



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

SECRETARY'S ORDER NO. 2018-W-0018

DELIVERY BY DELAWARE NATURAL RESOURCES POLICE OFFICER

**TO: Hanover Foods Corporation
7000 Millington Road
P.O. Box 1150
Clayton, DE 19938**

This is to notify Hanover Foods Corporation (Respondent) that the Department of Natural Resources and Environmental Control (Department) has found that the Respondent has violated 7 Del. Admin. C. §7201 *et seq.*, *Delaware Regulations Governing the Control of Water Pollution* (Water Pollution Regulations), and National Pollutant Discharge Elimination System (NPDES) Permit No. DE0051063. 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 vegetable processing facility located at 7000 Millington Road, Clayton, DE, (Facility). The Department issued NPDES Permit No. DE0051063 (NPDES Permit) to the Facility, effective April 1, 2013, which authorizes the discharge of effluent from the Facility through Outfall 001 that discharges to a tributary of Providence Creek.

Pursuant to its NPDES Permit, Respondent is required to monitor its discharge 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 their NPDES Permit.

During the time period May, 2011 through October, 2017, Respondent accumulated numerous violations of Part I.B.I of the NPDES Permit for Total Suspended Solids (TSS) and Biochemical Oxygen Demand (BOD₅), and was in direct violation of the Part II.A.2.b "Notification of Noncompliance" and Part II.B.8.b "Reapplication for a Permit" of the NPDES Permit.

Part II.A.2.b of the NPDES Permit states that:

"(1) If, for any reason, the permittee does not comply with or will be unable to comply with any daily maximum effluent limitation...specified in this permit, the permittee shall report such incident within 24 hours and provide the Department with the following information, in writing, within five (5) days of becoming aware of such conditions:

- a) A description of the discharge and cause of noncompliance;
- b) The period of noncompliance, including exact dates and times and, if the noncompliance has not been corrected, the anticipated time when the discharge will return to compliance; and
- c) Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

(2) If, for any reason, the permittee does not comply with any daily average or average monthly effluent limitation or standard specified in this permit, the permittee shall provide the information outlined above in paragraph b.1 with the discharge monitoring report (DMR) submitted in accordance with Part I.D.2 of this permit."

Hanover Foods Corporation received a Notice of Violation (NOV) on March 3, 2017 for the effluent and non-compliance notification violations outlined below. A response to the NOV was received by the Department on March 27, 2017.

Additionally, Hanover Foods Corporation failed to submit their NPDES permit renewal application by the deadline set forth in the NPDES Permit Part II.B.8.b. The deadline to submit the permit renewal application was October 2, 2017 and the facility did not submit the application until November 14, 2017.

FINDINGS OF FACT

The Department finds that Respondent committed the following violations of its NPDES permit at the Facility:

Outfall 001 Effluent Violations

A. The permit limit of 30.0 mg/L for the daily average concentration of Total Suspended Solids (TSS) was exceeded during the following months:

- May 2011 - 30.4 mg/L
- July 2011 - 57.0 mg/L

- June 2014 - 37.0 mg/L
- B. The permit limit of 45.0 mg/L for the daily maximum concentration of Total Suspended Solids (TSS) was exceeded on the following days (total of 56 days) through September 30, 2016:
- July 5, 2011 thru August 3, 2011 (30 days)- concentration reported at 57 mg/L
 - September 20, 2011 (1 day) - concentration reported at 62.6 mg/L
 - June 4, 2013 thru June 19, 2013 (16 days) - concentration reported at 45.3 mg/L
 - June 10, 2014 thru June 18, 2014 (9 days)- concentration reported at 54 mg/L
- C. The permit limit of 30.0 mg/L for the daily average concentration of Biochemical Oxygen Demand (BOD₅) was exceeded during the following month:
- June 2016 - >84.65 mg/L
- D. The permit limit of 45.0 mg/L for the daily maximum concentration of Biochemical Oxygen Demand (BOD₅) was exceeded on the following days (total of 47 days) through September 30, 2016:
- June 14, 2012 thru June 28, 2012 (15 days) - 59.2 mg/L
 - June 7, 2016 thru June 29, 2016 - daily maximum was reported at >66 mg/L to 153 mg/L (23 days)
 - August 9, 2016 thru August 17, 2016 (9 days) - 143 mg/L

Notification of Non-Compliance Violations

- July 2011 - The Facility had a TSS Daily Maximum Concentration violation of 57 mg/L from the July 6, 2011 sample, however the Department was not notified until the July 2011 DMR was received on August 26, 2011.
- June 2013 - The Facility had a TSS Daily Maximum Concentration violation of 45.3 mg/L from the June 4, 2013 sample, however the Department did not receive any notification until the June 2013 DMR was received on July 29, 2013. A letter addressing the violation was received on August 2, 2013 after the facility was contacted regarding the lack of notification of the violation.
- March 2014 - The Outfall 001 effluent flow meter was inoperable for a period of 10 days and there was no notification to the Department until the March 2014 DMR was received on April 28, 2014.
- June 2014 - The Facility had a TSS Daily Maximum Concentration violation of 54 mg/L from the June 10, 2014 sample, however the Department did not receive any notification until the violation was discovered during the DMR review conducted during the July 22, 2014 Compliance Sampling and Inspection (CSI). The contract laboratory notified Hanover Foods of the violation on June 16, 2014 via email.

- August 2015 - The Outfall 001 effluent flow meter malfunctioned due to a power surge on August 9, 2015. The Department was not notified within 24 hours and discovered the equipment failure on August 11, 2015 during the 2015 CSI.
- June 2016 - The Facility had the following BOD₅ Daily Maximum Concentration violations:
 - June 7, 2016: 153 mg/L - Department notified via phone call on 6/28/16
 - June 22, 2016: >66 mg/L - Department notified in writing on 7/5/16
 - June 29, 2016: 95.6 mg/L - Department notified in writing on 7/28/16 with DMR submission.
 - There were no verbal notifications for the June 22, 2016 and June 29, 2016 violations.

Failure to Submit Permit Renewal Application in accordance with NPDES Permit requirements

- October 2017: The facility was required to submit the Permit Renewal Application for the NPDES Permit by October 2, 2017. The permit renewal application was received by the Department on November 14, 2017 after the facility was contacted for non-submittal.

STATUTORY AND REGULATORY PROVISIONS

1. 7 Del. Admin. C. §7201-3.2.1 states

"No person shall undertake any activity that causes or contributes to the discharge of a pollutant to any surface water or groundwater except as authorized pursuant to a permit or equivalent authorization, issued by the Secretary or as prescribed by these regulations (e.g. General Permit Program requirements of §9)."

2. 7 Del. Admin. C. §7201-3.2.3 states

"No person shall discharge any pollutant from a point source into surface or ground water, directly or indirectly, except as authorized pursuant to a permit granted under these regulations, unless such discharge is specifically exempted from such permit regulations."

CONCLUSIONS

The Department determined that Respondent violated specific terms and conditions of its NPDES Permit No. DE0051063, more particularly as follows:

Respondent violated Part I.B.1, Part II.A.2.b, Part II.A.3, and Part II.B.8.b of the Permit as iterated in the above.

Respondent violated 7 Del. Admin. C. § 7201 3.2.1 of the Regulations, by discharging pollutants to surface water, except as authorized by the NPDES permit.

SECRETARY'S ORDER ASSESSING ADMINISTRATIVE PENALTY AND COSTS

Pursuant to the provisions of 7 Del.C. §6005(b)(3), this is written notice to the Respondent that on the basis of its findings noted above, the Department is hereby assessing Respondent an administrative penalty of **\$48,545.00**.

In addition to the administrative penalty assessment, the Respondent is hereby assessed costs in the amount of **\$5,990.00**, pursuant to 7 Del.C. §6005(c), which the Department incurred in abating the noted violations.

Respondent shall pay the assessed administrative penalty and reimburse the Department's costs within **thirty (30) days** of its receipt of this Secretary's Order. The Respondent shall remit two checks, made payable to the "State of Delaware" in the amounts of \$48,545.00 and \$5,990.00. The checks shall be directed to: Ralph K. Durstein III, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904.

The Department reserves the right to take additional enforcement actions against the Respondent regarding the violations cited herein as well as other violations, including but not limited to one or more of the following: an action under 7 Del.C. §6005(b)(1) seeking civil penalties for past violations, an action under 7 Del.C. §6005(b)(2) seeking civil 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 administrative penalties and recovery of the Department's costs and attorney's fees pursuant to 7 Del.C. §6005(b)(3) & (c)(1).

PUBLIC HEARING & APPEAL RIGHTS

This Secretary's Order is effective and final upon Respondent's receipt thereof.

Pursuant to §6008 of Title 7 of the Delaware Code, any person whose interest is substantially affected by this action of the Secretary may file an Appeal with the Environmental Appeals Board within **twenty (20) days** of Respondent's receipt of this Secretary's Order.

In the alternative, pursuant to §6005(b)(3) of Title 7 of the Delaware Code, Respondent may request a Public Hearing on this Secretary's Order within **thirty (30) days** of its receipt thereof. The Public Hearing will be conducted pursuant to 7 *Del.C.* §6006, and the Secretary's Order following the Public Hearing may be subject to appeal, pursuant to 7 *Del.C.* §6008, by any person substantially affected by the Secretary's Order issued following the Public Hearing.

To request a Public Hearing pursuant to 7 *Del.C.* §6005(b)(3), the Department must receive your written Public Hearing Request within **thirty (30) days** of your receipt of this Secretary's Order. You must submit your Public Hearing 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 file an Appeal with the Environmental Appeals Board pursuant to 7 *Del.C.* §6008, the Environmental Appeals Board must receive your written Statement of Appeal within **twenty (20) days** of your receipt of this Secretary's Order. You must submit your written Statement of Appeal 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

There is a \$50.00 deposit for Appeals to the Environmental Appeals Board. You must include a check for \$50.00, made payable to, "Environmental Appeals Board," with your Statement of Appeal. If unable, because of financial hardship, to make the \$50.00 deposit, specify the circumstances and reasons for not submitting the deposit in your Statement of Appeal. (7 *Del. Admin. C.* §105-2.3). For additional information on filing an Appeal with the Environmental Appeals Board, please refer to the *Environmental Appeals Board Regulations*, 7 *Del. Admin. C.* §105.

In the event you do not file an Appeal with the Environmental Appeals Board or request a Public Hearing within the deadlines specified above, you would lose your right to contest this Secretary's Order and you would be required to pay the Administrative Penalty and Costs within **thirty (30) days** of your receipt of this Secretary's Order. In the event of nonpayment of the Administrative Penalty and Costs after all legal appeals have been

exhausted, pursuant to 7 Del.C. §§6005(b)(3) & (c), the Department may bring a civil action against you for collection of the Administrative Penalty and Costs, and the validity, amount and appropriateness of such Administrative Penalty shall not be subject to review.

PRE-PAYMENT

The Respondent may prepay the administrative penalty of **\$48,545.00** and the Department's costs in the amount of **\$5,990.00**, in the manner described above. **By doing so, the Respondent waives its right to a hearing and the opportunity to appeal or contest this Secretary's Order.**

DATE:

2/20/18



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

cc: Ralph K. Durstein III, Deputy Attorney General
Virgil R. Holmes, Director, DNREC Division of Water
Bryan Ashby, Program Manager II, Division of Water

WAIVER OF STATUTORY RIGHT TO A HEARING

The **Hanover Foods Corporation** hereby **waives its right to a hearing and its opportunity to appeal or contest Secretary's Order No. ,** and agrees to the following:

1. The **Hanover Foods Corporation** will pay the administrative penalty in the amount of **\$48,545.00** by sending a check payable to the "State of Delaware" within 30 days of receipt of Secretary's Order No. . The check shall be directed to Ralph K. Durstein III, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19901;
2. The **Hanover Foods Corporation** will reimburse the Department's costs in the amount of **\$5,990.00**. The reimbursement shall be paid within 30 days of receipt of Secretary's Order No. . The check shall be made payable to the "State of Delaware" and shall be directed to Ralph K. Durstein III, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19901; and
3. The **Hanover Foods Corporation** further agrees to abide by all of the terms and conditions of Secretary's Order No. .

Hanover Foods Corporation

Date: _____

By: _____
(Signature)

Title: _____

Name: _____
(Print)