

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Office of General Counsel, Region 4  
1130 North Westcott Road, Schenectady, NY 12306-2014  
P: (518) 357-2048 | F: (518) 357-2087  
www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED  
7015 0640 0005 8292 1994

June 22, 2017

Robert Tyson  
Bond Schoeneck & King  
One Lincoln Center  
Syracuse, NY 13202-1355

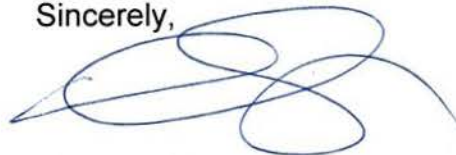
Re: Order on Consent  
R4-2017-0426-209  
Friesland Campina, USA, LP

Dear Mr. Tyson:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$22,140 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

ec: D. Thorsland  
K. O' Connor

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

---

In the Matter of the Alleged  
Violations of Environmental  
Conservation Law Article 17

-by-

ORDER ON CONSENT  
File No. R4-2017-0426-209

Friesland Campina, USA, LP  
40196 State Highway 10  
Delhi, N.Y. 13753

Respondent

---

WHEREAS:

1. The Department of Environmental Conservation ("Department" or "DEC") is an agency of the State charged with jurisdiction over the protection of water quality of the State pursuant to Article 17 of the Environmental Conservation Law ("ECL") and the rules and regulations promulgated thereto.
2. Respondent is a person as defined at ECL §17-0105(1).
3. Respondent, Friesland Campina, USA, LP, located at 40196 State Highway 10, Delhi, New York, is a dairy processor that pre-treats their process wastewater and is an indirect discharger via the Village of Delhi Sewage Treatment Plant. The facility's State Pollutant Discharge Elimination System ("SPDES") permit regulates the direct discharge of non-contact cooling water to the West Branch of the Delaware River, Class C(T). The direct discharge of process wastewater to groundwater, and the discharge of sanitary waste water to groundwater.

## First Violation

4. Respondent reported the following permit effluent limit violations in its monthly discharge monitoring reports (“DMRS”) for Outfall No. 001M. The following chart represents exceedances for 2012-2016.

### **Outfall # 001M      NON-CONTACT COOLING WATER**

Parameter Desc	Units	Stat Base	Mon.	Limit	DMR Value	% Exc.
Flow rate	gal/d	MO AVG	05/31/2016	720000	=8028670.00	1,015
pH	SU	MAXIMUM	12/31/2012	8.5	=9.20	
pH	SU	MAXIMUM	08/31/2016	8.5	=8.70	
pH	SU	MAXIMUM	09/30/2016	8.5	=11.70	
pH	SU	MAXIMUM	11/30/2016	8.5	=9.30	
pH	SU	MAXIMUM	12/31/2016	8.5	=10.60	
pH	SU	MINIMUM	12/31/2013	6	=5.80	
Phosphorus, total [as P]	mg/L	DAILY MX	08/31/2014	.1	=26.00	25,900
Phosphorus, total [as P]	mg/L	DAILY MX	05/31/2015	.1	=0.56	460
Phosphorus, total [as P]	mg/L	DAILY MX	07/31/2016	.1	=0.21	112
Phosphorus, total [as P]	mg/L	DAILY MX	08/31/2016	.1	=0.13	31
Phosphorus, total [as P]	mg/L	DAILY MX	09/30/2016	.1	=0.13	30
Phosphorus, total [as P]	mg/L	DAILY MX	10/31/2016	.1	=0.20	100
Temperature, water deg. fahrenheit	deg F	DAILY MX	01/31/2012	70	=73.00	4
Temperature, water deg. fahrenheit	deg F	DAILY MX	02/29/2012	70	=74.00	6
Temperature, water deg. fahrenheit	deg F	DAILY MX	07/31/2012	70	=73.00	4
Temperature, water deg. fahrenheit	deg F	DAILY MX	09/30/2012	70	=73.00	4
Temperature, water deg. fahrenheit	deg F	DAILY MX	11/30/2012	70	=77.00	10
Temperature, water deg. fahrenheit	deg F	DAILY MX	12/31/2012	70	=78.00	11
Temperature, water deg. fahrenheit	deg F	DAILY MX	09/30/2013	70	=71.00	1
Temperature, water deg. fahrenheit	deg F	DAILY MX	11/30/2013	70	=74.00	6
Temperature, water deg. fahrenheit	deg F	DAILY MX	09/30/2014	70	=71.00	1
Temperature, water deg. fahrenheit	deg F	DAILY MX	11/30/2014	70	=73.00	4
Temperature, water deg. fahrenheit	deg F	DAILY MX	01/31/2015	70	=72.00	3
Temperature, water deg. fahrenheit	deg F	DAILY MX	07/31/2015	70	=85.00	21
Temperature, water deg. fahrenheit	deg F	DAILY MX	08/31/2015	70	=71.00	1
Temperature, water deg. fahrenheit	deg F	DAILY MX	09/30/2015	70	=73.00	4
Temperature, water deg. fahrenheit	deg F	DAILY MX	10/31/2015	70	=71.00	1
Temperature, water deg. fahrenheit	deg F	DAILY MX	11/30/2015	70	=75.00	7
Temperature, water deg. fahrenheit	deg F	DAILY MX	12/31/2015	70	=80.00	14
Temperature, water deg. fahrenheit	deg F	DAILY MX	02/29/2016	70	=72.00	3
Temperature, water deg. fahrenheit	deg F	DAILY MX	03/31/2016	70	=74.00	6
Temperature, water deg. fahrenheit	deg F	DAILY MX	05/31/2016	70	=76.00	9
Temperature, water deg. fahrenheit	deg F	DAILY MX	06/30/2016	70	=76.00	9
Temperature, water deg. fahrenheit	deg F	DAILY MX	07/31/2016	70	=74.00	6
Temperature, water deg. fahrenheit	deg F	DAILY MX	08/31/2016	70	=76.00	9
Temperature, water deg. fahrenheit	deg F	DAILY MX	09/30/2016	70	=91.00	30
Temperature, water deg. fahrenheit	deg F	DAILY MX	10/31/2016	70	=81.00	16
Temperature, water deg. fahrenheit	deg F	DAILY MX	11/30/2016	70	=83.00	19
Temperature, water deg. fahrenheit	deg F	DAILY MX	12/31/2016	70	=75.00	7

5. Respondent's SPDES permit (NY0262838) sets effluent limits on monthly discharge. ECL §17-0511 provides "*The use of existing or new outlets or point sources, which discharge sewage, industrial waste or other wastes into waters of this state is prohibited unless such use is in compliance with all standards, criteria, limitations, rules and regulations promulgated or applied by the department pursuant to this article.*"

6. Pursuant to the chart set forth in paragraph #4, the facility exceeded the daily maximum temperature effluent limit of 70 degrees Fahrenheit ten (10) times in 2016, exceeded the maximum pH effluent limit of 8.5 four (4) times in 2016, and exceeded the monthly average flow effluent limit of 720,000 GPD once in 2016. The facility also exceeded the no net addition action level for total phosphorus of 0.1 mg/l above the well water level four (4) times in 2016. The no net addition action level is explained in footnote No. 2 of the facility's SPDES permit, which requires a specific response when exceeded. It is unclear if the facility followed the requirements set forth in this footnote. In addition to the SPDES permit effluent limitation and action level exceedances, during piping repair work at the facility in October of 2016, a floor drain was inadvertently and incorrectly connected to the facility's non-contact cooling water outfall pipe instead of the pipe that discharges to the Village of Delhi Sewage Treatment Plant. It was not until after December 26, 2016 that the facility identified and plugged the illicit cross connection. The facility estimated that the illicit cross-connection discharged intermittently from November 17<sup>th</sup> until December 26<sup>th</sup> (39 days).

7. ECL §71-1929 provides for the following civil penalties: "*A person who violates any of the provisions of, or who fails to perform any duty imposed by titles 1 through 11 inclusive and title 19 of article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued there under, shall be liable for a penalty of not to exceed thirty-seven thousand five hundred dollars per day for each violation, and, in addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.*"

8. Respondent has affirmatively waived its right to a hearing as provided by law and has consented to the issuing of this Order on Consent and has agreed to be bound by the provisions, terms and conditions of this Order.

NOW, having considered this matter and being duly advised, **IT IS HEREBY**

**ORDERED THAT:**

I. With respect to the aforesaid alleged violations, a civil penalty in the amount of TWENTY TWO THOUSAND ONE HUNDRED FORTY DOLLARS (\$22,140) which shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

II. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for it.

III. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

IV. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

V. No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

VI. Respondent shall allow duly authorized representatives of the DEC access to the site without prior notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. All communications except where otherwise specifically directed should be sent to:

For Department:  
Regional Water Engineer  
New York State Department  
of Environmental Conservation  
Region 4  
1130 N. Westcott Road  
Schenectady, New York 12306

IX. This Order is deemed effective on the date signed by the Department.

X. Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, its agents, its servants, its employees, its successors and its assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

D. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

XI. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and applicable state and federal regulations and laws and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal from Respondent, the Department shall notify Respondents in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations alleged in this Order.

XIII. If more than one Respondent is a signatory to this Order, use of the term "Respondent" in this Order shall be deemed to refer to each Respondent identified in the Order.

XIV. This Order shall not create any presumption of law or fact which shall inure to the benefit of any person other than the Department, State or Respondent.

XV. This Order shall not create any presumption of law or fact which shall inure to the benefit of any person or entity other than the State of New York, the US EPA, the Department or the Respondent.

DATED: *June 22* 2017  
Rotterdam, New York

Basil Seggos  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

A handwritten signature in blue ink, appearing to read "Keith Goertz", is written over a horizontal line.

Keith Goertz  
Regional Director  
Region 4



CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Friesland Campina, USA, LP

Authorized Representative Rudy Dieperink

SIGNED: Rudy Dieperink

TITLE: C.E.O.

DATE: June 12, 2017

STATE OF NEW YORK

)ss.:

COUNTY OF )

On the 12<sup>th</sup> day of June in the year 2017 before me, the undersigned, a Notary Public in and for the State, personally appeared Rudolf H. Dieperink personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Jennifer L Cosgrove  
Notary Public

Qualified in the County of:  
My Commission Expires:

JENNIFER L COSGROVE  
Commission # 2419544  
Notary Public, State of New Jersey  
My Commission Expires  
April 05, 2022

June 12, 2017

## Schedule of Compliance

1. Within 15 days of the effective date of the Order on Consent, Respondent shall provide documentation to the Department that the response required by footnote No. 2 of the facility's SPDES Permit (p. 4 of 7) has been performed for the 2-16 exceedances of the no net addition action level for total phosphorus. If such response has not been performed, it shall be initiated immediately and documented in Paragraph No. 3 of this Schedule of Compliance.
2. Within 15 days of the effective date of the Order on Consent, Respondent shall submit written confirmation to the Department that the permanent repairs to the piping that led to the illicit discharge from a floor drain to the non-contact cooling water outfall have been completed and that all other piping has been dye tested to confirm proper connections.
3. Within 90 days of the effective date of the Order on Consent, Respondent shall develop and submit to the Department, an engineering report prepared by a professional engineer licensed in and by the State of New York, outlining the SPDES permit effluent limitation exceedances, the cause(s), and the corrective and preventative measures necessary to return and maintain compliance with all SPDES permit requirements. Based upon the information in this report, Respondent shall implement appropriate measures to assure compliance with SPDES permit requirements.