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February 22, 2017

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Re: Comments Regarding Proposed Corrective Action Plan
Tyson Farms, Inc. (Temperanceville)

Dear Ms. Coleman:

Thank you for the opportunity to comment on the draft Corrective Action Plan (CAP) submitted by Tysons Farms, Inc. (Tyson) to the Department of Environmental Quality (DEQ) on December 16, 2016. This CAP is required pursuant to the State Water Control Board Enforcement Action–Order by Consent as a result of violations of the Virginia Pollutant Discharge Elimination System (VPDES) Permit VA0004049 governing Tyson’s Temperanceville processing facility. Chesapeake Bay Foundation (CBF) staff have reviewed the proposed CAP to determine whether the CAP is likely to bring about the required reduction in pollutant loadings from the Temperanceville facility and whether modifications would be appropriate. Based on that review, we submit the following comments to strengthen the draft CAP so that it will provide better protection for both local and regional water quality in the future.

The Temperanceville facility includes hatchery, processing, and rendering operations generating process wastewater and stormwater which, after treatment, are discharged to an unnamed tributary of Sandy Bottom Branch that eventually flows to the Chesapeake Bay. The facility is permitted to discharge treated stormwater and wastewater under VPDES Permit VA0004049, which was reissued on January 1, 2016.¹

The Temperanceville facility’s large permitted discharge (approximately 1.25 million gallons per day) makes it highly likely that flow from the plant dominates water quality in this small unnamed tributary.² DEQ agrees, finding that, “Tyson’s failure to comply with its permit substantially contributes to the impaired water quality of the unnamed tributary and Sandy Bottom Branch.” Unfortunately, this tributary has been listed on the Commonwealth’s 303(d) list as impaired for fecal coliform, leading to the 2005

¹ VA DEQ. State Water Control Board Enforcement Action-Order by Consent. 2016.

² VA Nutrient Credit Exchange Association. Exchange Compliance Plan: 2015 Annual Update. 2016.

development of a total maximum daily load, which was approved by the Virginia State Water Control Board in 2009.³

The number of pollutants subject to the Temperanceville CAP and the magnitude of its permit violations as determined by the State Water Control Board are deeply concerning. For instance, fecal coliform discharge monitoring indicated levels *over 19 times* the amounts allowed by Permit No. VA0004049. Moreover, the BOD₅ maximum concentration was reported at more than two times the permit limit, while the average concentration was almost two times the permitted average.⁴ Given these circumstances, it is imperative that the CAP impose a new regime that will effectively ensure no repeated violations.

The proposed CAP does not meet this standard. First, it should include mandated upgrades to the facility's disinfection system in addition to the changes proposed for the anaerobic lagoon. Increasing the capacity of the disinfection system will better ensure future treatment that is adequate to protect public health from harmful exposure to fecal contamination, in contrast to the inadequate past controls.

Also concerning is the apparent "logic" of the CAP's water conservation program which, Tyson explains, would reduce pollution loadings to the wastewater treatment system by reducing the volume of water per finished pound of product by 10 percent.⁵ Simply reducing flow to the wastewater treatment plant without reducing the actual pollutant loadings will not correct the problem, however; it will simply result in an increase in pollutant concentrations, given equal production levels. The Tyson water conservation plan assumes at least a steady state of production in order to be effective. Considering the growth in poultry production facilities on the Delmarva Peninsula during the past five years, it is a safe assumption that production at the facility will be increasing and not in a steady state in future years.

Moreover, while the CAP is in effect, it would be prudent to increase the discharge monitoring requirements for all pollutants where identified discharges have significantly exceeded permit limits (e.g., by two times the allowed rate). The facility, a significant discharger, is subject to the Watershed General Permit, which requires each covered discharger to monitor for a variety of pollutants using a 24-hour composite twice per week which can then be composited for a single week analysis.^{6 7} To ensure during the term of the CAP that progress is being made as anticipated and that upset conditions do not occur, it would be appropriate to require two discreet 24-hour composites per week. Daily samples for fecal coliform and *E. coli* should also be collected at all times the wastewater treatment plant is in operation.

We are also concerned about the proposed penalty, a scant \$16,150.00. The State Water Control Law, following the Clean Water Act, requires the Board to base penalties for violations of the sort at issue here on "the severity of the violation, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefits

³ VA DEQ. Enforcement Recommendation and Plan. 2016.

⁴ VA DEQ. Enforcement Recommendation and Plan. 2016.

⁵ Tyson's Foods, Inc. Compliance Action Plan. 2016.

⁶ VA DEQ. Enforcement Recommendation and Plan. 2016.

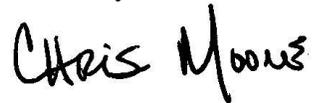
⁷ 9VAC25-820-70.

realized from the noncompliance,” and the ability of the person to pay the penalty.”⁸ We do not believe that the penalty proposed in this case satisfies these standards.

First, DEQ’s Enforcement Recommendation and Plan (ERP) indicates that the Tyson facility violated its permit (exceeding effluent limits) 10 times, with one of the exceedances classified as “serious.” DEQ also recognized the facility’s culpability level as “serious,” as Tyson is a major facility that has been subject to permitting for many years and because its failure to comply “substantially contributes to the impaired water quality” of the receiving stream. Added to the gravity of the violations is Tyson’s failure to provide required letters of explanation for these violations and its failure, up to and including the date of the draft consent order, to submit documentation verifying that the violations have been corrected. Finally, neither the ERP nor the consent decree reflects that DEQ gave any consideration to the economic benefit accruing to Tyson as a result of the violations. For all of these reasons, we believe that the penalty should be recalculated and increased to take into account the determination of substantial environmental harm, the facility’s serious culpability (and Tyson’s disappointing refusal to explain the circumstances to DEQ), and a specific assessment of the economic benefits realized by Tyson.

We appreciate the opportunity to submit these comments and would be pleased to discuss any of these ideas at your convenience.

Sincerely,

A handwritten signature in black ink that reads "Chris Moore". The signature is written in a cursive, slightly slanted style.

Chris Moore
Senior Regional Ecosystem Scientist

cc: Rebecca LePrell, Virginia Executive Director, CBF
Margaret L. (Peggy) Sanner, Virginia Assistant Director and Senior Attorney, CBF
Joe Wood, Ph.D., Virginia Staff Scientist, CBF

⁸ Va. Code § 62.1-44:15(8a).