

**STATE OF OKLAHOMA
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY DIVISION**

**OKLAHOMA
DEPT OF ENVIRONMENTAL QUALITY**

**IN THE MATTER OF:
FAYMAN USA
DBA ESRO FOOD GROUP, LLC**

SEP 13 2023

FILED BY HEARING CLERK

RESPONDENT,

CASE NO. 23-216

**PERMIT NO. OKP003094
FACILITY NO. I-44000260
PROBLEM(S): Permit Limit and
Reporting Violations**

CONSENT ORDER

The parties to this case, the State of Oklahoma, ex rel. Department of Environmental Quality (“DEQ”) and Fayman USA, dba ESRO Food Group, LLC, (“Respondent”), agree to this Consent Order to resolve certain environmental compliance issues. This Consent Order closes and supersedes the Notice of Violation (“NOV”), No. I-44000260-23-1, issued by DEQ on April 17, 2023.

FINDINGS OF FACT

1. Respondent owns and operates a meat processing plant located at SW ¼, NE ¼, SE ¼, and NW ¼, SE ¼ of Section 27, Range 5 EIM or at 600 East Industrial Drive, Madill, Marshall County, Oklahoma. Respondent holds a DEQ-issued Oklahoma Pollutant Discharge Elimination System (“OPDES”) Permit, No. OKP003094 (“Permit”). The Permit upon which this Consent Order is based became effective on June 1, 2022 and will expire on May 31, 2027. The Permit allows Respondent to discharge industrial wastewater from the meat processing operation to the Madill Public Works Authority’s Publicly Owned Treatment Works (“POTW”). Among other requirements, the Permit requires Respondent to monitor the effluent

and submit monthly electronic Discharge Monitoring Reports (“eDMRs”) to DEQ, with the first eDMR due by July 15, 2022.

2. On April 17, 2023, DEQ issued Respondent a NOV, No. I-44000260-23-1. Respondent received the NOV on April 21, 2023. The NOV identified reporting errors for the monthly average and daily maximum effluent flow data during the months of January 2023 and February 2023, and outlined permit limit violations for oil and grease and pH discharged through Outfall 001 during the month of February 2023 and as listed below:

<u>Month</u>	<u>Parameter</u>	<u>Outfall</u>	<u>Reported Value</u>	<u>DMR Limit</u>
February 2023	Daily Max. Oil and Grease (mg/L)	001	11,719	150
February 2023	Max. pH value (s.u.)	001	12.3	11

The NOV required Respondent to take corrective actions to correct the reported flow data and to address the oil and grease and pH exceedences cited in the NOV within thirty (30) days of the receipt date.

3. In a NOV response letter dated May 16, 2023, Respondent informed DEQ that the reporting errors for flow have been corrected. In addition, Respondent proposed to install auto-dispensing neutralization equipment for pH control, and to install a rotary screen system to reduce the grease particles in the waste stream. Furthermore, the response noted that Respondent implemented weekly cleaning of the grease trap and lift station system to remove grease and tissues from the collection system.

4. In a DEQ letter dated May 31, 2023, DEQ informed Respondent that the flow data correction and the proposed project to address the pH issues are adequate corrective actions.

In the same letter, DEQ informed Respondent that DEQ is concerned that the proposed project to address the oil and grease concentration within the waste stream is not adequate. As a result, DEQ offered to address the issue with this Consent Order.

5. In a letter dated June 12, 2023, Respondent informed DEQ of additional treatment units to be implemented by June 30, 2023. The additional treatment units included a sequential inline filtration system and a flocculant separation tank. On June 13, 2023, DEQ requested (via email) additional operational information for the proposed treatment units. To date, DEQ has not received the requested information.

6. A review of Respondent-submitted eDMRs for the monitoring periods from March through June 2023 revealed additional permit limits violations for oil and grease and pH for discharges through Outfall 001 (see below table).

<u>Month</u>	<u>Parameter</u>	<u>Outfall</u>	<u>Reported Value</u>	<u>DMR Limit</u>
March 2023	Daily Max. Oil and Grease (mg/L)	001	18798	150
March 2023	Max. pH value (s.u.)	001	11.25	11
April 2023	Daily Max. Oil and Grease (mg/L)	001	1188	150
April 2023	Max. pH value (s.u.)	001	11.36	11
May 2023	Daily Max. Oil and Grease (mg/L)	001	2044	150
June 2023	Daily Max. Oil and Grease (mg/L)	001	2436	150
July 2023	Daily Max. Oil and Grease (mg/L)	001	2373	150

7. On June 10, 2023, Jason Ma, District Engineer, WQD, DEQ, contacted Messrs. Dan Sorbello, Managing Director, and Kenneth Howard, Facility Manager, both with Respondent (via phone), to discuss the option of this Consent Order. The Consent Order, upon execution, would adequately resolve the outstanding administrative issues. Both Mr. Sorbello and Mr. Howard were made aware that this Consent Order would be offered to Respondent and that the Consent Order may contain an administrative penalty. They both indicated that they understood the nature of the Consent Order, the reasons for it, and that Respondent would have the opportunity to review the order.

8. Failure by Respondent to comply with the state statutes and/or rules cited below may result in harm to the environment or health and well-being of the affected public. By failing to comply with Oklahoma statutes and regulations, Respondent cannot guarantee compliance with Oklahoma's Water Quality Standards.

9. DEQ and Respondent agree that it is beneficial to resolve this matter promptly and by agreement.

10. DEQ and Respondent waive the filing of a petition or other pleading, and Respondent waives the right to a hearing.

CONCLUSION OF LAW

11. DEQ has regulatory jurisdiction and authority in this matter, and Respondent is subject to the jurisdiction and authority of DEQ under Oklahoma law 27A Oklahoma Statutes (O.S.) § 1-3-101(B) and 27A O.S. §§ 2-6-201 through 2-6-206 and the rules promulgated thereunder at Oklahoma Administrative Code ("OAC") 252:606.

12. The parties are authorized by 75 O.S. § 309(E) and 27A O.S. § 2-3-506(B) to

resolve this matter by agreement.

13. By exceeding permit limits and reporting incorrect monitoring data, Respondent violated **OAC 252:606-1-3(b)(3)(W)**, which incorporates by reference **Title 40 of the Code of Federal Regulations (“C.F.R.”) § 122.41**, specifically **40 C.F.R. § 122.41(a)**, which states “The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Clean Water Act [and the Oklahoma Environmental Quality Code] and is grounds for an enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.”

14. **OAC 252:606-3-6** states, “Applicants must comply with the terms of the permits that are issued.”

15. **OPDES Permit No. OKP003094** establishes, among other conditions, monthly monitoring and reporting requirements for Oil and Grease, pH, and flow discharged through Outfall 001.

16. Violations of the Environmental Quality Code and the rules promulgated thereto are subject to enforcement actions and penalties as set forth in 27A O.S. §§ 2-3-502, 2-3-504, and 2-6-206.

17. The Executive Director of DEQ may enforce this Consent Order pursuant to 27A O.S. §§ 2-3-202(A)(10) and 2-6-206.

ORDER

18. Based on the above paragraphs, DEQ and Respondent agree, and it is ordered by

the Executive Director, Respondent will complete the following task by the date specified below:

<i>TASK</i>	<i>DATE</i>
A. Respondent shall submit an approvable engineering report identifying proposed corrective actions necessary to consistently meet permit limits for pH, oil and grease, and eliminate any discharges that would cause interference with the City of Madill's POTW. Any engineering work performed (as defined by the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors) in conjunction with the investigation shall be conducted, supervised, and approved by an Oklahoma-registered professional engineer.	December 1, 2023
B. Respondent shall begin implementation of the DEQ approved corrective actions as identified in the engineering report required by Task A.	February 1, 2024
C. Respondent shall complete implementation of DEQ approved corrective actions identified in the engineering report required by Task A.	August 1, 2024
D. Respondent shall attain compliance with the DEQ Permit requirements for pH, oil and grease, and eliminate any discharges that would cause interference with the City of Madill's POTW for a period of six (6) months following the completion of Task C.	February 1, 2025

19. Respondent will prepare and submit reports to DEQ within fourteen (14) days of the above dates advising DEQ of Respondent's compliance status.

20. The Oklahoma Pollutant Discharge Elimination System Act, 27A O.S. §§ 2-6-201 through 2-6-206 authorizes DEQ to seek penalties of up to Ten Thousand Dollars (\$10,000.00) per day of violation of the Act and the associated rules. Based on the facts and circumstances of this case, DEQ assesses a total penalty of Seven Thousand Eight Hundred Seventy-Five Dollars

(\$7,875.00). Within thirty (30) days from the effective date of this Consent Order, Respondent shall submit a valid check or money order payable to the Department of Environmental Quality, showing the case number of this Consent Order, and delivered to:

Accounts Receivable
Financial & Human Resources Management
Department of Environmental Quality
P.O. Box 2036
Oklahoma City, OK 73101-2036

21. If Respondent fails to comply with this Order, by the specified due date, the stipulated penalty for the incomplete task shall be the maximum sum per day as follows:

TASK	PENALTY PER DAY
A.	\$140.00
B.	\$140.00
C.	\$140.00
D.	\$140.00

Notwithstanding the above, the stipulated penalties for failing to complete the specified task(s) by the corresponding due date(s) shall begin to accrue on the day performance is due as indicated in this Consent Order with a maximum penalty of Thirty-Five Thousand Dollars (\$35,000.00). If DEQ notifies Respondent that Respondent is not in compliance with this Consent Order and that an additional penalty is being assessed, Respondent may request a hearing to contest the finding of noncompliance. The notification from DEQ will specify how to request a hearing.

22. If Respondent fails to pay any penalty, DEQ may bring a separate action for collection of the penalty in district court. An action by DEQ for the collection of a penalty does not affect Respondent's duty to complete the task required by this Consent Order.

GENERAL PROVISIONS

23. DEQ has received delegation from the United States Environmental Protection Agency, to implement and enforce the federal National Pollutant Discharge Elimination System program. A portion of the implementation and enforcement program is to issue timely enforcement actions and impose appropriate penalties. The federal program calls for a significant increase in monetary penalties should this Consent Order be violated or future violations occur.

24. Respondent agrees to perform the requirements of this Consent Order within the time frames specified unless performance is prevented or delayed by events which are a “force majeure”. For purposes of this Consent Order, a force majeure event is defined as any event arising from causes beyond the reasonable control of Respondent or Respondent’s contractors, subcontractors, or laboratories, which delays or prevents the performance of any obligation under this Consent Order. Examples are vandalism, fire, flood, labor disputes or strikes, weather conditions, which prevent or seriously impair construction activities, civil disorder or unrest, and “acts of God”. Force majeure events do not include increased costs of performance of the tasks agreed to in this Consent Order, or changed economic circumstances. Respondent must notify DEQ in writing within fifteen (15) days after Respondent knows or should have known of a force majeure event that is expected to cause a delay in achieving compliance with any requirement of this Consent Order. Failure to submit notification within fifteen (15) days waives the right to claim a force majeure.

25. As used in this Order, an “approvable” submission to DEQ is to be considered a final submission. That is, all preliminary discussions between DEQ and Respondent regarding

the requirements of a submission must be concluded prior to the date the submission is due so that the submission will be approvable as submitted. If the submission is not submitted in an approvable form by its due date, the submission will be considered late, and Respondent will be subject to the stipulated penalty per day as stated in Paragraph 21 of this Consent Order.

26. Upon their approval by DEQ, any final reports, plans, specifications, schedules, and attachments required under this Consent Order are incorporated into it and enforceable under it. Failure of Respondent to respond within a reasonable time to any errors, deficiencies, or other regulatory requirements identified by DEQ is a violation of this Consent Order.

27. No informal advice, guidance, suggestions, or comments by employees of DEQ regarding reports, plans, specifications, schedules, and other writings affect Respondent's obligation to obtain written approval by DEQ, when required by this Consent Order.

28. Respondent agrees to allow agents of DEQ entry onto Respondent's property, at reasonable times and without advance notice, for the purposes of inspecting, sampling, testing, records review, and other authorized activities to assess compliance with Oklahoma statutes, applicable rules, and this Consent Order. If Respondent is required to sample or test, Respondent agrees to give DEQ reasonable notice of the sampling or testing date and time, and to allow DEQ to observe and/or split-sample.

29. Unless otherwise specified, any report, notice or other communication required under this Order must be in writing and must be sent to:

For the Department of Environmental Quality:

Jason Ma, P.E., District Engineer
Industrial & Stormwater Field Inspection and Enforcement Section
Water Quality Division

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Department of Environmental Quality
P.O. Box 1677
Oklahoma City, Oklahoma 73101-1677

For Respondent:

Kenneth Howard, Facility Manager
ESRO Food Group, LLC
600 E. Industrial Drive
Madill, OK 73446

30. This Consent Order is in addition to any other remedies provided by law and does not preclude DEQ from seeking other relief as appropriate.

31. This Consent Order is enforceable as a final order of the Executive Director of the DEQ. The DEQ retains jurisdiction of this matter for the purposes of interpreting, implementing, and enforcing the terms and conditions of this Consent Order and for the purpose of resolving disputes.

32. Nothing in this Consent Order limits DEQ's right to take enforcement action for violations discovered or occurring after the effective date of this Consent Order.

33. Nothing in this Consent Order excuses Respondent from its obligation to comply with all applicable federal, state, and local statutes, rules, and ordinances. DEQ and Respondent agree that the provisions of this Consent Order are considered severable, and if a court of competent jurisdiction finds any provisions to be unenforceable because they are inconsistent with state or federal law, then the remaining provisions will remain in full effect.

34. The provisions of this Consent Order apply to and bind DEQ and Respondent and their officers, officials, directors, employees, agents, successors, and assigns. No change in the ownership or corporate status of Respondent will affect Respondent's responsibilities under this

Consent Order.

35. Compliance with the terms and conditions of this Consent Order fully satisfies Respondent's liability to DEQ for all items of noncompliance in this Consent Order. If Respondent satisfies the requirements of this Consent Order, DEQ will not pursue any other remedy, sanction or relief that might otherwise be available to address the issues of noncompliance in this Consent Order. Nothing in this Consent Order shall be deemed to satisfy Respondent's liability, if any, for actions or remedies not within the scope of authority of DEQ.

36. This Consent Order is for the purpose of settlement. Neither the fact that DEQ and Respondent have agreed to this Consent Order, nor the Findings of Fact and Conclusions of Law in it, shall be used for any purposes in any proceeding except the enforcement by DEQ and Respondent of this Consent Order and, if applicable, a future determination by DEQ of eligibility for licensing or permitting. As to others who are not parties to this Consent Order, nothing contained in this Consent Order is an admission by Respondent of the Findings of Fact or Conclusions of Law, and this Consent Order is not an admission by Respondent of liability for conditions at or near the facility and is not a waiver of any right, cause of action, or defense Respondent otherwise has.

37. DEQ and Respondent agree that the venue of any action in district court for the purposes of interpreting, implementing, and enforcing this Consent Order will be Oklahoma County, Oklahoma.

38. The requirements of this Consent Order will be considered satisfied, and this Consent Order terminated when Respondent receives written notice from the DEQ that Respondent has demonstrated that all the terms of the Consent Order have been completed to the

satisfaction of the DEQ, and that any assessed penalty has been paid.

39. DEQ and Respondent may amend this Consent Order by mutual consent. Such amendments must be in writing and the effective date of the amendments will be the date on which they are filed by DEQ. Any amendment to this Consent Order may require the payment of an administrative penalty.

40. The individuals signing this Consent Order certify that they are authorized to sign it and to legally bind the parties they represent.

41. This Consent Order becomes effective on the date of the later of the two signatures below.

FOR RESPONDENT:



DAN SORBELLO
MANAGING DIRECTOR
FAYMAN USA

Dated: 9/1/23

FOR OKLAHOMA DEPARTMENT
OF ENVIRONMENTAL QUALITY:



SCOTT A. THOMPSON
EXECUTIVE DIRECTOR

Dated: 9-13-23