west virginia department of environmental protection

Division of Water and Waste Management
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Charleston, WV 25304
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11

TO: Mr. Ron Kilgore, General Manager
Ballard's Farm Sausage, Inc.
Rt. 2, PO Box 699
Wayne, WV 25570

DATE: August 24, 2012

ORDER NO.: 7591

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. to Ballard's Farm Sausage, Inc. (hereinafter "Ballard's Farm").

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Ballard's Farm operates a wastewater treatment facility located in Wayne County, West Virginia. Ballard's Farm was re-issued WV/NPDES Water Pollution Control Permit No. WV0002666 on January 29, 2010.

2. On January 11, 2010, West Virginia Department of Environmental Protection (WVDEP) personnel requested, by certified letter, that Ballard's Farm submit an approved Groundwater Protection Plan (GPP).

3. On January 29, 2010, WVDEP personnel issued Order No. 6919 to Ballard's Farm, which required submittal of a Plan of Corrective Action. The Order was issued due to repeated exceedances of discharge limitations, which are violations of its WV/NPDES permit (Section A). Exceedances included those for Total Residual Chlorine (TRC), Biochemical Oxygen Demand (BOD), Dissolved Oxygen (DO), and Fecal Coliform. Order No. 6957 was concurrently issued because of failure to submit a GPP with its

permit renewal application, a violation of Ballard's Farm's WV/NPDES permit (Section C).

4. On August 3, 2010, WVDEP personnel conducted a Compliance Evaluation Inspection (CEI) at Ballard's Farm. During the inspection, the following violations were observed and documented:

    a. Ballard's Farm failed to submit an approvable Plan of Corrective Action concerning compliance with discharge limitations, as required by Order No. 6919.

    b. Several operation and maintenance deficiencies were noted. Half of Ballard's Farm's aerators were out of service due to a separated air supply line, a violation of its WV/NPDES Permit (Appendix A, Section II, Requirement 1).

    Notice of Violation (NOV) No. CM-JNH-102910-1 was issued for the deficiencies.

    c. Ballard's Farm was not in compliance with Order No. 6957, because it had not submitted the required GPP.

5. Ballard's Farm submitted a GPP soon after the August 3, 2010 CEI.

6. On May 9, 2011, Ballard's Farm submitted WV/NPDES Water Pollution Control Permit Modification Application No. WV0002666-A, which proposed to include the de-chlorination unit to the effluent line prior to discharge from Outlet 001. Ballard's Farm also proposed plans to install an aeration system to meet its permitted BOD and Ammonia Nitrogen effluent limits by September 1, 2011.

7. On October 19, 2011, WVDEP personnel approved WV/NPDES Water Pollution Control Permit Modification Application No. WV0002666-A.

8. On December 14, 2011, Ballard's Farm responded to WVDEP's WV/NPDES Permit Modification approval, stating that it intended to begin installation of the proposed improvements in early spring of 2012.

9. WVDEP personnel conducted a review of Ballard's Farm Discharge Monitoring Reports (DMRs) from September 2010 to January 2012. The discharge of pollutants into waters of the State by Ballard's Farm in amounts that exceed permitted limitations are further described and detailed in Attachment A. These violations of its WV/NPDES permit (Section A) are summarized as follows:

    a. Seventeen (17) Minor Exceedances
    b. Twenty-Six (26) Moderate Exceedances
    c. Fifteen (15) Major Exceedances

    NOV Nos. W11-50-020-TB, W11-50-021-TB, W11-50-022-TB, W11-50-023-TB, W11-50-041-TB, W11-50-042-TB, W11-50-62-TB, and W12-50-021-TMB were issued for these deficiencies.

10. On June 22, 2012, WVDEP personnel and representatives of Ballard's Farm met to discuss the terms and conditions of this Order.

11. On July 10, 2012, Ballard's Farm submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Ballard Farm's ability to pay a civil administrative penalty.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Ballard's Farm shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.

2. Within twenty (20) days of the effective date of this Order, Ballard's Farm shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Ballard's Farm will achieve compliance with all terms and conditions of its WV/NPDES permit. The plan of corrective action shall be submitted to:

WVDEP Environmental Inspector Supervisor
SW Satellite Environmental Enforcement Office
PO Box 662
Teays, WV 25569

A copy of this plan shall be submitted to:

Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

3. Because of Ballard's Farm's permit violations, Ballard's Farm shall be assessed a civil administrative penalty of seven thousand two hundred thirty dollars ($7,230) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of the effective date of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304

OTHER PROVISIONS

1. Ballard's Farm hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Ballard's Farm agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Ballard's Farm does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Ballard's Farm other than proceedings, administrative or civil, to enforce this Order.

2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.

3. If any event occurs which causes delay in the achievement of the requirements of this Order, Ballard's Farm shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Ballard's Farm becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Ballard's Farm intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Ballard's Farm (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.

4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Ballard's Farm of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Ballard's Farm to additional penalties and injunctive relief in accordance with the applicable law.

5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.

6. This Order is binding on Ballard's Farm, its successors and assigns.

7. This Order shall terminate upon Ballard's Farm's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Mr. Ron Kilgore, General Manager
Ballard's Farm Sausage, Inc.

9-5-12
Date

Public Notice begin:

Date

Public Notice end:

Date

Scott G. Mandirola, Director
Division of Water and Waste Management

Date

revised September 2011

RECEIVED
SEP - 6 2012
ENVIRONMENTAL
ENFORCEMENT

Attachment A:
Ballard's Farm DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - August 2010 through January 2012						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
09/2010	Total Residual Chlorine	ug/l	9	50	456%	-	-	X
10/2010	Biochemical Oxygen Demand	mg/l	5	7	40%	X	-	-
10/2010	Total Residual Chlorine	ug/l	9	120	1233%	-	-	X
11/2010	Biochemical Oxygen Demand	mg/l	5	12	140%	-	X	-
12/2010	Ammonia Nitrogen	mg/l	3	3.27	9%	X	-	-
12/2010	Biochemical Oxygen Demand	mg/l	5	27	440%	-	-	X
01/2011	Ammonia Nitrogen	mg/l	3	8.65	188%	-	X	-
01/2011	Biochemical Oxygen Demand	mg/l	5	49	880%	-	-	X
01/2011	Fecal Coliform	Cnts/100m	200	590	195%	-	X	-
01/2011	Total Residual Chlorine	ug/l	9	810	8900%	-	-	X
02/2011	Ammonia Nitrogen	mg/l	3	10.2	240%	-	X	-
03/2011	Ammonia Nitrogen	mg/l	3	4.76	59%	-	X	-
03/2011	Biochemical Oxygen Demand	mg/l	5	28	460%	-	-	X
04/2011	Ammonia Nitrogen	mg/l	3	4.36	45%	-	X	-
04/2011	Biochemical Oxygen Demand	mg/l	5	27	440%	-	-	X
05/2011	Biochemical Oxygen Demand	mg/l	5	10	100%	-	X	-
06/2011	Biochemical Oxygen Demand	mg/l	5	11	120%	-	X	-
06/2011	Total Residual Chlorine	ug/l	9	30	233%	-	X	-
07/2011	Biochemical Oxygen Demand	mg/l	5	25	400%	-	-	X
07/2011	Fecal Coliform	Cnts/100m	200	230	15%	X	-	-
07/2011	Total Residual Chlorine	ug/l	9	70	678%	-	-	X
08/2011	Fecal Coliform	Cnts/100m	200	240	20%	X	-	-
08/2011	Biochemical Oxygen Demand	mg/l	5	13	160%	-	X	-
09/2011	Biochemical Oxygen Demand	mg/l	5	10	100%	-	X	-
09/2011	Total Residual Chlorine	ug/l	9	20	122%	-	X	-
10/2011	Total Residual Chlorine	ug/l	9	2120	23456%	-	-	X
11/2011	Biochemical Oxygen Demand	mg/l	5	12	140%	-	X	-
12/2011	Biochemical Oxygen Demand	mg/l	5	33	560%	-	-	X
01/2012	Ammonia Nitrogen	mg/l	3	4.05	35%	X	-	-
01/2012	Biochemical Oxygen Demand	mg/l	5	57	1040%	-	-	X
01/2012	Total Residual Chlorine	ug/l	9	20	122%	-	X	-

Outlet 001 DMR Exceedances - MAX. DAILY - August 2010 through January 2012						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
09/2010	Total Residual Chlorine	ug/l	18	50	178%	-	X	-
10/2010	Total Residual Chlorine	ug/l	18	120	567%	-	X	-
11/2010	Biochemical Oxygen Demand	mg/l	10	12	20%	X	-	-
12/2010	Biochemical Oxygen Demand	mg/l	10	27	170%	-	X	-
01/2011	Ammonia Nitrogen	mg/l	6	8.65	44%	X	-	-
01/2011	Biochemical Oxygen Demand	mg/l	10	49	390%	-	X	-
01/2011	Fecal Coliform	Cnts/100m	400	590	48%	X	-	-
01/2011	Total Residual Chlorine	ug/l	18	810	4400%	-	-	X
02/2011	Ammonia Nitrogen	mg/l	6	10.2	70%	X	-	-
03/2011	Biochemical Oxygen Demand	mg/l	10	28	180%	-	X	-
04/2011	Biochemical Oxygen Demand	mg/l	10	27	170%	-	X	-
06/2011	Biochemical Oxygen Demand	mg/l	10	11	10%	X	-	-

Attachment A:
Ballard's Farm DMR Exceedance Summary

06/2011	Total Residual Chlorine	ug/l	10	30	200%	-	X	-
07/2011	Biochemical Oxygen Demand	mg/l	10	25	150%	-	X	-
07/2011	Total Residual Chlorine	ug/l	18	70	289%	-	X	-
08/2011	Biochemical Oxygen Demand	mg/l	10	13	30%	X	-	-
09/2011	Total Residual Chlorine	ug/l	18	20	11%	X	-	-
11/2011	Biochemical Oxygen Demand	mg/l	10	12	20%	X	-	-
12/2011	Biochemical Oxygen Demand	mg/l	10	33	230%	-	X	-
01/2012	Biochemical Oxygen Demand	mg/l	10	57	470%	-	X	-
01/2012	Total Residual Chlorine	ug/l	18	20	11%	X	-	-

Outlet 001 DMR Exceedances - pH MAX. DAILY (Max.) - August 2010 through January 2012						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
03/2011	pH	S.U.	9.0	9.39	52.0%	X		

Outlet 001 DMR Exceedances - D.O. INSTANTANEOUS. MIN. - August 2010 through January 2012						Degree of non-compliance		
Date	Parameter	Units	Permitted min. daily	Reported min. daily	% Exceedance	Min	Mod	Maj
02/2011	D.O.	mg/l	6.0	2.3	616.7%			X
05/2011	D.O.	mg/l	6.0	5.45	91.7%	X		
06/2011	D.O.	mg/l	6.0	4.65	225.0%		X	
07/2011	D.O.	mg/l	6.0	5.54	76.7%	X		
08/2011	D.O.	mg/l	6.0	1.34	776.7%			X

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	17	26	15

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Ballard's Farm Sausage, Inc. **Receiving Stream:** Twelvepole Creek

Treatment System Design Maximum Flow: 0.0045 **MGD**

Treatment System Actual Average Flow: **MGD** (if known)

Enter FOF# and rate each finding as to Potential and Extent.

			FOF#												
1)	**Potential for Harm Factor**	**Factor Range**	**4a**	**4b**	**4c**	**9a**	**9b**	**9c**							
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1							
b)	Toxicity of Pollutant	0 to 3	0	1	0	1	1	1							
c)	Sensitivity of the Environment	0 to 3	0	1	0	1	1	1							
d)	Length of Time	1 to 3	2	1	2	1	1	1							
e)	Actual Exposure and Effects thereon	0 to 3	0	1	0	1	1	1							
	Average Potential for Harm Factor		0.6	1	0.6	1	1	1	No	No	No	No	No	No	No
2)	**Extent of Deviation Factor**	**Factor Range**													
	Degree of Non-Compliance	1 to 3	3	1	3	1	2	3							

Potential for Harm Factors:

1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)

1)d - Length of Time of Violation

1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by <=40% for Avg. Monthly or <=100% for Daily Max., exceed numeric WQ standard by <= 100%, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by >= 41% and <= 300% for Avg. Monthly , >= 101% and <= 600% for Daily Max., exceed numeric WQ standard by >= 101% and <= of 600% or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by >= 301% for Avg. Monthly, >= 601% for Daily Max., exceed numeric WQ standard by >= 601%, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

1)	Potential for Harm Factor	Factor Range	FOF#												
a)	Amount of Pollutant Released	1 to 3													
b)	Toxicity of Pollutant	0 to 3													
c)	Sensitivity of the Environment	0 to 3													
d)	Length of Time	1 to 3													
e)	Actual Exposure and Effects thereon	0 to 3													
	Average Potential for Harm Factor		No	No	No	No	No	No	No	No	No	No	No	No	No
2)	**Extent of Deviation Factor**	**Factor Range**													
	Degree of Non-Compliance	1 to 3													

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	$8,000 to $10,000	$6,000 to $8,000	$5,000 to $6,000
	Moderate	$4,000 to $5,000	$3,000 to $4,000	$2,000 to $3,000
	Minor	$1,500 to $2,000	$1,000 to $1,500	Up to $1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
4a	Minor	Major	$1,800	1	$1,800
4b	Minor	Minor	$1,000	1	$1,000
4c	Minor	Major	$1,800	1	$1,800
9a	Minor	Minor	$1,000	17	$17,000
9b	Minor	Moderate	$1,500	26	$39,000
9c	Minor	Major	$2,000	15	$30,000
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
Total Base Penalty					$90,600

Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor

6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase
6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum

6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)

6.2.b.7 - Public Interest (increase to be determined)

6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)

6.2.b.9 - Staff investigative costs (increase to be determined)
6.2.b.10 - Other factors

Size of Violator: 0 - 50% decrease

NOTE: This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

Additional Other factors to be determined for increases or decreases on a case-by-case basis.

Public Notice Costs (cost for newspaper advertisement)
6.2.b.2 - Good Faith - 10% decrease to 10% increase
6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease
6.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -			$0
6.2.b.4 - Compliance/noncompliance history			$0
6.2.b.6 - Economic benefits - (flat monetary increase)			$0
6.2.b.7 - Public Interest - (flat monetary increase)			$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			$0
6.2.b.9 - Investigative costs - (flat monetary increase)			$0
6.2.b.10 - Other factors (size of violator)			$0
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)			$0
Public Notice Costs (flat monetary increase)	$30		$30
6.2.b.2 - Good Faith - Increase			$0
6.2.b.2 - Good Faith - Decrease		10	($9,060)
6.2.b.3 - Cooperation with the Secretary		10	($9,060)
6.2.b.5 - Ability to Pay		72.053	($65,280)
Penalty Adjustments			**($83,370)**
Penalty =			**$7,230**

Estimated Economic Benefit Item	Estimated Benefit ($)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	**$0**
Comments:	