

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

Plaintiff

v.

JBS Souderton, Inc.,

Defendant.

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) Civil Action No. _____
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COMPLAINT

Plaintiff, the United States of America, by the authority of the Attorney General and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

INTRODUCTION

1. This is a civil action brought pursuant to Section 309(b) and (d) of the Clean Water Act (also referred to herein as the "Act"), 33 U.S.C. § 1319(b) and (d), for permanent injunctive relief and the assessment of civil penalties against JBS Souderton, Inc. (the "Souderton Plant"). The United States alleges that the Souderton Plant discharged and/or continues to discharge pollutants into navigable waters of the United States in violation of Section 301 of the Act, 33 U.S.C. § 1311, and the conditions and limitations of National Pollutant Discharge Elimination System ("NPDES") permit No. PA0035769 issued to the Souderton Plant by the Pennsylvania Department of

Environmental Protection (“PADEP”) pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and Section 202 of the Pennsylvania Clean Streams Law (“Clean Streams Law”), 35 P.S. § 691.202, and which Permit was renewed on September 29, 2006 (the “NPDES Permit”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b).

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), because the Souderton Plant is located in this district and because the causes of action alleged herein arose in this district. Venue in this district is also proper under 28 U.S.C. §§ 1391(c) and 1395(a).

JBS SOUDERTON, INC.

4. JBS Souderton, Inc. is a Pennsylvania corporation, a wholly owned subsidiary of JBS Packerland, Inc., and is a “person” within the meaning of Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5). The NPDES Permit was issued to Smithfield Beef Group – Souderton, Inc., a wholly owned subsidiary of Smithfield Foods, Inc. As the result of a stock sale transaction between Smithfield Foods, Inc. and JBS, SA, Smithfield Beef Group – Inc. became part of JBS, SA. On October 23, 2008, Smithfield Beef Group – Inc. changed its name to JBS Souderton, Inc.

FEDERAL STATUTORY BACKGROUND

5. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into the waters of the United States by any person except in

accordance with that section of the Clean Water Act and, *inter alia*, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

6. Under Section 402(a) of the Clean Water Act, 33 U.S.C. § 1342(a), the Administrator of EPA may issue NPDES permits to authorize the discharge of pollutants into waters of the United States, subject to the conditions and limitations set forth in such permits.

7. Effluent limitations, as defined in Section 502(11) of the Clean Water Act, 33 U.S.C. § 1362(11), are restrictions on the quantity, rate, and concentration of chemical, physical, biological, and other constituents of wastewater discharges. Effluent limitations are among the conditions and limitations prescribed in NPDES permits issued under Section 402(a) of the Act, 33 U.S.C. § 1342(a).

8. Permittees have an obligation to properly operate and maintain their facilities in compliance with the Act. See 40 C.F.R. Part 122.41(e).

9. Sections 308 and 402(a)(2) of the Clean Water Act, 33 U.S.C. §§ 1318 and 1342(a)(2), provide that a NPDES permit may also require, among other things, data and information collection and reporting, the establishment and maintenance of monitoring equipment, the sampling of effluent, and the reporting on a regular basis to the permit-issuing authority regarding the permittee's discharge of pollutants.

10. Section 402(b) of the Clean Water Act, 33 U.S.C. § 1342(b), authorizes EPA to delegate permitting and inspection authority to states that meet certain requirements.

11. On or about July 1, 1978, the Administrator of EPA authorized the Commonwealth of Pennsylvania ("Commonwealth") to issue NPDES permits under the

Clean Water Act and the Commonwealth's authority to issue such permits has been in effect at all times relevant to this Complaint.

12. Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), authorizes the Administrator of EPA to commence a civil action to obtain civil penalties or other appropriate relief, including a permanent or temporary injunction, when any person violates Section 301 of the Clean Water Act, 33 U.S.C. § 1311, or violates any permit condition or limitation in a permit issued under Section 402 of the Clean Water Act, 33 U.S.C. § 1342.

13. PADEP has been notified of the commencement of this action, as required by Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b).

14. Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), provides that any person who violates Section 301 of the Act, 33 U.S.C. § 1311, or violates any permit condition or limitation in a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, shall be subject to a civil penalty of up to \$25,000 per day for each violation occurring prior to January 31, 1997. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note; Pub. L. 104-134, enacted April 26, 1996; 110 Stat. 1321), EPA may seek civil penalties of up to \$27,500 per day for each violation occurring on or after January 31, 1997, and up to \$32,500 per day per violation on or after March 15, 2004, pursuant to 40 C.F.R. Part 19.

FACTUAL ALLEGATIONS

15. JBS Souderton, Inc. owns and operates a beef processing operation located at 741 Souder Road, Souderton, Pennsylvania, Franconia Township, Montgomery County. The Souderton Plant includes a beef processing facility and rendering facility approximately one mile apart. The beef processing facility has a slaughter capacity of 2,375 head per day but has generally processed less than 2000 head per day. As of 2004, the Souderton Plant produced approximately 180 million pounds of boxed beef and 117 million pounds of ground beef per year. The rendering plant processes the inedible and leftover material from the slaughter operations as well as processing kitchen grease from various restaurants. Rendering plant projects include feed grade animal fat, bone meal, blood meal and recycled restaurant grease. The facility is generally operated six days a week, Monday through Saturday.

16. The Souderton Plant discharges pollutants and stormwater from outfalls and various pipes into the Skippack Creek which is a tributary of the Perkiomen Creek and the Schuylkill River.

17. The Skippack Creek, the Perkiomen Creek and the Schuylkill River, and/or their tributaries are “navigable waters” within the meaning of Section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7).

18. Commercial and industrial waste and their constituents are “pollutants” within the meaning of Section 502(g) of the Clean Water Act, 33 U.S.C. § 1362(g).

19. The outfalls and pipes from which the Souderton Plant discharges are “point sources” within the meaning of Section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14).

20. Outfall 001 as identified in NPDES Permit No. PA0035769 is the outfall at the wastewater treatment plant through which treated wastewater is discharged to the Skippack Creek. The NPDES Permit authorizes the discharge of wastewater from Outfall 001 provided that certain pollutants in the treated wastewater do not exceed specific effluent limitations set forth in the NPDES Permit.

21. Outfalls 002-004 as identified in NPDES Permit No. PA0035769 is the outfall at the wastewater treatment plant through which treated stormwater is discharged to the Skippack Creek.

22. The applicable NPDES Permit does not sanction discharges or spills from unpermitted outfalls at the wastewater treatment plant. In addition, the applicable NPDES Permit does not sanction discharges or spills under any condition from various unpermitted outfalls and pipes at the Plant.

23. The Souderton Plant has a history of violations of its effluent limitations established in NPDES Permit No. PA0035769. In addition, the Souderton Plant has discharged pollutants into waters of the United States resulting in fish kills.

FIRST CLAIM FOR RELIEF
(Illegal Discharge of Pollutants)

24. Paragraphs 1 through 23 are realleged and incorporated by reference.

25. On numerous occasions since December 20, 2003, the Souderton Plant discharged pollutants from pipes at the Souderton Plant into the Skippack Creek, Perkiomen Creek and Schuylkill River, and/or their tributaries without a permit for these

discharges in violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311 including, but not limited to, those set forth in Exhibit A.

26. The Souderton Plant will continue to violate Section 301 of the Clean Water Act, 33 U.S.C. § 1311, in this manner, unless enjoined by the Court.

27. Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), the Souderton Plant is liable for civil penalties of up to \$27,500 per day for such violations occurring on or after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and up to \$32,500 per day per violation on or after March 15, 2004, pursuant to 40 C.F.R. Part 19.

SECOND CLAIM FOR RELIEF
(Effluent Limitation Violations)

28. Paragraphs 1 through 27 are realleged and incorporated by reference.

29. On numerous occasions since December 20, 2003, the Souderton Plant discharged pollutants in violation of the effluent limitations set for Outfall 001 in the NPDES Permit including, but not limited to, those set forth in Exhibit B. The Souderton Plant reported these violations to the PADEP in monthly discharge monitoring reports (“DMRs”), and it certified the accuracy of its data on each DMR.

30. The Souderton Plant will continue to violate Section 301 of the Clean Water Act, 33 U.S.C. § 1311, in this manner, unless enjoined by the Court.

31. Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), the Souderton Plant is liable for civil penalties of up to \$27,500 per day for such violations occurring on or after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and up to \$32,500 per day per violation on or after March 15, 2004, pursuant to 40 C.F.R. Part 19.

THIRD CLAIM FOR RELIEF
(Failure to Properly Operate and Maintain Plant)

32. Paragraphs 1 through 31 are realleged and incorporated by reference.

33. NPDES Permit No. PA0035769 requires the Souderton Plant to properly operate and maintain all facilities and systems of treatment and control which are installed or used by the Souderton Plant to achieve compliance with the terms and conditions of NPDES Permit No. PA0035769.

34. On numerous occasions since December 20, 2003, the Souderton Plant failed to properly operate and maintain its facilities, in violation of its NPDES Permit and the Clean Water Act, by failing to employ appropriate quality assurance procedures.

35. The Souderton Plant will continue to violate its NPDES Permit, and will therefore continue to violate Section 301 of the Clean Water Act, 33 U.S.C. § 1311, unless enjoined by the Court.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully pray that this Court:

A. Permanently enjoin the Souderton Plant from discharging pollutants except as expressly authorized by the Clean Water Act and the limitations and conditions of NPDES Permit No. PA0035769.

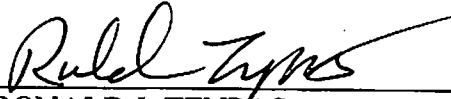
B. Order the Souderton Plant to take all steps necessary to comply with the Clean Water Act and the limitations and conditions of the NPDES Permit.

C. Assess civil penalties to the extent authorized by law against the Souderton Plant for up to \$27,500 per day through March 14, 2004, and up to \$32,500 per day

thereafter, for each violation of the Clean Water Act and/or any applicable NPDES Permit.

- D. Award the Plaintiff its costs and fees of this action; and
- E. Grant such other and further relief as this Court may deem appropriate.

Respectfully submitted,

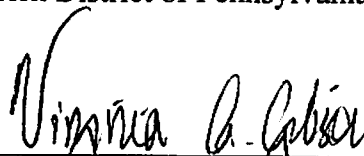


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EXHIBIT A

EXHIBIT A
TABULATION OF DISCHARGE OCCURRENCES

Date of Occurrence

September 13 & 14, 2004

October 20, 2004

March 7, 2005

June 23, 2006

June 27, 2006

September 19, 2006

August 10, 2007

December 5, 2007

June 10, 2008

EXHIBIT B

EXHIBIT B
TABULATION OF DMR EXCEEDANCES

<u>Date</u>	<u>Parameter</u>	<u>Type</u>	<u>Result</u>	<u>Limit</u>	<u>Flow</u>
11/1/05	Osmotic Pressure	Maximum Daily	104	90 mos/kg	0.6282
11/11/05	Osmotic Pressure	Maximum Daily	100	90 mos/kg	0.7475
November 2005	Fecal Coliform	Geometric Mean	387.2	200#/100ml	na
3/21/06	Osmotic Pressure	Maximum Daily	94	90 mos/kg	0.7636
4/4/06	Phosphorus	Maximum Daily	2.18	1.6 mg/l	0.7546
4/4/06	Phosphorus	Maximum Daily	13.7	10 lb/d	0.7546
April 2006	Phosphorus	Monthly Average	0.95	0.8 mg/l	na
6/20/06	Ammonia	Maximum Daily	3.05	2.4 mg/l	0.7696
6/20/06	Ammonia	Maximum Daily	19.58	15 lb/d	0.7696
6/27/06	Osmotic Pressure	Maximum Daily	229	90 mos/kg	0.92
7/12/06	Phosphorus	Maximum Daily	3.08	1.6 mg/l	0.8083
July 2006	Phosphorus	Monthly Average	1.37	0.8 mg/l	na
7/12/06	Phosphorus	Maximum Daily	20.76	10 lb/d	0.8083

July 2006	Phosphorus	Monthly Average	6.23	5 lb/d	na
7/18/06	Ammonia	Maximum Daily	6.47	2.4 mg/l	0.4866
7/18/06	Ammonia	Maximum Daily	26.26	15 lb/d	0.4866
7/25/06	Osmotic Pressure	Maximum Daily	112	90 mos/kg	0.7349
7/25/06	Oil & Grease	Maximum Daily	32	25 mg/l	0.7349
7/25/06	Oil & Grease	Maximum Daily	196.1	156 lb/d	0.7349
8/01/06	Phosphorus	Maximum Daily	3.04	1.6 g/l	0.8084
8/06/06	Phosphorus	Maximum Daily	20.5	10 lb/d	0.8084
8/17/06	Dissolved Oxygen	Inst. Minimum	4.4	>5 mg/l	0.7489
8/20/06	Dissolved Oxygen	Inst. Minimum	4.4	>5 mg/l	0.162
8/23/06	Dissolved Oxygen	Inst. Minimum	4.7	>5 mg/l	0.7624
8/28/06	Dissolved Oxygen	Inst. Minimum	4.1	>5 mg/l	0.6814