

IN THE CIRCUIT COURT FOR BALTIMORE CITY

STATE OF MARYLAND  
DEPARTMENT OF THE  
ENVIRONMENT,

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Plaintiff,

\*

\*

v.

\* Case No. 24-C-23001841

FLEISCHMANN’S VINEGAR  
COMPANY, INC.,

\*

KERRY HOLDING CO.,

\*

AND

\*

KERRY INC.

\*

Defendants.

\*

\* \* \* \* \*

**CONSENT DECREE**

Plaintiff, the Maryland Department of the Environment (hereinafter “MDE” or “Department”) and Defendants, Fleischmann’s Vinegar Company, Inc. (“Fleischmann’s Vinegar”), Kerry Holding Co., and Kerry Inc. (together, the “Defendants”), hereby represent and acknowledge that they agree to enter into this Consent Decree regarding certain alleged violations of Maryland’s environmental laws relating to Fleischmann’s Vinegar’s permit authorizing the discharge of pollutants from its vinegar manufacturing facility to waters of the State, and hereby request that this Court enter this Consent Decree as follows:

## **I. FACTUAL BACKGROUND**

1. Fleischmann's Vinegar owns, and previously operated, a vinegar manufacturing facility ("Facility") in Baltimore, Maryland.

2. Paragraphs 3 through 34 are allegations made by the Department about Defendants. As noted in Paragraph 44, Defendants do not admit or concede to these allegations.

### **The Discharge Permit**

3. The Department issued National Pollutant Discharge Elimination System (NPDES) Permit No. 17-DP-0075/MD0002101 (the "Discharge Permit"), with an effective date of July 1, 2020, authorizing the discharge of pollutants from the Facility under conditions set forth in the Discharge Permit. The Discharge Permit expires on June 30, 2025.

4. The Discharge Permit authorizes discharges of treated wastewater from the Facility's Outfall 001 to the Jones Falls subject to restrictions depending on the pollutant.

5. The Department conducted inspections of the Facility on the following dates for compliance with terms and conditions of the Discharge Permit: September 12, 2021; September 13, 2021; November 23, 2021; November 29, 2021; January 25, 2022; March 3, 2022; May 17, 2022; September 15, 2022; October 31, 2022; November 10, 2022; March 2, 2023; March 20, 2023; April 13, 2023; April 28, 2023; June 2, 2023; July 25, 2023; November 9, 2023; December 20, 2023; January 12, 2024; and January 31, 2024.

6. The Department made certain observations during its inspections, and the Department alleged violations in connection with various matters which are described

below.

Total Residual Chlorine and the Dechlorination System

7. Condition I.A.1 of the Discharge Permit limits discharges of Total Residual Chlorine (“TRC”) to a daily maximum of 0.019 mg/l.

8. Condition II.B.3 of the Discharge Permit requires Fleischmann’s Vinegar to maintain the Facility’s treatment and control systems in good working order and operate them efficiently.

9. During the September 12, 2021 inspection, the Department sampled the discharge from Outfall 001 and found the discharge to have a level of 0.66 mg/l of TRC.

10. During the September 13, 2021 inspection, the Department sampled the discharge from an unpermitted outfall located adjacent to Outfall 001 and found the discharge to have a level of 0.44 mg/l of TRC.

11. During the September 13, 2021 inspection, the Department also reviewed records of the Facility’s dechlorination system showing that Fleischmann’s Vinegar had not been maintaining its dechlorination system in good working order or operating it efficiently since July 4, 2021.

12. During this inspection, the Department’s inspector also observed sheet flow discharging from an unknown point at the Facility to the Jones Falls. The inspector sampled the sheet flow, finding that it had a level of 0.26 mg/l of TRC.

13. During the January 12, 2024 inspection, the Department sampled the discharge from Outfall 001 and found the discharge to have a level of 0.43 mg/l of TRC.

### Flow

14. Condition I.A.1 of the Discharge Permit requires Fleischmann's Vinegar to notify the Department when the Facility's annual average flow exceeds 295,000 gallons per day, evaluate any change in annual flow each year, and in accordance with Condition II.B.1, notify the Department by May 1 of each year if it expected to exceed its annual average flow.

15. During the inspections on September 13, 2021, November 23, 2021, and November 29, 2021, the Department noted that the Facility's annual average flow was 643,383 gallons per day for the preceding year, and that Fleischmann's Vinegar had not notified the Department of this volume of flow.

### General Permit for Stormwater Discharges Associated with Industrial Activities

16. Condition I.P of the Discharge Permit required Fleischmann's Vinegar to apply for coverage under the General Permit for Discharges from Stormwater Associated with Industrial Activity, Discharge Permit No. 12-SW-A/MDR0000 (the "General Industrial Stormwater Permit") by January 1, 2021. This permit authorized stormwater discharges from industrial sources like the Facility, subject to certain stormwater-specific pollution-control conditions.

17. During the November 29, 2021 inspection, the Department's inspector noted that Fleischmann's Vinegar had not submitted an application for coverage under the General Industrial Stormwater Permit. The Department received Fleischmann's Vinegar's application for coverage under this permit on January 28, 2022.

### Unauthorized Low pH Discharges

18. The Discharge Permit only authorizes discharges consistent with the terms and conditions of the Permit.

19. Additionally, MDE designated the Jones Falls as a Class IV water body, protected for water contact recreation, fishing, aquatic life (recreational trout waters), and wildlife. As a Class IV water body, the water quality standard for pH in the Jones Falls is between 6.5 and 8.5.

20. During the inspections on September 13, 2021, November 29, 2021, and January 25, 2022, the Department observed a Baltimore City stormwater outfall, to which the Facility was connected in violation of the Baltimore City Code, discharging water with an approximate pH of 4, 3.65, and 5.01, respectively.

21. During the November 29, 2021 inspection, the Department also observed an unknown liquid with an approximate pH of 4.62 discharging directly into the Jones Falls from underneath a retaining/foundation wall of the Facility along the Jones Falls.

22. During the March 3, 2022 inspection, the Department observed liquid discharging directly from underneath the Facility's retaining/foundation wall directly into the Jones Falls.

23. During the November 10, 2022 inspection, the Department sampled discharges from Outfall 001 and the unpermitted outfall located adjacent to Outfall 001 and found the discharges to have approximate pH levels of 3.74 and 4.11, respectively.

24. During the March 2, 2023 inspection, the Department sampled the Jones Falls' water quality along the Facility's retaining/foundation wall in stream and found approximate pH levels of 8.85 approximately 10 feet upstream from Outfall 001, 4.78 at

the wall approximately 100 feet downstream of Outfall 001, and 5.02 approximately 200 feet down stream of Outfall 001.

25. During the March 20, 2023 inspection, the Department sampled liquid discharging directly into the Jones Falls from underneath the Facility's retaining/foundation wall and found the discharge had an approximate pH of 3.55.

26. During the November 9, 2023 inspection, the Department took water quality measurements in the Jones Falls near the Facility's retaining/foundation wall and found approximate pH levels of 4.68 along the Facility's wall.

27. During the January 31, 2024 inspection, the Department took water quality measurements in the Jones Falls along the Facility's retaining/foundation wall and found approximate pH levels of 5.22 along the Facility's wall.

28. Blue Water Baltimore ("BWB"), a local nonprofit organization, also conducted sampling in the Jones Falls at the Facility and documented low pH at the stormwater outfall or along the Facility's retaining/foundation wall on the following dates: November 8, 2022; November 18, 2022; December 5, 2022; January 12, 2023; April 25, 2023; May 2, 2023; May 12, 2023; May 24, 2023; June 1, 2023; June 12, 2023; June 26, 2023; July 5, 2023; August 2, 2023; August 24, 2023; August 28, 2023; September 19, 2023; and October 16, 2023.

29. Additionally, on November 1, 2023, the Facility began weekly self-monitoring for low pH along the retaining/foundation wall in the Jones Falls and reported low pH levels on the following dates: November 10, 2023; December 1, 2023; December 8, 2023; December 15, 2023; January 4, 2024; January 12, 2024; January 21, 2024; January

26, 2024; February 1, 2024; and February 16, 2024. These reported levels are summarized in the attached Exhibit A.

30. During the July 25, 2023 inspection, the Department noted that certain vinegar tanks were leaking towards the retaining/foundation wall and that certain floor drains were unplugged.

31. On December 20, 2023, and January 31, 2024, the Department conducted dye testing of floor drains within the Facility, the results of which established that certain floor drains directly discharge to the Jones Falls.

#### Self-Reported Unauthorized Discharges

32. On April 1, 2022, Fleischmann's Vinegar notified the Department that it spilled 200 gallons of ethyl alcohol into the Jones Falls.

33. On March 23, 2023, Fleischmann's Vinegar reported that it spilled approximately 200 gallons of 150 grain vinegar (15% acetic acid) into the Jones Falls on August 17, 2022.

34. On January 25, 2024, Fleischmann's Vinegar reported that it spilled approximately 500 gallons of 175 grain vinegar (17.5% acetic acid) into the Jones Falls on January 22, 2024.

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

35. Title 9, Subtitle 3 of the Environment Article, Annotated Code of Maryland, prohibits the discharge of any pollutant into the waters of the State unless authorized by a discharge permit issued by the Department. The term "discharge" includes the placement of a pollutant in a position where it is likely to pollute waters of the State. Title 9, Subtitle

3 also provides that any person who violates any provision of Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order, or permit adopted or issued by the Department thereunder, is liable for a civil penalty of up to \$10,000 per violation. Each day a violation occurs is a separate violation.

36. Title 9, Subtitle 3 also provides that the Department may seek injunctive relief to address violations of any rule, regulation, order, or permit issued pursuant to the Water Pollution Control Subtitle.

37. Title 9, Subtitle 3 also provides that a person who discharges a pollutant into the waters of the State must reimburse the Department for the reasonable costs incurred by the Department in conducting environmental health monitoring or testing, including the cost of collecting and analyzing soil samples, surface water samples, or groundwater samples for the purpose of assessing the effect on public health and the environment of the person's discharge.

### **The Litigation**

38. On April 5, 2023, the Department filed the above-captioned lawsuit in the Circuit Court for Baltimore City seeking relief under Title 9 of the Environment Article, alleging that Defendants' operation of the Facility violated its NPDES Permit and State water pollution laws. Together with the federal Clean Water Act, Title 9 of the Environmental Article, the facility NPDES permit, and the State water pollution laws are collectively referred to as "Applicable Water Laws."

39. On July 21, 2023, the Defendants filed an Answer to the Department's Complaint.



40. To avoid protracted litigation of the alleged violations and the corrective action required, the Department and Defendants (collectively, “Parties”) have reached an agreement on the terms of this Consent Decree. The Parties recognize that, 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 further litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

41. It is the mutual objective of the Parties, by entering into this Consent Decree, to provide for and achieve compliance with the environmental laws addressed by this Consent Decree in an expeditious manner to protect public health and the environment.

42. The Department believes that this Consent Decree is in the best interests of and will benefit the residents of the State of Maryland.

43. It is expressly understood that this Consent Decree pertains to the specific alleged violations described herein and that the Parties have made no promises or representations other than those contained in this Consent Decree and that no other promises or representations will be made unless in writing, and the Department makes no representations with regard to any criminal liability for the above-referenced allegations and has no authority over any criminal actions.

44. Signature of this Consent Decree by the Parties represents a settlement of contested claims and Defendants deny the factual allegations and legal conclusions contained herein. Defendants further deny liability and this Consent Decree is not an admission of liability.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED  
AS FOLLOWS:**

**II. JURISDICTION AND VENUE**

45. For purposes of this Consent Decree, the Parties agree that the Court has jurisdiction over the Parties and over the subject matter of this action pursuant to Title 2, Subtitle 6, and Title 9, Subtitle 3 of the Environment Article, Annotated Code of Maryland. Venue is proper under § 6-201 of the Courts and Judicial Proceedings Article, Annotated Code of Maryland because Defendants carry out business in Baltimore, Maryland.

46. For purposes of this Consent Decree, or any action to enforce this Consent Decree, the Parties consent to this Court's jurisdiction over this Consent Decree and consent to venue in this judicial district.

**III. WORK TO BE PERFORMED**

**A. Review and Approval Process**

47. All documents required under Section III (Work to be Performed) of this Consent Decree to be submitted to the Department ("Submittal(s)") shall be made electronically, where practicable. All documents shall be submitted in accordance with Section XII (Notification).

48. The Department shall promptly review each Submittal and may approve, disapprove, or require revisions to the Submittal.

49. The Department shall notify Defendants in writing within thirty (30) days of submission if it determines that a Submittal is substantially deficient or flawed and shall set forth the basis for that determination in such notification.

50. If the Department requires revisions to a Submittal, Defendants shall provide a revised Submittal within thirty (30) days of the Department's notice. The deadlines set forth in this Paragraph and Paragraphs 58, 59, 62, 65, 66, 70, 75, & 79 may be extended by mutual agreement of the Parties.

51. The Interim Investigation and Remedial Measures Plan, Source Identification Plan, and the Corrective Action Plan shall be incorporated by reference into this Consent Decree. The Interim Investigation and Remedial Measures Plan, Source Identification Plan, and Corrective Action Plan shall specify which schedules, deadlines, and reports are incorporated by reference into this Consent Decree and are enforceable as if fully set forth herein.

**B. Modification of Work To Be Performed**

52. Any request to modify an approved Submittal under Section III (Work to be Performed) shall be made in writing at least ten (10) days prior to expiration of the required deadline.

53. Except as provided below, any request to modify an approved Submittal shall be subject to the review and approval process in Section III.A (Review and Approval Process).

54. Any request to modify work shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this Consent Decree and/or as set forth in any approved Submittals during the pendency of the Department's consideration of the request, nor shall it stay the accrual of stipulated penalties, unless agreed to by the Parties.

**C. Additional Necessary Approvals**

55. Nothing in this Consent Decree relieves Defendants of any obligation to obtain any local, State, or federal approvals or permits that may be required to accomplish the work in Section III (Work to be Performed).

**D. Monitoring and Reporting**

56. Throughout the duration of this Consent Decree, Defendants shall engage a neutral third party to:

a. Conduct weekly pH monitoring of Jones Falls at the following monitoring points, using GPS to assure consistency in location (see Exhibit A, Sampling GPS Coordinates Map):

1. Adjacent to the Facility's retaining/foundation wall at Wall ID# 1, 2, 12, 16, 17, 18 at mid-depth, 6 inches from the wall;
2. Under the retaining/foundation wall at Wall ID# 12 and 16;
3. Discharges from Industrial Outfalls 001 and 002 (if actively discharging);
4. Discharges from the Facility's Stormwater Outfall 001 and 002 (if actively discharging);
5. Discharges from the City of Baltimore Stormwater Outfall (if actively discharging); and
6. One upstream and two downstream control samples as close to mid-stream as practicable ("Control Locations").

Control Locations are excluded from the stipulated penalties set forth in Section V.

- b. In conjunction with and at the same time as the weekly pH monitoring, inspect the entire length of the retaining/foundation wall for “any active discernible discharge” to Jones Falls at locations other than the monitoring points described in Paragraph 56(a), and if there is such a discharge, record the location, description, and water quality readings, including pH.
- c. If, due to safety concerns related to demolition, weather, water conditions, or other safety related issues, sampling is delayed or must be conducted on a different date, Defendants will make best efforts to notify MDE within 24 hours of the delay.

57. Defendants shall report any sample results obtained for pH outside the range of 6.5 to 8.5 to the Department by email at [mde.wsacompliance@maryland.gov](mailto:mde.wsacompliance@maryland.gov) within 24 hours of receipt of sample data.

58. Throughout the duration of this Consent Decree, Defendants shall submit a Monthly Report in accordance with Section XII (Notification). The Monthly Report shall be submitted no later than the 28th day of each month, and include the following information regarding investigation and action during the prior month:

- a. The weekly pH sample results as described in Paragraph 56 above;

- b. Any updates and information required as part of an Interim Investigation and Remedial Measures Plan as described in Paragraphs 59 and 60 below;
- c. Any updates and information regarding the status of Demolition Activities as defined in Paragraph 63 below, including, but not limited to, notifying the Department when Defendants: apply for a demolition permit, obtain a demolition permit, begin demolition, and complete demolition;
- d. Any updates and information required as part of an approved Source Identification Plan as described in Paragraphs 66 and 67 below; and
- e. Any updates and information required as part of an approved Corrective Action Plan as described in Paragraphs 70-73 below.

**E. Interim Investigation & Remedial Measures Plan, Source Identification Plan, Corrective Action Plan, and Continued Monitoring**

Interim Investigation and Measures

59. Within thirty (30) days of the Effective Date of this Consent Decree, Defendants must submit an Interim Investigation and Remedial Measures Plan (“Interim Plan”).

60. The Interim Plan shall include, at a minimum, the following:

- a. A summary of investigation activities taken to date to identify sources of low pH discharge(s) from the Facility to the Jones Falls;

- b. A summary of in-stream pH sampling results taken to date in the Jones Falls by the Defendants;
- c. A summary of any initial actions taken to date at the Facility to address sources of low pH discharge(s) from the Facility to the Jones Falls; and
- d. Either
  - i. proposed interim actions that can be taken at the Facility to address any identified ongoing low pH either prior to or during Demolition Activities, as defined below in Paragraph 63 (“Interim Actions”); or
  - ii. a description of potential Interim Actions that were considered with an explanation as to why, after consideration of feasibility, safety, and any other relevant concerns, Interim Actions are either not feasible prior to completion of Demolition Activities or not feasible without significant delay to initiation and/or completion of Demolition Activities.

61. MDE will use best efforts to review and approve the Interim Plan (including any proposed Interim Actions) expeditiously. The Parties may agree informally in writing to proceed with identified Interim Actions prior to approval of the Interim Plan. In the event Defendants require MDE approval before a certain date to proceed without impacting Demolition Activities, Defendants shall notify MDE of that date in writing.

62. In the event that Defendants propose, and MDE approves, any Interim Actions to be conducted prior to or during the Demolition Activities, Defendants shall submit a report to MDE documenting completion of the Interim Actions (“Interim Actions Report”) within 45 days of completing all Interim Actions.

#### Demolition Activities

63. Demolition Activities means all activities required for demolition, including the retention of a demolition contractor; submission of required permit applications; demolition, removal, and/or closure of some or all site buildings and structures; and demobilization of demolition equipment. These activities and their scope are subject to attainment of requisite permits and approvals.

64. Defendants shall undertake Demolition Activities, in conjunction with or after taking the Interim Actions according to paragraph 60.d. Demolition Activities shall be completed no later than September 1, 2025, except that this deadline may be extended by the Department upon documentation by Defendants, provided to MDE, that an extension is necessary due to the time necessary to obtain permits and other prior approvals; complications encountered during the demolition process and/or change orders for additional work beyond that originally contemplated; safety concerns; and/or factors outside Defendants' control, including but not limited to weather events.

65. Defendants shall notify MDE within seven (7) days of completion of Demolition Activities.

#### Source Identification Plan



66. Within sixty (60) days of the sooner of (a) the completion of Demolition Activities, as documented in the notice provided pursuant to Paragraph 65, or (b) the deadline to complete Demolition Activities per Paragraph 64, Defendants must submit a Source Identification Plan (“SIP”) to the Department, for the purpose of identifying all sources and pathways of unauthorized low pH discharges from the Facility to the Jones Falls.

67. The SIP shall include, at minimum, the following:

- a. The investigation of all locations, sources, or pathways that have previously or are currently contributing to low pH discharge(s), and any potential sources or pathways of low pH discharge indicated by the Monitoring in Section III.D.
- b. A schedule, with deadlines, for investigation of the locations, sources, or pathways identified as required by Paragraph 67.a.

68. Defendants may submit a SIP that demonstrates that based on ongoing in-stream sampling and prior work at the Facility, prior sources and/or pathways have already been identified or otherwise resolved. In this event Defendants may propose, for MDE approval, that only targeted further investigation or no further investigation is necessary.

69. If further investigation activities are proposed by Defendants and approved by MDE, Defendants shall begin implementation of the SIP within thirty (30) days of its approval by the Department.

### Corrective Action Plan

70. Within sixty (60) days of completing the SIP, Defendants shall submit to the Department a report summarizing the SIP's findings and proposing a plan of associated corrective actions ("Corrective Action Plan") to (1) eliminate, treat, or otherwise prevent ongoing low pH discharges from the Facility to the Jones Falls; (2) prevent future unauthorized discharges occurring through all pathways identified prior to and during implementation of the SIP; and (3) eliminate, treat, or otherwise prevent any other sources of previously unknown unauthorized discharges to the Jones Falls that were discovered during Defendants' investigation. If any potential unauthorized discharges to the Jones Falls are discovered at the Facility while this Consent Decree remains in full force and effect, Defendants shall seek approval from the Department to amend the Corrective Action Plan to remediate any and all potential unauthorized discharges.

71. The Corrective Action Plan shall include (1) further demolition of the Facility to its lowermost building foundation slab, including the floor drain system; (2) the permanent sealing or capping of any identified floor drains, walls, and any other known pathways by which pollutants have reached or may reach the Jones Falls; and/or (3) other final remedial measures taken at the Facility to eliminate, treat, or otherwise prevent low pH discharges from the Facility to Jones Falls. The Corrective Action Plan shall also include any other final remedial measures to eliminate, treat, or otherwise prevent any other sources of previously unknown unauthorized discharges to the Jones Falls that were discovered during Defendants' investigation.

72. The Parties acknowledge that some of or all the activities described in Paragraph 70, including those that are a part of the Demolition Activities, may be completed prior to submission of the Corrective Action Plan, in which case the Corrective Action Plan shall document the completed work. Defendants may submit a Corrective Action Plan that demonstrates that based on ongoing in-stream sampling and prior work at the Facility, prior sources and/or pathways have already been addressed or otherwise resolved. In this event Defendants may propose, for MDE approval, that only targeted further corrective action or no further corrective action is necessary.

73. If further corrective measures are proposed by Defendants and approved by MDE, Defendant shall begin implementation of the Corrective Action Plan within thirty (30) days of its approval by the Department.

#### Continued Monitoring

74. Defendants shall continue to monitor according to Section III.D after completion of all activities identified in the Corrective Action Plan until there are six consecutive months where all sampling results taken pursuant to Paragraph 56 at all locations listed in Appendix A (other than the Control Locations) are above 6.5 s.u. to confirm the effectiveness of the Corrective Action Plan in eliminating current and future unauthorized discharges. If upstream sampling indicates that pH is lower than 6.5 for a given week, Defendants will have the opportunity to demonstrate to MDE that any low pH results at locations listed in Appendix A (other than the Control Locations) found to be lower than 6.5 s.u. should not be considered a violation for purposes of the stipulated

penalties in Section V of this Consent Decree and should not be treated as lower than 6.5 s.u. for purposes of the six consecutive months described above.

75. If after one year following the completion of all activities identified in the Corrective Action Plan (or after one year following MDE's approval of the Corrective Action Plan if no further activities are identified), the Defendants have not achieved six consecutive months where all sampling results taken pursuant to Paragraph 56 at all locations listed in Appendix A (other than the Control Locations) are above 6.5 s.u., then the Department may require Defendants to submit a newly revised Corrective Action Plan identifying additional corrective actions to achieve compliance. Defendants shall submit the newly revised Corrective Action Plan with the additional corrective actions ninety (90) days after receiving a written request from MDE.

76. Upon receipt of the Department's acceptance of the newly revised Corrective Action Plan, the newly revised Corrective Action Plan shall be incorporated into, and become enforceable under this Consent Decree. No later than sixty (60) days after receipt of the Department's acceptance of the newly revised Corrective Action Plan, Defendants shall implement the newly revised Corrective Action Plan in accordance with the plan's schedule for implementation.

**F. Storage Tank Removal**

77. Defendants shall remove all above ground and underground storage tanks at the Facility as prior to submission of the Final Confirmation Report, or shall otherwise close the tanks in a manner consistent with the applicable COMAR provisions prior to submission of the Final Confirmation Report. Defendants acknowledge and agree that they

will comply with all applicable federal and State regulations when removing such storage tanks from the Facility, including COMAR 26.10.01.10, 26.10.17.13, and 26.10.10.04; however, this Paragraph shall not trigger stipulated penalties in Section V of this Consent Decree.

**G. Vinegar Removal**

78. Defendants shall remove all vinegar and any related substances, including liquids, semi-solids, and sludges, from the Facility within fifteen (15) days of the Effective Date of this Consent Decree. Defendants shall provide the receipts and manifests demonstrating that removal of vinegar and all related substances has been completed.

**H. Final Confirmation Report**

79. Within sixty (60) days of completion of the activities identified in Sections III.D, III.E, III.F, and III.G of this Consent Decree, Defendants shall submit a Final Confirmation Report.

80. The Final Confirmation Report shall include: 1) a report on the Facility's demolition, elimination of discharge pathways to the Jones Falls, and/or other corrective measures to eliminate, treat, or prevent discharges pursuant to Paragraphs 70-71; 2) confirmation of the work related to storage tanks pursuant to Paragraph 77; 3) confirmation of the removal of vinegar and any related substances, including liquids, semi-solids, and sludges, pursuant to Paragraph 78; 4) the monitoring results pursuant to Paragraph 74 and the SIP; and 5) any other remediation efforts taken pursuant to the SIP or this Consent Decree.

81. The Department shall use its best efforts to review the Final Confirmation Report as expeditiously as reasonably possible. After review and approval of the Final Confirmation Report, the Department shall provide its approval (“Completion of Work Acknowledgement”) in writing to the Defendants.

#### **IV. ACCESS TO THE FACILITY**

82. The Department and any authorized representatives of the Department, including contractors, are authorized to enter the Facility property subject to the rights of quiet enjoyment held by any tenants, at all reasonable times for the purposes of, *inter alia*, communicating with Defendants’ personnel and contractors performing work under this Consent Decree, inspecting non-privileged records related to the work performed hereunder, reviewing the progress of Defendants in carrying out the terms of the Consent Decree, conducting such tests, sampling, or monitoring as the Department deems necessary, using a camera, sound recording, or other documentary-type equipment, and verifying reports and data submitted to the Department. Defendants shall permit such representatives of the Department to inspect and copy non-privileged records, files, photographs, documents, and other writings, including sampling and monitoring data, that pertain to the work undertaken pursuant to this Consent Decree. Nothing herein shall be interpreted as limiting the inspection authority of the Department under Maryland law. Likewise, nothing herein shall be interpreted as a waiver of any attorney work product or attorney client communication privilege held by one or more Defendants. The Department agrees that it and its representatives will comply with all applicable laws, regulations, ordinances, or procedures related to access to the Facility, including, but not limited to, all

security laws, regulations, or procedures, and any site-related health and safety protocols and procedures established by Defendants.

83. To the extent that work required by the Consent Decree, or any plans submitted hereunder, must be conducted on property that is not owned by Defendants or for which a third-party has relevant property rights, Defendants shall use their reasonable best efforts to obtain access agreements from the property right holder(s) as appropriate within thirty (30) days of receipt of notice of the Department approval of any plan submitted hereunder requiring such work. “Reasonable best efforts” shall include, at a minimum, but shall not be limited to, sending a certified letter to the property right holder requesting an access agreement to permit Defendants and the Department to enter such property. Failure to obtain access shall not be subject to the penalty provisions of Section V so long as reasonable best efforts are employed by Defendants.

84. In the event that access agreements cannot be obtained within the time period set forth above, Defendants shall promptly notify the Department in writing, indicating all efforts made to obtain such agreements, and the Department may, consistent with its legal authority, assist Defendants in obtaining access. In the event that the Department obtains such access, Defendants shall be obligated to reimburse the Department for any costs judicially awarded or reasonably incurred in exercise of its authority. If the Department does not obtain such access, the relevant approved work to be performed shall be modified with input from all Parties.

85. In each Submittal under Section III (Work to be Performed), Defendants shall include provisions for providing a minimum of at least five (5) business days’ notice

to the Department before commencing each element of the plans unless a deadline for notice about commencing that plan element is otherwise specified in the Submittal. Other than the sampling required by Section III.D, Defendants shall also provide the Department with at least five (5) business days' notice before conducting any sampling pursuant to this Consent Decree. If notice is impracticable, notification shall be provided as soon as possible. At the request of the Department, Defendants shall allow the Department, or an authorized representative of the Department, to take split or duplicative samples of any sample collected by Defendants pursuant to this Decree. Similarly, at the request of Defendants, the Department shall allow Defendants to take split or duplicative samples of any sample collected by the Department. The Department shall notify Defendants at least five (5) business days before conducting any sampling pursuant to this Consent Decree unless an emergency makes advance notice impracticable.

86. Nothing herein shall be interpreted as limiting the sampling authority of the Department under any federal or State law or regulation.

## **V. STIPULATED PENALTIES**

87. Beginning on the Effective Date and continuing until the Department provides Defendants a written Completion of Work Acknowledgement, upon sixty (60) days of receipt of written demand by the Department, Defendants shall pay stipulated penalties in accordance with the following criteria:

- a. Except as otherwise stated, if Defendants fail to meet any deadline or schedule under this Consent Decree, including those set forth in plans incorporated herein, Defendants shall pay \$250 per day of non-



compliance for the first one (1) to seven (7) days of noncompliance, \$1,000 per day of non-compliance between eight (8) and one hundred twenty (120) days, and \$2,000 per day of non-compliance thereafter until the requirement is met. Failure to meet more than one date shall subject Defendants to cumulative penalties for each day the requirement is not met by its due date.

- b. Defendants shall pay a stipulated penalty of \$3,000 for each week in which a monitoring result taken in Jones Falls pursuant to Section III.D or III.E demonstrates a pH result below 6.5 s.u.

88. Failure to meet more than one (1) date shall subject Defendant to cumulative penalties for each day that each separate requirement is not met by its due date.

89. Payment of stipulated penalties shall be made by wire transfer or check. Wire transfers to be paid pursuant to instructions provided by MDE on invoices. Checks to be made payable to the Maryland Department of the Environment and mailed to the following address: Maryland Department of the Environment, P.O. Box 2057, Baltimore, Maryland 21230-2057. The following must be noted on the check: MDE v. Fleischmann's Vinegar Company, Inc., PCA: 13710, OBJ: 7545, SFX: 408 GL: 0544, Case No. 24-C-23001841, and the invoice number if available.

90. All stipulated penalties begin to accrue on the date that complete performance was due, or a violation occurs and shall continue to accrue through the final day of noncompliance. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

91. Stipulated penalties shall continue to accrue as provided in this Section during Dispute Resolution pursuant to Section XIX (Dispute Resolution) but need not be paid until thirty (30) days after final resolution of the dispute, including resolution of any judicial appeal.

92. Except as otherwise expressly set forth in this Consent Decree, none of the stipulated penalties in this Consent Decree shall be construed as an election of remedy or other limitation on the Department's discretion to seek in lieu of stipulated penalties any other remedy or sanction available to it for violations of this Consent Decree or any other violation of State law or regulation not expressly made the subject of this Consent Decree. The Department's failure to demand any stipulated penalty under this Consent Decree does not constitute a waiver of the Department's right to make such a demand.

93. Except as otherwise expressly set forth in this Consent Decree, payment of any stipulated penalty shall not relieve Defendants from the obligations imposed by this Consent Decree, or any permit that may be issued or any other statute or regulation, nor shall such payment limit the right of the Department to seek enforcement, including all judicially available remedies, of the terms of this Consent Decree or any other statute or regulation.

94. The Department shall waive any stipulated penalty if the noncompliance is due to an event of *force majeure* as set forth in Section XVIII of this Consent Decree, or for any other reason deemed appropriate by the Department.

95. Failure to pay any stipulated penalty as required by this Consent Decree may result in this case being referred to the State of Maryland's Central Collection Unit

(“Central Collection Unit”) as a debt owed to the State. The Central Collection Unit is authorized to collect outstanding debts resulting from unpaid penalties. The Central Collection Unit will add a collection fee of 17%, plus interest, to the amount owed by Defendants. In addition, § 3-304(c) of the State Finance and Procurement Article authorizes the Central Collection Unit to report the debt to consumer reporting agencies.

## **VI. CIVIL PENALTIES**

96. As settlement and compromise of this matter, the Department hereby assesses a Civil Penalty in the amount of \$1,100,000.00.

97. Within sixty (60) calendar days of the Effective Date, Defendants shall pay to the Department the penalty with a check or wire transfer. Wire transfer to be paid pursuant to instructions provided by MDE on invoice. Check to be made payable to the “Maryland Department of the Environment,” and mailed to: Maryland Department of the Environment, P. O. Box 2057, Baltimore, Maryland 21230-2057. The check and any accompanying correspondence must reference MDE v. Fleischmann’s Vinegar Company, Inc., PCA: 13710, OBJ: 7545, SFX: 408, GL: 0544, Case No. 24-C-23001841, and the invoice number if available.

98. An invoice for payment of the penalty will be mailed to the Defendants with a copy by email. The lack of receipt of an invoice has no effect on Defendants’ obligation to make timely payments under the Consent Decree; provided, however, that MDE supplies Defendants with wire instructions pursuant to Paragraph 89.

99. Failure to pay any civil penalty as required by this Consent Decree may result in this case being referred to the Central Collection Unit as a debt owed to the State. The

Central Collection Unit is authorized to collect outstanding debts resulting from unpaid penalties. The Central Collection Unit will add a collection fee of 17%, plus interest, to the amount owed by Defendants. In addition, § 3-304(c) of the State Finance and Procurement Article authorizes the Central Collection Unit to report the debt to consumer reporting agencies.

## **VII. RECOVERY OF RESPONSE COSTS**

100. Defendants agree to reimburse the Department for its past response costs at the Facility in the amount of \$4,518.46. The Department shall send an invoice to Defendant with a copy by email. Defendant shall pay the amount in the invoice within thirty (30) days of receipt of the invoice.

## **VIII. PERSONS BOUND BY ORDER**

101. This Consent Decree applies to and is binding upon the Department (and its successors, assigns, and designees) and the Defendants (and their respective successors, assigns, and designees).

102. Should Defendants transfer ownership of all or part of the Facility prior to Termination, the following provisions shall apply:

- a. In the event that Defendants retain the contractual responsibility for carrying out the terms of the Consent Decree, Defendants shall provide notice of the transfer to the Department at least ten (10) days prior to the transfer.
- b. In the event the Purchaser(s) contractually assumes some or all responsibility for carrying out the terms of this Consent Decree, but

Defendants remain ultimately responsible for compliance with the terms of this Consent Decree, then notice of the Purchaser(s)'s contractual assumption of this Consent Decree's responsibilities, together with an itemization of the responsibilities assumed, shall be provided to the Court and to Department at least ten (10) days prior to the transfer. Under such circumstances, the Defendants remain responsible for compliance with the term of this Consent Decree in any dispute between Defendants and Purchasers as to such responsibility.

- c. In the event Defendants also seek to modify this Consent Decree to replace the Purchaser(s) for the Defendants, with Purchaser(s) assuming both the responsibility for carrying out the terms of and for compliance with the terms of this Consent Decree, Defendants and the Purchaser(s) will execute an agreement in which the Purchaser(s) acknowledge(s) its/their responsibilities under this Consent Decree and demonstrate(s) the financial capability to perform said responsibilities. In such circumstances, if the Court has entered the Consent Decree, Defendants shall file a motion with the Court, submitting the agreement between Defendants and the Purchaser(s) as an exhibit (under seal as necessary), to modify this Consent Decree to replace the Purchaser(s) for the Defendants. If necessary, the Defendants and the Department agree that the Department shall

amend the Complaint to include the Purchaser(s). If the Court determines that it cannot exercise jurisdiction over the Purchaser, then the Defendants shall remain responsible for compliance with the terms of this Consent Decree. In the event the Court has not entered the Consent Decree, the Parties shall amend this agreement to replace the Defendants with the Purchaser(s).

- d. In the event that a Purchaser(s) assume(s) any responsibility of any type with respect to this Consent Decree, disputes regarding the responsibility assumed are between the Defendants and Purchaser(s).

103. To the extent feasible, Defendants shall provide at least fifteen (15) days in advance written notice to the Department prior to the filing of any petition or the commencement of any proceeding arising under the Bankruptcy Code, 11 U.S.C. §§ 1101 through 1195. If fifteen (15) days' notice is not feasible, Defendants will provide notice as soon as practicable prior to the filing of any petition or the commencement of such proceeding.

## **IX. RELEASE**

104. Upon the full completion of all the obligations set forth in this Consent Decree, the Department agrees to release the Defendants, as well as their respective parents, affiliates, officers, employees, agent and representatives (together with Defendants, the "Released Parties"), of any civil liability related to the Facility for the violations described herein. This release shall include (1) any violations of the Applicable Water Laws on or before the Effective Date related to surface water discharges from the

Facility into Jones Falls provided that all such violations are investigated and remediated to the satisfaction of the Department, and (2) any violations that occur after the Effective Date that are subject to stipulated penalties or other remedies pursuant to this Decree. This release does not include discharges from the Facility to groundwater so long as such discharges have not reached the Jones Falls. For purposes of this Paragraph, approval by the Department of the Final Confirmation Report shall demonstrate that any violations prior to the Effective Date have been investigated and remediated to the satisfaction of the Department. Upon signature of this Consent Decree by the Parties, the Department agrees to refrain from pursuing or continuing any civil enforcement action against Released Parties for violations described in this Consent Decree, including any amendments, or arising out of the facts or circumstances recited in this Consent Decree. The Department reserves, and this Consent Decree is without prejudice to, all rights against Defendants with respect to the following matters: (a) civil and administrative enforcement actions for violations that occur after January 31, 2024, unless those violations are subject to stipulated penalties or other remedies pursuant to this Decree; (b) civil and administrative enforcement actions for violations existing at the time of the Consent Decree that are not described herein, including violations that may be discovered during work performed pursuant to this Consent Decree, unless such violations are surface water discharges to the Jones Falls that occurred on or before the Effective Date and have been investigated and remediated to the satisfaction of the Department as described above; (c) criminal enforcement actions; (d) violations of any other State law or regulation that do not arise

out of the facts or circumstances recited in this Consent Decree; or (e) any violation of the terms of this Consent Decree.

105. It is expressly understood that this Consent Decree pertains to the civil violations described herein, and that the Department has made no promises or representations other than those contained in this Consent Decree and that no other promises or representations will be made unless in writing. The Department has made no promises or representations with regard to any criminal liability for the above-referenced violations and has no authority over any criminal actions.

106. Notwithstanding any other provision of this Consent Decree, no action or decision by the Department or any authorized representative of the Department pursuant to this Consent Decree shall constitute final agency action giving rise to any right of judicial review prior to the Department's initiation of a judicial action to enforce this Consent Decree, including an action for penalties or an action to compel Defendants' compliance with the terms and conditions of this Consent Decree.

107. Nothing in this Consent Decree shall limit the authority of the Department to issue any orders or to take any action it deems necessary to protect public health, safety, or the environment.

108. All factual information provided by the Defendants to the Department that forms the basis of this Consent Decree is to the best of their knowledge. To the extent that any of the factual information that is material to this Consent Decree provided by the Defendants is not true and accurate, the Department reserves the right to seek any available legal, equitable, administrative and/or judicial remedies.



## **X. THIRD PARTIES**

109. The Parties intend that nothing in this Consent Decree shall be construed as a release or covenant not to sue any third party that is not a Released Party. Nothing contained in this Consent Decree shall affect any right, claim, cause of action or defense of any party hereto with respect to third parties other than Released Parties. The Parties specifically reserve any and all rights, defenses, claims, demands, and causes of action, which the Parties may have against any third parties other than Released Parties relating in any way to the subject matter of this Consent Decree.

110. This Consent Decree does not and is not intended to create any, or limit existing, rights, claims, or benefits for any third party other than Released Parties. No third party other than Released Parties shall have any legally enforceable rights, claims, or benefits under this Consent Decree. No act of performance by the Parties, nor forbearance to enforce any term of this Consent Decree by the Department, shall be construed as creating any rights, claims, or benefits for any third party.

111. Neither the terms nor the conditions of this Consent Decree, nor any act of performance by the Parties, shall collaterally estop the Department in any other proceeding with any third party (other than a Released Party) that is not a signatory to this Consent Decree.

## **XI. EFFECTIVE DATE**

112. The Department shall execute this Consent Decree following Defendants' execution. This Consent Decree shall become effective as a contract upon execution by all

Parties (“the Effective Date”). This Consent Decree shall become effective as a Court Order upon entry by the Circuit Court Judge.

## **XII. NOTIFICATION**

113. Unless otherwise specified, all workplans, reports, correspondence, approvals, notices, or other submissions required by or relating to this Consent Decree shall be submitted via e-mail or, upon request, by one of the following methods: (a) hand delivery; (b) first class mail; or (c) overnight mail by private courier. In the event of a change to any of the contacts listed below, the party making the change shall notify the other contacts below within ten (10) days of the change. Notice shall be sent to the following:

### The Department

Andrew Gosden, Program Manager, WSA Compliance Program

Jessica Herpel, Enforcement Coordinator, WSA Compliance Program

### Office of the Attorney General

Matthew Clagett, Assistant Attorney General

Patricia Tipon, Assistant Attorney General

Judd Crane, Assistant Attorney General

### Fleischmann’s Vinegar Company, Inc.

Martha Thomsen, Baker Botts L.L.P.

### **XIII. GENERAL PROVISIONS**

114. Each undersigned representative of the Parties to this Consent Decree certifies that he or she is fully authorized by the party to enter into and execute the terms and conditions of this Consent Decree and to legally bind such party to this Consent Decree.

115. Defendants agree to undertake and complete all actions required by the terms and conditions of this Consent Decree. In any action by the Department to enforce the terms of this Consent Decree, Defendants consent to and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Consent Decree and agree not to contest the validity of this Consent Decree or its terms or conditions. Defendants agree that this Consent Decree is a contract and upon entry by the Court, a final order enforceable in a judicial forum.

116. This Consent Decree is not intended to be, nor shall it be construed to be, a permit. Defendants acknowledge and agree that the Department's approval of the work and/or work plan does not constitute a warranty or representation that the work and/or work plan will achieve the required cleanup or performance standards. Compliance by Defendants with the terms of this Consent Decree shall not relieve Defendants of their obligation to comply with any other applicable local, State, or federal laws and regulations.

117. In the event that Defendants fail to comply with any provision of this Consent Decree, including but not limited to failure to complete the work or pay the civil penalty or any stipulated penalties demanded hereunder, the Department shall have the right to seek any and all legal and equitable remedies available to it for any such failure, and all other provisions of this Consent Decree shall remain in full force and effect.

118. This Consent Decree is the entire agreement between the Department and the Defendants in this case. This Consent Decree constitutes the complete, final, and entire understanding of the Parties hereto, and they shall not be bound by any terms, conditions, covenants, or representations not expressly herein contained.

119. The Parties represent that prior to signing this Consent Decree, each has read it, understood its terms and conditions, and consulted with counsel, and that each party has voluntarily signed it.

120. This Consent Decree may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.

121. This Consent Decree shall be construed without regard to any presumption or other rule requiring construction against the party causing the Consent Decree to be drafted.

122. This Consent Decree is governed by, and interpreted according to, the laws of the State of Maryland without regard to conflict of laws principles.

#### **XIV. SUBSEQUENT MODIFICATION**

123. The terms of this Consent Decree are contractual and not mere recitals. This Consent Decree contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation, or understanding. Prior to approval by the Court, this Consent Decree may only be modified by the mutual written agreement of all the Parties. Upon approval by the Court, this Consent Decree is not only contractual

but constitutes a court order. Any modification, other than minor modifications made through written agreement of the Parties, must be approved by the Court in writing.

#### **XV. SEVERABILITY**

124. If any portion of this Consent Decree or the application of this Consent Decree to any party or circumstance is held by any judicial or administrative authority to be invalid, unenforceable, or illegal, the application of such provision or authority to other parties or circumstances and the remainder of this Consent Decree shall not be affected thereby and shall remain in full force; provided, however, that the Parties shall negotiate in good faith to amend this Consent Decree through a motion to the Court, if necessary, by revision of existing provisions or insertion of proposed additional provisions that are valid, enforceable, and legal and that reflect, to the extent possible, the intended meaning and purpose of the provisions deemed invalid, unenforceable, or illegal. Any revised version of this Consent Decree, as agreed to by the Parties, shall be filed with the Court.

#### **XVI. TERMINATION**

125. Except for the Release contained in Section IX (Release), this Consent Decree shall terminate and be of no further force and effect upon the occurrence of the following events: (a) the Defendants' payment of the full civil penalty as set forth in Section VI (Civil Penalties); (b) the Defendants' payment of all stipulated penalties that may be demanded by the Department under this Consent Decree, which shall be made prior to or in conjunction with the Department's issuance of the Final Confirmation Report; (c) the Department's determination that Defendants have completed all obligations set forth in and contemplated by the scope of this Consent Decree between the Department and the

Defendants; and (d) the payment of all recovery and response costs as detailed in Section VII of this Consent Decree. The Department's approval of the Final Confirmation Report, pursuant to Section III.H (Final Confirmation Report) of this Consent Decree and the Department's issuance of a Completion of Work Acknowledgement shall constitute the Department's determination that Defendants have completed all obligations under this Consent Decree. Notwithstanding the foregoing in this Paragraph, the Parties may terminate this Consent Decree at any time by mutual written agreement and the approval of the Court.

#### **XVII. RECORD RETENTION**

126. Defendants will retain all documents, including paper and electronic files, relating to this matter for at least three (3) years after termination of this Consent Decree.

#### **XVIII. FORCE MAJEURE**

127. Defendants shall perform the requirements of this Consent Decree in the manner and within the time limits set forth herein, unless the performance is delayed by events or circumstances arising from causes not reasonably foreseeable or beyond the reasonable control of Defendants, which cannot be avoided or overcome by due diligence, and which delays or prevents performance in the manner or by a date required by this Consent Decree.

128. Circumstances beyond the reasonable control of Defendants include earthquake, flood, hurricane, severe weather or other act of God, war, riot, injunction, fire, pandemic, and compliance with any law, rule, or Decree of any governmental body either existing now or hereafter created that conflicts with the requirements or obligations of this

Consent Decree. Such circumstances do not include increased costs of performance, changed economic circumstances, normal inclement weather, or failure to obtain federal, State, or local permits unless Defendants have made timely and complete application for such permits.

129. The mere existence of a novel coronavirus and COVID-19 in the state in which the work contemplated by this Consent Decree and plans submitted hereunder does not excuse performance. Defendants must take all reasonable steps to mitigate any delay that may occur as a result of the novel coronavirus or COVID-19. Delays attributable to the novel coronavirus or COVID-19 may only constitute a *force majeure* where Defendants could not reasonably have taken the known circumstances associated with COVID-19 into account when developing plans and implementation schedules.

130. Within ten (10) business days after becoming aware that an event Defendants believe constitutes an unforeseeable event or circumstance beyond their reasonable control may prevent or delay performance of an obligation under this Consent Decree, Defendants shall notify the Department of such event. Defendants' notification shall describe in detail the precise cause or causes of the delay, the anticipated length of the delay, the measures taken and to be taken by Defendants to prevent or minimize the delay, and a timetable by which those measures will be implemented. Defendants shall adopt all reasonable measures to avoid or minimize any such delay. Defendants shall include in the notification a request to extend the deadline associated with any obligation under this Consent Decree whose performance may be prevented or delayed by unforeseeable events or circumstances beyond Defendants' reasonable control.

131. Failure by Defendants to comply with the notice requirements set forth in the preceding Paragraph constitutes a waiver of Defendants' right to request an extension of the applicable deadline associated with an obligation to be performed under this Consent Decree.

132. If the Department determines that the event or anticipated event which has caused or will cause the delay constitutes an unforeseeable event or circumstance beyond the control of Defendants, the time for performance hereunder shall be extended for an appropriate period of time as determined by the Department, but not less than a period of time substantially equal to the length of the necessary delay, and any stipulated penalty shall not accrue. The Department shall inform Defendants in writing of its approval or denial.

133. In the event the Parties cannot agree that a delay or failure has been or will be caused by a *force majeure* event or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with Section XIX (Dispute Resolution).

#### **XIX. DISPUTE RESOLUTION**

134. The dispute resolution procedures of this Section shall be the exclusive mechanism for the Parties to raise and resolve disputes arising under or with respect to this Consent Decree. Nothing herein shall be construed to prohibit the Department from exercising any other remedy available at law or in equity to enforce the terms of this Consent Decree.



135. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties in an attempt to resolve the dispute in a good faith and expeditious manner. A dispute shall be considered to have arisen when one party sends all other parties a written Notice of Dispute. Electronic mail is the preferred delivery method for a Notice of Dispute to the Parties.

136. The Parties shall have thirty (30) days following receipt of a Notice of Dispute to reach agreement, unless both parties agree to a longer duration. The Parties shall have the right to jointly meet during this thirty (30) day period. If the Parties cannot reach agreement on the disputed issue, the Department shall serve on the disputing party a written statement setting forth its proposed resolution of the dispute within fifteen (15) days after expiration of the initial thirty (30) day period. The dispute shall be resolved in accordance with the Department's proposed resolution unless, within sixty (60) days after receipt of such proposed resolution, the disputing party files a petition for resolution of the dispute with the Court. Any such petition shall describe the nature of the dispute and the disputing party's proposal for resolution of the dispute. The Department and the Defendants shall have thirty (30) days after service of such petition to file a response to the petition.

137. The Court shall have exclusive and continuing jurisdiction to issue any Decree or resolve any dispute arising between or among the Parties with respect to matters within the scope of this Consent Decree. With respect to the resolution of any dispute pursuant to a petition to the Court, the Court shall resolve the dispute in accordance with applicable law, deciding for itself the extent to which it should defer to any administrative

determination by the Department with respect to any matters of fact or law, but in no event shall the Court be precluded from holding evidentiary hearings, considering testimony, or otherwise making determinations of fact if it deems such to be appropriate.

138. The existence of any dispute initiated under the process provided by this Section shall not excuse, toll, or suspend any compliance obligation or deadline required, or stipulated penalty accruing, pursuant to this Consent Decree during the pendency of the dispute resolution process, unless agreed to by the Parties.

## **XX. RESERVATION OF RIGHTS**

139. The signing of this Consent Decree and each Party's consent shall not limit or otherwise preclude the Department from taking additional action pursuant to the powers granted to it under State and federal law to address violations of laws or regulations not otherwise addressed by this Consent Decree, or to reduce or eliminate risks to public health or the environment that were not known to the Department at the time of approval of this Consent Decree or at the time of approval of work to be performed hereunder.

## **XXI. U.S. INTERNAL REVENUE SERVICE REPORTING REQUIREMENTS**

140. The Parties to this Consent Decree recognize and acknowledge that the Department is required to report certain fines, penalties, and other amounts to the United States Internal Revenue Service pursuant to 26 U.S.C. § 6050X. The Parties agree to cooperate with the Department in meeting its reporting obligations, to promptly provide information requested by the Department, and to complete the Information Form attached hereto as Attachment A. The Parties acknowledge that this Consent Decree is not fully executed until a completed Attachment A is received by the Department.

141. Penalty payments under this Consent Decree pursuant to Section V (Stipulated Penalties) or Section VI (Civil Penalties) are penalties within the meaning of Section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), and 26 C.F.R. § 1.162-21(a)(3)(i), and Defendants shall not deduct any penalties paid under this Consent Decree pursuant to Section V (Stipulated Penalties) or Section VI (Civil Penalties) in calculating its federal income tax.

142. 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 the actions required by Section III (Work to be Performed) and Section VII (Recovery of Response Costs) is restitution, remediation, or required to come into compliance with the law.

**IT IS SO DECREED AND ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2024:**

\_\_\_\_\_  
Judge, Circuit Court for Baltimore City

Signature Page for Consent Decree in *Maryland Department of the Environment v. Fleischmann's Vinegar Company, Inc.*

FOR THE MARYLAND DEPARTMENT OF THE ENVIRONMENT

9/20/2024

DATE

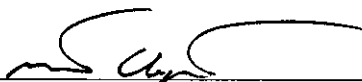


D. Lee Currey

Director

Water & Science Administration

Approved as to form and legal sufficiency this 25<sup>th</sup> day of September, 2024.



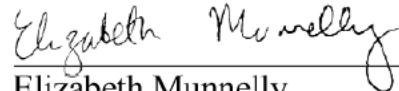
Matthew Clagett

Assistant Attorney General

Signature Page for Consent Decree in *Maryland Department of the Environment v. Fleischmann's Vinegar Company, Inc.*

FOR THE DEFENDANTS:

9/19/2024  
DATE

  
\_\_\_\_\_  
Elizabeth Munnelly  
Vice President, Chief Financial Officer,  
and Secretary of Fleischmann's Vinegar  
Company, Inc., Kerry Inc., and Kerry  
Holding Co.

Attachment A  
Information Form

Settling Party's Information:

Full Legal Name: Fleischmann's Vinegar Company, Inc., Kerry Holding Co.,  
and Kerry Inc.

Tax ID Number: XXXXXXXXXX

Address: 3400 Millington Road

City: Beloit State: Wisconsin

ZipCode: 53511 Phone: (608) 363-1200

Court & Case Information:

Court/Jurisdiction: Circuit Court for Baltimore City

Case Name/Caption: State of Maryland Department of the Environment v.  
Fleischmann's Vinegar Company, Inc., et al.

Case Number: 24-C-23001841

Settlement Terms:<sup>1</sup>

Amount to be paid as a penalty:	\$1,100,000.00
Cost of remediation or restitution:	\$4,518.46
Cost for compliance:	\$0.00

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<sup>1</sup> If these amounts are not specified in the settlement agreement, provide your best estimate based upon the information available to you at this time. You will report your actual expenditures on your tax returns.

Total: \$1,104,518.46

Date 9/19/2024

Signature Paul King

Name and Title: Paul King  
VP Finance, Kerry