

LANCE R. LEFLEUR
DIRECTOR



Alabama Department of Environmental Management
adem.alabama.gov

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Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

ROBERT J. BENTLEY
GOVERNOR

OCT 10 2013

**CERTIFIED MAIL 91 7199 9991 7030 3430 4334
RETURN RECEIPT REQUESTED**

Mr. Gary Davis
Vice President Eastern Division
JCG Foods of Alabama, LLC
764 George Cagle Drive
Collinsville, Alabama 35961

RE: Consent Order No. 14-004-CWP
NPDES Permit AL0002241
JCG Foods of Alabama, LLC
DeKalb County (049)

Dear Mr. Davis:

Please find the enclosed ADEM Consent Order No. 14-004-CWP which requires you to take certain actions at the JCG Foods of Alabama, LLC at 764 George Cagle Drive in Collinsville, AL in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of JCG Foods of Alabama, LLC.

Sincerely,

Glenda L. Dean, Chief
Water Division

GLD/kbj

File: ECO/14-004-CWP

Enclosure

cc: Tom Johnston/ADEM, Office of General Counsel
Schuyler Espy/ADEM, Office of General Counsel
Daphne Smart/ADEM, Industrial Municipal Branch/Water Division
Scott Ramsey/ ADEM, Industrial Municipal Branch/Water Division
Latoya Hall/ADEM, Industrial Municipal Branch/Water Division

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S. W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
4171 Commanders Drive
Mobile, AL 36615-1421
(251) 432-6533
(251) 432-6598 (FAX)

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

<u>IN THE MATTER OF:</u>)	
)	
JCG FOODS OF ALABAMA LLC)	Consent Order No. 14-004-CWP
764 George Cagle Drive)	
Collinsville, DeKalb County, Alabama)	
)	
<u>Permit No. AL0002241</u>)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department”) and JCG Foods Of Alabama LLC, formerly Cagle’s Inc. (hereinafter the “Permittee”), pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act (hereinafter the “AWPCA”), Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342.

STIPULATIONS

1. The Permittee operates a poultry processing facility (hereinafter “the Facility”), located at 764 George Cagle Drive in the city of Collinsville, Dekalb County, Alabama. The Permittee discharges pollutants from a point source into Big Wills Creek, a water of the state.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to § 22-22A-4(n), Ala. Code (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA, §§ 22-22-1 to 22-22-14, Ala. Code (2006 Rplc. Vol.).

4. In accordance with ADEM Admin. Code chap. 335-6-6 and the AWPCA, the Department issued National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit Number AL0002241 (hereinafter "the Permit") to Cagle's Inc. on June 16, 2004 (effective July 1, 2004) establishing limitations on the discharges of pollutants from such point source, designated therein as outfall number DSN001, into Big Wills Creek. The Permit was transferred from Cagle's Inc. to JCG Foods of Alabama LLC (hereinafter the "Permittee") on October 15, 2012 and reissued to the Permittee on May 21, 2013 (effective June 1, 2013). The Permit requires that the Permittee monitor its discharge and submit periodic Discharge Monitoring Reports (hereinafter "DMRs") to the Department describing the results of the monitoring. In addition, the Permit requires that the Permittee properly operate and maintain all facilities and systems of treatment and control which are installed or used by the Permittee to achieve compliance with the terms and conditions of the Permit.

DEPARTMENT'S CONTENTIONS

5. In 2005, EPA promulgated revisions to 40 CFR 432.112 for Best Practicable Control Technology (hereinafter "BPT") and to 40 CFR 432.113 for Best Available Technology (hereinafter "BAT"). The revisions established daily maximum and monthly average effluent limitations for Ammonia as Nitrogen (NH₃-N), Biological Oxygen

Demand (BOD), Fecal Coliform, Oil and Grease, Total Nitrogen (TN) and Total Suspended Solids (TSS). The Permittee has indicated to the Department that it cannot meet these effluent guidelines without adding additional treatment.

6. The DMRs submitted to the Department by the Permittee indicate that the Permittee has discharged pollutants in violation of the limits imposed by Part 1 of NPDES Permit No. AL0002241. The effluent violations are listed in Attachment #1.

7. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations specifically cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

PERMITTEE'S CONTENTIONS

8. The Permittee purchased the Facility on or about June 15, 2012, with knowledge that the wastewater treatment facilities would need significant upgrades.

9. The Permittee discussed the system upgrades and permit compliance with the Department both prior to and subsequent to the actual purchase of the Facility.

10. After the Permittee began operating the Facility in 2012, it was operated in substantial compliance with NPDES Permit No. AL0002241 (effective July 1, 2004).

11. However, since the Permittee was aware that its revised permit would contain more stringent limits for certain parameters, the Permittee began working diligently to design and implement a new wastewater treatment system for the Facility.

12. More specifically, the Permittee began the upgrade design efforts in March 2012 using Clearwater Consultants, Inc. These design efforts included site inspections,

review of aerial surveys, testing of existing basins, preliminary design drawings and cost estimates for several alternatives and treatment system components.

13. After reviewing cost estimates from Clearwater Consultants, Inc., the Permittee decided to obtain a second opinion on the treatment system design.

14. In January 2013, the Permittee decided to retain Reid Engineering Company for the design and implementation of the new wastewater treatment system at the Facility.

15. The Permittee has expended significant time and resources in its re-design efforts to ensure that the upgraded system will meet current permit requirements.

16. Reid Engineering has estimated that its construction drawings and specifications will be complete by October 2013 and that construction on the new treatment system will begin by December 2013. Construction is scheduled to be complete by May 2015, with start-up and system testing to be complete by September 2015.

17. The Permittee neither admits nor denies the Department's Contentions, but in an effort to cooperate with the Department, consents to abide by the terms of this Consent Order.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the alleged compliance issues cited above. The Department has carefully considered the facts available to the Department, as well as the need for timely and effective enforcement. The Department believes the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee

(hereinafter collectively "Parties") agree to enter into this CONSENT ORDER with the following terms and conditions:

A. That any penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

B. That, if not already enrolled in the Department's Electronic Environmental Discharge Monitoring Reports (hereinafter "eDMR") Reporting System Program (hereinafter "E2 Program"), the Permittee shall prepare and submit to the Department a complete application for enrollment of the Facility, so that it is received by the Department not later than thirty days after the effective date of this Consent Order. If the Department determines through its review of the submitted application that the submittal is not sufficient for the Permittee to participate in the E2 Program, the Permittee must modify the application so that it is sufficient. The Permittee shall submit modifications to the application, if required, so that they are received by the Department no later than fourteen days after receipt of the Department's comments. Upon acceptance by the Department into the E2 Program, the Permittee shall begin the electronic submittals of DMRs through the E2 Program no later than the 28th day of the month following the first complete monitoring period. The Permittee shall fully implement all aspects of the E2 Program including the cessation of federal paper DMR submittals, if applicable, no later than 180 days after acceptance into the E2 Program, unless an extension is granted in writing by the Department. The Permittee shall abide

by all terms, conditions, and limitations of the E2 Program immediately upon acceptance into the E2 Program.

C. That, the Permittee shall prepare and submit to the Department, not later than sixty days after the effective date of this Consent Order, an Engineering Report that identifies the potential causes of noncompliance and summarizes an investigation of the changes necessary for the Permittee to achieve and maintain compliance with the Permit. The Engineering Report must include a schedule for implementation (i.e., a Compliance Plan). At a minimum, the Permittee shall consider each of the following in making its determination: the need for changes in maintenance and operating procedures; the need for modification of existing treatment and collection system works; and the need for new or additional treatment and collection system works. The Engineering Report shall be prepared by a professional engineer licensed to practice in the State of Alabama. If the Department determines through its review of the submitted Engineering Report that the report is not sufficient to accomplish compliance with the Permit, then the report shall be modified so that it does accomplish compliance. Modifications to the Engineering Report, if required, shall be submitted to ADEM no later than thirty days after receipt of the Department's comments. The Permittee shall complete implementation of the recommendations made in the Engineering Report within 730 days after the effective date of this Consent Order.

D. That, the Permittee shall prepare and submit progress reports to the Department describing in detail the Permittee's progress towards achieving compliance with the items presented in the Compliance Plan. Such reports shall be submitted beginning sixty days after the effective date of this Consent Order and shall continue to be submitted every ninety days until the compliance date established in the following paragraph is attained. In addition, not later than fourteen days following each

applicable due date contained in this Consent Order, the Permittee shall submit a written notice of noncompliance with the requirements of that paragraph, if applicable. Notices of noncompliance shall state the cause of noncompliance, the corrective action taken, and shall describe the Permittee's ability to comply with any remaining requirements of this Consent Order.

E. No later than 730 days after the date of entry of this Order, the Permittee shall comply with the TSS, Fecal Coliform, CBOD, TN and NH3-N requirements of the Permit and all applicable Federal and State Regulations. The Permittee shall also comply with all other terms, conditions, and limitations of its Permit immediately upon the effective date of this Order.

F. That, after the effective date of this Consent Order, the Permittee shall pay stipulated penalties for each day it fails to meet any of the milestone dates or satisfy any of the requirements set forth in or established by Paragraphs B, C, and D contained herein. The stipulated civil penalties for failure to meet each milestone or any requirement date, except for *Force Majeure* acts as hereinafter defined, shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 30th day	\$ 100.00
31st to 60th day	\$ 200.00
After 60 days	\$ 300.00

If the Permittee fails to meet any milestone or any assigned date ninety days after the required dates found in paragraphs B, C, and D, the Department reserves the right to file a new action against the Permittee.

G. That, cumulative stipulated penalties described in paragraph F above shall under no circumstances exceed \$18,000.00. Once stipulated penalties of \$18,000.00

are due to the Department and violations continue to occur after 455 days after the effective date of this Consent Order or as stipulated in paragraph F above, then the Department shall be free to issue an additional order or file suit against the Permittee in the Circuit Court of Montgomery County or other court of competent jurisdiction to enforce compliance of this Consent Order.

H. That payment of stipulated penalties due for violations of milestone dates under this Consent Order shall be due not later than the 28th day of the month following the month a milestone date was not achieved. Notification to the Permittee by the Department of the assessment of any stipulated penalty is not required.

I. That this Consent Order shall apply to and be binding upon both Parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

J. That, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

K. That the Permittee is not relieved from any liability if it fails to comply with any provision of this Consent Order.

L. For purposes of this Consent Order only, that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. In any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical

impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

M. That the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in other Orders as may be issued by the Director, by litigation initiated by the Department, or by such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this

Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

N. That this Consent Order shall be considered final and effective immediately upon signature of all Parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

O. The Parties agree that this Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

P. That, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

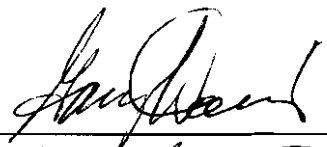
Q. That any modifications of this Consent Order must be agreed to in writing signed by both Parties.

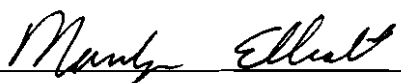
R. That, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

JCG FOODS OF ALABAMA LLC

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: 
Its: V.P. Koch Foods
Date: 10-2-13

By: 
Its: Deputy Director
Date: OCT 10 2013

**JCG Foods of Alabama
AL0002241**

Attachment 1:

Permit Effluent Violations

Monitoring Period	Outfall	Parameter	Limit Type	Unit	Permit Limit	Reported Value
June 2013	DSN001	Total Suspended Solids	Daily Maximum	mg/l	30	68.6
June 2013	DSN001	Total Suspended Solids	Monthly Average	mg/l	20	35.9
June 2013	DSN001	Carbonaceous BOD	Daily Maximum	mg/l	18.0	22.4
July 2013	DSN001	Total Suspended Solids	Daily Maximum	mg/l	30	218
July 2013	DSN001	Total Suspended Solids	Monthly Average	mg/l	20	68.8
July 2013	DSN001	Total Organic Nitrogen	Daily Maximum	mg/l	7.5	9.64
July 2013	DSN001	Fecal Coliform	Daily Maximum	col/100ml	400	2800
August 2013	DSN001	Total Suspended Solids	Daily Maximum	mg/l	30	129
August 2013	DSN001	Total Suspended Solids	Monthly Average	mg/l	20	55.8
August 2013	DSN001	Total Organic Nitrogen	Daily Maximum	mg/l	7.5	11.8
August 2013	DSN001	Total Organic Nitrogen	Monthly Average	mg/l	5.0	6.4
August 2013	DSN001	Fecal Coliform	Daily Maximum	col/100ml	400	18,000