

**IN THE CIRCUIT COURT OF WALKER COUNTY, ALABAMA**

**THE STATE OF ALABAMA, ex rel. )  
STEVE MARSHALL, )  
ATTORNEY GENERAL; THE )  
ALABAMA DEPARTMENT OF )  
ENVIRONMENTAL MANAGEMENT; )  
and THE ALABAMA DEPARTMENT )  
OF CONSERVATION AND NATURAL )  
RESOURCES )  
)  
Plaintiffs, )  
)  
v. )  
)  
TYSON FARMS, INC. )  
)  
Defendant. )**

**Civil Action No.: 64-CV-2020-900123**

**CONSENT DECREE**

A. Plaintiffs, the State of Alabama (“State”), Alabama Department of Conservation and Natural Resources (“DCNR”), and the Alabama Department of Environmental Management (“ADEM”) (collectively, “Plaintiffs”), by and through their undersigned counsel, filed a civil Complaint on April 29, 2020 against Tyson Farms, Inc. (“Defendant”), pursuant to the Alabama Water Pollution Control Act (“AWPCA”), Ala. Code § 22-22-1 *et seq.*, the Alabama Environmental Management Act (“AEMA”), Ala. Code § 22-22A-1 *et seq.*, and applicable regulations, seeking civil penalties, injunctive relief, and restitution for violations of the NPDES Permit and the AWPCA, including the unpermitted discharge of partially treated wastewater into waters of the State of Alabama. The Complaint also alleged common law causes of action under Alabama law, including counts for Public Nuisance, Trespass to Lands, Trespass to Chattel, Negligence, and Wantonness.

B. Defendant does not admit any liability to any Plaintiffs arising out of the transactions or occurrences alleged in the Complaint. Plaintiffs and Defendant (the “Parties”) have agreed to the entry of this Consent Decree without further adjudication of any of the

factual or legal issues raised in the Complaint or Defendant's answer, including any and all affirmative defenses, and in full settlement of all claims that were brought or could have been brought in the above-styled proceedings.

C. The Parties agree, and the Court by entering this Consent Decree finds, that this Consent Decree, and the remedial and monetary obligations thereunder, address the acts or omissions of Defendant alleged in the Complaint and do not address the alleged acts and omissions of any other person or entity, aside from those expressly released herein.

D. The Parties agree, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and the terms memorialized in this Consent Decree will avoid prolonged and complex litigation between the Parties, and that this Consent Decree is in the public interest.

E. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree, and the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

**NOW, THEREFORE,** without admission by Defendant of the allegations in the Complaint, without waiver by Defendant of any defense(s) to which it may be entitled, without adjudication of any issue of fact or law pertaining to this action, and upon the consent and agreement of the Parties to this Consent Decree, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

#### **I. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action and the Parties to this action pursuant to the AEMA and the AWPCA. This Court also has personal jurisdiction over the Parties. Solely for the purposes of this Consent Decree and any

enforcement of its provisions, Defendant waives all objections and defenses that it may have to jurisdiction of the Court.

## **II. VENUE**

2. Solely for the purposes of this Consent Decree and any enforcement of its provisions, Defendant waives all objections and defenses that it may have to venue and agrees to submit to venue in the Circuit Court of Walker County, Alabama.

## **III. PARTIES**

3. Plaintiff, the State, by and through the authority of Attorney General Steve Marshall, is authorized by Ala. Code §§ 22-22A-5(1), 22-22-9(m), 22-22A-5(12), and 22-22A-5(18) to enforce the provisions of the AWPCA. Specifically, Ala. Code § 22-22A-5(18)b. authorizes the Attorney General to bring a civil action on behalf of the State for violations of said Acts. Ala. Code § 22-22A-5(18)c. authorizes ADEM and the State to recover civil penalties for such violations. The Attorney General is authorized by Ala. Code § 36-15-12 to institute and prosecute, in the name of the State, all civil actions and other proceedings necessary to protect the rights and interests of the State.

4. Plaintiff, ADEM, is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1, et seq. Pursuant to Ala. Code § 22-22A-4(n), ADEM 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, et seq. (“Clean Water Act”). ADEM is also authorized to administer and enforce the provisions of the AWPCA, Ala. Code §§ 22-22-1, et seq.

5. Plaintiff, DCNR, is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 9-2-1, et seq. Pursuant to Ala. Code § 9-2-2, one of the primary duties of DCNR is to “protect, conserve, and increase wildlife of the state and to administer all laws relating to wildlife and the protection, conservation and increase thereof.” In

accordance with these statutes, DCNR may recover damages for the loss of its species, natural resources, and the public's use of these resources.

6. Defendant, Tyson Farms, Inc., is a corporation formed under the laws of the State of North Carolina, with its principal place of business located in Springdale, Arkansas. Defendant is a "person" within the meaning of Ala. Code §§ 22-22-1(b)(7), 22-28-2(4), and 22-22A-3(7). Defendant owns and operates a poultry byproduct rendering plant, known as the "Tyson Farms, Inc. – River Valley Ingredients Hanceville Alabama Facility" ("Facility") located at 1170 County Road 508, in the city of Hanceville, Cullman County, Alabama. Defendant is registered to do business in Alabama, does business in Alabama, and has a registered agent in Alabama. Defendant holds National Pollutant Discharge Elimination System Permit No. AL0040843 ("NPDES Permit"), that was previously issued by ADEM to American Proteins, Inc. on April 19, 2018 and transferred to Defendant on October 1, 2018.

#### **IV. BINDING EFFECT**

7. The provisions of this Consent Decree shall apply to and be binding upon, the Defendant and its officers, directors, employees, agents, servants, successors, and assigns, and upon all persons, firms and corporations in active concert or participation with the Defendant and assigns, and upon Plaintiffs and their representatives.

#### **V. OBJECTIVES**

8. It is the express purpose of the Parties entering into this Settlement Agreement to further the objectives set forth in Section 22-22-2 of the AWPCA, and to resolve the issues alleged in the Complaint. In light of these objectives:

- a. Plaintiffs acknowledge that Defendant has voluntarily undertaken various capital improvement projects at the Facility since its acquisition of the Facility in late 2018;
- b. Defendant agrees to the restitution projects as set forth in Paragraph VIII;

- c. Plaintiffs acknowledge that Defendant has taken or will take, as needed, all reasonable and appropriate steps necessary to address and remediate the impact from the acts alleged in Plaintiffs' Complaint; and
- d. Defendant agrees to comply with the terms and conditions of its NPDES Permit and to submit to ADEM all NPDES reports in a timely manner and perform all lawful acts necessary to effectuate the provisions of this Consent Decree.

#### **VI. CIVIL PENALTY TO ADEM**

9. Defendant is assessed and agrees to pay a civil penalty to ADEM in the total amount of three hundred fifty thousand (\$350,000) dollars. Defendant shall submit said amount within thirty (30) days of the effective date of this Consent Decree to ADEM via wire transfer pursuant to the instructions provided by ADEM.

10. If Defendant fails to pay such penalty within the time required, Defendant agrees to pay ADEM's expenses and attorneys' fees necessary for collection of the civil penalty.

#### **VII. RESTITUTION TO DCNR**

11. Defendant hereby agrees to pay to DCNR restitution in the amount of six hundred fifty thousand (\$650,000) dollars. Defendant shall submit said amount within thirty (30) days of the effective date of this Consent Decree via wire transfer pursuant to the instructions provided by DCNR.

12. If Defendant fails to pay such restitution within the time required, Defendant agrees to pay DCNR's expenses and attorneys' fees necessary for the collection of the restitution.

## **VIII. RESTITUTION PROJECTS FOR CULLMAN AND WALKER COUNTIES**

**13.** In lieu of the payment of any additional civil penalties, compensatory damages, and/or attorneys' fees to the State, Defendant shall deposit one million five-hundred thousand (\$1,500,000) dollars into a fund established for the benefit of the communities in Cullman and Walker Counties. Defendant shall submit said amount within thirty (30) days of the effective date of this Consent Decree via wire transfer pursuant to instructions provided by the Office of Attorney General. The Attorney General shall maintain these funds in an interest-bearing account and distribute said funds for projects located in Cullman and Walker Counties, as directed by a five-member Restitution Fund Oversight Committee ("Committee") to be named by the Attorney General.

## **IX. CONSTRUCTION OF ACCESS POINTS**

**14.** In order to increase public access for recreational paddlers and boaters along the Mulberry and Sipsey Forks of the Black Warrior River, Defendant shall fund, in the amount of five hundred thousand (\$500,000) dollars, the placement of up to four public access points in Walker and Cullman Counties. Within thirty (30) days of the effective date of this Consent Decree, Defendant shall submit said amount via wire transfer pursuant to instructions provided by DCNR.

## **X. ENVIRONMENTAL EDUCATION GRANT**

**15.** Within thirty (30) days of the effective date of this Consent Decree, Defendant shall provide to the Alabama Cooperative Extension System's Alabama Water Watch, a not-for-profit organization, a grant in the amount of twenty-five thousand (\$25,000) dollars that shall be used for the benefit of training citizens of Walker and Cullman Counties to monitor water quality conditions and trends of their local water bodies. Within forty-five (45) days of the effective date of this Consent Decree, Defendant shall submit to the Office of the Attorney

General written verification by certified mail that it has satisfied above-described grant obligation.

## **XI. ADDITIONAL COMPLIANCE OBLIGATIONS**

**16.** As a result of the Defendant's May 26, 2019 and June 6, 2019 releases at the Facility ("Incidents"), the following shall apply:

- a.** Defendant shall prepare and submit to ADEM an Engineering Report that identifies the potential cause(s) of noncompliance for the Incidents and, with respect to identified potential cause(s), summarizes the corrective action(s) that have been taken or are necessary for Defendant to achieve and maintain compliance with its NPDES Permit and the AWPCA. Defendant shall submit the Engineering Report so that it is received by ADEM no later than ninety (90) days after the effective date of this Consent Decree unless mutually agreed by the Parties in writing. If not already fully addressed and remediated by Defendant as of the date the Engineering Report is submitted, the Engineering Report shall include a Compliance Plan with a schedule for implementation of any necessary corrective action(s). At a minimum, with respect to any identified potential cause(s) of the Incidents, Defendant shall consider each of the following: the need for changes in maintenance and operating procedures; the need for additional or modified best management practices, the need for modification of existing treatment and collection system works; and the need for new or additional treatment and collection system works. A Professional Engineer, licensed to practice in the State of Alabama, shall certify the Engineering Report. If ADEM determines within ninety (90) days of receipt of the submitted Engineering Report that the Report is not sufficient, then the Report shall be modified accordingly. Defendant shall submit modifications to

the Engineering Report, if required, so that they are received by ADEM no later than thirty (30) days after receipt of ADEM's comments. Defendant shall complete implementation of the recommendation(s) made in the Engineering Report not later than 180 days after the Engineering Report is accepted by ADEM.

- b.** If not already fully addressed and remediated by Defendant as of the date the Engineering Report is submitted, Defendant shall prepare and submit detailed quarterly Progress Reports to ADEM describing in detail its progress towards achieving compliance with the items presented in the Compliance Plan, including the cost of necessary corrective actions. Defendant shall submit such reports so that they are received by ADEM 120 days after the effective date of this Consent Decree and continuing every ninety (90) days thereafter so long as performance obligations under this Consent Decree remain incomplete. In addition, no later than fourteen (14) days following each applicable due date herein, Defendant shall submit to ADEM a written notice of noncompliance with the requirements of that paragraph, if applicable. Notices of noncompliance shall state the cause(s) of noncompliance, the corrective action taken, and shall describe Defendant's ability to comply with any remaining requirements of this Consent Decree.
- c.** Defendant shall submit a certification to ADEM, signed by a Professional Engineer, licensed to practice in the State of Alabama, indicating whether the Facility is in compliance with the NPDES Permit and the Consent Decree. Defendant shall submit such certification so that it is received by ADEM no later than 210 days after the Engineering Report is accepted by ADEM.



## **XII. ATTORNEYS' FEES AND COSTS**

17. The Parties shall bear and be responsible for their own attorneys' fees and costs incurred in connection with this matter.

## **XIII. EFFECT OF SETTLEMENT AND RELEASE**

18. Except as expressly provided herein, this Consent Decree resolves any and all known claims the Plaintiffs now have or could have concerning, related to, or arising out of any of the Incidents, including without limitation those allegations in the Complaint filed in this action, Plaintiffs' claims for costs and expenses incurred in response and investigation and oversight of the Incidents, and any damages caused by any of the Incidents. It is the Parties' intent to fully release all of Plaintiffs' claims against Defendant Tyson Farms, Inc., as well as its parent company, Tyson Foods, Inc., and all subsidiaries, affiliates, directors, officers and employees thereof for any and all liability in connection with Plaintiffs' claims.

## **XIV. RETENTION OF JURISDICTION/DISPUTE RESOLUTION**

19. The Court shall retain jurisdiction over this matter for the purposes of implementing and enforcing the terms and conditions of this Consent Decree and for the purpose of adjudicating all disputes among the Parties that may arise under the provisions of this Consent Decree.

20. Submission of any matter to the Court for resolution shall not extend any deadlines set forth in this Consent Decree, unless the Parties agree to such extension in writing, or the Court allows the extension upon motion.

## **XV. NOT A PERMIT/COMPLIANCE WITH OTHER STATUTES/REGULATIONS**

21. This Consent Decree is not and shall not be construed as a permit, or modification of any existing permit, issued pursuant to the AWPCA or the federal Clean Water Act, and nothing herein shall be construed as relieving Defendant of its obligations to comply with the terms and conditions of any applicable State or federal statute, any

regulations promulgated thereunder, or any permit(s) issued thereunder, or as relieving Defendant of its duty to comply with any other applicable State or federal law.

## **XVI. NON-WAIVER PROVISIONS**

**22.** Nothing contained in this Consent Decree shall be construed to prevent or limit the Plaintiffs' rights to obtain penalties or injunctive relief under the AWPCA or other State laws for violations occurring after the effective date of this Consent Decree.

**23.** This Consent Decree shall not limit any authority of the Plaintiffs under any applicable statute, including the authority to seek information from Defendant or to seek access to the Facility, nor shall anything in this Consent Decree be construed to limit Plaintiffs' authority to undertake any action against any person, including Defendant, in response to conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

**24.** Nothing contained in this Consent Decree shall be construed to prevent or limit the rights of Plaintiffs or Defendant against any third parties which are not parties to this litigation. The Parties recognize that this Consent Decree resolves only matters between the Plaintiffs and Defendant as expressed in Paragraph XIII above and that its execution does not preclude Defendant from asserting any legal or factual position in any action brought by Defendant against any person or entity not a party to this Consent Decree or against Defendant by any person or entity not a party to this Consent Decree.

**25.** Subject to the terms in this Consent Decree, the Parties reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree.

**26.** It is the intent of the Parties hereto that the clauses hereof are severable and should any clause(s) be declared by a court of competent jurisdiction to be invalid and unenforceable, the remaining clauses shall remain in full force and effect.

27. This Consent Decree was negotiated, mutually drafted, and executed by the Parties in good faith to avoid further litigation and is a settlement of claims which were vigorously contested, denied, and disputed. The execution of this Consent Decree is not an admission of any fact, liability, or wrongdoing of any kind regarding any of the matters addressed in the Complaint or Consent Decree. Accordingly, with the exception of this proceeding, this Consent Decree shall not be admissible in any judicial or administrative proceeding for use against any Party over the objection of that Party.

### **XVII. FORM OF NOTICE**

28. Unless otherwise specified and agreed to in writing by the Parties hereto, all reports, notices, or any other written communications required to be submitted under this Consent Decree shall be sent to the respective Parties at the following addresses:

**If to Plaintiffs:**

Robert D. Tambling, Esq.  
Zack D. Wilson, Esq.  
Alabama Office of the Attorney General  
501 Washington Ave.  
Montgomery, Alabama 36130

S. Shawn Sibley, Esq.  
Carrie T. Blanton, Esq.  
Office of the General Counsel  
Alabama Department of Environmental Management  
1400 Coliseum Blvd.  
Montgomery, Alabama 36110

Charlanna W. Skaggs, Esq.  
Jennifer Weber, Esq.  
Department of Conservation and Natural Resources Legal Section  
64 North Union Street, Suite 474  
Montgomery, Alabama 36130 If to Defendant:

**If to Defendants:**

William S. "Buddy" Cox  
Bradley Arant Boult Cummings, LLP  
1819 Fifth Avenue North  
Birmingham, AL 35203

Jane W. Duke  
Chief Compliance Officer  
Tyson Foods, Inc.  
2200 West Don Tyson Parkway  
Springdale, AR 72762

**29.** Notifications to or communications with Plaintiffs shall be deemed submitted on the date they are postmarked and sent by certified mail, return receipt requested, except as otherwise provided herein. Notifications to or communications with Defendant shall be deemed received on the date of certified mail receipt or ten (10) days after the item's postmark date, except as otherwise provided herein.

#### **XVIII. MODIFICATION**

**30.** This Consent Decree represents the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation, or understanding. Prior drafts of this Consent Decree shall not be used in any action involving the interpretation or enforcement of this Consent Decree. This Consent Decree may not be amended or modified except by written order of this Court. Any modification of this Consent Decree by the Parties shall be in writing and approved by the Court before it will be deemed effective.

#### **XIX. TERMINATION**

**31.** This Consent Decree shall terminate upon the granting of a motion to the Court after all of the following have occurred:

- a.** Defendant has paid all monetary obligations due hereunder and no penalties or other monetary obligations due hereunder are outstanding or owed to Plaintiffs; and,
- b.** Plaintiffs, within forty-five (45) days of receiving certification from Defendant pursuant to Paragraph XI.16.c, have not contested, in writing, that such

compliance has been achieved. If Plaintiffs dispute Defendant's full compliance with the Consent Decree, the Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court.

**32.** Defendant may petition Plaintiffs for termination of the obligations of any Paragraph of this Consent Decree, provided that Defendant has satisfied each and every term and condition of that Paragraph, and has certified to Plaintiffs that it has satisfied each and every term and condition of that Paragraph.

## **XX. SIGNATORIES**

**33.** Each undersigned signatory certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

**WE HEREBY CONSENT** to the entry of this Consent Decree in *State of Alabama, ex rel., Steve Marshall, Attorney General, the Alabama Department of Environmental Management, and the Alabama Department of Conservation and Natural Resources v. Tyson Farms, Inc.*, Case No. 64-CV-2020-900123.

**SO ORDERED** this \_\_\_\_ day of August, 2021.

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Walker County Circuit Court Judge

Jointly submitted on this \_\_\_ day of August, 2021.

**COUNSEL FOR  
THE STATE OF ALABAMA:**

STEVE MARSHALL  
ATTORNEY GENERAL

/s/ Katherine G. Robertson  
Katherine G. Robertson (GRE128)  
Deputy Attorney General

/s/ Robert D. Tambling  
Robert D. Tambling (TAM001)  
Assistant Attorney General

/s/ Zack D. Wilson  
Zack D. Wilson (WIL471)  
Assistant Attorney General

**ADDRESS OF COUNSEL:**  
Office of the Attorney General  
P.O. Box 300152  
Montgomery, AL 36130  
Telephone: (334) 242-7300  
Robert.Tambling@alabamaag.gov  
Zack.Wilson@alabamaag.gov

**COUNSEL FOR THE ALABAMA  
DEPARTMENT OF CONSERVATION  
AND NATURAL RESOURCES:**

STEVE MARSHALL  
ATTORNEY GENERAL

/s/ Charlanna W. Skaggs  
Charlanna W. Skaggs (SPE004)  
General Counsel

/s/ Jennifer Weber  
Jennifer Weber (ZIM008)  
Deputy General Counsel

**ADDRESS OF COUNSEL:**  
Alabama Department of Conservation and  
Natural Resources  
64 North Union Street, Suite 474  
Montgomery, Alabama 36130  
Telephone: (334) 242-3165  
charlanna.skaggs@dcnr.alabama.gov  
jennifer.weber@dcnr.alabama.gov

**COUNSEL FOR THE ALABAMA  
DEPARTMENT OF ENVIRONMENTAL  
MANAGEMENT:**

STEVE MARSHALL  
ATTORNEY GENERAL

/s/ S. Shawn Sibley  
S. Shawn Sibley (SIB002)  
Assistant Attorney General & General  
Counsel

/s/ Carrie T. Blanton  
Carrie T. Blanton (TOM024)  
Assistant Attorney General & Associate  
General Counsel

**ADDRESS OF COUNSEL:**  
Alabama Department of Environmental  
Management  
Office of General Counsel  
Post Office Box 301463  
Montgomery, Alabama 36130-1463  
Telephone: (334) 271-7855  
ssibley@adem.alabama.gov  
carrie.blanton@adem.alabama.gov

**COUNSEL FOR TYSON FARMS, INC:**

/s/ William S. "Buddy" Cox  
William S. "Buddy" Cox (COX018)

**ADDRESS OF COUNSEL:**  
Bradley Arant Boult Cummings, LLP  
1819 Fifth Avenue North  
Birmingham, AL 35203  
bcoc@bradley.com