

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA and STATE OF NEW YORK,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL ACTION NO.
	)	
FRIESLANDCAMPINA INGREDIENTS NORTH AMERICA, INC.	)	
	)	
Defendant.	)	
	)	

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**NOTICE OF LODGING**

Pursuant to 28 C.F.R. § 50.7, the United States lodges a Consent Decree with this Court that has been agreed to and signed by the parties to this action. The Consent Decree is being lodged simultaneously with the filing of the Complaint by the United States and State of New York and settles all of the claims alleged in the Complaint.

Notice of lodging of the Consent Decree will be published in the Federal Register. During the pendency of the 30-day public comment period required under 28 C.F.R. § 50.7 for Consent Decrees, no action is required of this Court. After the expiration of the public comment period and evaluation of the comments received, the United States will advise the Court whether the Consent Decree may be entered or whether further action may be required.

Respectfully submitted,

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FOR PLAINTIFF STATE OF NEW YORK:

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New York State Department of Environmental Conservation

**CERTIFICATE OF SERVICE**

I, Alison Kelly, hereby certify that on August 2, 2023, a copy of the foregoing Notice of Lodging was sent by electronic mail, to all counsel of record, including the following individual who represents FrieslandCampina Ingredients North America, Inc., which is a party to the Consent Decree:

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*s/Alison Kelly*  
\_\_\_\_\_  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and  
STATE OF NEW YORK,

Plaintiffs,

v.

FRIESLANDCAMPINA INGREDIENTS  
NORTH AMERICA, INC.,

Defendant.

CIVIL ACTION NO.  
23 Civ.

CONSENT DECREE

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## I. BACKGROUND

Plaintiffs United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), and State of New York (“New York” or “the State”), on behalf of the citizens and residents of the state and the New York State Department of Environmental Conservation (“NYSDEC”), (collectively referred to as the “Plaintiffs”) have filed a Complaint in this action concurrently with this Consent Decree, against Defendant FrieslandCampina Ingredients North America, Inc. (“Friesland” or “Defendant”), pursuant to Section 113(b) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(b), Section 309(b) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(b), and Article 19 of the New York Environmental Conservation Law (“ECL”), implementing regulations, and the New York State Implementation Plan (“SIP”). The Complaint alleges that Friesland violated the CAA, CWA, and ECL, in its manufacturing of hydrolyzed protein powder at its facility located at 40196 State Highway 10, Delhi, Delaware County, New York (the “Facility”).

Friesland’s batch manufacturing process involves mixing raw material protein sources (e.g., casein, whey, rice, cotton) with water and enzymes, then heating the mixture so the large protein chains are cut into smaller protein fragments. Additional processes (e.g., enzyme deactivation, filtration, evaporation and drying) are performed to produce a finished protein hydrolysate product. Toluene is used in the manufacture of some, but not all, of the protein hydrolysates at the Facility. Toluene is a volatile organic compound (“VOC”), as defined in 40 C.F.R. § 51.100(s), and is listed as a hazardous air pollutant (“HAP”) in Section 112(b)(1) of the CAA, 42 U.S.C. § 7412(b)(1). Because of its volatility, toluene is emitted into the air from the Facility. Emissions of toluene contribute to the formation of ground-level ozone and are harmful to human health and the environment. Since approximately 1998, Friesland has possessed a Title



V CAA permit because its Facility is a major source of HAP due to toluene emissions. The Facility did not submit a permit modification application as a major source of VOC due to toluene emissions until June 2021, and it was not permitted as a major source of VOC until September 21, 2022.

Process wastewater containing suspended solids (turbidity), ammonia, and phosphorous, biochemical oxygen demand, total nitrogen, and other pollutants, is discharged from the Facility's wastewater pretreatment plant ("WWPTP") to the Village of Delhi's publicly owned treatment works ("POTW") that discharges treated wastewater to the West Branch of the Delaware River, which is a drinking water supply source; non-contact cooling water containing heat from the Facility is discharged through an outfall pipe, also to the West Branch of the Delaware River; and stormwater that comes into contact with industrial activities on the Facility's grounds discharges to Platner Brook, which flows to the West Branch of the Delaware River. The pollutants in Friesland's discharges are harmful to human health, to water quality, and to aquatic food resources and habitats.

The Complaint alleges that Friesland violated Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and its implementing regulations, including Title 6 of the New York Codes, Rules, and Regulations ("6 N.Y.C.R.R.") and requirements of New York's federally enforceable SIP, by: (1) failing to obtain a modification of its Title V CAA permit before its Facility became a major source of VOC emissions (toluene), as required by 40 C.F.R. § 70.5(a)(1)(ii) and 6 N.Y.C.R.R. § 201-6.1(a)(1); (2) failing to perform a Reasonably Available Control Technology ("RACT") demonstration and implement RACT before commencing operation of a major source of VOC emissions, as required by 6 N.Y.C.R.R. § 212-3.1(a)(2), (e), and (f); (3) constructing a new, modified or existing air contamination source at the Facility without first obtaining a registration

or permit, as required by 6 N.Y.C.R.R. § 201-1.2(a); (4) failing to accurately report its toluene emissions to the NYSDEC in annual emissions statements, as required by 6 N.Y.C.R.R. §§ 202-2.3(a)(3)(xii) and (xiii), 202-2.3(c)(2), and 202-2.4(a); and (5) failing to maintain annual reports of its toluene emissions for at least five years, as required by 6 N.Y.C.R.R. § 202-2.5(a).

The Complaint also alleges that Friesland violated Sections 307 and 402 of the CWA, 33 U.S.C. §§ 1317, 1342, and the implementing regulations at 40 C.F.R. Parts 122, 123, and 403, by: (1) failing to comply with its New York State Pollutant Discharge Elimination System (“SPDES”) Permit No. NY0262838, by discharging non-contact cooling water to the Delaware River at temperatures that exceeded the Facility’s permit limit of 70 degrees Fahrenheit for temperature on multiple occasions between December 2015 and the date of lodging; (2) introducing total suspended solids (“TSS”) into the Village of Delhi’s POTW in quantities that caused pass through and/or interference with the treatment works, on numerous occasions between December 2015 and the date of lodging, in violation of 40 C.F.R. § 403.5(a)(1); and (3) failing to comply with its New York State SPDES Multi-Sector General Permit (“MSGP”) for Stormwater Discharges Associated with Industrial Activity (GP-0-17-004 – No. NYR00F872) No Exposure Certification, by failing to prevent exposure of industrial materials and activities to rain, snow, snowmelt and/or runoff, as required by 40 C.F.R. §§ 122.26(b)(14) and (g).

Friesland has completed and/or is in the process of completing additional updates to achieve Facility-wide reductions of toluene emissions, including the installation of two regenerative thermal oxidizers (“RTOs”) to control emissions from the Facility’s manufacturing processes and from the WWPTP, respectively. Friesland has also submitted a Title V permit modification application to NYSDEC, which was issued on September 21, 2022, Permit ID No. 4-1228-00027/00015 (hereinafter, “Title V permit”), and which includes the following

significant modifications: (1) addition of Emission Unit 2-WWPTP for the WWPTP, including the addition of a second RTO to control VOC emissions from the WWPTP; (2) modification of Emission Unit 1-TANKS to reduce the “3-hour waiting period” for startup of the RTO; and (3) defining equipment that can continue to operate in the event of an unplanned or emergency shutdown of either RTO.

Further, Friesland has modified the Facility’s WWPTP to prevent pass through and/or interference with the Village of Delhi’s POTW, agrees to operate its WWPTP in compliance with an existing User Agreement until such time as it receives a discharge permit from the Village of Delhi for its discharges of treated process wastewater to the POTW (and thereafter, to comply with such discharge permit), and continue to use a cooling water tower, and use well water withdrawals, as necessary, to comply with the temperature limit for its cooling water discharges. It has also obtained coverage for its industrial stormwater discharges under the MSGP, in lieu of its prior No Exposure Certification.

The Parties recognize, and the Court by entering this Consent Decree finds, that the Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I with the consent of the Parties IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

## II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and over the Parties. This Court has supplemental

jurisdiction over the State law claims asserted by the State of New York, pursuant to 28 U.S.C. § 1367. Venue lies in this District pursuant to 42 U.S.C. § 7413(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the Facility is located in this judicial district and the violations alleged in the Complaint are alleged to have occurred in, and Defendant conducts business in, this judicial district. For purposes of this Decree, or any action or proceeding to enforce this Consent Decree, Defendant consents to the Court's jurisdiction over this Consent Decree and any such action over Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant neither admits nor denies the allegations set forth herein and, in the Complaint, and further Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and Article 19 of the ECL.

### III. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and the State, and upon Friesland and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee, and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to the EPA, the State, DOJ, and the United States Attorney for the Northern District of New York, in accordance with Section XV (Notices). Any attempt to transfer ownership or

operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree.

Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Friesland shall not raise as a defense the failure by any of its officers, directors, employees, agents, contractors, to take any actions necessary to comply with the provisions of this Consent Decree.

#### IV. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the CAA, CWA, ECL, or in regulations promulgated thereunder, have the meanings assigned to them in such statutes or regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

“Complaint” means the complaint filed by the United States and the State of New York in this action;

“Consent Decree” or “Decree” means this decree and all appendices attached hereto and incorporated into this Consent Decree;

“CDCS” means Consolidated Debt Collection System;

“Date of Lodging” means the day that this Consent Decree is lodged with the Court for public comment as provided in Section XX (Public Participation);

“Day” means a calendar day unless expressly stated to be a business day. In computing any period of time for a deadline under this Consent Decree, if the last day would fall on a Saturday, Sunday, or federal holiday, the period shall continue until the next business day;

“Defendant” or “Friesland” means FrieslandCampina Ingredients North America, Inc.;

“DOJ” means the United States Department of Justice and any of its successor departments or agencies;

“EPA” means the United States Environmental Protection Agency and any of its successor departments or agencies;

“ECL” means the New York State Environmental Conservation Law;

“Effective Date” means that date described in Section XVI;

“EFT” means electronic funds transfer;

“Facility” means Defendant’s hydrolyzed protein powder manufacturing facility located at 40196 State Highway 10, Delhi, Delaware County, New York;

“FLU” means Financial Litigation Unit;

“HAP” means hazardous air pollutant;

“NYSDEC” means the New York State Department of Environmental Conservation and any of its successor departments or agencies;

“Paragraph” means a portion of this Consent Decree identified by an Arabic numeral;

“Parties” means the United States, the State of New York, and Friesland;

“POTW” means publicly owned treatment works;

“RACT” means reasonably available control technology;

“Section” means a portion of this Decree identified by a roman numeral;

“State” means the State of New York, acting on behalf of its citizens and residents and NYSDEC;

“United States” means the United States of America, acting on behalf of the EPA;

“VOC” means volatile organic compound;

“WWPTP” means wastewater pretreatment plant.

## V. CIVIL PENALTY

8. Within 30 Days after the Effective Date, Defendant shall pay the sum of \$2,880,000.00 (two million eight hundred eighty thousand and no/100 dollars) as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging. The civil penalty payment will be divided between the United States and the State as specified below.

9. Defendant shall pay \$1,440,000 of the civil penalty due pursuant to paragraph 8, together with interest, to the United States by FedWire Electronic Funds Transfer (“EFT”) to the DOJ account, in accordance with instructions provided to Defendant by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Northern District of New York within 30 Days after the Effective Date of this Consent Decree. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System (“CDCS”) number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to

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on behalf of Defendant. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to DOJ and EPA in accordance with Section XV (Notices).

10. At the time of payment, Defendant shall send notice that payment has been made: (i) to EPA via email at [cinwd\\_acctsreceivable.cinwd@epa.gov](mailto:cinwd_acctsreceivable.cinwd@epa.gov) or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to DOJ via e-mail or regular mail in accordance with Section XV (Notices); and (iii) to EPA in accordance with Section XV (Notices). Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in U.S. v. FrieslandCampina Ingredients North America, Inc. and shall reference the civil action number, CDCS Number and DOJ case number 90-5-2-1-12387.

11. Defendant shall pay \$1,440,000 of the civil penalty due pursuant to paragraph 8 together with interest, to the State of New York via wire transfer to the Office of the Attorney General of the State of New York (NYSOAG), with written and email notice delivered to Morgan Costello, Assistant Attorney General, Environmental Protection Bureau, The Capitol, Albany, New York 12224-0341, [Morgan.Costello@ag.ny.gov](mailto:Morgan.Costello@ag.ny.gov). Such wire transfer shall be remitted by Defendant to the Office of the Attorney General within 30 Days after the Effective Date of this Consent Decree. The monetary payment of \$1,440,000 made to the NYSOAG pursuant to this paragraph will, as authorized by State Finance Law § 4(11) and Executive Law § 63(16), be held by the NYSOAG in a designated account and used, in consultation with NYSDEC, exclusively to fund projects to prevent, abate, restore, mitigate, or control any identifiable instance of prior or ongoing water, land, or air pollution. Projects funded by this account will be designed to secure environmental or public health protection and improvements



benefiting the affected community. Projects funded by this account will be designed to advance New York's policy to conserve, improve and protect its natural resources and environment and to prevent, abate and control water, land, and air pollution, in order to enhance the health, safety and welfare of the people of the State and their overall economic and social well-being. Should the full \$1,440,000 not be expended or committed to projects as described in this paragraph within two years after the payment is made, then the State shall direct that any and all funds remaining in the designated account be transferred to the State Comptroller and that the designated account be closed upon completion of the transferring of any and all remaining funds. Any written or formal public oral statements or representations made by any of the parties regarding funded projects shall expressly state that the projects were funded pursuant to a consent decree resolving a civil action brought by the NYSOAG on behalf of NYSDEC and the citizens and residents of the state to enforce New York State's Environmental Conservation Law.

12. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section IX (Stipulated Penalties) in calculating its federal, State, or local income tax.

#### VI. COMPLIANCE REQUIREMENTS

13. Defendant shall comply with all applicable requirements of the CAA, CWA, and ECL Article 19, and all associated permits, with respect to the Facility, including all applicable limits on discharges of treated process wastewater to the POTW, and shall implement the Phase II VOC RACT controls schedule, as follows:

- a. Complete construction and installation of Phase II VOC RACT controls by April 3, 2023;
- b. Submit an emission testing protocol meeting the requirements of 6 N.Y.C.R.R. Subpart 202 to NYSDEC for approval by March 15, 2023;

c. Complete equipment debugging and commence full-scale operation of the Phase II VOC RACT controls by April 17, 2023;

d. Complete emissions testing of the Phase II VOC RACT controls within 60 days of NYSDEC's approval of the testing protocol required by Paragraph 13.b, above; and

e. Submit final testing report to NYSDEC within 60 days following completion of testing required by Paragraph 13.d.

14. Defendant shall expeditiously implement the Phase II RACT schedule, operation of controls, and compliance monitoring in accordance with its Title V permit. For three years from the effective date of this Consent Decree, Defendant shall provide copies to EPA of any monitoring reports submitted to NYSDEC.

15. Defendant shall continue operation of the upgraded WWPTP at the Facility and comply with the Village of Delhi's User Agreement and subsequently, discharge permit limits. For three years from the effective date of this Consent Decree, Defendant shall provide to EPA copies of any updated or amended versions of its User Agreement and/or discharge permit with the Village of Delhi, sampling of effluent from the Facility performed by the Village of Delhi and provided to Friesland, and any monitoring reports submitted to NYSDEC.

16. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Consent Decree, EPA, after consultation with the State, will in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

17. If the submission is approved pursuant to Paragraph 16(a), Defendant shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 16(b) or (c), Defendant shall, upon written direction from EPA, after consultation with the State, take all actions required by the approved plan, report, or other item that EPA, after consultation with the State, determines are technically severable from any disapproved portions.

18. If the submission is disapproved in whole or in part pursuant to Paragraph 16(c) or (d), Defendant shall, within 15 days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendant shall proceed in accordance with the preceding Paragraph.

19. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA, after consultation with the State, may again require Defendant to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies.

20. If Defendant elects to invoke Dispute Resolution as set forth in Section XI (Dispute Resolution) concerning a decision by EPA to disapprove, approve any specified conditions, or modify a deliverable, Defendant shall do so by sending a Notice of Dispute in accordance with Paragraph 64 within 15 Days (or such other time as the Parties agree to in writing) after receipt of the applicable decision.

21. Any stipulated penalties applicable to the original submission, as provided in Section IX, accrue during the 15 Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendant’s obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

22. Permits. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section X (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

23. Defendant shall implement a Supplemental Environmental Project (“SEP”), to prevent pollution, by converting the Facility’s “once-through” non-contact cooling water (NCCW) system used for its manufacturing process, to a recirculating closed-loop NCCW system, pursuant to the following schedule:

<b>Activity</b>	<b>Date</b>
Complete Preliminary Engineering Design	June 30, 2023
Complete Final Engineering Design	September 15, 2023

Major Equipment Procurement	October 29, 2023
Delivery of Major Equipment	June 30, 2024
Complete Construction and Installation	July 31, 2024
Final System Tuning	September 30, 2024

The SEP shall be completed and fully operational by September 30, 2024, in accordance with the schedule set forth in this Paragraph. The SEP shall reduce groundwater withdrawals needed for Friesland’s operations and reduce the volume of discharges of heated water to the Delaware River. The river is habitat for several native species of trout and is managed by the New York State Department of Environmental Conservation as a trout fishery. Water temperature is essential to this habitat because trout are a cold-water species that cannot survive in warmer weather temperatures. Additionally, the reduction of existing thermal discharge to the river is expected to increase the river’s capacity to retain dissolved oxygen, and reduce thermal stress on the river’s macroinvertebrate community, resulting in both physiological and forage-related benefits to the trout population.

24. Defendant is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree. “Satisfactory completion” means that the closed-loop system, as described in Paragraph 23 above, is operating as intended for a period of five years of the Effective Date of this Decree. Defendant may use contractors or consultants in planning and implementing the SEP.

25. With regard to the SEP, Defendant certifies the truth and accuracy of each of the following:

a. that all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and that Defendant in good faith estimates that the cost to implement the SEP, exclusive of indirect costs, such as overhead; additional employee time and salary; administrative expenses; most legal fees; contractor oversight; and annual operating costs, is \$1.44 million;

b. that, as of the date of executing this Decree, Defendant is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that the SEP is not a project that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. that Defendant has not received and will not receive credit for the SEP in any other enforcement action;

e. that Defendant will not receive any reimbursement for any portion of the SEP from any other person; and

f. that Defendant is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 23 above.

26. SEP Completion Report. Within 30 days after the date set for completion of the SEP, Defendant shall submit a SEP Completion Report to DOJ and EPA, in accordance with Section XV (Notices). The SEP Completion Report shall contain the following information:

a. a detailed description of the SEP as implemented;

- b. a description of any problems encountered in completing the SEP and the solutions thereto;
- c. an itemized list of all eligible SEP costs expended;
- d. certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and
- e. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

27. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate Defendant's completion report.

28. After receiving the SEP Completion Report, the United States will notify Defendant whether or not Defendant has satisfactorily completed the SEP. If Defendant has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section IX.

29. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 35.

30. Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to the SEP under this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States v. FrieslandCampina Ingredients North America, Inc., taken on behalf of the U.S. Environmental Protection Agency under the Clean Water Act."

31. For federal income tax purposes, Defendant agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

## VIII. REPORTING REQUIREMENTS

32. Defendant shall maintain records to demonstrate compliance with this Consent Decree, without limitation. For three years from the effective date of this Consent Decree, the Defendant shall submit to EPA copies of all compliance monitoring reports submitted to NYSDEC required by its Title V, SPDES, and MSGP permits, and any other records sufficient to demonstrate that the Defendant is complying with the terms and conditions of this Consent Decree.

33. By July 31st and January 31st of each year after the lodging of this Consent Decree, until termination of this Decree pursuant to Section XIX, Defendant shall submit to EPA, with a copy to the State, a semi-annual report for the preceding six months that includes the status of any construction or compliance measures; completion of milestones; problems encountered or anticipated, together with implemented or proposed solutions; status of permit applications; operation and maintenance; reports to state agencies; and a discussion of Defendant's progress in satisfying its obligations in connection with the SEP under Section VII, including, at a minimum, a narrative description of activities undertaken; status of any construction or compliance measures, including the completion of any milestones set forth in the SEP Work Plan in Paragraph 23, and a summary of costs incurred since the previous report.

a. The report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall notify DOJ and EPA and the State of such violation and its likely duration, in writing, within two business days of the Day Defendant first becomes aware of the violation, with an



explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section X (Force Majeure).

b. Submission of semi-annual reports by June 30th and December 31st of each year containing a description of the nature, concentration, and flow of the pollutants, as required by 40 C.F.R. § 403.12(h), which shall be in lieu of the submission of quarterly reports to EPA and NYSDEC currently required pursuant to a CWA Section 308(a) Request for Information (CWA-IR-20-004).

34. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting Defendant's performance under this Decree may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA and the State as soon as possible, but no later than 24 hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

35. Each report submitted by Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant

penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

36. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

37. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the CWA or CAA, or their implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

38. Any information provided pursuant to this Consent Decree may be used by the United States and the State in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

#### IX. STIPULATED PENALTIES

39. Defendant shall be liable for stipulated penalties to the United States and the State for violations of this Consent Decree as specified below, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

40. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid pursuant to Section V (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$1,000 per Day for each Day that the payment is late.

41. Permit Compliance. The following stipulated penalties shall accrue per violation per Day for each violation of all applicable requirements of the CAA, CWA, ECL Article 19, or Friesland's associated permits (including its Title V, SPDES, and MSGP permits), including all

applicable limits on discharges of treated process wastewater to the Village of Delhi’s POTW, as specified below:

Penalty Per Violation Per Day	Period of Noncompliance
\$1,250	1st through 14th day
\$2,500	15th through 30th day
\$4,000	31st day and beyond

42. Compliance Milestones. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in Paragraph 13(a) through (d):

Penalty Per Violation Per Day	Period of Noncompliance
\$1,250	1st through 14th day
\$2,500	15th through 30th day
\$4,000	31st day and beyond

43. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Paragraph 13(e) and Section VIII:

Penalty Per Violation Per Day	Period of Noncompliance
\$750	1st through 30th day
\$1,500	31st through 59th day
\$2,250	60th day and beyond

44. Transfer of Ownership. If Defendant fails to: (a) provide a copy of this Consent Decree to any proposed transferee; (b) provide written notice to the United States at least 30 Days prior to any transfer of any portion of the Facility; or (c) provide a copy of the proposed

written agreement with the transferee as required by Paragraph 4. Defendant shall pay a stipulated penalty of \$4,500 per occurrence.

45. SEP Compliance.

a. If Defendant fails to satisfactorily complete the SEP by the deadline set forth in Section VII, Defendant shall pay stipulated penalties for each Day for which it fails to satisfactorily complete the SEP, as follows:

Penalty Per Violation Per Day	Period of Noncompliance
\$1,250	1st through 14th day
\$2,500	15th through 30th day
\$4,000	31st day and beyond

46. Except as provided in subparagraphs 45a., stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day that a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

47. Defendant shall pay stipulated penalties to the United States and the State within 30 Days of a written demand by either Plaintiff. Defendant shall pay fifty (50) percent of the total stipulated penalty amount due to the United States and fifty (50) percent to the State. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

48. Either Plaintiff may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

49. Stipulated penalties shall continue to accrue as provided in Paragraph 46, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA or the State that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States or the State within 30 Days of the effective date of the agreement or the receipt of EPA's or the State's decision or order.

b. If the dispute is appealed to the Court and the United States or the State prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c., below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

50. Obligations Prior to the Effective Date. Upon the Effective Date, the stipulated penalty provisions of this Decree shall be retroactively enforceable with regard to any and all violations of Section VI (Compliance Requirements) that have occurred prior to the Effective Date, provided that stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Consent Decree is entered by the Court.

51. Defendant shall pay stipulated penalties owing to the United States in the manner set forth in Paragraph 9 and with the confirmation notices required by Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. Defendant shall pay stipulated penalties owing to the State pursuant to the terms and notice requirements set forth in Paragraph 11.

52. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28

U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or the State from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

53. The payment of penalties and interest, if any, shall not alter in any way Defendant's obligation to complete the performance of the requirements of this Consent Decree.

54. Non-Exclusivity of Remedy. Stipulated penalties are not the Parties' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XIII (Effect of Settlement/Reservation of Rights), the Parties expressly reserve the right to seek any other relief the deem appropriate for Defendant's violation of this Consent Decree or applicable law, including but not limited to an action against Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

#### X. FORCE MAJEURE

55. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite the Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring, and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

56. If any event occurs for which Defendant will or may claim a force majeure, Defendant shall provide notice by telephone to EPA and the State. The deadline for the initial notice is three days after Defendant first knew or should have known that the event would likely delay or prevent performance. Defendant shall be deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by Defendant knew or should have known.

57. If Defendant seeks to assert a claim of force majeure concerning the event, within seven Days after the notice under Paragraph 56, Defendant shall submit a further notice to EPA and the State that includes (a) an explanation and description of the event and its effect on Defendant's completion of the requirements of the Consent Decree; (b) a description and schedule of all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay and/or other adverse effects of the event ; (c) if applicable, the proposed extension of time for Defendant to complete the requirements of the Consent Decree; (d) Defendant's rationale for attributing such delay to a force majeure if it intends to assert such a claim; (e) a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health or welfare or the environment; and (f) all available proof supporting any claim that the delay was attributable to a force majeure.

58. Failure to submit a timely or complete notice or claim under Paragraph 56 or 57 regarding an event precludes Defendant from asserting any claim of force majeure regarding that event, provided, however, that EPA, in its unreviewable discretion, excuse such failure if it is able to assess to its satisfaction whether the event is force majeure, and whether Defendant has exercised its best efforts, under Paragraph 55.

59. After receipt of any claim or force majeure, EPA, after a reasonable opportunity for review and comment by the State, will notify Defendant of its determination whether Defendant is entitled to relief under Paragraph 55, and, if so, the excuse of, or the extension of the time for performance of the obligations affected by the force majeure does not, of itself, excuse or extend the time for performance of any other obligation.

60. If Defendant elects to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Defendant has the burden of proving that it is entitled to relief under Paragraph 55, that its proposed excuse or extension was or will be warranted under the circumstances, and that it complied with the requirements of Paragraphs 55-57. If Defendant carries this burden, the delay or non-performance at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to the Plaintiffs and the Court.

## XI. DISPUTE RESOLUTION

61. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States or the State to enforce any obligation of Defendant arising under this Decree.

62. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends DOJ and the Plaintiffs a written Notice of



Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the Plaintiffs shall be considered binding unless, within 14 Days after the conclusion of the informal negotiation period, Defendant invokes the formal dispute resolution procedures as set forth below.

63. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by sending DOJ and the Plaintiffs a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

64. Plaintiffs will send Defendant their Statement of Position within 45 Days of receipt of Defendant's Statement of Position. Plaintiffs' Statement of Position shall include, but need not be limited to, factual data, analysis, or opinion supporting that position and supporting documentation relied upon by the Plaintiffs. Plaintiffs' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute, in accordance with the following Paragraph.

65. Judicial Dispute Resolution. Defendant may seek judicial review of the dispute by filing with the Court and serving on the Plaintiffs a motion requesting judicial resolution of the dispute. The motion (a) must be filed within ten Days of receipt of the Plaintiffs' Statement of Position pursuant to the preceding Paragraph; (b) may not raise any issue not raised in informal dispute resolution pursuant to Paragraph 52, unless the Plaintiffs raise a new issue of law or fact in the Statement of Position; (c) shall contain a written statement of Defendant's

position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and (d) shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

66. Plaintiffs shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

67. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought pursuant to Paragraph 63 pertaining to the adequacy or appropriateness of Defendant's submissions or filings, schedules or any other items requiring approval by EPA and the State under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the Plaintiffs is arbitrary and capricious, or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 63, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of this Consent Decree.

68. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with

respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 49. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

## XII. INFORMATION COLLECTION AND RETENTION

69. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Facility covered by this Consent Decree, during all hours of operation, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;
- c. obtain samples, and upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with the Consent Decree.

70. Upon request, Defendant shall provide EPA and the State, or their authorized representatives splits of any samples taken by Defendant. Upon request, EPA and the State shall provide Defendant splits of any samples taken by EPA or the State.

71. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's

performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

72. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States and the State at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the State, Defendant shall deliver any such documents, records, or other information to EPA or the State. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

73. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2 and/or 6 N.Y.C.R.R. § 616.7. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2 and 6 N.Y.C.R.R. § 616.7.

74. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

### XIII. EFFECT OF SETTLEMENT/RESERVATIONS OF RIGHTS

75. This Consent Decree resolves only the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action through the date of lodging.

76. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under any laws or implementing regulations, or under other federal or state laws, regulations, or permit conditions except as expressly specified in Paragraph 75. The United States and the State further reserve all legal and equitable remedies to address any conditions if there is or may be an imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

77. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, or other appropriate relief relating to the Facility, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, claim preclusion (*res judicata*), issue preclusion (*collateral estoppel*), claim-splitting, or other defenses based upon any contention that the claims raised by the United

States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 75.

78. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced by the United States or the State pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with any provision of the CWA, CAA, or the ECL, or with any other provisions of federal, state, or local laws, regulations, or permits.

79. This Consent Decree does not limit or affect the rights of Defendant or of the United States or the State against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

80. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

#### XIV. COSTS

81. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs (including reasonable attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

#### XV. NOTICES

82. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and sent by electronic mail ("email") or mail (with a preference for email), addressed as follows:

As to DOJ by email: [eesdcopy.enrd@usdoj.gov](mailto:eesdcopy.enrd@usdoj.gov)  
Re: DJ # 90-5-2-1-12387

As to DOJ by mail: EES Case Management Unit  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-5-2-1-12387

As to EPA by email: [mckenna.douglas@epa.gov](mailto:mckenna.douglas@epa.gov)  
[buettner.robert@epa.gov](mailto:buettner.robert@epa.gov)

As to EPA by mail: Chief, Water Compliance Branch  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 21st Floor  
New York, NY 10007

Chief, Air Compliance Branch  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 21st Floor  
New York, NY 10007  
As to the State by email: [morgan.costello@ag.ny.gov](mailto:morgan.costello@ag.ny.gov)  
[anthony.luisi@dec.ny.gov](mailto:anthony.luisi@dec.ny.gov)  
[mark.lanzafame@dec.ny.gov](mailto:mark.lanzafame@dec.ny.gov)

As to the State by mail: Chief, Affirmative Litigation Section  
State of New York  
Office of the Attorney General  
Environmental Protection Bureau  
The Capitol  
Albany, NY 12224-0241

Regional Director  
NYSDEC Region 4  
1130 North Westcott Road  
Schenectady, NY 12306-2014

As to Defendant by mail: Operations Director  
FrieslandCampina Ingredients  
North America, Inc.  
40196 State Highway 10  
Delhi, NY 13753

As to Defendant by email: [boudewijn.stijne@frieslandcampina.com](mailto:boudewijn.stijne@frieslandcampina.com)

With a copy to: Robert R. Tyson, Esq.  
Bond, Schoeneck & King, PLLC  
One Lincoln Center  
Syracuse, NY 13202  
[tysonr@bsk.com](mailto:tysonr@bsk.com)

83. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

84. Notices submitted pursuant to this Section shall be deemed submitted upon mailing or transmission by email, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

#### XVI. EFFECTIVE DATE

85. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.



## XVII. RETENTION OF JURISDICTION

86. The Court shall retain jurisdiction over this action until termination of this Consent Decree, for the purposes of resolving disputes arising under this Consent Decree, or entering orders modifying this Consent Decree, pursuant to Sections XI (Dispute Resolution) and XVIII (Modification) of this Consent Decree, or effectuating or enforcing compliance with the terms of this Decree.

## XVIII. MODIFICATION

87. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

88. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section XI (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 67, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

## XIX. TERMINATION

89. After Defendant has completed all of the requirements set forth in Section VI (Compliance Requirements), has thereafter maintained continuous satisfactory compliance with this Consent Decree and Defendant's permits for a period of three years, has complied with all other requirements of this Consent Decree, including those relating to the SEP required by Section VII, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States and the State a Request for

Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

90. Following receipt by the United States and the State of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States after consultation with the State agree that this Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

91. If the United States after consultation with the State does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section XI. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination until 90 Days after service of its Request for Termination.

## XX. PUBLIC PARTICIPATION

92. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of this Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

## XXI. SIGNATORIES/SERVICE

93. Each undersigned representative of Defendant, U.S. Attorney's Office for the Northern District of New York, the New York State Attorney General, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice identified on the signature page below, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party that person represents to this document.

94. This Consent Decree may be signed in counterparts, and by electronic means, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

## XXII. INTEGRATION

95. This Consent Decree, including deliverables that are subsequently approved pursuant to this Decree, constitutes the entire agreement among the Parties regarding the subject matter of the Decree and supersedes all prior representations, agreements and understandings, whether oral or written, concerning the subject matter of the subject matter of the Decree herein.

## XXIII. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

96. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2),

performance of the requirements in Paragraphs 5, 13-21, 32-36, and 68-71 is restitution, remediation, or required to come into compliance with law.

#### XXIV. HEADINGS

97. Headings to the Sections and Subsections of this Consent Decree are provided for convenience and do not affect the meaning or interpretation of the provisions of this Consent Decree.

#### XXV. FINAL JUDGMENT

98. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State, and Defendant. The Court finds there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

Dated and entered this \_\_\_\_ Day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

TODD KIM  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

Washington, D.C.  
July 24, 2023

s/Alison Kelly  
ALISON KELLY  
Florida Bar No. 0016660  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
Telephone: (202) 514-1210  
Alison.Kelly@usdoj.gov

Albany, New York  
July 25, 2023

CARLA B. FREEDMAN  
United States Attorney for the  
Northern District of New York

By: s/John Hoggan  
JOHN HOGGAN  
Assistant United States Attorney  
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FOR THE PLAINTIFF UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

New York, New York

PATRICIA  
HICK

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PATRICIA HICK  
Date: 2023.07.11  
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*FOR*

PAUL SIMON

Regional Counsel

U.S. Environmental Protection Agency, Region 2

Christopher Saporita

Assistant Regional Counsel

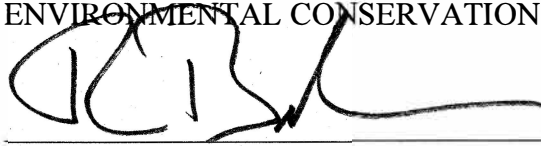
Water and General Law Branch

U.S. Environmental Protection Agency, Region 2

FOR THE PLAINTIFF STATE OF NEW YORK:

Albany, New York  
July 21, 2023

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION



THOMAS S. BERKMAN  
Deputy Commissioner and General Counsel  
New York State Department of Environmental  
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Albany, New York  
July 26, 2023

Attorney General of the State of New York


By: s/ Morgan Costello

MORGAN COSTELLO  
Assistant Attorney General  
Environmental Protection Bureau


FOR THE DEFENDANT FRIESLANDCAMPINA INGREDIENTS NORTH AMERICA, INC.:

Paramus, NJ

7-7, 2023

  
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MIRJAM VAN THIEL  
Finance Director Americas  
FrieslandCampina Ingredients North America, Inc.

7-7, 2023

  
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BOUDEWIJN STIJNE  
Operations Director – Delhi  
FrieslandCampina Ingredients North America, Inc.