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HEARINGS CLERK  
EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

FRY FOODS, INC.,  
Tiffin, Ohio,

Respondent

DOCKET NO. CWA-10-2016-0029

CONSENT AGREEMENT

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B).

1.2. Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (g)(2)(B), and in accordance with the Rule 22.18 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. part 22, EPA issues, and Fry Foods, Inc. ("Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement ("Final Order").

**II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant") has been delegated the authority pursuant to Section 309(g) of the CWA,

33 U.S.C. § 1319(g), to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

### **III. ALLEGATIONS**

#### **Statutory and Regulatory Authority**

3.1. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. CWA § 101(a), 33 U.S.C. § 1251(a).

3.2 Section 301(a) of the CWA prohibits the “discharge of any pollutants by any person” except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit. CWA § 301(a), 33 U.S.C. § 1311(a); CWA § 402, 33 U.S.C. § 1342.

3.2.1 The CWA defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source” and defines “navigable waters” to include “waters of the United States.” CWA § 502(7), (12); 33 U.S.C. § 1362(7), (12).

3.2.2 The CWA defines “pollutant” to include “sewage ... chemical wastes, biological materials ... and industrial, municipal, and agricultural waste discharged into water.” CWA § 502(6), 33 U.S.C. § 1362(6).

3.2.3 The CWA defines “point source” to include, *inter alia*, “any pipe, ditch, channel, tunnel, conduit, well, [or] discrete fissure ... from which pollutants are or may be discharged.” CWA § 502(16), 33 U.S.C. § 1362(14).

3.3 As required by Section 307(b)(1) of the CWA, EPA established the General Pretreatment Regulations, at 40 C.F.R. part 403, to regulate the introduction of wastewater from

non-domestic sources into Publicly Owned Treatment Works (“POTWs”). CWA § 307(b), 33 U.S.C. § 1317(b); 40 C.F.R. part 403.

3.4 The General Pretreatment Regulations include National Prohibited Discharge Standards, at 40 C.F.R. § 403.5(b), which prohibit certain discharges into POTWs by non-domestic sources, including discharges with a pH of lower than 5.0 standard units, unless that POTW is specifically designed to accommodate such discharges. CWA § 307(b), 33 U.S.C. § 1317(b); 40 C.F.R. § 403.5(b)(2).

3.5 Section 307(d) of the CWA prohibits the introduction of pollutants into a POTW in violation of any pretreatment standards, including National Prohibited Discharge Standards. CWA § 307(d), 33 U.S.C. § 1317(d).

3.6 An Industrial User (“IU”) is any non-domestic source regulated under Sections 307(b), (c) or (d) of the CWA that introduces pollutants into a POTW. 40 C.F.R. § 403.3(i), (j).

3.7 No IU may discharge fluids to a POTW that have a pH lower than 5.0, unless the POTW is specifically designed to accommodate such discharges. 40 C.F.R. § 403.5(b)(2)

### **Factual Background**

3.8 Respondent is a corporation organized under the laws of the State of Ohio, and a “person” within the meaning of the CWA. CWA § 502(5), 33 U.S.C. § 1362(5).

3.9 Respondent has a processing plant (“Facility”) at 1 Appleton Lane in Weiser, Idaho. Respondent’s Facility primarily produces onion rings, along with other food products.

3.10 The City of Weiser is a “municipality” within the meaning of the CWA. The City of Weiser owns the City of Weiser Wastewater Treatment Facility, which is a “POTW Treatment Plant.” CWA § 502(4), 33 U.S.C. § 1362(4); 40 C.F.R. § 403.3(r).



3.11 The City of Weiser Wastewater Treatment Facility, along with all sewers, pipes and other conveyances used to convey wastewater to the POTW treatment plant, is a POTW. CWA § 307(b), 33 U.S.C. § 1317(b); 40 C.F.R. §§ 122.2, 403.3(q).

3.11.1 The City of Weiser Wastewater Treatment Facility is a “point source” that “discharges pollutants” to the Snake River, which is a “navigable water” of the United States. CWA § 502(7), (12), (14); 33 U.S.C. § 1362(7), (12), (14).

3.11.2 The City of Weiser Wastewater Treatment Facility is not specifically designed to accommodate fluids that have a pH lower than 5.0.

3.12 Since at least 2006, Respondent’s Facility discharged process wastewater to the sewer system that conveys wastewater to the City of Weiser Wastewater Treatment Facility.

3.13 Respondent is an IU for purposes of the CWA, as it is a “non-domestic source regulated under Section 307(b), (c), or (d)” of the CWA that discharges pollutants to a POTW. CWA § 307(b)-(d); 33 U.S.C. § 1317(b)-(d); 40 C.F.R. § 403.3(i), (j).

### Violation

3.2. From May 17, 2012, through March 18, 2015, Respondent discharged fluids with a pH lower than 5.0 to the POTW on 57 different days of violation, as follows:

Month of Violation		Days of Violations
May	2012	1
August	2012	2
February	2013	1
April	2013	1
June	2013	1
August	2013	2
October	2013	3
November	2013	16

Month of Violation (continued)		Days of Violations
January	2014	2
February	2014	3
March	2014	6
April	2014	1
May	2014	1
June	2014	2
July	2014	4
September	2014	2
October	2014	1
November	2014	1
December	2014	3
January	2015	1
February	2015	1
March	2015	2

3.2 From May 17, 2012, through March 18, 2015, Respondent's discharge of fluids with a pH lower than 5.0 to the POTW on 57 different dates constitute violations of Sections 301(a) and 307(d) of the CWA. CWA §§ 301(a), 307(d); 33 U.S.C. §§ 1311(a), 1317(d).

#### **IV. TERMS OF SETTLEMENT**

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.2. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$99,870.

4.3. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.2 within thirty (30) days of the effective date of the Final Order. 40 C.F.R. § 22.31(c).

4.4. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.5. Concurrent with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.4 on the Regional Hearing Clerk and EPA Compliance Officer at the following addresses:

Teresa Luna, Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, M/S ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
Luna.teresa@epa.gov

Chae Park, Compliance Officer  
U.S. Environmental Protection Agency  
Region 10, M/S OCE-101  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
Park.chae@epa.gov

4.6. Except as described in Subparagraph 4.7.2, below, each party shall bear its own fees and costs in bringing or defending this action.

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and



additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. *Interest.* Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C.

§ 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty days of the effective date of the Final Order.

4.7.2. *Attorneys Fees, Collection Costs, Nonpayment Penalty.* Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. *Federal Tax.* The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to the terms and conditions of this document.

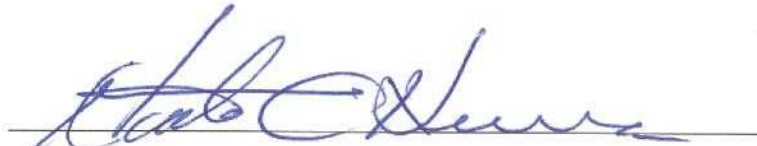
4.10. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in the Final Order.

4.11. The provisions of this Consent Agreement and Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.12. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED: FOR FRY FOODS, INC.:

11-2-15



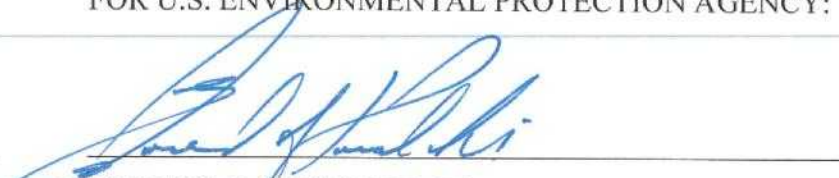
Signature

Print Name: Hector C. Herrera

Title: Plant Manager

DATED: FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

11/9/2015



EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement



**BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

FRY FOODS, INC.,  
Tiffin, Ohio,

Respondent

**DOCKET NO. CWA-10-2016-0029**

**FINAL ORDER**

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency ("EPA") Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act ("CWA") for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

1.4. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any

issue of fact or law set forth in this Final Order, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

1.5. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Idaho Department of Environmental Quality has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

1.6. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

1.7. This Final Order shall become effective upon filing.

SO ORDERED this 14<sup>th</sup> day of December, 2015.



M. SOCORRO RODRIGUEZ  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in: **In the Matter of: FRY FOODS, INC., Docket No. CWA-10-2016-0029**, was filed, and served as follows, on the signature date below.

The undersigned certifies that a true and correct electronic copy of the document was delivered to:

Chris Bellovary  
U.S. Environmental Protection Agency  
Region 10, M/S: ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of this document was placed in the United States mail, certified/return receipt, to:

Fry Foods, Inc.  
Attn: Hector Herrera  
1 Appleton Lane  
Weiser, ID 83672

DATED this 14 day of December 2015

Teresa Luna  
Signature

Teresa Luna  
Regional Hearing Clerk  
EPA Region 10