

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

LOWER SUSQUEHANNA RIVERKEEPER)
ASSOCIATION)
)
)
Plaintiff)
)
v.)
)
HANOVER FOODS CORPORATION)
)
Defendant.)
_____)

Case No. _____

COMPLAINT

NATURE OF THE CASE

1. The Lower Susquehanna Riverkeeper Association (“Plaintiff” or “Citizens”), by and through their counsel, the Environmental Integrity Project (“EIP”), file this Complaint against Hanover Foods Corporation (“Hanover Foods” or “Defendant”) for significant and ongoing violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.* (CWA), and Pennsylvania’s Clean Streams Law, the Act of June 22, 1937, P.L. 1987, *as amended*, 35 Pa. Cons. Stat. § 691.1 *et seq.* (CSL), at Defendant’s food processing facility (the “Facility”), located at 1550 York Street, Hanover, Pennsylvania 17331-0334, in Penn Township, York County.

2. Industrial wastewater generated from the Facility is partially treated at an on-site industrial wastewater treatment plant (“WWTP”). The WWTP



discharges partially treated wastewater to Penn Township’s municipal wastewater treatment plant, which then discharges the wastewater to Oil Creek. The WWTP also discharges wastewater directly to Oil Creek from Outfall 001.

3. Oil Creek—with a watershed of approximately 16.8 square miles—is a small tributary to Codorus Creek.¹ Pollution from Oil Creek flows downstream directly into the Codorus Creek, which flows into the Lower Susquehanna River.

4. Defendant owns and operates the Facility, including the WWTP.

5. On June 29, 2021, Plaintiff sent a Notice of Intent to Sue letter to Defendant and other recipients as required by section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), and section 601(e) of the CSL, 35 P.S. § 691.601. Exhibit 1, Lower Susquehanna Riverkeeper Association, Notice of Intent to Sue Hanover Foods Corporation for Violations of the Clean Water Act and Pennsylvania’s Clean Streams Law at the Hanover Foods facility in York County, Pennsylvania (Jun. 29, 2021) (“NOI”).

6. The CWA prohibits any person from discharging any pollutant into waters of the United States from a point source without compliance with a National Pollutant Discharge Elimination System (“NPDES”) permit. 33 U.S.C. §§ 1311(a),

¹ York County Planning Commission, *York County Environmental Resources Inventory* (Feb. 2018), 52-53 available at <https://www.ycpc.org/DocumentCenter/View/285/Environmental-Resources-Inventory-PDF>.

1342. Pennsylvania’s CSL similarly prohibits the discharge of industrial waste or pollution into waters of the Commonwealth by any person. 35 P. S. §§ 691.1, 691.301, 691.307, 691.401.

7. The Pennsylvania Department of Environmental Protection (“DEP”) is authorized to administer the CWA’s NPDES permitting program for the Commonwealth of Pennsylvania. *See* 33 U.S.C. § 1342; *see, e.g.*, 67 Fed. Reg. 55,841, 55,842 (Aug. 30, 2002) (stating that the Environmental Protection Agency (“EPA”) delegated to DEP authority to issue NPDES permits on June 30, 1978). DEP issues NPDES permits pursuant to its authority under the CWA and the CSL. *See, e.g.*, 25 Pa. Code § 963.1 (defining a “Part I Permit” as an NPDES permit “issued by the Department under section 5 of The Clean Streams Law (35 P. S. § 691.5) and section 402 of the Clean Water Act (33 U.S.C.A. § 1342).”).

8. On September 22, 2015, DEP issued Defendant a renewal of NPDES Permit No. PA0044741, which became effective on October 1, 2015. Exhibit 1, NOI, Attachment D, Authorization to Discharge Under the National Pollutant Discharge Elimination System, Discharge Requirements for Industrial Wastewater Facilities, NPDES Permit No. PA0044741 (Sept. 22, 2015) (issued to Hanover Foods Corp, effective Oct. 1, 2015) (the “2015 NPDES Permit”). Although the 2015 NPDES Permit expired on September 30, 2020, it was administratively continued by DEP and remains in effect.

9. The 2015 NPDES Permit authorizes Defendant to discharge specific pollutants from the Facility from several permitted outfalls, with specific limits on several parameters. The 2015 NPDES Permit also imposes monitoring and reporting requirements pertaining to the discharge and requires proper operation and maintenance of the WWTP. The 2015 NPDES Permit prohibits the discharge of any substances that result in observed deposits in the receiving water or that produce an observed change in the color or turbidity of the receiving water.

10. Defendant has discharged, and continues to discharge, through Outfall 001, industrial wastewater containing pollutants at levels that exceed effluent limitations into Oil Creek, a tributary to Codorus Creek, which flows into the Susquehanna River.

11. Defendant has discharged and, upon information and belief, continues to discharge, substances that result in observed deposits in Oil Creek and substances that produce an observed change in the color and turbidity of Oil Creek.

12. The 2015 NPDES Permit and all conditions contained therein are each “a permit or condition of a permit issued under [33 U.S.C. § 1342],” and as such are each an “effluent standard or limitation” as defined by section 505(f)(7) of the CWA. 33 U.S.C. § 1365(f)(7).

13. Defendant’s discharges of pollutants through Outfall 001 to Oil Creek in excess of the 2015 NPDES Permit effluent limits and failures to comply with

other permit limits and conditions violate the 2015 NPDES Permit and also constitute violations of the CWA and the CSL.

14. The Penn Township Wastewater Treatment Plant (“Penn Township WWTP”) administers a pretreatment program, approved by the regional administrator of the EPA in accordance with 40 C.F.R. § 403.11. According to its pretreatment program, Penn Township WWTP sets pretreatment standards and issues pretreatment permits to industrial facilities that discharge to it.

15. Defendant holds a pretreatment permit issued by the Penn Township WWTP, effective January 1, 2021, authorizing effluent discharge from the Facility to the Penn Township WWTP according to its terms. Exhibit 1, NOI, Attachment L, Penn Township Wastewater Treatment Plant Industrial Wastewater Discharge Permit, Permit No. 2021-4 (the “2021 Pretreatment Permit”).

16. Previously, Defendant held a permit issued by Penn Township WWTP, effective January 1, 2016 to December 31, 2020, which authorized effluent discharge from the Facility to the Penn Township WWTP according to its terms. Exhibit 1, NOI, Attachment M, Penn Township Wastewater Treatment Plant Industrial Wastewater Discharge Permit, Permit No. 2016-4 (the “2016 Pretreatment Permit”).

17. Defendant has discharged and, upon information and belief, continues to discharge, effluent to the Penn Township WWTP at a flow rate, and/or with

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