

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA,

Plaintiff,

v.

OLD DUTCH MUSTARD CO., INC. D/B/A
PILGRIM FOODS, INC.,

Defendant,

CIVIL ACTION NO. 1:26-cv-00655

CONSENT DECREE

TABLE OF CONTENTS

I.	JURISDICTION AND VENUE.....	4
II.	APPLICABILITY.....	5
III.	OBJECTIVES	6
IV.	DEFINITIONS	6
V.	CIVIL PENALTY	8
VI.	COMPLIANCE REQUIREMENTS.....	10
VII.	REPORTING REQUIREMENTS	20
VIII.	STIPULATED PENALTIES	24
IX.	FORCE MAJEURE.....	28
X.	DISPUTE RESOLUTION.....	30
XI.	INFORMATION COLLECTION AND RETENTION	33
XII.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS	35
XIII.	COSTS	37
XIV.	NOTICES.....	38
XV.	EFFECTIVE DATE.....	39
XVI.	RETENTION OF JURISDICTION.....	40
XVII.	MODIFICATION	40
XVIII.	TERMINATION	40
XIX.	PUBLIC PARTICIPATION.....	41
XX.	SIGNATORIES/SERVICE	42
XXI.	INTEGRATION.....	42
XXII.	26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION	42
XXIII.	HEADINGS	43

XXIV. FINAL JUDGMENT	43
XXV. APPENDIX.....	43
Unauthorized Discharge Incident Response Form	47
Certification Statement	49

Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action (the “Complaint”) concurrently with this Consent Decree, alleging that Defendant, Old Dutch Mustard Co., Inc., d/b/a Pilgrim Foods, Inc. (“Pilgrim Foods”), violated Sections 301(a) and 308(a) of the Clean Water Act (“Act” or “CWA”), 33 U.S.C. §§ 1311(a), 1318(a).

The Complaint alleges that Defendant caused unpermitted discharges of pollutants into waters of the United States, failed to comply with numerous requirements of the 2015 and 2021 National Pollutant Discharge Elimination System (“NPDES”) Multi-Sector General Permits for Stormwater Discharges Associated with Industrial Activity, and failed to provide information to EPA as was reasonably required to carry out the objective of the CWA and to carry out Section 402 of the CWA, 33 U.S.C. § 1342.

Defendant operates a vinegar and mustard production facility located at 68 Old Wilton Road in Greenville, New Hampshire (the “Facility”). The Complaint against Defendant alleges that on at least 1,728 known days from November 5, 2019, through February 19, 2026, Defendant discharged low-pH materials into an unnamed stream (the “Stream”) flowing into the Souhegan River in violation of Defendant’s NPDES permits. In addition, the Complaint alleges that on at least 1,728 known days since November 5, 2019, Defendant caused unpermitted discharges of pollutants in violation of Section 301 of the Clean Water Act. 33 U.S.C. § 1311.

Prior to the filing of the Complaint and this Consent Decree, the United States and Pilgrim Foods (collectively, the “Parties”) entered into the Administrative Order for Compliance Issued on Consent, *In the Matter of Old Dutch Mustard Co., Inc. d/b/a Pilgrim Foods, Inc.*, Docket No. CWA-AO-R01-FY25-23 dated January 16, 2025 (the “AOC”). The purpose of the AOC was to design and implement an environmental compliance program to ensure that no

unauthorized discharges of pollutants from the Facility's manufacturing activities or areas, storage areas, waste handling activities, and related infrastructure enter the Stream or the Souhegan River either directly or indirectly via stormwater or groundwater.

Defendant has asserted that it has a limited ability to pay a civil penalty and has submitted Financial Information to the United States in support of that assertion. The United States has reviewed this Financial Information to determine whether Defendant is financially able to pay a civil penalty for the violations alleged in the Complaint. Based upon this Financial Information, the United States has determined that Defendant has limited financial ability to pay a civil penalty.

Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

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

NOW, THEREFORE, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. 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, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b). This Court has personal jurisdiction over the Parties to this Consent Decree. Venue properly lies in this district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), 28 U.S.C. §§ 1391(b) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and Defendant conducts business in, this judicial district. For purposes of this Consent Decree, or any

action to enforce this Consent Decree, Defendant consents to the Court's jurisdiction over this Consent Decree and any such action and over Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendant and any of Defendant's 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 Consent Decree are implemented unless (a) the transferee agrees to undertake the obligations required by this Decree and to be substituted for the Defendant as a Party under the Decree and thus bound by the terms thereof, and (b) the United States consents to relieve Defendant of its obligations. The United States may refuse to approve the substitution of the transferee for Defendant if it determines that the proposed transferee does not have the financial or technical ability to comply with the requirements of the Decree. If the United States opposes the substitution, the issue shall first be subject to dispute resolution pursuant to Section X (Dispute Resolution). 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 EPA, the United States Department of Justice ("DOJ"), and the New Hampshire Department of Environmental Services, in accordance with Section XIV ("Notices"). Any attempt to transfer

ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Consent 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 Consent 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, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors under its direction and control to take any actions necessary to comply with the provisions of this Consent Decree. For avoidance of doubt, this provision shall not apply to the independent Engineering Expert, Environmental Expert, and Remedial Expert, as defined in the AOC, hired to complete the obligations set forth in Paragraphs 17-19, but only to the extent that the acts or omissions of those independent experts are not the result of acts or omissions by Defendant.

III. OBJECTIVES

7. It is the express purpose of the Parties in entering into this Consent Decree to require Defendant to take measures necessary to achieve and maintain compliance with the CWA, including the 2021 Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (“MSGP”) (effective on September 29, 2021) and any NPDES permits that may be issued to or made applicable to Defendant at the Facility in the future, and to identify and cease all other violations of the CWA at the Facility.

IV. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the CWA or in regulations promulgated under the CWA will have the meanings ascribed to them in the CWA or in the

regulations promulgated thereunder unless otherwise provided in this Consent Decree. Whenever the terms listed below are used in this Consent Decree, the following definitions apply:

“Act” or “CWA” means the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act), as amended, 33 U.S.C. §§ 1251-1387.

“AOC” means the Administrative Order for Compliance Issued on Consent, *In the Matter of Old Dutch Mustard Co., Inc. d/b/a Pilgrim Foods, Inc.*, Docket No. CWA-AO-R01-FY25-23 dated January 16, 2025.

“Applicable NPDES Permit” means the 2021 MSGP¹ under which Defendant is authorized to discharge from Defendant’s “Facility,” as that term is defined below, and any subsequent permit which takes the place of the 2021 MSGP during the term of the Consent Decree.

“Complaint” means the complaint filed by the United States in this action.

“Consent Decree” or “Decree” means this Consent Decree and all appendices attached hereto. In the event of conflict between this Decree and any appendix, this Decree will control.

“Date of Lodging” means the day this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the District of New Hampshire.

“Day” means a calendar day. In computing any period of time for a deadline under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period runs until the close of business of the next business day.

“Defendant” means Old Dutch Mustard Co., Inc., d/b/a Pilgrim Foods, Inc.

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

¹ The 2021 MSGP became effective on September 29, 2021 and expired on February 28, 2026, but was administratively continued and remains in effect for facilities that received coverage under the 2021 MSGP.

“Effective Date” will have the definition provided in Section XV (“Effective Date”).

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

“Facility” means Defendant’s vinegar and mustard production facility located at 68 Old Wilton Road, Greenville, New Hampshire.

“Financial Information” means the documentation and other information submitted by Defendant to the United States on October 23, 2025, February 6, 2026, and February 26, 2026.

“Paragraph” means a portion of this Consent Decree identified by an Arabic numeral, a lowercase letter, and/or a lowercase Roman numeral, except that “AOC Paragraph” means a portion of the AOC identified by an Arabic numeral, a lowercase letter, and/or a lowercase Roman numeral.

“Parties” mean the United States and Pilgrim Foods.

“Section” means a portion of this Consent Decree identified by an uppercase Roman numeral.

“United States” or “U.S.” means the United States of America, acting on behalf of EPA.

V. CIVIL PENALTY

9. Defendant shall pay a civil penalty in accordance with this Paragraph.
 - a. Defendant shall pay the sum of \$50,000 as a civil penalty, plus interest as described in this Paragraph. This payment shall be made in two consecutive annual payments of \$25,000, with the first payment due 30 Days after the Effective Date, and the second payment due one year plus 30 Days after the Effective Date. Defendant shall include with the first installment payment an additional amount for interest accrued at the rate specified in 28 U.S.C. § 1961

as of the Date of Lodging from the Date of Lodging through the date of payment. Defendant shall include with each subsequent payment an additional amount for interest accrued at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging on the unpaid balance from the date of the previous payment through the date of the payment.

- b. After the Effective Date, the United States Attorney's Office for the District of New Hampshire, Financial Litigation Unit ("FLU"), Concord, New Hampshire will provide to Defendant a calculation of the interest due for each payment.
- c. Defendant may pay any payment prior to its due date but must contact the FLU in advance for a determination regarding the amount of interest to be included with the payment. If any installment payment includes an overpayment, the amount of the overpayment will be applied to the remaining principal.
- d. The civil penalty required to be paid is based on the United States' review of Financial Information submitted by Defendant and the United States' subsequent determination that Defendant has a limited ability to pay a civil penalty for the violations alleged in this case.

10. Defendant shall pay the civil penalty due, together with interest, by FedWire Electronic Funds Transfer ("EFT") to the United States Department of Justice account, in accordance with instructions provided to Defendant by the United States Attorney's Office for the District of New Hampshire, Financial Litigation Unit ("FLU"), Concord, New Hampshire after the Effective Date. The payment instructions provided by the FLU will 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:

Benjamin Gremm
Controller
Old Dutch Mustard, Inc., d/b/a Pilgrim Foods, Inc.
68 Old Wilton Road
Greenville, NH 03048
Email: bgremm@olddutchmustard.com
603-878-2100 ext. 215

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 XIV (“Notices”).

11. Within 24 hours of payment, Defendant shall send Notice that payment has been made to: (i) EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Division, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) DOJ via email in accordance with Section XIV (“Notices”); and (iii) EPA in accordance with Section XIV (“Notices”). Such Notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. Old Dutch Mustard Co., Inc. d/b/a Pilgrim Foods, Inc.*, and shall reference the civil action number, CDCS Number and DOJ case number 90-5-1-1-07145/1.

12. Defendant shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section VIII (“Stipulated Penalties”) in calculating its federal income tax.

VI. COMPLIANCE REQUIREMENTS

13. Sound Engineering Practices. All work pursuant to this Consent Decree shall be performed using sound, generally accepted engineering practices to ensure that any construction, management, operation, and maintenance of the Facility shall comply with the CWA.

14. Water Quality Monitoring. AOC Paragraphs 39 and 40 are hereby incorporated herein by reference with the same force and effect as if fully set forth herein.

- a. Pursuant to AOC Paragraphs 48 and 54, the Environmental Expert and Engineering Expert shall incorporate into the final detailed report(s) a recommendation regarding alternative water quality instrumentation and parameters. Evaluation of alternatives will be done in terms of effectiveness, cost, and other criteria to achieve the water quality monitoring objectives.
- b. Not later than 60 Days of the date(s) on which the reports described in AOC Paragraphs 48 and 54 are approved by EPA, whichever is later, Pilgrim Foods shall submit to EPA, in accordance with Section XIV (“Notices”), for EPA’s review and approval, a detailed plan, including an implementation schedule to update the existing water quality monitoring program set forth in AOC Paragraphs 39 and 40.
- c. Within 30 Days of Defendant’s receipt of EPA’s comments on the detailed plan, Pilgrim Foods shall revise the plan to incorporate comments from EPA and begin implementing the plan.
- d. In instances where water quality monitoring sondes require maintenance such as calibration or cleaning, monitoring may be temporarily suspended at any sonde undergoing such necessary maintenance for the reasonable time required to complete it, as set forth in the approved plan submitted pursuant to Paragraph 14(b).

15. Acetic Acid Monitoring. AOC Paragraph 41 is hereby incorporated herein by reference with the same force and effect as if fully set forth herein.

- a. For AOC Paragraph 41(a), such monitoring is only required when a wet weather event, as defined by AOC Paragraph 41(a), begins during normal facility operating hours.
- b. For AOC Paragraph 41(c), if collection within 120 minutes is impracticable due to safety risks, a grab sample should be taken as soon as possible, provided that Pilgrim Food submits with its monitoring results a description of why a grab sample during the first 120 minutes was impracticable.

16. Flow Monitoring. Within 60 days after the Effective Date, Pilgrim Foods shall submit to EPA, in accordance with Section XIV (“Notices”), for EPA’s review and approval, a detailed plan, including an implementation schedule, to monitor and record the flow of the Stream every five minutes near the upstream access point² and near the downstream access point,³ as well as in the pipe from CBY17 to the culvert located under the Mustard Building at the Facility. The plan shall incorporate the instrumentation recommendations of the Environmental Expert and Engineering Expert based on their assessment of effectiveness, cost, and other criteria to achieve the flow monitoring objectives, provided the recommendations have been finalized by the Environmental Expert and Engineering Expert at the time of submittal of the flow monitoring plan. Within 30 Days of Defendant’s receipt of EPA’s comments on the flow monitoring plan, Pilgrim Foods shall revise the plan to incorporate comments from EPA and begin implementing the plan. The flow monitoring plan shall include biweekly reports of

² The AOC refers to the upstream access point as the “Upstream Brook Access Point.”

³ The AOC refers to the downstream access point as the “Downstream Brook Access Point.”

monitoring results in the form of an electronic spreadsheet submitted to EPA, in accordance with Section XIV (“Notices”), within five Days of the end of each biweekly period. In instances where flow monitoring equipment requires maintenance such as calibration or cleaning, monitoring may be temporarily suspended at any flow monitoring equipment undergoing such necessary maintenance for the reasonable time required to complete it, as set forth in the plan submitted pursuant to this Paragraph 16.

17. Facility Engineering Investigation. AOC Paragraphs 42.a., 42.b., 44.b., 44.c., and 46 through 48 are hereby incorporated herein by reference with the same force and effect as if fully set forth herein.

18. Facility Environmental Site Assessment and Investigation. AOC Paragraphs 49.a., 49.b., 51.b., 51.c., 53, and 54 are hereby incorporated herein by reference with the same force and effect as if fully set forth herein.

19. Comprehensive Environmental Compliance Program. AOC Paragraphs 55 through 63 are hereby incorporated herein by reference with the same force and effect as if fully set forth herein.

20. By no later than the deadline established in AOC Paragraph 62, there shall be no unauthorized discharges of pollutants from the Facility, and Defendant shall have achieved and thereafter maintain compliance with the CWA.

21. Upon the Effective Date and continuing thereafter, at the Facility, Defendant shall achieve and maintain compliance with Defendant’s Applicable NPDES Permits. Upon the Effective Date and continuing thereafter, Defendant’s compliance with Defendant’s Applicable NPDES Permits and with this Consent Decree shall include, at a minimum:

- a. Evaluations for Non-Stormwater Discharges. Defendant shall evaluate for the presence of non-stormwater discharges, consistent with the requirements of Defendant's Applicable NPDES Permits, including but not limited to the requirements of Part 2.1.2.9 of the 2021 MSGP, and consistent with this Consent Decree. During each such evaluation, Defendant shall make a good-faith effort to determine the root cause of the unauthorized non-stormwater discharge. Defendant shall evaluate for the presence of non-stormwater discharges, at a minimum:
- i. In every instance where there is direct or indirect evidence of an event at the Facility (such as a spill, overflow, leak, release, etc.) resulting in an unauthorized non-stormwater discharge.
 - ii. In every instance where, for two or more consecutive pH readings from the water quality monitoring required by Paragraph 14, (A) pH as measured at CBY17 is lower than 6.5 pH units or higher than 8.0 pH units, and there is flow from CBY17 to the Stream; (B) pH as measured at the downstream access point to the Stream is lower than 6.5 pH units or higher than 8.0 pH units; or (C) pH measured at the upstream access point to the Stream is lower than 6.5 pH units or higher than 8.0 pH units. Each occurrence of two or more consecutive pH readings that require Defendant to conduct an evaluation under Paragraph 21(a)(ii) is referred to below as a "Qualifying pH Occurrence."

- A. In instances where Defendant reasonably determines that multiple Qualifying pH Occurrences within a 24-hour period have a single cause, Defendant shall document its reasons for such determination and conduct only a single evaluation for the presence of non-stormwater discharges.
- B. In instances where Defendant reasonably determines that a Qualifying pH Occurrence is due solely to influences from precipitation events or natural fluctuations in the pH of the Stream, Defendant shall document its reasons for such determination and is not required under Paragraph 21(a)(ii) to further evaluate for the presence of non-stormwater discharges.
- C. In instances where a Qualifying pH Occurrence is higher than or equal to 5.0 pH units and Defendant reasonably determines that the Qualifying pH Occurrence is due solely to historic groundwater contamination, Defendant shall document its reasons for such determination and is not required under Paragraph 21(a)(ii) to further evaluate for the presence of non-stormwater discharges.
- D. Notwithstanding the provisions described in Paragraph 21(a)(ii)(A), (B), and (C), Defendant shall achieve and maintain compliance with Defendant's Applicable NPDES Permits.

- b. Elimination of Unauthorized Non-Stormwater Discharges. Defendant shall eliminate any non-stormwater discharges not explicitly authorized or covered by Defendant's Applicable NPDES Permit, consistent with the requirements of Part 2.1.2.9 of the 2021 MSGP and this Consent Decree, including, at a minimum:
 - i. Immediately taking all reasonable steps to minimize and prevent the discharge of pollutants until Defendant can implement a permanent solution, consistent with the requirements of Part 5.1.3.1 of the 2021 MSGP and this Consent Decree.
 - ii. Complying with all deadlines for subsequent corrective actions, consistent with the requirements of Parts 5.1.3.1 and 5.1.3.2 of the 2021 MSGP and this Consent Decree.
- c. Control Measures. Defendant shall select, design, install, and implement control measures that minimize pollutant discharges in stormwater, consistent with Part 2.1 of the 2021 MSGP, including, at a minimum:
 - i. Locating materials, equipment, and activities so that potential leaks and spills are contained or able to be contained or diverted before discharge, consistent with Part 2.1.2.1 of the 2021 MSGP.
 - ii. Minimizing the potential for leaks, spills, and other releases that may be exposed to stormwater, including through the use of secondary containment, consistent with Part 2.1.2.4 of the 2021 MSGP.
 - iii. Implementing procedures for material storage and handling, including the use of secondary containment and barriers between material

storage and traffic areas, or a similarly effective means designed to prevent the discharge of pollutants from these areas.

- iv. Developing plans for effective responses to leaks, spills, and other releases that may be exposed to stormwater, consistent with Part 2.1.2.4 of the 2021 MSGP.

d. SWPPP. Defendant shall prepare and implement a Stormwater Pollution Prevention Plan (“SWPPP”) consistent with Part 6 of the 2021 MSGP, including but not limited to Part 6.2.2.3 of the 2021 MSGP.

- i. Within 60 Days of the Effective Date, Defendant shall provide to EPA, in accordance with Section XIV (“Notices”), an updated SWPPP.

A. During an inspection of the Facility on May 29, 2025, EPA observed a discharge point from the Facility parking lot that discharges to the upstream access point in the Stream. Pilgrim shall address this discharge point by either (i) including it as a discharge point in the Facility’s SWPPP; or (ii) addressing such discharge point through construction of a berm or other appropriate engineered control.

- ii. Within 60 Days of the Effective Date, Defendant shall submit to EPA, in accordance with Defendant’s Applicable NPDES Permits, a Change Notice of Intent (“NOI”)⁴ that includes any other discharge points at

⁴ If Defendant is unable to submit the Change NOI during the administrative continuance of the 2021 MSGP, Defendant shall still email this form to the EPA contacts listed in Section XIV (“Notices”) and ensure that all discharge points at the Facility are accurately reflected in Defendant’s future applications for coverage under the MSGP or other NPDES permit.

the Facility that have not already been included in the Facility's SWPPP. In addition, Defendant shall submit a copy of the Change NOI to EPA, in accordance with Section XIV ("Notices"). Defendant shall immediately comply with all obligations under the 2021 MSGP with respect to these additional discharge points, and shall submit any monitoring or sampling results for these discharge points directly to the EPA contacts listed in Section XIV ("Notices") until the end of the administrative continuance of the 2021 MSGP.

e. Routine Facility Inspections.

- i. At least once each calendar year, Defendant shall conduct a routine facility inspection during a period when a stormwater discharge is occurring consistent with Part 3.1.4 of the 2021 MSGP.
- ii. During routine facility inspections, the qualified personnel conducting routine Facility inspections shall look out for, at a minimum, all of the elements described in Part 3.1.3 of the 2021 MSGP.

22. 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 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.

23. If the submission is approved pursuant to Paragraph 22(a), Defendant shall take all actions required by the plan, report, or other document, in accordance with this Consent Decree and 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 22(b) or (c), Defendant shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions.

24. If the submission is disapproved in whole or in part pursuant to Paragraph 22(c) or (d), Defendant shall, within the deadlines set forth in the AOC or in the Consent Decree, or, if no deadline is set forth in the AOC or this Consent Decree, within 45 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 Paragraphs.

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

26. If Defendant elects to invoke Dispute Resolution as set forth in Section X (“Dispute Resolution”) concerning a decision by EPA to disapprove, approve on specified conditions, or modify a deliverable, Defendant shall do so by sending a Notice of Dispute in accordance with Paragraph 53 within 30 Days (or such other time as the Parties agree to in writing) after receipt of the applicable decision.

27. Any stipulated penalties applicable to the original submission, as provided in Section VIII (“Stipulated Penalties”), accrue during the 45 Day correction 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.

28. 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 IX (“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. REPORTING REQUIREMENTS

29. Defendant shall comply with all reporting requirements of Defendant’s Applicable NPDES Permits, including but not limited to the 24-hour reporting and five-day reporting requirements of Parts 7.6.1 and 7.6.2, respectively, of the 2021 MSGP, and with Part B.12.F of Appendix B of the 2021 MSGP.

30. For all unauthorized non-stormwater discharges and for all evaluations conducted pursuant to Paragraph 21, Defendant shall fully complete and submit to EPA the “Unauthorized Discharge Incident Response Form” attached hereto as Appendix A, and the certification statement included in the Unauthorized Discharge Response Form within five Days of learning of the unauthorized non-stormwater discharge and/or conducting the evaluations. If there are multiple evaluations required under Paragraph 21 during a 24-hour period and/or if there are multiple unauthorized non-stormwater discharges discovered during a 24-hour period, Defendant may submit one Unauthorized Discharge Incident Response Form covering all evaluations and all unauthorized non-stormwater discharges during the 24-hour period. For unauthorized non-

stormwater discharges only, Defendant's submission of a fully complete Unauthorized Discharge Incident Response Form within the deadline specified in this Paragraph shall satisfy the five-day follow-up reporting requirement in Section 7.6.2 of the 2021 MSGP and any similar requirement in Defendant's Applicable NPDES Permits.

31. Defendant shall submit the following reports to EPA and DOJ at the addresses set forth in Section XIV ("Notices"):

- a. By July 31st and January 31st of each year after the lodging of this Consent Decree, until termination of this Decree pursuant to Section XVIII ("Termination"), Defendant shall submit a semi-annual status report that details actions taken during the prior 180 Days (the "Reporting Period"), towards implementation of the requirements in Section VI ("Compliance Requirements"). Reporting under this section of the Consent Decree satisfies the reporting requirements under AOC Paragraph 63, provided that Defendant submits the same to New Hampshire Department of Environmental Services ("NH DES") as required by AOC Paragraph 63. The report shall include, without limitation:

- i. The status of compliance with the Facility Engineering Investigation set forth in Paragraph 17, with the Facility Environmental Site Assessment and Investigation set forth in Paragraph 18, and with the Comprehensive Environmental Compliance Program set forth in Paragraph 19, and any problems encountered or anticipated, together with implemented or proposed solutions.

- ii. A description of the activities Defendant plans to undertake during the next year following the Reporting Period in order to achieve compliance with the schedules contained in Section VI (“Compliance Requirements”).
 - iii. A summary of all unauthorized non-stormwater discharges that occurred at the Facility during the Reporting Period, including an update on any pending evaluations conducted pursuant to Paragraph 21(a) and Defendant’s ongoing efforts to eliminate unauthorized non-stormwater discharges pursuant to Paragraph 21(b).
 - iv. A description of any noncompliance with Defendant’s Applicable NPDES Permits during the Reporting Period.
 - v. A summary of any other actions that Defendant has carried out to comply with this Consent Decree during the Reporting Period.
- b. The report shall also include a description of any noncompliance with the requirements of this Consent Decree; an explanation of the violation’s likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation; and the duration of the period of noncompliance.
- c. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall notify DOJ and EPA of such violation and its likely duration, in writing, within ten

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.

- d. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the Notice required by Section IX ("Force Majeure").

32. Whenever any violation of this Consent Decree 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 Solanch Pastrana-Del Valle at EPA by telephone at 617-918-1746 or by email pursuant to Section XIV ("Notices") 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 and in Paragraph 29 above.

33. 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 perjury 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.

34. This certification requirement does not apply to emergency or similar notifications where compliance with the requirements of this Consent Decree would be impractical.

35. The reporting requirements set forth in this Consent Decree do not relieve Defendant of any reporting obligations required by the Act or implementing regulations, or by any other federal, state or local law or regulation.

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

VIII. STIPULATED PENALTIES

37. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section IX (“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.

- a. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section V (“Civil Penalty”) when due, Defendant shall pay a stipulated penalty as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
--------------------------------------	--------------------------------

\$300.....	1st through 14th Day
\$500.....	15th through 30th Day
\$1,000.....	31st Day and beyond

- b. Compliance Requirements – Monitoring. The following stipulated penalties will accrue per violation per Day for each violation of the requirements identified in Paragraph 14 (“Water Quality Monitoring”), Paragraph 15 (“Acetic Acid Monitoring”), and Paragraph 16 (“Flow Monitoring”):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
--------------------------------------	--------------------------------

\$500.....	1st through 14th Day
\$1,000.....	15th through 30th Day
\$2,500.....	31st Day and beyond

- c. Compliance Requirements – Investigations and Environmental Compliance Program. The following stipulated penalties will accrue per violation per Day for each violation of the requirements identified in Paragraph 17 (“Facility Engineering Investigation”), Paragraph 18 (“Facility Environmental Site Assessment and Investigation”), Paragraph 19 (“Comprehensive Environmental Compliance Program”) to the extent that such noncompliance is not caused by an action or inaction of the independent Engineering Expert, Environmental Expert, and/or Compliance Expert beyond Defendant’s control.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
--------------------------------------	--------------------------------

\$500.....	1st through 14th Day
\$1,000.....	15th through 30th Day
\$2,500.....	31st Day and beyond

- d. Compliance Requirements – NPDES Permit Requirements. The following stipulated penalties will accrue per violation per Day for each violation of the requirements identified in Paragraphs 21(a), 21(c), 21(d), and 21(e):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.....	1st through 14th Day
\$1,000.....	15th through 30th Day
\$2,500.....	31st Day and beyond

- e. Compliance Requirements – Unauthorized Discharges. The following stipulated penalties will accrue per Day per violation of the requirements described in Paragraph 21(b), unless Defendant can demonstrate that the discharge resulted from circumstances beyond Defendant’s immediate control. Any violations resulting from Defendant’s operational failures do not constitute a circumstance beyond Defendant’s immediate control:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,500.....	1st through 14th Day
\$5,000.....	15th through 30th Day
\$7,500.....	31st Day and beyond

- f. Reporting Requirements. The following stipulated penalties will accrue per violation per Day for each violation of the reporting requirements in Section VII (“Reporting Requirements”):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.....	1st through 14th Day
\$1,000.....	15th through 30th Day
\$2,500.....	31st Day and beyond

38. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and will continue

to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties will accrue simultaneously for separate violations of this Consent Decree.

39. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

40. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

41. Stipulated penalties shall continue to accrue as provided in Paragraph 38, 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 that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.
- b. If the dispute is appealed to the Court and the United States 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.

42. Defendant shall pay stipulated penalties owing to the United States in the manner set forth in Paragraph 10 and with the confirmation Notices required by Paragraph 11, 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.

43. 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 from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

44. 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.

45. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XII ("Effect of Settlement/Reservation of Rights"), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendant's violation of this 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 will be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree for the same violation.

IX. FORCE MAJEURE

46. "Force majeure," for purposes of this Consent Decree, means any event arising from causes beyond the control of 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 Defendant's best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that Defendant exercise

“best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure, such that any delay or non-performance is, and any adverse effects of the delay or non-performance are, minimized to the greatest extent possible.

“Force majeure” does not include financial inability to perform any obligation under this Consent Decree.

47. If any event occurs for which Defendant will or may claim a force majeure, Defendant shall provide Notice by telephone or by email to the Enforcement Officer, Water Technical Unit, EPA, Region 1 as identified in Section XIV (“Notices”). The deadline for the initial Notice is 72 hours 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. For avoidance of doubt, the term “contractor” or “subcontractor” does not include the independent consultant(s) hired pursuant to Paragraphs 17-19.

48. Regardless of whether Defendant seeks to assert a claim of force majeure concerning the event, within 14 Days after the Notice under Paragraph 47, Defendant shall submit a further Notice to EPA 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 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.

49. Failure to submit a timely or complete Notice under Paragraph 47 or 48 regarding an event precludes Defendant from asserting any claim of force majeure regarding that event, provided, however, that EPA may, in its unreviewable discretion, excuse such failure if it is able to assess to its satisfaction whether the event is a force majeure, and whether Defendant has exercised its best efforts, under Paragraph 46.

50. After receipt of any claim of force majeure, EPA will notify Defendant of its determination whether Defendant is entitled to relief under Paragraph 46, and, if so, the excuse of, or the extension of time for, performance of the obligations affected by the force majeure. An excuse of, or 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.

51. If Defendant elects to invoke the dispute resolution procedures set forth in Section X (“Dispute Resolution”), it shall do so no later than 30 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 46, that its proposed excuse or extension was or will be warranted under the circumstances, and that it complied with the requirements of Paragraphs 47 through 49. If Defendant carries this burden, the delay or non-performance at issue will be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

X. DISPUTE RESOLUTION

52. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section will 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 concerning an issue of which it had notice and an opportunity to dispute under this Section prior to an action by the United States to enforce any obligation of Defendant arising under this Decree precludes Defendant from raising any such issue as a defense to any such enforcement action.

53. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree will first be the subject of informal negotiations. The dispute will be considered to have arisen when a Defendant sends DOJ and EPA a written Notice of Dispute. Such Notice of Dispute shall clearly state the matter in dispute. The period of informal negotiations may not exceed 45 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 United States will be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

54. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by sending DOJ and EPA 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.

55. The United States will send Defendant its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States'

Statement of Position is binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

56. Judicial Dispute Resolution. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States a motion requesting judicial resolution of the dispute. The motion (a) shall be filed within 30 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph; (b) may not raise any issue not raised in informal dispute resolution pursuant to Paragraph 53, unless the United States raises a new issue of law or fact in its 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 shall be resolved for orderly implementation of the Consent Decree.

57. The United States 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.

58. Standard of Review

- a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 54 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA 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 United States 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 54, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the Objectives of the Consent Decree.

59. 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 will be stayed pending resolution of the dispute as provided in Paragraph 41. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (“Stipulated Penalties”).

XI. INFORMATION COLLECTION AND RETENTION

60. Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Defendant executes this Consent Decree.

61. The United States and its representatives, including attorneys, contractors, and consultants, will have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

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

62. Upon request, Defendant shall provide EPA or its authorized representatives splits of any samples taken by Defendant or its representatives, contractors, or consultants. Upon request, EPA shall provide Defendant splits of any samples taken by EPA.

63. 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, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

64. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States 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, Defendant shall deliver any such documents, records, or other information to EPA. 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.

65. 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. 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.

66. 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 pursuant to applicable federal 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.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

67. This Consent Decree resolves only the civil claims of the United States for the violations alleged in the Complaint filed in this action through the Date of Lodging.

68. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief in addition to that provided in this Consent Decree, if the Financial Information provided by Defendant, or the certification made by Defendant in Paragraph 60, is false or, in any material respect, inaccurate.

69. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree may not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 67. The United States expressly reserves its authority to terminate the Facility's permit coverage, pursuant to 40 C.F.R. § 124.5. The United States also expressly reserves its authority to require Defendant to obtain an individual National Pollutant Discharge Elimination System permit for the Facility, pursuant to 33 U.S.C. § 1342. The United States further reserves 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.

70. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Defendant's violations, 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 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 67.

71. 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 pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its 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 provisions of the federal Clean Water Act or with any other provisions of federal, state, or local laws, regulations, or permits.

72. This Consent Decree does not limit or affect the rights of Defendant or of the United States 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.

73. 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.

XIII. COSTS

74. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including 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.

XIV. NOTICES

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

As to DOJ by email (preferred): eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-1-1-07145/1

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 # 90-5-1-1-07145/1

As to EPA
Solanch Pastrana-Del Valle
Enforcement Officer
Water Compliance Section 2
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100
Mail Code 4-MO
Boston, MA 02109-3912
Email: pastrana-del-valle.solanch@epa.gov
617-918-1746

Tahani Rivers
Attorney-Advisor
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100
Mail Code 4-WC
Boston, MA 02109-3912
Email: rivers.tahani@epa.gov
617-918-1299

As to Old Dutch Mustard Co., Inc., d/b/a Pilgrim Foods, Inc.

Cindy Camargo
Food & Safety Manager
Old Dutch Mustard, Inc., d/b/a Pilgrim Foods, Inc.
68 Old Wilton Road
Greenville, NH 03048
safetydirector@olddutchmustard.com

603-878-2100 ext. 209

Defendant shall provide complete copies to both Solanch Pastrana Del-Valle and Tahani Rivers at EPA, or alternatively designated persons at EPA, of all submissions and notices required to be made by Defendant to EPA pursuant to this Decree. In addition, Defendant shall provide complete copies to the NH DES contact and the New Hampshire Attorney General's Office contact listed below, or alternatively designated persons at the NH DES or New Hampshire Attorney General's Office, of all submissions and notices required to be submitted to EPA pursuant to this Consent Decree:

As to NH DES:

Teresa Ptak, New Hampshire Department of Environmental Services
Email: teresa.b.ptak@des.nh.gov

As to NH Attorney General's Office:

Mark Lucas, Assistant Attorney General
Email: mark.l.lucas@doj.nh.gov

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

77. 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.

XV. EFFECTIVE DATE

78. 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, provided, however, that Defendant hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree

before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date will terminate.

XVI. RETENTION OF JURISDICTION

79. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X (“Dispute Resolution”) and XVII (“Modification”), or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

80. 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.

81. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X (“Dispute Resolution”), provided, however, that, instead of the burden of proof provided by Paragraph 58 (“Standard of Review”), 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).

XVIII. TERMINATION

82. After Defendant has completed the requirements of Section VI (“Compliance Requirements”), has thereafter maintained satisfactory compliance with this Consent Decree for a period of three years, has complied with all other requirements of this Consent Decree, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

83. Following receipt by the United States 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 agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

84. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section X. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination until 60 Days after service of its Request for Termination.

85. If Defendant fails to submit a Notice of Termination or fails to sign a joint stipulation terminating the Decree, and the United States has sufficient information to determine that Defendant has met the requirements for termination under Paragraph 82, the United States, after notice to the Defendant, may file a motion to terminate the Decree.

86. If the United States does not have sufficient information to determine whether Defendant has met the requirements for termination under Paragraph 82, the United States may request additional information from Defendant, which Defendant shall provide within 30 days of receiving the United States' request.

XIX. PUBLIC PARTICIPATION

87. 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 its 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 the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

88. Each undersigned representative certifies that that person is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

89. This Consent Decree may be signed in counterparts, 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.

XXI. INTEGRATION

90. 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 Decree herein.

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

91. For purposes of the identification required 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 Paragraphs 13 through 21 is restitution, remediation, or required to come into compliance with the law. Penalty payments pursuant to this Consent Decree (including the

payments described in Paragraph 9 as well as any stipulated penalties provided for herein that may become due and owing) are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax-deductible expenditures for purposes of federal law.

XXIII. HEADINGS

92. 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.

XXIV. FINAL JUDGMENT

93. 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 and Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXV. APPENDIX

The following Appendix is attached to and part of this Consent Decree:

“Appendix A” is the Unauthorized Discharge Incident Response Form.

Judgment is hereby entered in accordance with the foregoing Consent Decree this ____ day of _____, 2026.

UNITED STATES DISTRICT JUDGE
District of New Hampshire

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America v. Old Dutch Mustard d/b/a Pilgrim Foods Inc.*

For Plaintiff UNITED STATES OF AMERICA

ADAM R.F. GUSTAFSON
Principal Deputy Assistant Attorney General
Environment and Natural Resources Division

ERIN CREEGAN
United States Attorney
District of New Hampshire

JOHN
OSBORN Digitally signed
by JOHN OSBORN
Date: 2026.08.13
12:16:00 -04'00'

John G. Osborn
Special Assistant U.S. Attorney
53 Pleasant Street, 4th Floor
Concord, NH 03301
(207) 780-3257
john.osborn2@usdoj.gov

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America v. Old Dutch Mustard Co., Inc., d/b/a Pilgrim Foods, Inc.*

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

CYNTHIA LEWIS

Digitally signed by CYNTHIA LEWIS
Date: 2026.06.08 10:04:08 -04'00'

CYNTHIA A. LEWIS

Date

Acting Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

TAHANI RIVERS

Digitally signed by TAHANI
RIVERS
Date: 2026.06.02 12:27:59 -04'00'

Tahani Ann Rivers

Date

Attorney-Advisor
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America v. Old Dutch Mustard Co., Inc., d/b/a Pilgrim Foods, Inc.*

For Defendant OLD DUTCH MUSTARD CO., INC. D/B/A PILGRIM FOODS, INC.

Aimée M. Stutgen

6/2/2026
Date

APPENDIX A

Unauthorized Discharge Incident Response Form

Provide a detailed description of all evaluations conducted under Paragraph 21 of the Consent Decree, and any documentation of such evaluations. For all unauthorized non-stormwater discharges discovered, fully complete the table below.

Provide additional supporting materials (*e.g.*, photos, videos, figures, tables) as attachments.

Item	Prompt	Response
1	Unauthorized discharge ID No(s). (<i>e.g.</i> , 1, 2, 3)	
2	Start date and time of each discharge:	
3	End date and time of each discharge (if applicable):	
4	Manner by which the Facility discovered each discharge:	
5	Date and time when the Facility discovered each discharge:	
6	Name of person investigating each discharge:	
7	Title and contact information of person investigating each discharge:	
8	Weather conditions during each discharge:	
9	Source(s) of materials released:	
10	Outfall(s) of each unauthorized discharge:	
11	Pathway(s) from source(s) to outfall(s):	
12	Description of materials released:	
13	pH of materials released (include when and where pH was measured):	
14	Volume of materials released:	
15	Composition of diluting materials that mixed with materials released prior to discharge (<i>e.g.</i> , groundwater, stormwater):	
16	pH of diluting materials (include when and where pH was measured):	
17	Volume of diluting materials:	
18	Flow in the Stream during each discharge:	

Item	Prompt	Response
19	pH in Stream upstream of each discharge:	
20	pH in Stream downstream of each discharge:	
21	Reason for release of materials from the source(s):	
22	Description of secondary containment around the source(s) (if applicable):	
23	Reason for release of materials from secondary containment (if applicable):	
24	Steps already taken to minimize or prevent each discharge:	
25	Steps that will be taken to minimize or prevent each discharge:	
26	Estimated date by which each discharge will cease:	
27	Steps already taken to prevent future recurrence of each discharge:	
28	Steps that will be taken to prevent future recurrence of each discharge:	
29	Date by which steps will be taken to prevent future recurrence of each discharge, and schedule(s) for completing this work:	
30	If the date by which steps will be taken to prevent future recurrence of each discharge is more than 14 calendar days from the time of discovery, explain and document why it is infeasible to complete the corrective action within the 14-day timeframe. Include a schedule or schedules for completing this work.	
31	Pictures of each discharge, including ongoing discharges and of the entire tank or other equipment while releases are occurring. For each photo, include an accompanying description of the photo's subject matter and location.	

Certification Statement

I certify under penalty of perjury 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.

Name:

Title:

Company:

Signature:

Date: