

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Riceland Foods, Inc.  
P.O. Box 927  
Stuttgart, AR 72160

LIS No. 23- 036  
Permit No. AR0037834  
AFIN 56-00048

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 rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of Riceland 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 food processing plant with a sanitary wastewater treatment facility (“facility”) located at US Hwy 49 and Lake Hogue Road, Waldenburg, Poinsett County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary to Bayou DeView, thence to Bayou DeView, thence to the Cache River, thence to the White River in Segment 4B of the White River Basin.
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. Ark. Code Ann. § 8-4-217(a)(3) provides:

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

...

(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].

7. 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.

8. 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.”

9. DEQ issued NPDES Permit Number AR0037834 (“Permit”) to Respondent on April 3, 2020. The Permit became effective on May 1, 2020, and expires on April 30, 2025.

10. On September 1, 2022, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

11. The review revealed that Respondent reported the following violations of the permitted effluent discharge limits detailed in Part I, Section A of the Permit from May 1, 2019, through July 31, 2022:

- a. Nine (9) violations of Total Suspended Solids;
- b. Six (6) violations of Ammonia Nitrogen; and
- c. Two (2) violations of Dissolved Oxygen

12. Each of the seventeen (17) discharge limitation violations listed in Paragraph 11 above constitutes a separate permit violation for a total of seventeen (17) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

13. On October 31, 2022, DEQ reviewed the Respondent's Licensed Operator Register. The review revealed Respondent does not have an operator with a Class II Wastewater Operator License at the facility. Failure to maintain a Class II licensed operator is a violation of Part II, Condition I of the Permit. Failure to provide adequate operating staff that is duly qualified to carry out operations at this facility is a violation of Part III, Section B, Condition 1(B) of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

14. On November 3, 2022, the Respondent and DEQ met via Zoom. Respondent agreed to submit a Corrective Action Plan (CAP) with a milestone schedule and final compliance date by December 30, 2022.

15. On December 16, 2022, Respondent submitted an adequate CAP with an expected final date of compliance of April 15, 2023. Respondent is connecting the facility to the Waldenburg wastewater treatment plant with construction scheduled to commence on January 15, 2023.

16. On March 29, 2023, Respondent submitted an update of the progress in connecting the facility to the Waldenburg wastewater treatment plant. Respondent reported:

- a. Neighboring property easements secured;
- b. The pump station and parts have been delivered to the facility;

- c. The contractor delayed the initiation of construction as the ground is too wet to begin installation; and
- d. Respondent will notify DEQ when installation begins.

### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a closure plan for the facility that has been developed, signed, and stamped by a Professional Engineer licensed in the State of Arkansas.
2. Within thirty (30) calendar days of completion of the sewer connection project, Respondent shall submit a certification of completion, signed and stamped by a Professional Engineer licensed in the State of Arkansas.
3. Within thirty (30) calendar days of completion of closure of the facility, Respondent shall submit a certification of closure, signed and stamped by a Professional Engineer licensed in the State of Arkansas, stating that the facility has been closed in accordance with an approved closure plan and Respondent has submitted a request to terminate the Permit.
4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Four Thousand Dollars (\$4000.00), or one-half of the full civil penalty of Two Thousand Dollars (\$2000.00) if this Order is signed and returned to the Office of Water Quality Enforcement Branch, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days of receipt of this Order. Even if the conditions for receiving a reduced penalty of Two Thousand Dollars (\$2000.00) have been met, failure to otherwise comply with this Order will result in the penalty reverting to the full civil penalty of Four Thousand Dollars (\$4000.00) and shall become due immediately and payable to

DEQ. 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.

5. 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

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.

6. If any event, including but not limited to an act of nature, occurs that 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.

7. DEQ may grant an extension of any provision of this Order if Respondent requests such an extension in writing, and 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. Respondent has the burden of proving that any delay is caused by circumstances beyond the control and without the fault of Respondent, as well as the length of the delay attributable to such circumstances. Failure to notify DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

8. 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.

9. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Rule 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) 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 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.

10. 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 that is not expressly addressed herein, nor does it relieve Respondent of its responsibilities for obtaining any necessary permits.

11. 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 15<sup>th</sup> DAY OF May, 2023.



CALEB J. OSBORNE, DIVISION OF ENVIRONMENTAL QUALITY, DIRECTOR  
CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Riceland Foods, Inc.

BY:   
(Signature)

Andrew H. Dallas  
(Typed or printed name)

TITLE: Vice President General Counsel and Secretary

DATE: May 16, 2023