

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH DIVISION**

UNITED STATES OF AMERICA, and)	
)	
TERRITORY OF AMERICAN SAMOA,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL NO. 2:17-cv-01190-DSC
)	
STARKIST CO. and STARKIST SAMOA CO.,)	JUDGE DAVID S. CERCONE
)	
Defendants.)	ELECTRONICALLY FILED
)	

MODIFICATION OF THE CONSENT DECREE

The United States of America, the Territory of American Samoa, StarKist Co., and Starkist Samoa Co. (the Parties”) agree, and this Court hereby ORDERS the following amendments to the Consent Decree entered by the Court in this action on March 7, 2018, (“Consent Decree”) [Doc. No. 15]:

1. Supplement Background Section by Adding New Whereas Provisions

To provide updated context for the remaining modifications set forth below, insert the following additional background paragraphs onto page 2 of the Consent Decree immediately preceding the words, “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.”

WHEREAS, on June 1, 2018, Defendants submitted to EPA and American Samoa Environmental Protection Agency (“AS EPA”) for review and approval a proposal to upgrade the Facility’s wastewater treatment system that included several different wastewater treatment

technologies as possible options. The proposal included preliminary design calculations, process flow diagrams, and other information intended to demonstrate that the upgraded wastewater treatment system would be capable of reducing pollutants to achieve compliance with the effluent limitations for each pollutant in the NPDES permit to which the Facility was subject at the time of the proposal;

WHEREAS, on August 30, 2019, Starkist Samoa Co. submitted an application for a research permit to resume ocean disposal of certain fish processing liquid waste streams, and on May 22, 2020, the EPA issued a final research permit for ocean disposal of certain liquid fish processing waste streams from the Facility (“Ocean Disposal Research Permit”);

WHEREAS, on February 3, 2020, and in a March 1, 2020 supplement, Defendants submitted a Preliminary Process Design Report to U.S. EPA, which predicted, based on a statistical data analysis from typical and representative production rates, that the Facility should be capable of complying with the final effluent limits in the Facility’s NPDES permit after implementing ocean disposal of certain liquid fish processing waste streams;

WHEREAS, Starkist Samoa initiated ocean disposal of certain fish processing liquid waste streams on April 6, 2021;

WHEREAS, Starkist Samoa has encountered difficulties since early 2021 in fully staffing its operations, due to, among other reasons, increased absenteeism among current workers and an inability to bring workers to American Samoa due to coronavirus related travel restrictions, which has led to reduced headcount and reduced production;

WHEREAS, reduced production levels since the initiation of ocean disposal are significantly below production levels achieved in 2019 and 2020, and are not representative of Starkist’s expected or intended typical production, and also make it more difficult to evaluate

whether the Facility is capable of complying with the effluent limits in its NPDES permit when operating at typical and maximum production levels. .

2. Replace Paragraph 7(q) with the following:

q. “Evaporation System” shall mean a system that uses heat to reduce the water content in high strength wastewater and for the purpose of recovering fishmeal solids from the Facility’s stickwater and pre-cooker wastewater;

3. Replace Paragraphs 15 and 16 with the following:

15. Operation of Interim Wastewater Compliance Measures. Once each Interim Wastewater Compliance Measure in Paragraphs 16-20 is installed and operational, except as provided in Paragraph 16 and 20 below, Defendants shall operate such measure at all times that there is flow of wastewater through the wastewater treatment system in accordance with the process flow diagram in Appendix C, and shall not Bypass any measure except in accordance with the Bypass provisions in the NPDES permit to which the Facility is subject at the time of any such Bypass. In order to change the treatment process represented in Appendix C, Defendants must first submit a revised process flow diagram to EPA and AS EPA for review and approval pursuant to Paragraph 69.

16. Operation of the Tricanter Centrifuge. From the Date of Lodging of this Consent Decree, Defendants shall operate and maintain the Tricanter Centrifuge to separate and recover total suspended solids (“TSS”) and oil and grease from the high strength waste collected by the pre-cooker sump, consistent with good engineering and maintenance practices and in accordance with its design and the manufacturer’s specifications. Notwithstanding the foregoing, Defendants are not obligated to operate the Tricanter Centrifuge as otherwise required by Paragraphs 15 and

16 to the extent that Defendants send the pre-cooker wastewater for ocean disposal and are meeting the requirements set forth in Paragraph 22 below.

4. Replace Paragraph 20 with the following:

20. Evaporation System. By no later than February 1, 2018, Defendants shall install and optimize the Evaporation System to process high strength wastewater for the purpose of recovering fish meal solids. Defendants shall operate and maintain the Evaporation System consistent with good engineering and maintenance practices and in accordance with its design and the manufacturer's specifications. Notwithstanding the foregoing, Defendants are not obligated to operate the evaporator for the pre-cooker wastewater as otherwise required by Paragraphs 15 and 20 to the extent that Defendants send the pre-cooker wastewater for ocean disposal and are meeting the requirements set forth in Paragraph 22 below.

5. Replace Paragraphs 22 - 25 with the following:

22. Ocean Disposal Compliance Deadlines. Defendants shall comply with the following compliance deadlines related to ocean disposal of fish wastes.

a. Defendants shall conduct an ocean disposal demonstration. The Ocean Disposal Demonstration Period shall begin on July 1, 2021 and shall continue for at least six (6) months or later provided the ocean disposal demonstration data shall include a minimum of thirty (30) days and thirty (30) data points during which the daily production rate is at least 400 metric tons of fish. Upon reaching this benchmark, the period of time from July 1, 2021 through the last day of the final month of the ocean disposal demonstration shall be the Ocean Disposal Demonstration Period.

b. Beginning in October 2021 and continuing through the end of the Ocean Disposal Demonstration Period, by no later than the 15th day of each month, Starkist shall provide a report to EPA and AS EPA identifying the daily production rate in metric tons of fish per Day for each Day the Facility operated the prior calendar month.

c. By no later than forty-five (45) days after the end of the Ocean Disposal Demonstration Period, Starkist shall submit an Ocean Disposal Demonstration Report to EPA and AS EPA for review and approval pursuant to Paragraph 69. Defendants must demonstrate in the Ocean Disposal Demonstration Report that the Facility can achieve and maintain compliance with the effluent limitations in the Facility's NPDES permit both when operating at typical production levels and at the maximum production levels authorized by the Facility's NPDES permit using the Interim Wastewater Compliance Measures and ocean disposal of fish processing waste streams authorized by the Ocean Disposal Research Permit or subsequent permit issued pursuant to the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. §§ 1401 *et. seq.*, which authorizes ocean disposal.

In the event the Facility has any exceedances of a daily maximum effluent limitation during the Ocean Disposal Demonstration Period, Defendants shall have the burden of presenting information that explains why the Facility can achieve and maintain compliance with the daily maximum limitations despite any exceedances. The information provided by Defendants may include, but not be limited to, the nature, cause, magnitude, timing, duration, and frequency of the exceedance. To

the extent the cause of the exceedance is known Defendants will show that a corrective action has been implemented and the demonstrated or expected effectiveness of such corrective action(s). The evaluation of this demonstration will be based on the information Defendants provide to EPA in the Ocean Disposal Demonstration Report.

Defendants must also demonstrate that the Facility has not exceeded any monthly average effluent limits in Table 1 of the NPDES permit for the pollutants identified in Paragraph 26 of the Consent Decree during the Ocean disposal Demonstration Period.

d. Contents of the Ocean Disposal Demonstration Report.

- i. A description of any changes made to the wastewater treatment system to accommodate ocean disposal or increased capacity, including an updated process flow diagram.
- ii. All effluent limit monitoring data collected for all pollutants in Table 1 of the NPDES permit which are required to be reported.
- iii. Identification of daily effluent flow rates and Facility production levels for each day covered in the Ocean Disposal Demonstration Report.
- iv. Data and analysis to demonstrate that the Facility has been in compliance with the monthly average effluent limits in Table 1 of the Facility's NPDES permit for the pollutants identified in Paragraph 26 during the Ocean Disposal Demonstration Period.

v. Data and analysis to project that the Facility will comply with the effluent limits in Table 1 of the NPDES permit at the maximum daily production rate of 552 metric tons.

vi. Data and analysis to demonstrate that the Facility has not exceeded any NPDES permit limitations for average monthly limits during the ocean disposal demonstration period.

vi. Identification of each exceedance of a daily maximum effluent limit for the pollutants identified in Table 1 of the NPDES permit during the ocean disposal demonstration period with an explanation of the cause of the exceedance.

e. Additional information required. EPA may require Defendants to conduct additional testing or provide additional information in support of their request prior to responding to the proposal.

23. Effect of EPA's Decision on Request. If EPA approves Defendants' Ocean Disposal Demonstration Report, Defendants shall comply with the effluent limitations in Table 1 of the NPDES permit for the pollutants identified in Paragraph 26 as of the date of submitting the Ocean Disposal Demonstration Report. If EPA determines that Defendants failed to successfully demonstrate that they can achieve and maintain compliance with the effluent limitations in Table 1 of the Facility's NPDES permit without additional wastewater treatment, Defendants shall upgrade the Facility's wastewater treatment system in accordance with the timeframes set forth in Paragraph 24 below.

24. Wastewater Treatment Upgrade Compliance Deadlines. To the extent required by Paragraph 23 above, Defendants shall comply with the following compliance deadlines.

a. By no later than 60 Days after EPA disapproves the Ocean Disposal Demonstration Report, Defendants shall submit to EPA and AS EPA for review and approval pursuant to Paragraph 69, a proposal to upgrade the Facility's wastewater treatment system to provide for a treatment technology ("Additional Treatment Proposal") that will meet the effluent limits for the pollutants listed in Paragraph 26 of the Consent Decree. Defendants' proposal shall include preliminary design calculations, process flow diagrams, and any other information or data necessary to demonstrate that the upgraded wastewater treatment system will be capable of reducing pollutants to achieve compliance with the effluent limitation for each pollutant in the NPDES permit to which the Facility is subject at the time of the proposal. Prior to responding to Defendants' proposal, EPA reserves its right to require Defendants to submit additional information, documentation or data it deems necessary to approve the Additional Proposal. If the Additional Proposal is not approved, EPA shall identify the basis for the disapproval;

b. Defendants shall submit a preliminary design (30% design) of the wastewater treatment system upgrade approved pursuant to Paragraph 24.a. to EPA and AS EPA for review and approval pursuant to Paragraph 69 no later than 120 Days after EPA approval of the Additional Treatment Proposal. The 30% design shall include a proposed deadline for completion of the implementation, optimization, and compliance with the effluent limitations for pollutants listed in Paragraph 26 as soon as practicable and no later than 630 days after the date that EPA approves the Additional Treatment Proposal;

c. Defendants shall submit to EPA and AS EPA for review a 60% design of the wastewater treatment system upgrade no later than 90 Days after EPA approval of the 30% design;

d. Defendants shall complete the implementation and optimization of any necessary equipment at the wastewater treatment plant by no later than 630 days after the date that EPA approves the Additional Treatment Proposal; and

e. Defendants shall comply with the effluent limitations for the pollutants listed in Paragraph 26 no later than 630 days after the date that EPA approves the Additional Treatment Proposal.

25. Operation of Upgraded Wastewater Treatment System. Once the upgraded wastewater treatment system is implemented and optimized pursuant to the applicable deadlines in Paragraph 24 Defendants shall operate the wastewater treatment system all times that there is flow of wastewater through the wastewater treatment system and shall not Bypass the wastewater treatment system, except in accordance with the Bypass provisions in the Facility's NPDES permit. Defendants shall operate and maintain the wastewater treatment system consistent with good engineering and maintenance practices and in accordance with its design and the manufacturer's specifications.

6. Insert the following provision:

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

157. 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. § 162-21(b)(2)(iii)(A), performance of Paragraphs 5; 15 – 64; 66-68; 70; 74; 86; 89 and 127-130 are restitution, remediation, or required to come into compliance with law.

Dated: _____

HONORABLE DAVID S. CERCONE
Senior United States District Judge

WE HEREBY CONSENT to this Modification to Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

For Plaintiff the United States of America:

TODD KIM
Assistant Attorney General
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice

Dated: 6/29/22




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WE HEREBY CONSENT to this Modification to Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

For Plaintiff the United States of America (continued):

CINDY K. CHUNG
United States Attorney
Western District of Pennsylvania

Dated: 8 JUNE 2017

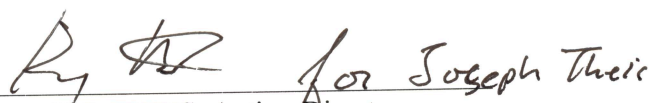


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WE HEREBY CONSENT to this Modification to Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

For Plaintiff the United States of America (continued):

Dated: June 6, 2022



JOSEPH G. THEIS, Acting Director
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

WE HEREBY CONSENT to this Modification to Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

For Plaintiff the United States of America (continued):

Dated: 5/26/2022



GRETCHEN BUSTERUD
Acting Regional Counsel
U.S. Environmental Protection Agency
Region 9

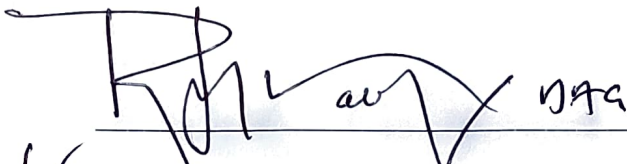
Of Counsel:
Melanie Shepherdson
Acting Deputy Regional Counsel
U.S. Environmental Protection Agency
Region 9

WE HEREBY CONSENT to this Modification to Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

For Plaintiff the Territory of American Samoa:

Dated: _____

6/13/22



for

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WE HEREBY CONSENT to this Modification to Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

For Defendant StarKist Co.:

Dated: 6/8/22



ANDREW CHOE
President and CEO

For Defendant Starkist Samoa Co.:

Dated: 6/8/22



ANDREW CHOE
President and CEO