



STATE OF CONNECTICUT)	ORDER NO. 2384
)	
VS.)	
)	
FRITO-LAY, INC.)	
)	

CONSENT ORDER

A. With the agreement of Frito-Lay, Inc. ("Respondent"), the Commissioner of Energy and Environmental Protection ("Commissioner") finds the following:

1. The Respondent manufactures a variety of corn and potato-based snack food products at 1886 Upper Maple Street in Killingly, Connecticut ("the facility").

Air Enforcement Findings:

2. The facility has potential CO and SO_x emissions that are in excess of one-hundred (100) tons per year, making the facility a "*Title V source*", as defined in Section 22a-174-33(a)(10)(F)(i) of the Regulations of Connecticut State Agencies ("RCSA"). The facility's most recent Title V permit renewal was issued on 8/20/2012 (permit No. 089-0066-TV).
3. At the facility, is a combined heat and power ("CHP") plant that supplies the facility with process steam and electricity. The CHP plant was installed at the facility in 2008, and operates under New Source Review ("NSR") permit No. 089-0105.
4. At the facility, are two (2) dryers that are used to dry the starch that is reclaimed from the potato processing water. Starch Dryer #1 ("Dryer #1") was installed in 1983, and operates under permit No. 089-0039.
5. In January of 2011, the Respondent submitted three (3) permit applications to the Department. The Respondent wanted to install a second Starch Dryer ("Dryer #2"), and divert the waste exhaust heat from the CHP plant to both Dryers; so that the waste exhaust heat could be used as an alternate source of heat to dry wet potato starch.

Date Issued: November 7, 2017

6. The Respondent's permitting requests were approved by the Commissioner on 3/12/2012. Dryer #2 operates under permit No. 089-0106.
7. Part VI. of permit Nos. 089-0039 and 089-0106 requires the Respondent to conduct emissions testing on Dryer #1 and Dryer #2, so as to demonstrate that the units comply with the allowable emission limit for PM₁₀/PM_{2.5}, that are listed in Part V. of the permits. Emissions testing is required "...within 60 days of achieving the maximum production rate (with both starch dryers running), but not later than 180 days after initial start-up".
8. In January of 2013, the Respondent notified the Department that initial start-up of Dryer #1 and Dryer #2 occurred in March of 2012; but that the units had not yet been tested.
9. Pursuant to Section 22a-174-3a(h) of the RCSA, "*An owner or operator shall comply with the permit...issued by the Commissioner...*". The Respondent's failure to test the Dryers by no later than September of 2012, violated Section 22a-174-3a(h) of the RCSA. As a result, Notice of Violation ("NOV") No. 17053 was issued to the Respondent on 2/7/2013.
10. In response to the NOV, the Respondent conducted emissions testing on the Dryers on 9/6/2013. The Dryers however, failed to meet the PM_{2.5}/PM₁₀ emission limits of their permits. Consequently, NOV #17174 was issued to the Respondent on 3/21/2014 for violating Part IV. of their permits, and Section 22a-174-3a(h) of the RCSA.
11. Pursuant to Part VI. of NSR permit Nos. 089-0039 and 089-0106 "*Stack emission testing shall be performed in accordance with the latest Emission Test Guidelines...*".
12. Section 4 of the Department's *Source Emissions Test Guidelines* requires that emissions testing be conducted when a source is operating at or above 90% of its maximum operating capacity, unless allowed otherwise by the Commissioner.
13. During the 9/6/2013 emissions test, the Dryers were unable to attain 90% of their permitted maximum operating capacity. The Dryers' permitted maximum capacity is 3,000 pounds per hour (dry basis) combined. The Dryers only tested at 700 pounds per hour (dry basis) combined.
14. The Respondent's failure to test the Dryers at or above 90% of its maximum operating capacity violated Part VI. of permit Nos. 089-0039 and 089-0106, and Section 22a-174-3a(h) of the RCSA. Consequently, NOV #17180 was issued to the Respondent on 3/21/2014.
15. Pursuant to Part III.A.2. of NSR permit Nos. 089-0039 and 089-0106, and Section III.B.1.b.ii. of permit No. 089-0066-TV, "*The Permittee shall install, calibrate, maintain, and operate a flow meter to continuously monitor and continuously record*

the (total) flow rate of the CHP plant's exhaust going into both dryers". During a May 2015 inspection of the facility, Department Staff discovered that the Respondent had failed to have their flow meters calibrated annually; as required by the manufacturer.

16. Pursuant to Part IV.B. of NSR permit Nos. 089-0039 and 089-0106, and Section III.B.1.vi. of permit No. 089-0066-TV, "*The Permittee shall properly operate the control equipment at all times that the starch dryers are in operation and emitting air pollutants*". During the May 2015 inspection of the facility, Department Staff discovered that the Respondent had failed to change the starch dryers' baghouse filters; as required by the baghouse's manufacturer.
17. Pursuant to Part III.B.5. of NSR permit Nos. 089-0039 and 089-0106, and Section III.2.c.iii. of permit No. 089-0066-TV, "*The Permittee shall make and keep records of the date and time the bag leak detector alarms, the cause, any corrective actions taken in response to the alarms, and the name of the person making the entry*". During the May 2015 inspection, Department Staff discovered that the Respondent had failed to properly keep baghouse alarm records for the Starch Dryers.
18. Pursuant to Part III.C.1 of NSR permit Nos. 089-0039 and 089-0106, and Section III.2.d.i. of permit No. 089-0066-TV, "*Reports of any exceedances of any...emission limitations, set forth in this permit, shall be submitted to the Department in writing within 30 days of the date of such exceedance...*". During the May 2015 inspection, Department Staff discovered that the Respondent had failed to submit an exceedance report, notifying the Department of the PM₁₀/PM_{2.5} emissions exceedance that occurred during the 9/6/2013 emissions test.
19. NOV No. 17547 was issued to the Respondent on 7/1/2015, for the violations cited in paragraphs A.15 through A.18 of this Consent Order.
20. Pursuant to Part III.A.2. of permit No. 089-0105 and Section III.D 7.b. of permit No. 089-0066-TV, "*The Permittee shall perform inspections of the air pollution control equipment as recommended by the manufacturer*". During the May 2015 inspection, Department Staff discovered that the Respondent had failed to inspect the CHP's air pollution control system on the schedule recommended by the unit's manufacturer.
21. Pursuant to Section 22a-174-26(d)(2) of the RCSA, "*The owner or operator of a Title V source shall pay an emission fee each year to the Department*".
22. Pursuant to Section 22a-174-26(d)(3), "*The emission fee shall be based on emissions of ...any volatile organic compound...*"
23. During the May 2015 inspection, Department Staff discovered that the Respondent has been incorrectly calculating the CHPs volatile organic compound ("VOC") and sulfur dioxide ("SO_x") emissions. As a result, the Respondent has been

underreporting their VOC and SOx emissions to the Department, and they have been underpaying emission fees.

24. NOV #17548 was issued to the Respondent on 7/1/2015, for the violations cited in paragraphs A.20 through A.23 of this Consent Order.
25. The Respondent has reported to the Department that after the issuance of NOV Nos. 17180 and 17174, the Respondent first attempted to resolve the issues that led to the issuance of the NOVs with its baghouse OEM, and when that failed, the Respondent sought out three (3) additional baghouse manufacturers in order to identify a new system that would guarantee compliance with the PM 2.5 permit limits. Through discussions with these vendors, the Respondent has claimed to the Department that none of the vendors could guarantee that the condensable (back half) of the particulate emissions would be reduced to a point where the Facility would meet its permitted emission limits.
26. On May 22, 2015, the Respondent submitted a letter to the Department summarizing the actions it had taken up to that date and the proposed steps to be taken to rectify the conditions cited in NOV Nos: 17127, 17053, 17180, and 17174.
27. The Respondent has also informed the Department that in 2015 and 2016, the Respondent retained a consultant, TRC, to assist it with the resolution of air compliance issues, including but not limited to: particulate emissions, natural gas calculation emission estimates, performing desk top modelling to determine what emission rate limit would be achievable with the current system, preparing two NSR permitting applications, analyzing how PM emissions are controlled at similar starch drying operations in other facilities in the United States, providing a calculation spreadsheet with conversions for future emissions reporting, and preparing a technical memorandum dated September 17, 2015, which was submitted by the Respondent to the Department to address the SOx and VOC violations as alleged in NOV 17548.
28. On April 13, 2016, the Respondent submitted a progress update to the Department concerning emission testing findings.
29. By virtue of the above, the Respondent violated permit Nos. 089-0039, 089-0106, 089-0066-TV, and Sections 22a-174-3a(h) and 22a-174-26(d) of the RCSA.

Water Permitting and Enforcement Division Findings:

30. On August 26, 2014, the Commissioner reissued pretreatment permit no. SP0000071 (the "discharge permit") to the Respondent authorizing the discharge of treated food processing and miscellaneous wastewaters to the town of Killingly publicly owned treatment works ("POTW").

31. On February 27, 2009, the Respondent submitted application no. 200900598, requesting that the discharge permit be renewed. A Notice of Sufficiency was issued to Respondent on April 3, 2009. Under the Notice of Sufficiency, the Respondent is authorized to continue to operate and discharge in accordance with the provisions and conditions of the discharge permit.
32. Between the evening of September 4, 2014 and the morning of September 5, 2014, the Respondent maintained a bypass of untreated food processing wastewater which discharged to the Killingly POTW. Between 250,000 and 300,000 gallons of untreated wastewater were reportedly discharged. The term "bypass", as defined under section 22a-430-3(a) of the RCSA, means the diversion of wastes from any portion of the wastewater collection or treatment facilities.
33. The discharge permit requires the Respondent to comply with the bypass requirements of section 22a-430-3(k) of the RCSA, which is also incorporated by reference into the permit. Section 22a-430-3(k)(1) of the RCSA states "*The permittee shall not bypass the collection system or treatment facilities or any part thereof unless (A)(i) such bypass is unanticipated, unavoidable, and necessary to prevent loss of life, personal injury or severe damage, and (ii) there were no feasible alternatives to the bypass, including but not limited to the use of auxiliary or back-up treatment facilities, retention of untreated wastes, stopping the discharges, or maintenance during normal periods of equipment downtime; or (B) the permittee receives prior written approval of the bypass from the commissioner in order to perform essential maintenance, and the bypass does not cause effluent limitations to be exceeded.*"
34. The circumstances under which the bypass occurred did not meet the conditions specified in section 22a-430-3(k)(1)(A) of the RCSA, nor did the Respondent receive prior approval from the Commissioner authorizing the bypass under section 22a-430-3(k)(1)(B) of the RCSA.
35. By virtue of the above, the Respondent has violated section 22a-430-3(k)(1) of the RCSA.
36. The discharge permit requires the Respondent to comply with the requirements for proper operation and maintenance of the wastewater collection and treatment system, as specified in section 22a-430-3(f)(1) of the RCSA, which is also incorporated by reference into the permit.
37. The Respondent submitted documentation dated August 21, 2015 addressing the cause of the bypass and corrective measures taken. The documentation included a Site Plan (sheet no. C-1, February 2005, most recently revised as of June 2015). The drawing was marked to show how the bypass occurred. There were two valves (BFV-012 and BFV-013) on the piping through which the wastewater flowed. On the valve schedule on the drawing, the description of BFV-012 indicates "Always

Closed, To Be Removed In The Future". The description of BFV-013 indicates "Always Closed (Locked In Closed Position), To Be Removed In The Future". Both valves had been left open, allowing the bypass to occur.

38. By virtue of the above, the Respondent has violated section 22a-430-3(f)(1) of the RCSA.
 39. By agreeing to the issuance of this Consent Order, the Respondent makes no admission of fact or law with respect to matters addressed in Paragraphs A.34., A.35., and A.38. of this Consent Order.
- B. With the agreement of the Respondent, the Commissioner, pursuant to Sections 22a-6, 22a-171, 22a-174, 22a-177, 22a-178, 22a-424, 22a-430, and 22a-462 of the Connecticut General Statutes, orders as follows:

Air

1. Retain Consultant. Within fifteen (15) days after the issuance of this Consent Order, the Respondent shall submit to the Commissioner, for review and approval, the name(s), description of education, experience, and relevant training of the consultant(s) who the Respondent is considering retaining for the preparation of documents required under this Consent Order. Such consultant(s) shall assist the Respondent in implementing the terms of this Consent Order. Within thirty (30) days of the issuance of this Consent Order, Respondent shall retain one or more approved qualified consultants.
2. Submit Corrective Action Plan. Within sixty (60) days after the issuance of this Consent Order, the Respondent shall submit, for the Commissioner's review and written approval, a detailed corrective action plan. Such plan shall detail the steps the Respondent will take to bring Dryer #1, Dryer #2, and the CHP into full regulatory compliance. Such plan shall also include an implementation schedule, including a schedule of emissions testing as provided for in paragraph B.4.
3. Operation and Maintenance Plan: Within one hundred eighty (180) days after the issuance of this Consent Order, the Respondent shall submit, for the Commissioner's review and written approval, an operation and maintenance plan for Dryer #1, Dryer #2, and the CHP. Such plan shall detail the measures the Respondent will take to ensure that the units will be operated in full regulatory compliance, and with the parameters set forth in permit Nos. 089-0039, 089-106, and 089-0066-TV, addressing the violations cited in paragraphs A.15., A16., A17., and A.20. of this Consent Order.
4. Emissions testing. Except as otherwise provided in this Consent Order or by the Commissioner in writing, all emissions testing required under this Consent Order shall be conducted in accordance with this paragraph and shall be completed in the time frame articulated in the implementation schedule in the corrective action plan

submitted under paragraph B.2. of this Consent Order. In completing this emissions testing, the Respondent shall, in a time frame articulated in the implementation schedule submitted under paragraph B.2., submit to the Commissioner for the Commissioner's review and written approval an Intent To Test ("ITT") protocol for such emissions testing. The ITT protocol shall include at least:

- i. The Department's Bureau of Air Management Test Form No. 1, "Intent to Test";
- ii. A detailed description of all aspects of facility operations (e.g., type and quantity of raw materials utilized) and of any air pollutant control equipment in use (e.g., screen mesh size, control equipment efficiency) which may affect emissions testing results, and how and when such information will be monitored;
- iii. A detailed description of each emissions testing methodology to be utilized, provided that all such methodologies shall conform to those approved by the U.S. Environmental Protection Agency and the Commissioner; and
- iv. A description of each discharge point at which emissions testing is to be conducted.

The Respondent shall provide to the Commissioner any information that the Commissioner deems necessary to review the Respondent's ITT protocol. Within thirty (30) days after the Commissioner approves an ITT protocol, the Respondent shall complete emissions testing in accordance therewith. The Respondent shall schedule all emissions testing so as to allow the Commissioner to be present during such testing and to independently verify relevant facility operations, air pollution control equipment parameters, and testing procedures. Within forty-five (45) days after completing any emissions testing required by this Consent Order, the Respondent shall submit to the Commissioner a written report providing the results of such testing; within fifteen (15) days of a notice from the Commissioner indicating any deficiencies in such report, the Respondent shall submit a revised report.

5. Title V Emission Fees. On or before ninety (90) days after issuance of this Consent Order, the Respondent shall pay a total of \$26,844.88 in outstanding emission fees, for emissions that occurred in calendar years 2009 through 2014.

Water

6. Notification Procedures. On or before sixty (60) days after issuance of this Consent Order, the Respondent shall submit, for the Commissioner's review and written approval, a description of procedures to be followed to notify facility environmental staff, facility management, and appropriate officials in the Town of Killingly in the event of a facility power outage or problems with the wastewater treatment system during second or third shifts or weekends.

Air and Water

7. Full compliance. The Respondent shall not be considered in full compliance with this Consent Order until all actions required by this Consent Order have been completed as approved and to the Commissioner's satisfaction.
8. Civil penalty-Air Enforcement. On or before thirty (30) days after issuance of this Consent Order, the Respondent shall pay a penalty of \$35,217 as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in paragraphs A.2 through A.29. of this Consent Order. Up to 100% of this civil penalty (\$35,217) may be offset by the completion of the supplemental environmental project ("SEP") described in Attachment A of this Consent Order.
9. Civil Penalty-Water Permitting & Enforcement Division. On or before thirty (30) days after issuance of this Consent Order, Respondent shall pay a penalty of \$43,000 as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in paragraphs A.30 through A.38 of this Consent Order. Up to 75% of this penalty (\$32,250) may be offset by the completion of the supplemental environmental project ("SEP") described in Attachment A of this Consent Order.
10. Payment of penalties for Air Engineering & Enforcement Division. Payment of penalties under this Consent Order shall be mailed or personally delivered to the Department of Energy and Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, CT 06106-5127, and shall be by certified or bank check payable to the "Connecticut Department of Energy and Environmental Protection". The check shall state on its face, "*Air Engineering & Enforcement Division, civil penalty Consent Order No. 2384*".
11. Payment of penalties for Water Permitting & Enforcement Division. Payment of penalties under this Consent Order shall be mailed or personally delivered to the Department of Energy and Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, CT 06106-5127, and shall be by certified or bank check payable to the "Connecticut Department of Energy and Environmental Protection". The check shall state on its face, "*Water Permitting & Enforcement Division, civil penalty Consent Order No. 2384*".
12. Supplemental Environmental Project.

In lieu of the civil penalty assessed in paragraph B.8 of this Consent Order, and in partial payment of the civil penalty assessed in paragraph B.9 of this Consent Order, the Respondent shall undertake the following supplemental environmental project ("SEP") described in Attachment A of this Consent Order and in accordance with the following:

 - a. The Respondent shall install a rectangular oil-water separator system to supplement the existing oily wastewater clarifier for the treatment of the Respondent's discharge to the Town of Killingly POTW. The additional oil-water

separator shall be designed in accordance with the standards promulgated by the American Petroleum Institute ("API") for oily-water separation, as described in API Publication 421, entitled, "Design and Operation of Oil-Water Separators," dated February 1990 ("API Standards"). The design, operation and maintenance of such oil-water separator shall be equal to, or better than the following design and performance specifications:

1. The oil-water separator shall be sized for a maximum design flow of 200 gallons per minute of wastewater as authorized in the Respondent's discharge permit (No. SP0000071) and for the characteristics of the oils present in the Respondent's wastewater discharge;
 2. The oil-water separator shall include an oil-skimming system and an oil belt skimmer in the oil-water separator chamber;
 3. The oil-water separator shall be capable of removing 100% of free oil with a particle size of 100 microns or larger and the majority of free oil with a particle size of 60 microns or larger;
 4. The oil-water separator will be designed to be capable of reducing the concentration of total oil and grease in the wastewater discharge to 50 milligrams per liter or less; and
 5. The Respondent's operation and maintenance plans for the wastewater treatment system shall, in accordance with Section 22a-430-3(f) of the Regulations of Connecticut State Agencies ("RCSA"), be revised to provide for the proper operation and maintenance of such oil-water separator and to prevent flow surges and/or slug discharges from being discharged to such oil-water separator.
- b. The Respondent shall perform such SEP and shall obtain any federal, state or local permit or approval necessary to carry out such SEP. In no event shall performance of the SEP be completed later than January 31, 2018. If the SEP cannot be completed by January 31, 2018, the Respondent shall notify the Commissioner in writing as to the reason for such non-compliance and the Respondent's efforts to remedy such non-compliance in accordance with paragraphs B.17 and B.27 of this Consent Order. The Commissioner has the sole discretion to excuse such delay, provided good cause is shown.
- c. If the Respondent fails to fully perform the SEP in accordance with paragraph B.12.a. and B.12.b of this Consent Order, the Respondent shall immediately notify the Commissioner in writing of such noncompliance and shall, upon written request by the Commissioner, remit a payment equal to: the approved total civil penalty offset (\$67,467); plus 10% of such approved total civil penalty offset (\$6,746), for a total payment amount of \$74,214. Within fourteen (14) days after the date of the Commissioner's written request, the Respondent shall make such payment in accordance with the remittance procedures for unexpended SEP funds in subparagraph B.12.f. of this Consent Order.

- d. On or before thirty (30) days after the date of issuance of this Consent Order, and on or before the last day of each month thereafter until the SEP is completed to the Commissioner's satisfaction, the Respondent shall submit written progress reports to the Commissioner. Each progress report shall include the following information: the Respondent's progress in performing the SEP including tasks performed to date, a complete accounting of actual project costs incurred to date, planning for the remaining project tasks to be performed, significant activities or findings related to the project, and any other reasonable information requested by the Commissioner for the purpose of evaluating the Respondent's progress in performing the SEP.
- e. On or before thirty (30) days after completion of the SEP, the Respondent shall submit for the Commissioner's review and written approval a comprehensive final report that certifies completion of such SEP. Such final report shall include, at a minimum, the following information: a narrative history of the project; a detailed explanation of the design and implementation of the SEP; a summary of any data collected; as-built plans and specifications for the design, operation and maintenance of the oil-water separator certified by a Connecticut Licensed Professional Engineer to be equal to, or better than the design and performance specifications described in subparagraph B.12.a of this Consent Order; a complete final accounting of actual project costs including receipts for out-of-pocket costs; and a discussion of environmental benefits resulting from the SEP. In addition, the Respondent shall have a Certified Public Accountant (CPA) calculate the net present after-tax value of the project, certify in writing under oath that such calculation is true and accurate, and submit such calculation and certification to the Commissioner.
- f. Should the Commissioner determine that the actual cost to the Respondent of any fully completed SEP is less than the civil penalty offset as articulated in Paragraph B.12.c. of this Consent Order (\$67,467), the Respondent shall pay the difference between such actual cost and the civil penalty offset to the Commissioner as unexpended SEP funds. The Commissioner shall notify the Respondent in writing of the amount of any such unexpended SEP funds that are due. The Respondent shall, within fourteen (14) days after the date of such written notice, remit the full amount of the unexpended SEP funds. Payment of unexpended SEP funds shall be by certified or bank check payable to the "Connecticut Department of Energy and Environmental Protection" and the check shall state on its face "Statewide SEP Account, Consent Order No. 2384." The Respondent shall mail or personally deliver such payment to the Department of Energy and Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, Connecticut 06106-5127.
- g. If and when the Respondent disseminates any publicity, including but not limited to any press releases regarding funding a SEP, the Respondent shall include a

statement that such funding is in partial settlement of an enforcement action brought by the Commissioner.

- h. The Respondent shall not claim or represent that any SEP payment made pursuant to this Consent Order constitutes an ordinary business expense or charitable contribution or any other type of tax deductible expense, and the Respondent shall not seek or obtain any other tax benefit such as a tax credit as a result of the payment under this paragraph.
13. Progress reports. On or before the last day of each month following issuance of this Consent Order and continuing until all actions required by this Consent Order have been completed as approved and to the Commissioner's satisfaction, the Respondent shall submit a progress report to the Commissioner describing the actions which the Respondent has taken to date to comply with this Consent Order, including the actions the Respondent has taken to comply with the SEP described in Attachment A of this Consent Order.
14. Approvals. The Respondent shall use best efforts to submit to the Commissioner all documents required by this Consent Order in a complete and approvable form. If the Commissioner notifies the Respondent that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and the Respondent shall correct the deficiencies and resubmit it within the time specified by the Commissioner or, if no time is specified by the Commissioner, within 30 days of the Commissioner's notice of deficiencies. In approving any document or other action under this Consent Order, the Commissioner may approve the document or other action as submitted or performed or with such conditions or modifications as the Commissioner deems necessary to carry out the purposes of this Consent Order. Nothing in this paragraph shall excuse noncompliance or delay.
15. Definitions. As used in this Consent Order, "Commissioner" means the Commissioner or a representative of the Commissioner.
16. Dates. The date of "issuance" of this Consent Order is the date the Consent Order is deposited in the U.S. mail or personally delivered, whichever is earlier. The date of submission to the Commissioner of any document required by this Consent Order shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this Consent Order, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is deposited in the U.S. mail or is personally delivered, whichever is earlier. Except as otherwise specified in this Consent Order, the word "day" as used in this Consent Order means calendar day. Any document or action which is required by this Consent Order to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed by the next day which is not a Saturday, Sunday or Connecticut or federal holiday.

17. Certification of documents. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this Consent Order shall be signed by Respondent or, if Respondent is not an individual, by Respondent's chief executive officer or a duly authorized representative of such officer, as those terms are defined in §22a-430-3(b)(2) of the Regulations of Connecticut State Agencies, and by the individual(s) responsible for actually preparing such document, and each such individual shall certify in writing as follows:
- "I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, that the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made in the submitted information may be punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law."
18. Noncompliance. This Consent Order is a final order of the Commissioner with respect to the matters addressed herein, and is nonappealable and immediately enforceable. Failure to comply with this Consent Order may subject Respondent to an injunction and penalties.
19. False statements. Any false statement in any information submitted pursuant to this Consent Order may be punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law.
20. Notice of transfer; liability of Respondent. Until the Respondent has fully complied with this Consent Order, the Respondent shall notify the Commissioner in writing no later than fifteen (15) days after transferring all or any portion of the facility, the operations, the site or the business which is the subject of this Consent Order or after obtaining a new mailing or location address. The Respondent's obligations under this Consent Order shall not be affected by the passage of title to any property to any other person or municipality.
21. Commissioner's powers. Except as provided hereinabove with respect to payment of civil penalties, nothing in this Consent Order shall affect the Commissioner's authority to institute any proceeding or take any other action to prevent or abate violations of law, prevent or abate pollution, recover costs and natural resource damages, and to impose penalties for past, present, or future violations of law. If at any time the Commissioner determines that the actions taken by Respondent pursuant to this Consent Order have not successfully corrected all violations, fully characterized the extent or degree of any pollution, or successfully abated or prevented pollution, the Commissioner may institute any proceeding to require Respondent to undertake further investigation or further action to prevent or abate violations or pollution.
22. Respondent's obligations under law. Nothing in this Consent Order shall relieve

Respondent of other obligations under applicable federal, state and local law.

23. No assurance by Commissioner. No provision of this Consent Order and no action or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the actions taken by Respondent pursuant to this Consent Order will result in compliance [or prevent or abate pollution].
24. Access to site. Any representative of the Department of Energy and Environmental Protection may enter the facility without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this Consent Order.
25. No effect on rights of other persons. This Consent Order neither creates nor affects any rights of persons or municipalities that are not parties to this Consent Order.
26. Notice to Commissioner of changes. Within fifteen (15) days of the date Respondent becomes aware of a change in any information submitted to the Commissioner under this Consent Order, or that any such information was inaccurate or misleading or that any relevant information was omitted, the Respondent shall submit the correct or omitted information to the Commissioner.
27. Notification of noncompliance. In the event that the Respondent becomes aware that it did not or may not comply, or did not or may not comply on time, with any requirement of this Consent Order or of any document required hereunder, the Respondent shall immediately notify by telephone the individual identified in the next paragraph and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. Within five (5) days of the initial notice, the Respondent shall submit in writing the date, time, and duration of the noncompliance and the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by which compliance will be achieved, and Respondent shall comply with any dates which may be approved in writing by the Commissioner. Notification by the Respondent shall not excuse noncompliance or delay, and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically so stated by the Commissioner in writing.
28. Submission of documents. Any document required to be submitted to the Commissioner under this Consent Order shall, unless otherwise specified in this Consent Order or in writing by the Commissioner, be directed to:


Lakisha Stephenson, Environmental Analyst
Department of Energy and Environmental Protection
Bureau of Air Management
Engineering & Enforcement Division
79 Elm Street, 5th Floor
Hartford, Connecticut 06106-5127

The *Notification Procedures* that are required to be submitted pursuant to paragraph B.6. of this Consent Order shall be directed to:


Peter Ploch, Supervising Sanitary Engineer
Department of Energy & Environmental Protection
Bureau of Materials Management and Compliance Assurance
Water Permitting & Enforcement Division
79 Elm Street
Hartford, Connecticut 06106-5127

The Respondent consents to the issuance of this Consent Order without further notice. The undersigned certifies that he/she is fully authorized to enter into this Consent Order and to legally bind the Respondent to the terms and conditions of the Consent Order.

FRITO-LAY, INC.

Signature: 
Type Name: George Wierwille
Type Title: SC Vice President
Date: October 11, 2017

Issued as a final Order of the Commissioner of Energy and Environmental Protection.


Robert E. Kaliszewski
Deputy Commissioner

11/7/17
Date

MAILED CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

TOWN KILLINGLY LAND RECORDS

ATTACHMENT A

PULLMAN

WALTER & WATSON

ATTORNEYS

Lee D. Hoffman
90 State House Square
Hartford, CT 06103-3702
p 860 424 4315
f 860 424 4370
lhoffman@pullcom.com
www.pullcom.com

April 5, 2017

VIA ELECTRONIC MAIL AND U.S. MAIL

Oswald Inglese, Jr.
Department of Energy and Environmental Protection
79 Elm Street
Hartford, CT 06106-5127

Re: Frito-Lay Inc.'s Facility in Killingly, Connecticut – Revisions to Supplemental Environmental Project Related to Draft Consent Order No. 2384

Dear Mr. Inglese:

I am writing this letter on behalf of Frito-Lay Inc. to describe a proposed Supplemental Environmental Project (SEP) in connection with the above-referenced consent order. The proposed project would, if approved, consist of an American Petroleum Institute (API) oil-water separator, which is more efficient than standard oily water clarifiers. Frito-Lay's current clarifier system meets permit requirements for fats, oils and grease (FOG); the system contemplated by the SEP is not currently required, nor is it anticipated to be required as a result of any modifications to the facility's water discharge permit. Further, Frito-Lay is not currently planning, nor has it planned, to install the system contemplated in its SEP.

Project Benefits

The API oil-water separator represents an improvement to the existing oily water clarifier currently employed by the Frito-Lay facility. The new system would consist of a rectangular separator designed in accordance with standards promulgated by API for oily water separation. The oil that is separated would then go to an above-ground storage tank for eventual recycling by a third-party vendor, and the remaining water would recirculate to the facility's oily wastewater treatment system.

Although the current system meets not only the current permit requirement for FOG, but also the anticipated new FOG permit requirements for the Frito-Lay facility's draft wastewater discharge permit, the proposed system will provide even greater reductions in pollutants that will be discharged to the Killingly POTW. This is anticipated to result in the following benefits:

- Improved quality of wastewater effluent discharge to the Killingly POTW;
- Because the Frito-Lay facility makes up approximately thirty percent (30%) of the flow to the Killingly POTW, any upgrade to the Frito-Lay facility's wastewater treatment is a *de facto* upgrade to the Killingly POTW;
- The new system will increase removal of FOG as well as total suspended solid (TSS) components from the Frito-Lay facility's effluent discharge; and
- Increased separation and removal will reduce pollutant loading on the Killingly POTW, and may assist with reducing the risk of foam at the POTW, which benefits the Town and potentially the Quinebaug River as the receiving water body.

Estimated Costs

The final costs of such a system will depend on the amount of flow through the system as well as the influent characteristics of the wastewater. We have begun vendor procurement and are in the process of obtaining firm pricing, however, we are being told that this proposed project is estimated to cost between \$500,000 to \$650,000 for equipment, installation and start-up. If Frito-Lay were to simply replace its existing oily water clarifier (which does not currently need to be replaced), such replacement would cost between \$350,000 to \$450,000 for equipment, installation and start-up. Again, the costs would be based on estimated flow and composition of the wastewater, so it is safe to assume that if an oily water clarifier were to cost \$350,000, the comparable API oil-water separator would cost approximately \$500,000. Therefore, the supplemental cost of the project would be \$150,000 to \$200,000, which is well in excess of the amounts contemplated under the draft consent order.

Proposed Schedule

We estimate that the proposed project can be installed in accordance with the following time schedule. Pursuant to subparagraph B.12.a. of the consent order, Frito-Lay would submit a Facility and Wastewater Treatment System Modification Notification and Request for Approval for the oil-water separator to the Commissioner no later than 60 days after the execution of the signed consent order. The Commissioner would then review this submittal and provide written approval. Pursuant to subparagraphs B.12.a. and B.12.b. of the consent order, Frito-Lay would perform the permitting, construction and installation of the oil-water separator. It is anticipated that this task would take 210 days from the date Frito-Lay receives written approval from the Commissioner as described in subparagraph B.12.a. of the consent order.

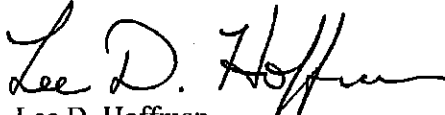
Assuming that Frito-Lay receives the Commissioner's approval on or before June 30, 2017, it is Frito-Lay's intention to have the proposed project fully operational by January 31, 2018. If the

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approval is delayed for some time after June 30, 2017, Frito-Lay would have to re-evaluate its proposed construction schedule as winter conditions may adversely impact that schedule.

Thank you for your evaluation of this proposal. Please contact me at your convenience if you have any questions concerning the foregoing.

Sincerely,


Lee D. Hoffman

cc: Robert Girard, CTDEEP
Cedric Robinson, Frito-Lay, Group Manager, Environmental Compliance & Engineering
John Poakeart, Frito-Lay, Senior Legal Director
Sil Quenga, Frito-Lay, Technical Manager, Killingly, CT
Paul Safin, Frito-Lay, Environmental Manager, Killingly, CT