

NEW HAMPSHIRE

Department of Justice
Office of the Attorney General

News Release

For Immediate Release

May 23, 2016

Contact:

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Old Dutch Mustard Co., Inc., d/b/a Pilgrim Foods fined \$949,000 for Hazardous Waste Violations

Attorney General Joseph A. Foster and Assistant Commissioner Clark Freise of the New Hampshire Department of Environmental Services ("NHDES") announce that the Hillsborough County Superior Court South approved a consent decree between the State and Old Dutch Mustard Co., Inc., d/b/a/ Pilgrim Foods ("Pilgrim") resolving allegations of violations of the State's Water Pollution and Waste Disposal Act and the Hazardous Waste Management Act at Pilgrim's facility in Greenville. The decree requires Pilgrim to implement corrective actions at its Greenville facility and also assesses a total civil penalty of \$ 949,000 to be paid as follows: \$425,000 to the State's Hazardous Waste Clean-up Fund; \$75,000 to the Rivers Management and Protection Fund for Supplemental Environmental Projects (SEPs); and the remaining \$449,000 to be utilized as an Internal Supplemental Environmental Project (SEP) against which Pilgrim can receive credit for implementing the corrective actions at its facility in Greenville. Because it is an internal SEP it is valued at a 2:1 ratio meaning that Pilgrim must spend \$898,000 on corrective actions at the facility to receive full credit for the SEP.

Pilgrim, a New York corporation, operates a food manufacturing facility located at 68 Old Wilton Road in Greenville, New Hampshire. Pilgrim manufactures juice from concentrate, vinegar, and mustard at the facility. Acetic acid coming from Pilgrim's facility in Greenville has caused significant water quality violations in an unnamed stream that flows through the facility into the Souhegan River. Since October of 2013, the State has documented over 90 instances where the pH in the stream was lower, meaning more acidic, than the level allowed by state law. In addition Pilgrim released phosphoric acid and sodium hydroxide --both hazardous wastes--into the stream. The result of these ongoing violations has severely impacted the unnamed stream such that it is void of aquatic life. The State was seeking injunctive relief and civil penalties.

Under the Consent Decree, Pilgrim has agreed to hire an independent audit team who will inspect the facility and make recommendations for corrective actions to improve the environmental safety and operations at the facility, which Pilgrim must then implement. Pilgrim has also agreed to (a) continue its water quality monitoring program at the facility; (b) test the unnamed stream several times a year for acetic acid and a number of other parameters; and (c) test the stream after completion of all the corrective actions to determine the biological health of the stream. Pilgrim will be allowed six years to implement all corrective actions and pay civil penalties.

"It is critically important for businesses to comply with all applicable environmental laws and rules to protect the State's water quality. I am pleased to see this positive movement and look forward to supporting Pilgrim's future efforts to improve the environment and public health of New Hampshire," said Assistant Commissioner Freise.

The settlement [agreement/consent decree](#) and [order](#) are attached.

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH COUNTY, SS
SOUTHERN DISTRICT

SUPERIOR COURT

State of New Hampshire
Department of Environmental Services

v.

Old Dutch Mustard Co., Inc.

Docket No.: _____

CONSENT DECREE

NOW COME the Petitioner, the State of New Hampshire Department of Environmental Services (hereinafter "State" or "Department" or "DES"), by and through its attorneys, the Office of the Attorney General, and the Respondent Old Dutch Mustard, Co., Inc., d/b/a Pilgrim Foods ("Pilgrim"), represented by their counsel, Robert P. Cheney, Jr., Esq., Sheehan, Phinney, Bass & Green, P.A. and hereby agree to the terms and conditions set forth in this Consent Decree ("Decree"), as ordered by the Superior Court for Hillsborough County, in settlement of the claims asserted by the State in this case.

A. INTRODUCTION

1. The Department, located at 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire, 03302-0095, is the State agency responsible for the administration and enforcement of New Hampshire's Water Pollution and Waste Disposal Act under RSA chapter 485-A, Hazardous Waste Management Act, RSA chapter 147-A, and the Administrative Rules adopted thereunder.

2. RSA 485-A:12, I makes it unlawful for any person or persons to dispose of any

sewage, industrial, or other wastes, either alone or in conjunction with any other person or persons, in such a manner as will lower the quality of the waters of a classified stream, lake, pond, tidal water, or section of such water below the minimum requirements of the adopted classification of said stream, lake, pond, tidal water, or section of such water and authorizes the State to seek injunctive relief to enforce such classification.

3. RSA 485-A:22, II, authorizes the State to seek a civil penalty up to ten thousand dollars (\$10,000) against a person for each day of each continuing violation of any provision of this subdivision (RSA 485-A:12-22-a) or RSA 485-A:4 through A:6, or any lawful regulation of the department issued pursuant to this subdivision or RSA 485-A:4 through A:6.

4. RSA 147-A:17, I, authorizes the State to seek a civil forfeiture of up to fifty thousand dollars (\$50,000) against a person for each day of each continuing violation of any provision of RSA 147-A (Hazardous Waste Management Act) or any rules adopted relative to RSA 147-A.

5. Respondent, Old Dutch Mustard, Inc., d/b/a/ Pilgrim Foods is a New York corporation with its principal offices at 98 Cutter Mill Road, Great Neck, New York, 11021 and a mailing address at 1 Sandhill Road, Unit 20, Peterborough, New Hampshire, 03458. Pilgrim operates a food manufacturing facility at 68 Old Wilton Road, Greenville, New Hampshire 03048 that manufactures vinegar, mustard and apple juice.

6. Concurrently with the submittal of this Consent Decree, the State is filing with the Hillsborough County Superior Court, Southern District, a Petition for Civil Penalties against Pilgrim, alleging specific violations of the State's Water Pollution and Waste Disposal Act under RSA chapter 485-A, and Hazardous Waste Management Act under RSA chapter 147-A, and related Administrative Rules.

7. There has been no trial on any issue of fact or law in this matter and no judicial determination of liability. The Parties agree that nothing in this Consent Decree should be construed as an admission of liability or fact by Defendant or a denial of liability or fact by the State. Instead the State and the Defendant, wishing to avoid the expense of litigation, and in an effort to work cooperatively in resolving this matter, agree that settlement of this matter is in the public interest and that entry of this Decree without further litigation is an appropriate way to resolve the dispute, and the parties consent to the entry of this Decree as an Order of the Court.

NOW THEREFORE, it is ORDERED, ADJUDGED and DECREED as follows:

B. JURISDICTION AND VENUE

8. The Court has jurisdiction over this matter pursuant to RSA 485-A:12, I & II and RSA 485-C:19, II; RSA 147-A:4, RSA 147-A:9, RSA 147-A:14; RSA 147-A:17 and RSA 491:7. Venue is appropriate as the location of alleged violations and Pilgrim's principal place of business is in Hillsborough County.

9. For purposes of this Decree and the underlying Petition, including any further action to enforce the terms of this Decree, Pilgrim waives any and all objections it may have to the Court's subject matter or personal jurisdiction. Pilgrim also agrees that its undersigned counsel will accept service of the Petition.

C. INJUNCTIVE RELIEF

(a) The Audit

10. Pilgrim will hire a team of industrial, stormwater (civil) and environmental engineers ("Audit Team") to fully assess its Greenville NH plant and its operations. The Audit Team's Scope of Work ("SOW") is attached hereto as Appendix A-1, as supplemented by the

additional specifications set forth in Appendix A-2. As a general matter, that SOW is intended to evaluate how the plant functions, what processes may lead to releases into the environment, possible pathways for such releases, storage of materials, training of personnel, maintenance of equipment, spill prevention and redundant protections, and environmental safety, and to make recommendations for potential "Corrective Actions" (the "Audit"). "Corrective Actions" are those actions the Audit Team concludes are necessary to prevent future releases to the environment of product or wastes including, but not limited to, infrastructure improvements, development and implementation of work practice standards for management and employees, training, production process and wastewater disposal improvements.

11. As part of the Audit, the Audit Team will identify two tiers of recommendations for Corrective Action (Tier I and II). The criteria for each of the tiers are specified in Appendix A-3.

12. Upon approval by the State, and the United States Environmental Protection Agency ("EPA") of the Audit Team's Corrective Action recommendations, Pilgrim will be required to implement all Tier I Corrective Actions.

13. With regard to Tier II Corrective Actions, if Pilgrim has not already expended the maximum amount of the SEP budget¹ on Tier I Corrective Actions, then Pilgrim shall perform the Tier II Corrective Actions. However, if Pilgrim has already expended the maximum amount of the SEP budget on Tier I Corrective Actions, the parties shall meet to review the Tier II recommendations to determine whether the Corrective Actions are necessary and/or reasonable, and/or to determine a schedule for these Corrective Actions. If the parties cannot agree as to whether the Tier II Corrective Actions are necessary and/or reasonable, or the parties cannot agree upon the implementation schedule for the Corrective Actions, the

¹ See Paragraphs 28 - 30, *infra*.

parties agree to pursue mediation in accordance with Superior Court Rule 30. If such mediation is unsuccessful, either party may seek review by this Court regarding the reasonableness and/or necessity of the Tier II Corrective Actions and/or the implementation schedule.

14. The Audit Team must be retained no later than one week after entry of this Decree as an Order of the Court.

15. As specified in Appendices A-1 and A-2, the Audit Team's SOW will include periodic inspections of the plant to determine whether the required Corrective Actions that emerge from the assessment are working to improve plant infrastructure and processes. The inspections under the SOW will also identify additional ongoing risks or practices that may be contributing to the deficiencies identified by the Audit, including items that might have been missed in the original Audit. The inspections shall take place no less than 2 times per year and shall be conducted several months apart. These inspections shall be unannounced and take place during regular business hours.

16. All reports generated by the Audit Team shall be submitted by them to the Department, EPA and Pilgrim no later than 30 days after the date the Audit is completed or an inspection under ¶ 15 is conducted. The Audit Team reports must be submitted simultaneously to the Department, EPA and Pilgrim. Audit results and reports shall be mailed by the Audit Team to NH DES, Waste Management Division, Attn. John Duclos, Administrator, Hazardous Waste Management Bureau, and the Water Division, Dave Neils, Director, Jody Connor Limnology Center, P.O. Box 95, Concord, NH 03302-0095 and Jack Melcher, US Environmental Protection Agency, Region I, 5 Post Office Square Suite 100, OESO4-1, Boston, MA 02109-3912.

17. The parties recognize that the Audit Team and any information shared by the Audit Team with the State and/or EPA may contain information about Pilgrim's Facility and business that Pilgrim considers a trade secret or confidential business information (collectively "CBI") as those terms may be defined under RSA 125-C, 147-A, 485-A or 91-A, the Resource Conservation and Recovery Act and the Clean Water Act or any rules or regulations implementing these statutes. Because the Audit Team's reports will be shared with the Department, EPA and Pilgrim simultaneously, the parties recognize that Pilgrim will not have any advance opportunity to designate information in the reports as CBI. Therefore, the parties agree that all the CBI will be managed in accordance with the "Additional Specifications for Third Party Auditor Pilgrim Foods" included in Appendix A-2.

(b) Continuous Sampling and Monitoring

18. As specified in Section 1 of Appendix C, Pilgrim will hire a contractor to set up a continuous water quality monitoring program through the deployment of three logging sondes. The schedule, parameters, methodology, and data reporting for the continuous monitoring will be as specified in Section 1 of Appendix C, which requirements are consistent with the past requirements of EPA Administrative Order, Docket No. 14-004, Attachment 1 and the amendments thereto (collectively "EPA AO"). The data shall be accessible to the facility on a real-time basis and shall be submitted bi-weekly to DES and EPA. Pilgrim shall immediately notify DES or the State Police (on off duty hours) if any of the monitoring data for any of the three logging sondes identifies a pH less than or equal to 2.0 standard units or greater than or equal to 12.5 standard units. For purposes of this paragraph, immediately shall mean within one hour of discovery of the pH reading lower

than or equal to 2.0 standard units or higher than or equal to 12.5 standard units.

19. Currently Pilgrim is engaged in conducting continuous monitoring of water quality conditions at three locations using sondes pursuant to the "EPA AO". This monitoring is to be distinguished from the requirements for continuous monitoring under this Consent Decree as indicated in Appendix C. Pilgrim shall conduct the continuous monitoring of water quality conditions as indicated herein pursuant to this Consent Decree for a period of five (5) years following the entry of this Consent Decree as an Order of the Court. To the extent that the schedule, parameters, methodology, and reporting for the continuous monitoring under this Consent Decree are the same as those required under the EPA AO, then the monitoring does not have to be duplicated. Should the results of the continuous monitoring of water quality conditions demonstrate no more than 2 violations per any twelve (12) month period of the State's water quality laws and regulations for thirty six (36) consecutive months of monitoring, and no violations of the State's hazardous waste laws and regulations, then the requirement for the continuous water quality monitoring for the balance of the five (5) year monitoring period may be suspended.² This suspension does not include the water quality monitoring that Pilgrim is required to conduct pursuant to its Multi Sector General Permit ("MSGP") or any other water

² NHDES will only use the acetic acid and pH criteria from the so-called Upstream and Downstream sondes in determining the number of water quality violations for the purposes of suspending monitoring activities pursuant to ¶ 19 or the assessment of fines related to water quality violations pursuant to ¶ 36 for the duration of the Consent Decree. For acetic acid, concentrations in the downstream receiving waters above the laboratory detection limit shall be considered a violation provided that test results from the upstream waters collected in near simultaneous time are not also detectable. For pH, the following measurements constitute water quality violations: (a) pH as measured in the downstream receiving waters below 5.0 pH units and; (b) pH as measured at the same time in the waters at the upstream location at least 0.5 pH units higher than as measured at the downstream location and; (c) the conditions described in (a) and (b) above must occur for all measures, i.e., sonde data readings for one hour or more; and/or (d) pH as measured in the downstream receiving waters above 9.0 pH units and; (e) pH as measured at the same time in the waters at the upstream location at least 0.5 pH units lower than as measured at the downstream location and; (f) the conditions described in (d) and (e) above must occur for all measures, i.e., sonde data readings for one hour or more.

quality monitoring it is required to conduct pursuant to the EPA AO.

(c) Additional Stream Monitoring

20. Pilgrim will also undertake non-biological and biological monitoring of the unnamed Stream as set forth in Appendices B and C attached hereto.

21. As specified in Section 2 of Appendix C, the non-biological monitoring consists of discrete water sampling for various water quality parameters including for acetic acid and metals, biological oxygen demand (BOD), and chemical oxygen demand (COD).

22. As specified in Appendix B, Pilgrim will undertake biological monitoring of the unnamed stream to include macroinvertebrates sampling, and benthic deposit analysis (both identification of deposits/growth and documentation of abundance) in 2020 between April 1 and October 31. If the result of this testing demonstrates no environmental improvement in the unnamed Stream then Pilgrim will undertake toxicity testing of downstream waters.

D. CIVIL PENALTIES

23. Pilgrim shall be assessed a total civil forfeiture of nine hundred and forty-nine thousand dollars (\$949,000), in exchange for a full settlement and release of claims as set forth in ¶ 40.

24. The total civil forfeiture provided by this Decree shall be satisfied through a combination of cash payments totaling four hundred and twenty-five thousand dollars (\$425,000), to the State's Hazardous Waste Cleanup Fund under RSA 147-B; a cash payment of seventy-five thousand dollars (\$75,000) to the Water Division for a Supplemental Environmental Program (SEP) as set forth in ¶ 27, and the remaining four hundred and forty nine thousand dollars (\$449,000) to be applied to an Internal SEP.

25. The cash payment of four hundred twenty-five thousand dollars (\$425,000) shall be paid into the State's Hazardous Waste Cleanup Fund, established by RSA 147-B, in the following manner: In the first year following entry of the Consent Decree as an order of the Court, Pilgrim shall pay fifty one thousand dollars (\$51,000) to the State's Hazardous Waste Cleanup Fund on or before the first anniversary date of approval of this Consent Decree by the Court. In the succeeding five (5) years, on or before the anniversary date of the Court's approval of this Consent Decree, Pilgrim shall pay seventy-four thousand eight hundred dollars (\$74,800) to the State's Hazardous Waste Clean-up Fund.

26. The installments of four hundred twenty-five thousand dollars (\$425,000) cash payment due to the State under this Decree shall be due and payable without any demand from the State. Apart from the funds payable to the Rivers Management and Protection Fund, the payments shall be delivered by hand or certified mail to the Office of the Attorney General, Environmental Protection Bureau, 33 Capitol Street, Concord, New Hampshire, 03301, Attn: Mary E. Maloney, Assistant Attorney General. Pilgrim shall pay interest on any late payment, which interest shall accrue at a rate of 10% per annum, per RSA 336:1, I.

27. Pilgrim shall contribute \$75,000 to the Rivers Management and Protection Fund as described in RSA 483:13 and RSA 483-A:8 for the protection of New Hampshire Rivers and Lakes in the following manner: In the first year following entry of the Consent Decree as an Order of the Court, Pilgrim shall contribute ten thousand dollars (\$10,000) to the Rivers Management and Protection Fund. In the succeeding five (5) years on or before the anniversary date of the Court's approval of this Consent Decree, Pilgrim shall contribute thirteen thousand dollars (\$13,000) to the Rivers Management and Protection Fund. Any contributions made pursuant to this SEP shall be paid by certified or corporate check made

payable to "SNH Rivers Management and Protection Fund" and mailed to: NHDES
Watershed Management Bureau, Attn: Rivers Coordinator, P.O. Box 95, Concord, NH
03302-0095.

Operation of the Internal SEP

28. With regard to the balance of the civil forfeiture in the amount of four hundred forty-nine thousand dollars (\$449,000), the State will permit Pilgrim to implement an Internal SEP comprised of the aforementioned Audit, Inspections, Corrective Actions, Water Quality Stream Sampling (Appendix C, Items 2.b and 2.c.ii) and Capital Expenses for Continuous Monitoring against which the balance can be credited.

29. Insofar as these funds are an "Internal" SEP they shall be valued at a 2:1 ratio. That means that Pilgrim must spend at least eight hundred ninety eight thousand dollars (\$898,000) towards the Audits, Inspections, Corrective Actions, Water Quality Stream Sampling (Appendix C, Items 2.b and 2.c.ii) and Capital Expenses for Continuous Monitoring in order receive full credit for the additional \$449,000 civil forfeiture. Except as provided in ¶32 and ¶33 below, if Pilgrim does not spend the full \$898,000 towards the Audits, Inspections, Corrective Actions, Water Quality Stream Sampling (Appendix C, Items 2.b and 2.c.ii) and Capital Expenses for Continuous Monitoring, then Pilgrim will be required to make payment of the non-credited amount remaining (*i.e.*, the difference between \$449,000 and the amount credited) to the Hazardous Waste Cleanup Fund under RSA 147-B within sixty (60) days after the completion of all of the aforementioned Audit, Inspections, Corrective Actions, Water Quality Stream Sampling (Appendix C, Items 2.b and 2.c.ii) and Capital Expenses for Continuous Monitoring.

30. Pilgrim shall submit to the Department copies of invoices, purchase orders and receipts or cancelled checks for the Audits, Inspections, Corrective Actions, Water Quality

Stream Sampling (Appendix C, Items 2.b and 2.c.ii) and Capital Expenses for Continuous Monitoring to demonstrate the expenses it has incurred, to the Department within 60 days of June 30 and December 31 of each year SEP-credited expenses are incurred.³

31. Implementing the Tier I Corrective Actions identified by the Audit Team may cost more than \$898,000. If that is the case, then Pilgrim must expend as much money as necessary to perform these Corrective Actions, unless the objective of any one, a number of or all of the Tier I Corrective Actions can be remedied or otherwise adequately addressed by ceasing facility operations, in whole or in part, or otherwise removing, disabling, decommissioning or demolishing the equipment, process, or structure that is the subject of the proposed Corrective Action(s) (collectively, "Corrective Action Remedial Activities"). Costs incurred by Pilgrim to implement Corrective Action Remedial Activities will count toward the Internal SEP identified in ¶ 29 above provided Pilgrim submits copies of invoices, purchase orders and receipts or cancelled checks for such Corrective Action Remedial Activities in accordance with ¶ 30. In the event Pilgrim elects to cease facility operations, costs related to legal fees, and/or administrative costs, including management and accountancy fees shall not be credited toward the Internal SEP identified in ¶ 29 above.

32. If Pilgrim implements all of the Tier I and II Corrective Actions in good faith, and Pilgrim has not expended sufficient funds (\$898,000) to realize the full SEP credit (\$449,000), then Pilgrim will be eligible for SEP forgiveness of up to \$100,000 of SEP credit (\$200,000 in actual SEP eligible expenses), i.e., as SEP forgiveness Pilgrim will be eligible to receive SEP credit up to \$100,000 but would not actually have to expend additional funds. Pilgrim will be eligible for the SEP forgiveness only if it performs in good faith all Tier I and II

³ All submissions under ¶ 30 shall be made to the Office of the Attorney General in accordance with the procedures set forth in ¶ 26.

Corrective Actions identified in the Audit, and has not suffered more than 2 water quality violations in each of the 3 years preceding completion of all Tier I and II Corrective Actions,⁴ and has not had any hazardous waste violations for the entire Compliance Period.

33. If it is determined that the cost of performing all Corrective Actions identified in the Audit will not exceed the full SEP (\$898,000), and Pilgrim has already been granted the SEP forgiveness described in ¶ 32, Pilgrim may propose additional internal SEP expenditures to address the balance of the SEP requirements. The additional internal SEP expenditures are required to have a direct nexus to the violations in the Complaint and they are subject to the prior written approval of DES, said approval not to be unreasonably withheld. They are also conditioned upon all of the additional work being completed within the Compliance Period. If Pilgrim does not propose additional internal SEP expenditures, or DES does not approve the additional SEP expenditures, or the additional SEP expenditures are not performed within the Compliance Period, the balance remaining in the SEP is subject to the pay-back provisions in ¶ 29.

34. Further, if Pilgrim cannot take advantage of the SEP forgiveness because the Corrective Action expenditures require that Pilgrim spend the full or greater than the SEP amount (\$898,000), Pilgrim will be eligible for civil penalty forgiveness in year 6 of the Compliance Period, in the amount of fifty thousand dollars (\$50,000) (representing \$40,000 from State's Hazardous Waste Clean-up Fund and \$10,000 from a portion of the Year 6 SEP payment to the Rivers Management and Protection Fund) provided that Pilgrim has not suffered more than 2 water quality violations in each of the preceding 3 years, and has not had

⁴ A year shall be defined as a continuous period of 365 days.

any hazardous waste violations for the entire Compliance Period, and has performed in good faith all of the Tier I and II Corrective Actions identified in the Audit.

35. The Compliance Period for the performance of Corrective Actions and the Internal SEP activities identified in ¶28 above (“SEP-eligible Activities”) and for payment of civil penalties is six (6) years from the date the Decree is entered as an Order of the Court (“Compliance Period”). Pilgrim may take up to six (6) years (based on a “year” as defined in footnote 4 *supra*), i.e., the Compliance Period covers all or a portion of the calendar years from 2016-2022, to perform the Tier I – II Corrective Actions identified by the Audit Team. In the first year of the Compliance Period Pilgrim must spend a minimum of forty-five thousand dollars (\$45,000) toward Corrective Actions. In the succeeding five (5) years of the Compliance Period (2017-2022), unless and until all Tier I and II Corrective Actions are completed, Pilgrim’s spending on a cumulative basis on Corrective Actions must meet or exceed the dollar amounts specified in Table 1 in Appendix D.

36. Should Pilgrim fail to make any of the aforementioned payments on or before the date they are due, or refuse to implement the Corrective Actions recommended by the Audit Team other than as provided in ¶ 31 above, the entire balance of the civil forfeiture including any non-credited amount toward the SEPs, shall immediately become due and payable, without any demand from the State, and at the election of the State, any motion to compel may seek the entire balance of the civil forfeiture remaining due to the State. In such a case the interest under ¶ 26 shall be applied to the entire balance owed to the State at that time.

37. No civil forfeiture payment made under this decree shall be tax deductible.

E. STIPULATED CIVIL PENALTIES

38. Pilgrim shall pay as stipulated civil penalties, two thousand five hundred dollars (\$2,500), for each day of a continuing violation, in the event Pilgrim commits any additional violations of the State's water quality laws. During the Compliance Period, the stipulated penalties shall be suspended for violations of the State's water quality laws. The suspension of stipulated penalties is conditioned upon there being no hazardous waste violations; a determination that Pilgrim is implementing Corrective Actions in good faith and a finding that no gross negligence has occurred. Any penalties remaining suspended in accordance with this paragraph at the end of the Compliance Period shall be waived.

39. Pilgrim will also incur a stipulated penalty of \$10,000 if it interferes with the independence of the Audit Team, with each day of interference constituting a separate violation. Interference with the independence of the Audit Team shall mean failure to cooperate with the initial visit, any subsequent visits or periodic inspections of the facility pursuant to §§ 10 and 15, and/or denying the Audit Team access to any location in the plant where there is no unreasonable risk of injury to the Audit Team, access permitted under applicable federal and State health and safety laws, including federal food safety laws, and the auditor is properly equipped under federal health and safety laws.

F. OTHER TERMS AND CONDITIONS

40. The Department, by and through the Attorney General, releases and covenants not to sue or take any administrative action against Pilgrim and its successors and assigns for the violations alleged in the Petition or for violations that might have been alleged based on facts known to the State, through the effective date of this Decree. The State expressly reserves the right to sue or to bring administrative actions against Pilgrim and its successors and assigns with regard to claims or liability for violations that could not have been alleged

in the State's Petition and Pilgrim reserves any and all defenses with regard to such State claims. The State and Pilgrim each also reserves the right to bring an action to enforce the terms of this Decree.

41. The parties acknowledge that Pilgrim and its successors and assigns have a continuing obligation to remain in compliance with all applicable federal and state laws, rules and permits relating to its facility. Subject to the qualifications in ¶ 40, the State reserves the right to bring any administrative, civil, or criminal action for any violation of the State's Water Pollution and Waste Disposal, and Hazardous Waste Control laws or other environmental violation based on facts occurring or arising after the effective date of this Decree, except as provided in ¶¶ 19 and 38. This reservation of rights includes, but is not limited to, violations that occur in connection with the terms of this Decree. Pilgrim reserves any and all defenses with regard to such State claims.

42. The obligations and undertakings hereunder shall survive the sale or other conveyance of Pilgrim, including without limitation the bankruptcy of Pilgrim or any assignment for the benefit of creditors. Pilgrim acknowledges and agrees that its obligations hereunder are non-dischargeable pursuant to 11 U.S.C. §1141(d)(1) and §524 and that Pilgrim's obligations for the Audits, Inspections, Corrective Actions, Capital Expenses for Continuous Monitoring and Water Quality Stream Sampling (Appendix C, Items 2.b and 2.c.ii) shall not be considered claims pursuant to 11 U.S.C. §101(5).

43. It is the intention of the parties that this Decree be entered and enforced as an Order of the Court, subject to all the power of the Court at law and equity. Pilgrim acknowledges that any violation of the Decree or the agreements reflected herein may be

cause for Pilgrim being adjudged in contempt of court and hereby waives any objections to jurisdiction or service of process if such remedy is sought by the State.

44. The State's failure to enforce any provision of this Decree after any breach or default shall not be deemed a waiver of its right to enforce each and all of the provisions of this Decree upon further breach or default.

45. This Decree contains the entire agreement of the parties, and any material modifications hereto must be agreed to in writing by both Pilgrim and the State, acting through the Attorney General's Office, and filed with the Court. The parties may agree in writing without Court approval of non-material modification, such as modification to schedules established by this Decree with no effect on statutory, regulatory, or permitted obligations. Such non-material modifications become effective upon execution by both parties.

46. The effective date of this Decree shall be the date upon which it is entered as an Order of the Court.

47. This Decree shall be construed in accordance with the laws of New Hampshire.

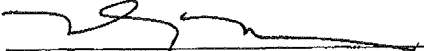
48. Each party shall bear its own costs and attorneys' fees.

49. The Court shall retain jurisdiction of this matter for purposes of enforcement of the Decree and shall reopen the case upon motion by either party for enforcement of its terms.

Respectfully submitted,


**THE STATE OF NEW HAMPSHIRE
JOSEPH A. FOSTER
ATTORNEY GENERAL**

Dated: 5/9/14

By: 
Mary E. Maloney (N.H. Bar # 1603)
Assistant Attorney General
Environmental Protection Bureau
33 Capitol Street
Concord, New Hampshire 03301
Tel. (603)271-3679


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

Dated: 5/5/16

By: 
Charles Santich
President
Old Dutch Mustard, Company, Inc.,
d/b/a Pilgrim Foods
98 Cuttermill Road, 338s
Great Neck, NY 11021

COUNSEL FOR Old Dutch Mustard, Co., Inc.,
d/b/a Pilgrim Foods
SHEEHAN, PHINNEY, BASS & GREEN P.A.

Dated: 5/6/2016

By: 
Robert P. Cheney, Jr. N.H. Bar # 574
Sheehan Phinney Bass & Green, P.A.
Two Eagle Square, Third Floor
Concord NH 03301
(603) 223-2020

I hereby enter this Consent Decree as an Order of the Court.

Dated and entered this _____ day of _____, 2016.

Justice of the Superior Court