

IN THE CIRCUIT COURT FOR BALTIMORE CITY

STATE OF MARYLAND,  
DEPARTMENT OF THE  
ENVIRONMENT,  
1800 Washington Boulevard  
Baltimore, Maryland 21230

Plaintiff,

v.

FLEISCHMANN'S VINEGAR  
COMPANY, INC.,  
1900 Brand Avenue  
Industrial Court  
Baltimore, Maryland 21209

Serve on:  
The Corporation Trust, Incorporated  
2405 York Road  
Suite 201  
Lutherville Timonium, Maryland  
21093-2264

and

KERRY INC.,  
3330 Millington Road  
Beloit, Wisconsin 53511

Serve on:  
The Corporation Trust, Incorporated  
2405 York Road  
Suite 201  
Lutherville Timonium, Maryland  
21093-2264

Defendants.

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## **COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES**

The State of Maryland, Department of the Environment (the “Department”), Plaintiff, by and through its attorneys, Anthony G. Brown, Attorney General, and Matthew P. Clagett and Patricia V. Tipon, Assistant Attorneys General, files this Complaint for Injunctive Relief and Civil Penalties against Defendants, Fleischmann’s Vinegar Company, Inc. (“Fleischmann’s Vinegar”) and Kerry Inc. (“Kerry”).

### **INTRODUCTION**

1. This is an action for injunctive relief and civil penalties against Defendants for violations of the terms of the water pollution discharge permit, issued by the Department to Defendant Fleischmann’s Vinegar, and discharges not permitted by this discharge permit or other discharge permits.

2. The Department asks the Court to enjoin Defendants from further operations that violate permit conditions and to order Defendants to remediate any environmental harm caused by unlawful discharges.

3. The Department also requests that the Court enter a judgment assessing civil penalties for the conduct alleged in this Complaint.

### **JURISDICTION AND VENUE**

4. The Court has subject matter jurisdiction over this matter under §§ 1-501 and 4-401 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland.

5. The Court has personal jurisdiction over Defendants pursuant to §§ 6-102

and 6-103 of the Courts and Judicial Proceedings Article because Defendants have an interest in property in Maryland and conducted business in Maryland at all times relevant to the Complaint.

6. Venue is proper in this Court pursuant to §§ 6-201 and 6-202 of the Courts and Judicial Proceedings Article because Defendants engaged in business activities relevant to this Complaint in Baltimore City and discharged pollution into the waters of the State of Maryland within Baltimore City.

7. The Department brings this action for injunctive relief and civil penalties pursuant to Maryland Rules 15-501 through -505 and §§ 9-322, 9-339, and 9-342 of the Environment Article of the Annotated Code of Maryland.

### **PARTIES**

8. Plaintiff is a State agency within the Executive Branch. The Secretary of the Environment is responsible for enforcing the provisions of the Environment Article and the rules and regulations adopted under the Environment Article.

9. Defendant Fleischmann's Vinegar is incorporated in the state of Delaware.

10. Defendant Fleischmann's Vinegar owns the Fleischmann's Vinegar Company facility (the "Facility"), located at 1900 Brand Avenue, Baltimore, Maryland.

11. Defendant Kerry is incorporated in the state of Delaware.

12. Defendant Kerry is the parent company of Fleischmann's Vinegar and at all times relevant to this Complaint participated in managing operations at the Facility.

## **STATUTORY AND REGULATORY AUTHORITY**

13. The Department, under §§ 1-301 and 9-334 through 9-344 of the Environment Article and Code of Maryland Regulations (COMAR) 26.08, is charged with the responsibility of enforcing Title 9, Subtitle 3 of the Environment Article.

14. Section 9-322 of the Environment Article prohibits the discharge of any pollutant to waters of the State unless authorized by Title 4, Subtitle 4, or by Title 9, Subtitle 3 of the Environment Article.

15. In accordance with § 9-323(a) of the Environment Article, a person must hold a discharge permit issued by the Department before the person may construct, install, modify, extend, alter, or operate: (1) An industrial, commercial, or recreational facility or disposal system; (2) A State-owned treatment facility; or (3) Any other outlet or establishment if its operation could cause or increase the discharge of pollutants into the waters of the State.

16. In accordance with § 9-342(a) of the Environment Article, the Department is authorized to bring a civil action to address violations of any rule, regulation, order, or permit issued pursuant to Title 9, Subtitle 3.

17. In accordance with § 9-339(a) of the Environment Article, the Department may seek injunctive relief to address violations of any rule, regulation, order, or permit issued pursuant to Title 9, Subtitle 3.

18. Pursuant to Environment § 9-342.2, a person who discharges a pollutant into waters of the State in violation of § 9-322 or § 9-323 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.

19. Pursuant to Environment § 9-339, a court shall grant injunctive relief, without the necessity of showing a lack of adequate remedy at law, upon a showing that a person is violating a provision of Title 9, Subtitle 3.

20. Pursuant to Environment § 9-342(a), a person who violates any provision of Title 9, Subtitle 3, or any rule, regulation, order, or permit adopted or issued under Title 9, Subtitle 3, is liable for a civil penalty not exceeding \$10,000, to be collected in a civil action brought by the Department. Each day a violation occurs is a separate violation under Title 9, Subtitle 3.

### **DEFINITIONS**

21. Section 9-101(b) of the Environment Article defines "discharge" as the addition, leaking, spilling, or emitting of a pollutant into waters of the State or the placing of a pollutant in a location where the pollutant is likely to pollute waters of the State.

22. Section 9-101(g) of the Environment Article defines the term "pollutant" to mean: "(1) any waste or wastewater that is discharged from: (i) any publicly owned treatment works; or (ii) an industrial source, or (2) any other liquid, gaseous, solid, or other substances which will pollute any waters of the State."

23. Section 9-101(h) of the Environment Article defines "pollution" as any

contamination or other alteration of the physical, chemical, or biological properties of any waters of the State, including any change in temperature, taste, color, turbidity, or odor of the waters, or the discharge or deposit of any organic matter, harmful organism, or liquid, gaseous, solid, radioactive, or other substance into any waters of the State, that will render the waters harmful or detrimental to: public health, safety, or welfare; domestic, commercial, industrial, agricultural, recreational, other legitimate beneficial uses; livestock, wild animals, or birds; or fish or other aquatic life.

24. Section 9-101(l) of the Environment Article defines “Waters of the State” to include both surface and underground waters within the boundaries of the State subject to its jurisdiction, including that part of the Atlantic Ocean within the boundaries of the State; the Chesapeake Bay and its tributaries; and all ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within the State, other than those designed and used to collect, convey, or dispose of sanitary sewage. In addition, the flood plain of free-flowing waters determined by the Department on the basis of the 100-year flood frequency is included as waters of the State.

### **FACTUAL ALLEGATIONS**

25. Defendants own and operate the Facility, a vinegar production facility located in Baltimore City, Maryland.

26. The Jones Falls is designated as a Class IV water body and is protected for water contact recreation, fishing, aquatic life (recreational trout waters), and wildlife. COMAR 26.08.02.08K(5)(b).

27. As a Class IV water body, the water quality standard for pH in the Jones Falls is between 6.5 and 8.5. COMAR 26.08.02.03-3A(4), 26.08.02.03-3F(4).

28. Defendant Fleischmann's Vinegar was issued a 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 under conditions set forth in the Discharge Permit. The Discharge Permit expires on July 1, 2024.

29. The Discharge Permit authorizes discharges of treated wastewater from Outfall 001 to the Jones Falls subject to restrictions depending on the pollutant. Condition I.A.1 limits discharges of Total Residual Chlorine (TRC) to a daily maximum of 0.019 mg/l. The discharges of TRC are required to be sampled and monitored once a month and reported to the Department on monthly Discharge Monitoring Reports (DMRs).

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

31. Condition I.A.1 of the Discharge Permit also requires Defendant 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 if Defendant Fleischmann's Vinegar expects to exceed its annual average flow.

32. Condition II.B.1 of the Discharge Permit requires Defendant Fleischmann's Vinegar to report any anticipated facility expansions, production increases, or process modification which will result in new, different, or an increased discharge of pollutants at least 180 days prior to the beginning of the changed discharge.

33. Condition II.B.2 of the Discharge Permit requires Defendant Fleischmann's Vinegar to notify the Department by telephone within twenty-four (24) hours of noncompliance with any daily maximum or daily minimum limitation of the Discharge Permit. Defendant Fleischmann's Vinegar must then notify the Department in writing within five (5) days to include certain information about the nature and cause of the violation and steps taken to correct the violation.

34. Condition I.P of the Discharge Permit required Defendant 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.

35. The General Industrial Stormwater Permit expired on December 31, 2018, and was extended administratively for all existing permittees until February 1, 2023, when a new general permit was issued. From January 1, 2019, until February 1, 2023, because the General Industrial Stormwater Permit had expired, the Department could not provide



coverage under the permit to new applicants. Until the new permit could become effective on February 1, 2023, permittees were required to agree to a Consent Order to Comply with the Terms and Conditions of the General Industrial Stormwater Permit (the “Consent Order”) and file a Declaration of Intent to Comply with the Terms of the Consent Order (the “Declaration of Intent”).

36. On September 12, 2021, the Department’s inspector conducted an inspection at the Facility and sampled the discharge from Outfall 001, finding the discharge to have a level of .66 mg/l of TRC.

37. On September 13, 2021, the Department’s inspector inspected the Facility and sampled the discharge from an unpermitted outfall located adjacent to Outfall 001, finding the discharge to have a level of .44 mg/l of TRC.

38. During this inspection, the Department’s inspector reviewed records on site. The records, in addition to records provided by the Facility after the inspection, showed that Defendant Fleischmann’s Vinegar had not been maintaining the Facility’s dechlorination system in good working order or operating it efficiently since July 24, 2021.

39. During this inspection, the Department’s inspector also observed an unknown and corroded outfall discharging water. The inspector sampled the discharge, finding it had an approximate pH of 4.

40. The Department subsequently received documentation from the Baltimore City government confirming that this unknown outfall was in fact a Baltimore City

stormwater outfall to which the Facility was connected in violation of the Baltimore City Code.

41. During this inspection, the Department's inspector also noted that the Facility's annual average flow was 643,383 gallons per day for the preceding year, and that Defendant Fleischmann's Vinegar had not notified the Department of this volume of flow.

42. On November 23, 2021, the Department inspected the Facility. During this inspection, the Department again noted the Facility's annual average flow of 643,383 gallons per day and that Defendant Fleischmann's Vinegar had not notified the Department of this volume of flow.

43. On November 29, 2021, the Department inspected the Facility. During this inspection, the inspector observed and sampled water discharging from the Baltimore City stormwater outfall, finding it had an approximate pH of 3.65.

44. The Department's inspector also observed and sampled liquid discharging directly from underneath a wall of the Facility along the Jones Falls directly into the Jones Falls. The liquid had an approximate pH of 4.62.

45. During this inspection, the Department's inspector also noted that the Facility's annual average flow was 643,383 gallons per day for the preceding year and that Defendant Fleischmann's Vinegar still had not notified the Department of this volume of flow.

46. During this inspection, the Department's inspector also noted that Defendant

Fleischmann's Vinegar had not submitted an application for coverage under the General Industrial Stormwater Permit, which the Facility was required to do by January 1, 2021.

47. On January 25, 2022, the Department inspected the Facility. During this inspection, the inspector observed and sampled water discharging from the Baltimore City stormwater outfall, finding it had an approximate pH of 5.01.

48. On January 28, 2022, the Department received Defendant Fleischmann's Vinegar's agreement to the Consent Order and the Declaration of Intent to comply by the terms and conditions of the General Industrial Stormwater Permit.

49. On March 3, 2022, the Department inspected the Facility. The Department's inspector observed liquid discharging directly from underneath a wall of the Facility along the Jones Falls directly into the Jones Falls.

50. On April 1, 2022, Defendant Fleischmann's Vinegar notified the Department of spilling 200 gallons of ethyl alcohol into the Jones Falls.

51. On November 10, 2022, the Department inspected the Facility. The Department's inspector observed and sampled discharges from Outfall 001 and the unpermitted outfall located adjacent to Outfall 001, finding the discharges to have approximate pH levels of 3.74 and 4.11, respectively.

52. On March 2, 2023, the Department inspected the Facility. The Department's inspector sampled the Jones Falls' water quality at the Facility's foundation wall in stream, finding the pH to be 8.85 approximately 10 feet upstream from Outfall 001, a pH of 4.78

at the foundation wall approximately 100 feet down stream of Outfall 001, and a pH of 5.02 approximately 200 feet down stream of Outfall 001.

53. On March 20, 2023, the Department inspected the Facility. The Department's inspector observed and sampled liquid discharging directly into the Jones Falls from underneath the Facility's foundation wall. The Department's inspector sampled the discharge, finding it had a pH of 3.55.

54. On March 23, 2023, Defendant Fleischmann's Vinegar reported spilling approximately 200 gallons of 15% acetic acid into the Jones Falls on August 17, 2022.

**Violations of Title 9 of the Environment Article**

**COUNT I**

**(Unauthorized Discharge of Pollutants to Waters of the State – TRC)**

55. The Department realleges and incorporates by reference the allegations of all prior paragraphs of this Complaint.

56. The Discharge Permit imposes daily maximum effluent limits of TRC of 0.019 mg/l. Based on the samples taken by the Department on September 12, 2021, and September 13, 2021, Defendant Fleischmann's Vinegar discharged TRC into waters of the State in violation of the daily maximum two times, totaling two days of violations.

57. Each discharge of pollutants in unauthorized amounts to waters of the State constitutes a separate violation of the Discharge Permit and §§ 9-322 and 9-323 of the Environment Article. Section 9-342 provides that a person who violates Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order, or Discharge Permit adopted or issued by the Department shall be subject to a civil penalty of up to \$10,000.00 per day for each such violation.

58. Maryland law also authorizes the Court to grant an injunction upon a showing that any person is violating Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order, or Discharge Permit issued by the Department. Md. Code Ann., Envir. § 9-339.

59. Unless enjoined by an order of the Court, Defendant Fleischmann's Vinegar will continue to discharge pollutants from the Facility in unauthorized amounts.

## **COUNT II**

### **(Unauthorized Discharge of Pollutants to Waters of the State – From Locations other than Outfall 001)**

60. The Department realleges and incorporates by reference the allegations of all prior paragraphs of this Complaint.

61. The Discharge Permit authorizes the discharge of TRC, with a daily maximum effluent limit of 0.019 mg/l, only from Outfall 001. Based on observations and sampling during the September 13, 2021, inspection, the Facility discharged into the Jones Falls on that day from an unpermitted outfall adjacent to Outfall 001, totaling one (1) violation.

62. Each discharge of pollutants in unauthorized amounts to waters of the State constitutes a separate violation of the Discharge Permit and §§ 9-322 and 9-323 of the Environment Article. Section 9-342 provides that a person who violates Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order, or Discharge Permit adopted or issued by the Department shall be subject to a civil penalty of up to \$10,000.00 per day for each such violation.

## **COUNT III**

### **(Failure to Maintain Treatment and Control Systems in Good Working Order and Operate Them Efficiently – Dechlorination)**

63. The Department realleges and incorporates by reference the allegations of all prior paragraphs of this Complaint.

64. The Discharge Permit requires Defendant Fleischmann's Vinegar to maintain the Facility's treatment and control systems in good working order and operate them efficiently. Based on the Facility's records, Defendant Fleischmann's Vinegar failed to maintain or operate its dechlorination system from July 24, 2021, through September 13, 2021, for a total of fifty-one (51) days, totaling fifty-one (51) violations.

65. Each day of failing to maintain the Facility's treatment and control systems in good working order and operate them efficiently constitutes a separate violation of the Discharge Permit and §§ 9-322 and 9-323 of the Environment Article. Section 9-342 provides that a person who violates Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order, or Discharge Permit adopted or issued by the Department shall be subject to a civil penalty of up to \$10,000.00 per day for each such violation.

66. Maryland law also authorizes the Court to grant an injunction upon a showing that any person is violating Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order, or Discharge Permit issued by the Department. Md. Code Ann., Envir. § 9-339.

67. Unless enjoined by an order of the Court, Defendant Fleischmann's Vinegar will continue to discharge pollutants from the Facility in unauthorized amounts.

#### **COUNT IV**

##### **(Unauthorized Discharge of Pollutants to Waters of the State – pH)**

68. The Department realleges and incorporates by reference the allegations of all prior paragraphs of this Complaint.

69. Defendant Fleischmann's Vinegar is not authorized to discharge water with pH below water quality standards to waters of the State. Based on samples taken by the Department on September 13, 2021, January 25, 2022, November 10, 2022, March 2, 2023, and March 20, 2023, and samples from two different discharges taken on November 29, 2021, Defendant Fleischmann's Vinegar discharged water with pH below water quality standards to waters of the State at least seven (7) times, totaling seven (7) violations.

70. Each unauthorized discharge of pollutants to waters of the State constitutes a separate violation of the Discharge Permit and §§ 9-322 and 9-323 of the Environment Article. Section 9-342 provides that a person who violates Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order, or Discharge Permit adopted or issued by the Department shall be subject to a civil penalty of up to \$10,000.00 per day for each such violation.

71. Maryland law also authorizes the Court to grant an injunction upon a showing that any person is violating Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order, or Discharge Permit issued by the Department. Md. Code Ann., Envir. § 9-339.

72. Unless enjoined by an order of the Court, Defendant Fleischmann's Vinegar will continue to discharge pollutants from the Facility in unauthorized amounts.



## **COUNT V**

### **(Unauthorized Discharge of Pollutants to Waters of the State – Ethyl Alcohol)**

73. The Department realleges and incorporates by reference the allegations of all prior paragraphs of this Complaint.

74. Defendant Fleischmann's Vinegar is not authorized to discharge ethyl alcohol to waters of the State. Based on its notification to the Department on April 1, 2022, Defendant Fleischmann's Vinegar discharged 200 gallons of ethyl alcohol to waters of the State on that date, totaling one (1) violation.

75. Each discharge of pollutants in unauthorized amounts to waters of the State constitutes a separate violation of the Discharge Permit and §§ 9-322 and 9-323 of the Environment Article. Section 9-342 provides that a person who violates Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order, or Discharge Permit adopted or issued by the Department shall be subject to a civil penalty of up to \$10,000.00 per day for each such violation.

## **COUNT VI**

### **(Unauthorized Discharge of Pollutants to Waters of the State – Acetic Acid)**

76. The Department realleges and incorporates by reference the allegations of all prior paragraphs of this Complaint.

77. Defendant Fleischmann's Vinegar is not authorized to discharge acetic acid to waters of the State. Based on its notification to the Department on March 23, 2023,

Defendant Fleischmann's Vinegar discharged 200 gallons of acetic acid on August 17, 2022 into waters of the State, totaling one (1) violation.

78. Each discharge of pollutants in unauthorized amounts to waters of the State constitutes a separate violation of the Discharge Permit and §§ 9-322 and 9-323 of the Environment Article. Section 9-342 provides that a person who violates Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order, or Discharge Permit adopted or issued by the Department shall be subject to a civil penalty of up to \$10,000.00 per day for each such violation.

#### **COUNT VII**

##### **(Failure to Report Changes to Volume of Flow – Increased Annual Average Volume Exceeding 295,000 Gallons per Day)**

79. The Department realleges and incorporates by reference the allegations of all prior paragraphs of this Complaint.

80. The Discharge Permit requires Defendant 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 General Condition II.B.2, notify the Department by May 1 if Defendant Fleischmann's Vinegar expects to exceed its annual average flow. Defendant Fleischmann's Vinegar failed to notify the Department when its annual average flow exceeded 295,000 gallons per day, totaling one (1) violation.

81. Section 9-342 provides that a person who violates Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order, or Discharge Permit adopted or issued by the Department shall be subject to a civil penalty of up to \$10,000.00 per day for each such violation.

### **COUNT VIII**

#### **(Unauthorized Discharge of Pollutants into Waters of the State – Stormwater Discharges Associated with Industrial Activity)**

82. The Department realleges and incorporates by reference the allegations of all prior paragraphs of this Complaint.

83. The Discharge Permit required Defendant Fleischmann's Vinegar to apply for coverage under the General Industrial Stormwater Permit by January 1, 2021, to authorize stormwater discharges from the Facility subject to stormwater-specific, pollution-control conditions. Without coverage under the General Industrial Stormwater Permit, stormwater discharges from the Facility were not authorized.

84. Defendant Fleischmann's Vinegar did not apply for such coverage until January 28, 2022.

85. Thus, between January 1, 2021, and January 28, 2022, the Facility discharged stormwater or had the potential to discharge stormwater without a discharge permit, totaling 392 days of violations.

86. Each discharge of pollutants in unauthorized amounts to waters of the State constitutes a separate violation of the Discharge Permit and §§ 9-322 and 9-323 of the

Environment Article. Section 9-342 provides that a person who violates Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order, or Discharge Permit adopted or issued by the Department shall be subject to a civil penalty of up to \$10,000.00 per day for each such violation.

### **REQUEST FOR RELIEF**

WHEREFORE, the Department respectfully requests that this Court grant the following relief against Defendants:

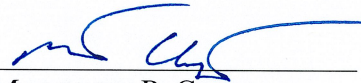
- A. Enter an injunction, pursuant to § 9-339 of the Environment Article and traditional common law principles, ordering Defendants to cease discharging any pollutants in violation of their NPDES/State discharge permits issued by the Department and require Defendants to take all steps necessary to come into permanent and consistent compliance with all requirements of its Permit, including but not limited to requiring Defendants to conduct a study of the Facility's infrastructure, including its stormwater system, that will identify the causes of the effluent violations and other unauthorized discharges, identify any and all interconnections between the Facility and the Baltimore City stormwater outfall, eliminate such interconnections, and provide a plan and schedule for implementation of necessary improvements;
- B. Enter judgment against Defendants for response costs incurred by the Department for the sampling of discharges as a result of Defendants'

noncompliance with the terms of its Discharge Permit;

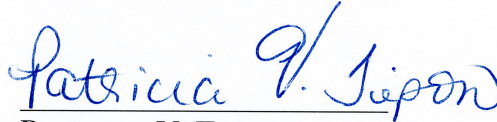
- C. Enter a Judgment against Defendants for civil penalties not exceeding \$10,000 per violation, per day, for violations of Title 9, Subtitle 3; and
- D. Grant such other relief as this Court deems just and equitable.

Respectfully submitted,

ANTHONY G. BROWN  
Attorney General of Maryland



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April 5, 2023