

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Twin Rivers Foods, Inc.  
602 SE 2nd Street  
Atkins, AR 72823

LIS No. 24- *116*  
Permit Tracking No. ARR002110  
AFIN 58-00906

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order ("Order") is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1311 *et seq.*, and the rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of Twin Rivers Foods, Inc. (Respondent) and the Division of Environmental Quality (DEQ), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

FINDINGS OF FACT

1. Respondent operates a chicken processing facility ("Facility") located at 602 South East Second Street, Atkins, Pope County, Arkansas.
2. Respondent discharges stormwater to White Oak Creek.
3. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).

4. Pursuant to the federal Clean Water Act, 33 U.S.C. § 1311(a) *et seq.*, the NPDES program prohibits the discharge of pollutants except as in compliance with a permit issued under the NPDES program in accordance with 33 U.S.C. § 1342(a).

5. DEQ is authorized under the Arkansas Water and Air Pollution Control Act (“Act”) to issue NPDES permits in the state of Arkansas and to initiate an enforcement action for any violation of a NPDES permit.

6. DEQ regulates stormwater discharges associated with industrial activity pursuant to the NPDES Stormwater Industrial General Permit, Permit Number ARR000000 (“Permit”), which became effective on July 1, 2019, and expires on June 30, 2024.

7. Respondent’s activities at the Facility fall within the definition of “Industrial Activities” in Part I, Section A of the Permit, making the Facility an “Industrial Site” as defined by the Permit. In accordance with the Permit and 40 C.F.R. § 122.26(c), incorporated by reference in APC&EC Rule 6, Respondent is required to have permit coverage for stormwater discharges associated with industrial activity.

8. Ark. Code Ann. § 8-4-217(a)(1) and (3) provide:

(a) It shall be unlawful for any person to:

...

(1) Cause pollution, as defined in § 8-4-102, of any of the waters of this state;

(3) Violate any provisions of this chapter or of any rule, or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [DEQ].

9. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes DEQ to assess an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation for any violation of any provision of the Act and any rule or permit issued pursuant to the Act.

10. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B), “[e]ach day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

11. In accordance with 40 C.F.R. § 122.26(c), as adopted by APC&EC Rule 6, dischargers of stormwater associated with industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(i-ix, xi), are required to obtain coverage under the NPDES Industrial Stormwater General Permit ARR000000 or an individual permit.

12. On May 26, 2023, DEQ received a complaint alleging that Respondent was regularly discharging into White Oak Creek.

13. On May 26, 2023, DEQ investigated the complaint. At the time of the investigation, grey water was present in White Oak Creek.

14. On June 2, 2023, DEQ conducted a reconnaissance inspection of the site. The inspection revealed the following:

- a. Respondent was operating without NPDES Industrial Stormwater General Permit (IGP) ARR000000 coverage. Operating the facility without IGP coverage is in violation of Ark. Code Ann. § 8-4-217(b)(1)(c) and 40 C.F.R. § 122.26(c), as adopted by APC&EC Rule 6, and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. The inspection further revealed an unpermitted discharge into White Oak Creek, in violation of Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-217(a)(1).

15. On June 8, 2023, DEQ notified Respondent of the results from the June 2, 2023 inspection via letter and requested a written response addressing the violations be submitted to DEQ within thirty (30) days of receipt of the letter.

16. On July 3, 2023, DEQ received the written response to the violations cited in the inspection report. Respondent stated that all materials needed to obtain IGP coverage would be submitted to DEQ.

17. On September 14, 2023, and on November 8, 2023, Respondent submitted the NOI, SWPPP, and drainage maps needed to obtain IGP coverage.

18. DEQ issued coverage under the Industrial Stormwater General Permit, Permit Tracking Number ARR002110 (IGP Permit), to Respondent for discharge of stormwater associated with industrial activity into waters of the state with a coverage date of December 14, 2023, and an expiration date of June 20, 2024.

19. On February 5, 2024, Respondent submitted a response to the proposed Order, which stated the Respondent's consulting engineers developed a Stormwater Pollution Prevention Plan (SWPPP) and conducted a Piping Survey at the facility. The Piping Survey determined which drains convey wastewater to the onsite wastewater treatment plant (WWTP) and which drains discharge stormwater only. The Respondent's WWTP discharges to the City of Atkins WWTP. The Piping Survey determined the green pipe in the White Oak Creek identified in the inspection report was discharging stormwater.

## ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Within sixty (60) calendar days of the effective date of this Order, Respondent shall submit to DEQ, a Corrective Action Progress Report including photographs documenting the Best Management Practices (BMPs) Respondent has implemented or is undertaking to comply with the IGP Permit. Respondent shall also collect and analyze stormwater samples from Outfalls 004, 005, and 007 for the assigned industrial sector, which includes Chemical Oxygen Demand (COD) and Oil & Grease (O&G) parameters. Copies of the results and chain of custody shall be included with the Corrective Action Progress Report.
2. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Three Thousand Six Hundred Dollars (\$3600.00) Payment is due within thirty (30) calendar days of the effective date of this Order. Payment of the penalty shall be made payable to the Division of Environmental Quality, and mailed to the attention of:

DEQ, Fiscal Division  
5301 Northshore Drive  
North Little Rock, AR 72118

In the event that Respondent fails to pay the civil penalty within the prescribed time, DEQ shall be entitled to attorneys' fees and costs of collection.

3. Failure to meet any requirement or deadline of this Order constitutes a violation of this Order. If Respondent should fail to meet any such requirements or deadlines, Respondent consents and agrees to pay on demand to DEQ stipulated penalties according to the following schedule:

- a. First day through fourteenth day: \$100.00 per day
- b. Fifteenth day through the thirtieth day: \$500.00 per day
- c. Each day beyond the thirtieth day: \$1000.00 per day

4. These stipulated penalties for delay in performance shall be in addition to any other remedies or sanctions that may be available to DEQ by reason of failure by Respondent to comply with the requirements of this Order.

5. If any event, including but not limited to an act of nature, occurs which causes or may cause a delay in the achievement of compliance by Respondent with the requirements or deadlines of this Order, Respondent shall so notify DEQ, in writing, as soon as reasonably possible after it is apparent that a delay will result, but in no case after the due dates specified in this Order. The notification shall describe in detail the anticipated length of the delay, the precise cause of the delay, the measures being taken and to be taken to minimize the delay, and the timetable by which those measures will be implemented.

6. DEQ may grant an extension of any provision of this Order, provided that Respondent requests such an extension in writing and provided that the delay or anticipated delay has or will be caused by circumstances beyond the control of and without the fault of Respondent. The time for performance may be extended for a reasonable period but in no event longer than the period of delay resulting from such circumstances. The burden of proving that any delay is caused by circumstances beyond the control of and without the fault of Respondent and the length of the delay attributable to such circumstances shall rest with Respondent. Failure to notify the DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

7. All requirements by the Order and Agreement are subject to approval by DEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by DEQ, submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies. Failure to respond adequately to such Notice of Deficiency within the timeframe specified in writing by DEQ constitutes a failure to meet the requirements established by this Order.

8. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Rule No. 8 and shall not be effective until thirty (30) calendar days after public notice is given. DEQ retains the right to rescind this Order based upon the comments received within the thirty (30) calendar day public comment period. Notwithstanding the public notice requirements, the corrective actions necessary to achieve compliance shall be taken immediately. The publication of this Order shall occur on or about the 10th or 25th day of the month following the date this Order is executed. As provided by APC&EC Rule No. 8, this matter is subject to being reopened upon Commission initiative or in the event a petition to set aside this Order is granted by the Commission.

9. Nothing in this Order shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed herein. Also, this Order does not exonerate Respondent from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve Respondent of its responsibilities for obtaining any necessary permits.

10. By virtue of the signature appearing below, the individual represents that he or she is an Officer of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this Order by an individual other than an Officer of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 18 DAY OF July, 2024.

Bailey Taylor  
BAILEY TAYLOR, INTERIM CHIEF ADMINISTRATOR OF ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Twin Rivers Foods, Inc.

BY: [Signature]  
(Signature)

FRED NORWOOD  
(Typed or printed name)

TITLE: CORP. SAFETY AND ENV. MGR.

DATE: 07-17-24