



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

Office of the
Secretary

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**NOTICE OF ADMINISTRATIVE PENALTY
ASSESSMENT AND SECRETARY'S ORDER**

Pursuant to 7 *Del. C.* § 6005

Order No. 2018-W-0014

***PERSONALLY SERVED BY A DELAWARE
NATURAL RESOURCES POLICE OFFICER***

Issued To:

Mr. Kevin Gordon – Plant Manager
Allen Harim Foods, LLC
18752 Harbeson Road
Harbeson, DE 19951

This is to notify Allen Harim Foods, LLC (Respondent) that the Department of Natural Resources and Environmental Control (Department) has found that the Respondent has violated 7 *Del. C.* §§ 6003 and 6005, 7 *Del. Admin. C.* § 7201 *et seq.*, Delaware Regulations Governing the Control of Water Pollution, hereinafter referred to as the Water Pollution Regulations, and National Pollutant Discharge Elimination System (NPDES) Permit No. DE 0000299. Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment and Secretary's Order (Secretary's Order).

BACKGROUND

The Department is responsible for the administration of the NPDES program and enforcement of the NPDES permits in accordance with the Federal Water Pollution Control Act, 33 *U.S.C.* §1251 *et seq.*, and 7 *Del. C.* Chapter 60. Pursuant to this authority, the Department has promulgated the Water Pollution Regulations.

Respondent owns and operates a poultry processing facility located at 18752 Harbeson Road, Harbeson, Delaware, (Facility). The Department issued an NPDES Permit No. DE0000299 (NPDES Permit) to the Facility, effective February 1, 2016, which regulates the Wastewater Treatment Plant (WWTP) and system, and authorizes the discharge of effluent from the Harbeson Facility through Outfalls identified as 001, 002, 003, and 004, that discharge to the Beaver Dam Creek, and ultimately into the Broadkill River.

Pursuant to its NPDES Permit, Respondent is required to monitor its discharges by collecting samples of its discharge and analyzing those samples for a number of pollutant parameters as stipulated in the NPDES Permit. Data generated as a result of the sampling and analysis is summarized in a monthly Discharge Monitoring Report (DMR) and submitted to the Department on a regular basis as required by the NPDES Permit. A further condition requires Respondent to at all times maintain in good working order and operate as efficiently as possible all collection and treatment facilities and systems (and related appurtenances) installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of its NPDES Permit.

During the time period of March 1, 2012 through November 29, 2016, Respondent submitted Discharge Monitoring Reports, "5-Day Letters," and non-compliance letters to the Department, and reported effluent and permit violations of the above mentioned NPDES Permit, some of which appear to be a direct result of equipment failures, process overloads, and various other circumstances as detailed in the reports submitted to the Department.

As a result of many of the above-mentioned reported violations, Notice of Violation W-16-SWD-04 was delivered to Respondent on November 4, 2016.

FINDINGS OF FACT

The Department finds that Respondent committed the following violations of its NPDES Permit No. DE0000299 at the Harbeson, Delaware facility:

Outfall 001 Violations

A. The permit limit of 0.62 mg/l for the monthly average concentration of Ammonia was exceeded during following months:

- August 2016 – average concentration reported at <2.07 mg/l
- September 2016 – average concentration reported at 0.92 mg/l

B. The permit limit of 0.93 mg/l for the daily maximum concentration of Ammonia was exceeded on the following days (total of 16 days):

- August 31, 2016 thru September, 2, 2016 (3 days) – concentration reported at 9.66 mg/l
- September 3, 2016 – concentration reported at 1.35 mg/l
- September 15, 2016 – concentration reported at 2.84 mg/l
- September 16, 2016 – concentration reported at 1.28 mg/l

- September 17 thru September 18, 2016 (2 days) – concentration reported at 2.95 mg/l
- September 22, 2016 – concentration reported at 2.8 mg/l
- September 23, 2016 – concentration reported at 2.8 mg/l
- October 1, 2016 – concentration reported at 7.36 mg/l
- October 2, 2016 – concentration reported at 1.55 mg/l
- October 4, 2016 – concentration reported at 5.2 mg/l
- October 5, 2016 – concentration reported at 2.44 mg/l
- October 7, 2016 – concentration reported at 3.4 mg/l
- October 8, 2016 – concentration reported at 13.6 mg/l
- October 9, 2016 – concentration reported at 1.13 mg/l
- October 20, 2016 – concentration reported at 2.26 mg/l
- October 26, 2016 – concentration reported at 2.68 mg/l
- October 27, 2016 – concentration reported at 5.07 mg/l
- October 28, 2016 – concentration reported at 5.30 mg/l
- November 2, 2016 – concentration reported at 1.36 mg/l
- November 11, 2016 – concentration reported at 1.36 mg/l
- November 29, 2016 – concentration reported at 1.58 mg/l

C. The permit limit of 10.4 lbs/day for the monthly average loading of Ammonia was exceeded during the following month:

- August, 2016 – average loading reported at <25.7 lbs/day

D. The permit limit of 15.6 lbs/day for the daily maximum loading of Ammonia was exceeded on the following days (total of 13 days):

- August 31, 2016 thru September, 2, 2016 (3 days) – loading reported at 121.59 lbs/day
- September 15, 2016 – loading reported at 33.84 lbs/day
- September 16, 2016 – loading reported at 15.97 lbs/day
- September 17 thru September 18, 2016 (2 days) – loading reported at 36.17 lbs/day
- September 22, 2016 – loading reported at 34.98 lbs/day
- October 1, 2016 – loading reported at 117.50 lbs/day
- October 4, 2016 – loading reported at 65.42 lbs/day
- October 5, 2016 – loading reported at 29.80 lbs/day
- October 7, 2016 – loading reported at 35.7 lbs/day
- October 8, 2016 – loading reported at 100.6 lbs/day
- October 20, 2016 – loading reported at 24.78 lbs/day
- October 26, 2016 – loading reported at 31.2 lbs/day
- October 27, 2016 – loading reported at 60.17 lbs/day
- October 28, 2016 – loading reported at 68.67 lbs/day
- November 2, 2016 – loading reported at 17.61 lbs/day
- November 29, 2016 – loading reported at 17.97 lbs/day

E. The permit limit of 15 lbs/day (old permit) for the monthly average loading for Total Phosphorus (TP) was exceeded on the following months:

- August, 2012 – average loading reported as 15.6 lbs/day
- September, 2012 – average loading reported at 18.9 lbs/day

F. The permit limit of 5.21 lbs/day (new permit) for the monthly average loading for Total Phosphorus (TP) was exceeded on the following month:

- July, 2016 – loading reported at 8.2 lbs/day

G. The permit limit of 23 lbs/day (old permit) for the daily maximum loading for Total Phosphorus (TP) was exceeded on the following days (total of 21 days):

- August 28, 2012 – September 4, 2012 (8 days) – 42.7 lbs/day
- September 5, 2012 – September 10, 2012 (6 days) – 44.4 lbs/day
- September 11, 2012 – September 17, 2012 (7 days) – 27.94 lbs/day

H. The permit limit of 7.82 lbs/day (new permit) for the daily maximum loading for Total Phosphorus (TP) was exceeded on the following days (total of 6 days):

- July 26, 2016 thru July 31, 2016 (6 days) – 23.9 lbs/day

I. The permit limit of 3.0 mg/l (old permit) for the daily maximum concentration for Total Phosphorus (TP) was exceeded on the following days (total of 21 days):

- August 28, 2012 – September 4, 2012 (8 days) – 7.5 mg/l
- September 5, 2012 – September 10, 2012 (6 days) – 6.23 mg/l
- September 11, 2012 – September 17, 2012 (7 days) – 3.79 mg/l

J. The permit limit of 9.1 mg/l for the monthly average concentration for Total Suspended (TSS) was exceeded on the following month:

- July, 2016 – average concentration reported at 11.65 mg/l

K. The permit limit of 13.7 mg/l for the daily maximum concentration for Total Suspended Solids (TSS) was exceeded on the following days (total of 6 days):

- July 26, 2016 thru July 31, 2016 (6 days) – 29.2 mg/l

L. The permit limit of 228 lbs/day for the daily maximum loading for Total Suspended Solids (TSS) was exceeded on the following days (total of 6 days):

- July 26, 2016 thru July 31, 2016 (6 days) – 256.9 lbs/day

M. The permit limit of 113 col/100ml for the daily maximum concentration for Enterococcus was exceeded on the following days (total of 2 days):

- September 7 & 8, 2016 (2 days) – 248.1 col/100ml

N. The permit limit of 55.3 mg/l for the daily maximum concentration for Total Nitrogen (TN) was exceeded on the following days (total of 7 days):

- March 20, 2012 thru March 26, 2012 (7 days) – 56.2 mg/l

Outfall 003 Violations

O. The permit limit of 20 mg/l for the monthly average concentration for Total Suspended (TSS) was exceeded on the following months:

- July, 2012 – average concentration reported at 474.0 mg/l
- August, 2012 – average concentration reported at 160 mg/l
- June, 2013 – average concentration reported at 674.0 mg/l
- July, 2015 – average concentration reported at 478.0 mg/l

P. The permit limit of 13.7 mg/l for the daily maximum concentration for Total Suspended Solids (TSS) was exceeded on the following days (total of 6 days):

- July 20, 2012 (1 days) – 474.0 mg/l
- August 2, 2012 (1 day) – 160.0 mg/l
- June 3, 2013 (1 day) – 674.0 mg/l
- July 21, 2015 (1 day) – 478 mg/l

Q. The permit limit of 185 col/100ml for the daily maximum concentration for Enterococcus was exceeded on the following day:

- June 3, 2013 (1 day) – 1,732,870 col/100ml

R. The permit limit of 16.0 mg/l for the monthly average concentration for 5-Day Biochemical Oxygen Demand (BOD₅) was exceeded on the following months:

- July, 2012 – average concentration reported at 31.2 mg/l
- August, 2012 – average concentration reported at 30.4 mg/l
- June, 2013 – average concentration reported at 20.4 mg/l

S. The permit limit of 26.0 mg/l for the daily maximum concentration for 5-Day Biochemical Oxygen Demand (BOD₅) was exceeded on the following (2) days:

- July 20, 2012 (1 day) – 31.2 mg/l
- August 2, 2012 (1 day) – 30.4 mg/l

General Permit Violations:

T. Failure to Operate as Efficiently as Possible, all Collection and Treatment Facilities:

- Part II, A.3 of NPDES Permit DE 0000299 requires that *the permittee shall at all times maintain in good order and operate as efficiently as possible, all collection and treatment facilities and systems (and related appurtenances) installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of this permit.*

U. Failure to Sample Outfall 001 For Enterococcus During Week of May 20, 2012 as Required by Permit:

- *NPDES Permit No. DE0000299 requires that Outfall 001 must be sampled a minimum of one time per week. During the week of May 20, 2012 thru May 26, 2012, the Allen Harim Foods, LLC, Harbeson, DE Wastewater Treatment Plant failed to sample Outfall 001 as required.*

STATUTORY AND REGULATORY PROVISIONS

The following statutes and regulations are applicable:

7 Del. C. § 6003(a)(2) states: "No person shall, without first having obtained a permit from the Secretary, undertake any activity in any way which may cause or contribute to discharge of a pollutant into any surface or ground water."

7 Del. C. § 6005(b) states: "Whoever violates this chapter or any rule or regulation duly promulgated thereunder, or any condition of a permit issued pursuant to §6003 of this title, or any order of the Secretary, shall be punishable as follows..."

7 Del Admin. C. §7201- 3.2.1 of the Water Pollution Regulations, states, in relevant part: "No person shall undertake any activity that causes or contributes to the discharge of a pollutant to any surface water or groundwater..." Violations of Respondent's NPDES Permit constitutes a violation of this section of 7 Del Admin. C. §7201 by discharging pollutants that exceeded permitted limitations as described in the permit violations above.

7 Del Admin. C. §7201- 3.2.3 of the Water Pollution Regulations, states, in relevant part: "No person shall discharge any pollutant from a point source into surface or ground water, directly or indirectly, except as authorized..." Violations of Respondent's NPDES Permit constitute violations of this section of 7 Del Admin. C. §7201 when the Facility discharges pollutants that exceeded permitted limitations as described in the permit violations above.

7 Del Admin. C. §7201- 3.2.4 of the Water Pollution Regulations, states: "No person shall discharge liquid waste from an existing septic tank or other system where such liquid waste flows to the surface of the ground or into surface waste". Violations of Respondent's NPDES Permit constitute violations of this section of 7 Del Admin. C. §7201 when the Facility discharges liquid waste that was allowed to flow to the ground and/or into surface water.

NPDES PERMIT VIOLATIONS

Respondent's failure to meet the requirements of its NPDES Permit as described above are violations as cited below:

- Discharges of pollutants not allowed by the NPDES Permit constitute violations of 7 *Del. C.* §6003(a)(2) which prohibits discharging pollutants without a permit.
- NPDES Permit Part I.B1 – Part I.B10 (Effluent Limitations and Monitoring Requirements) list specific Effluent Limitations for the facility outfalls that were not met, which are violations of the NPDES Permit.
- NPDES Permit Part II A.3 (Facilities Operation) list specific requirements for maintaining in good order and operating as efficiently as possible all collection and treatment facilities and systems (and related appurtenances) installed or used by the permittee to achieve compliance with the terms and conditions of the permit. Violations of these requirements are violations of the NPDES Permit.
- Violations of the NPDES Permit are punishable according to 7 *Del. C.* § 6005(b).

CONCLUSIONS

The Department has determined that Respondent violated 7 *Del. C.* §§ 6003 and 6005, 7 *Del. Admin. C.* §§ 7201- 3.2.1, 3.2.3, and 3.2.4 of the Water Pollution Regulations, and NPDES Permit No. DE 0000299 as described hereinabove.

ASSESSMENT OF PENALTY AND COSTS

Pursuant to the provisions of 7 *Del. C.* § 6005(b)(3), this is written notice to Respondent that on the basis of its findings, the Department is assessing Respondent an administrative penalty of \$241,000.00 for the violations identified in this Assessment and Order.

In addition to the penalty assessment, Respondent is hereby assessed estimated costs in the amount of \$7,888.00 pursuant to 7 *Del. C.* § 6005(c), which were incurred by the Department in the investigation of the noted violations.

Respondent shall submit one check to the Department in the amount of \$241,000.00 to pay the penalty and one check to the Department in the amount of \$7,888.00 to pay the estimated costs within 30 days from the receipt of this Assessment and Order. The checks shall be made payable to the "State of Delaware" and shall be directed to: Devera Scott, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street 3rd Floor, Dover, Delaware 19904.

PUBLIC HEARING & APPEAL RIGHTS

This Assessment and Order is effective and final upon receipt by Respondent. Pursuant to § 6008 of Title 7 of the Delaware Code, any person whose interest is substantially affected by this action of the Secretary may appeal to the Environmental Appeals Board within **20 days** of the receipt of the Assessment and Order. In the alternative, Respondent may, pursuant to 7 *Del. C.* § 6005(b)(3), request a public hearing on the penalty assessment and Order, within **30 days** of receipt of the Assessment and Order. A hearing would be conducted pursuant to 7 *Del. C.* § 6006, and the Secretary's order following the hearing would be subject to appeal, pursuant to 7 *Del. C.* § 6008, by any person substantially affected.

The Department reserves the right to take additional enforcement actions regarding these and other violations at Respondent's facility, including but not limited to one or more of the following: an action under 7 *Del. C.* § 6005(b)(1) seeking penalties for past violations, an action under 7 *Del. C.* § 6005(b)(2) seeking penalties for continuing violations, an action in the Court of Chancery pursuant to 7 *Del. C.* § 6005(b)(2) seeking a temporary restraining order or an injunction, and the imposition of civil penalties and recovery of the Department's costs and attorney's fees pursuant to 7 *Del. C.* § 6005(b)(3) & (c)(1). Nothing in this document shall be deemed to estop, or in any way preclude, any additional enforcement action for these or any other violations, including administrative and civil penalties for each day of violation, or an action for the recovery of Department costs expended in abating these violations.

To request a hearing, please submit your request, in writing, to:

Department of Natural Resources and Environmental Control
Office of the Secretary
89 Kings Highway
Dover, DE 19901
Ph: (302) 739-9000

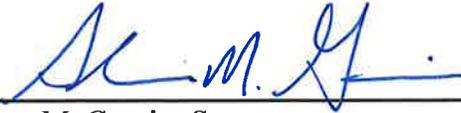
To submit an appeal to the Environmental Appeals Board, there is a \$50.00 filing fee that should be made payable to the: "Environmental Appeals Board" and sent to:

Department of Natural Resources and Environmental Control
Office of the Secretary
Attn: Assistant to the Environmental Appeals Board
89 Kings Highway
Dover, DE 19901
Ph: (302) 739-9000

If you have any questions, please contact Bryan Ashby at (302) 739-9946.

DATE:

2/22/18



Shawn M. Garvin, Secretary
Department of Natural Resources and
Environmental Control

cc: Devera B. Scott, Deputy Attorney General
Virgil R. Holmes, Director, DNREC Division of Water
Susan S. Baker, Enforcement Coordinator

WAIVER OF STATUTORY RIGHT TO A HEARING

The **Allen Harim Foods, LLC**, hereby **waives its right to a hearing and its opportunity to appeal or contest this Secretary's Order**, and agrees to the following:

1. The **Allen Harim Foods, LLC** will pay the administrative penalty in the amount of **\$241,000.00** by sending a check payable to the State of Delaware within 30 days of receipt of this Secretary's Order. The check shall be directed to Devera B. Scott, Deputy Attorney General, Department of Justice, 102 W. Water Street, Dover, DE 19901;
2. The **Allen Harim Foods, LLC** will reimburse the Department in the amount of **\$7,888.00** which represents the Department's estimated abatement costs. The reimbursement shall be paid within 30 days of receipt of this Secretary's Order. The check shall be made payable to the State of Delaware and shall be directed to Devera B. Scott, Deputy Attorney General, Department of Justice, 102 W. Water Street, Dover, DE 19901; and
3. The **Allen Harim Foods, LLC** further agrees to abide by all of the terms and conditions of this Secretary's Order.

Allen Harim Foods, LLC

Date: _____

By: _____
(Signature)

Title: _____

Name: _____
(Print)