

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:

PRINGLES MANUFACTURING CO.

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**DIVISION OF AIR POLLUTION
CONTROL**

CASE NO. APC21-0052

CONSENT ORDER & ASSESSMENT

This Consent Order and Agreement is entered into between the Tennessee Department of Environment and Conservation and Pringles Manufacturing Company for the purpose of resolving the issues set forth herein. The parties stipulate and agree as follows:

PARTIES

I.

Michelle Walker Owenby is the Technical Secretary of the Air Pollution Control Board ("Board") and Director of the Division of Air Pollution Control ("Division"), Tennessee Department of Environment and Conservation ("Department").

II.

The Pringles Manufacturing Company ("Pringles") is a domestic company authorized to do business in the State of Tennessee. Pringles' facility address is 1306 Highway 70 Bypass, Jackson, TN 38301-5072. According to the Tennessee Secretary of State's Office, Pringles' principal business office and address is 1 Kellogg Square, Battle Creek, MI 49017-3534. Pringles' registered agent for service of process is the CT Corporation System located at 300 Montvue Road, Knoxville, TN 37919-5546.

JURISDICTION

III.

Pursuant to Tennessee Code Annotated section 68-201-116, the Technical Secretary may assess a civil penalty of up to \$25,000 per day for each day of violation of the Tennessee Air Quality Act (“Act”) or any rules or regulations promulgated thereunder (“Division Rules”) against any person who violates said Act or Division Rules, and/or the Technical Secretary may issue an order for correction to the responsible person when provisions of the Act or Division Rules are violated. In addition, such person may also be liable for any damages to the State resulting therefrom.

IV.

Pringles is a “person” within the meaning of Tennessee Code Annotated section 68-201-102.

V.

“Air contaminant” means particulate matter, dust, fumes, gas, mist, smoke, vapor, or any combinations thereof, as stated in Tennessee Code Annotated section 68-201-102.

VI.

“Air contaminant source” means any and all sources of emission of air contaminants, whether privately or publicly owned or operated, as stated in Tennessee Code Annotated section 68-201-102.

VII.

Pringles operates an “air contaminant source” within the meaning of Tennessee Code Annotated section 68-201-102.

FACTS

VIII.

On October 20, 2014, the Technical Secretary issued Title V operating permit number 560071 (the “Permit”), to Pringles Manufacturing Company (“Pringles”) for food production operations. The Permit was amended on December 16, 2014, February 27, 2015, March 4, 2015, May 16, 2016, July 25, 2016,

February 14, 2018, October 31, 2018, February 8, 2019, and January 8, 2020.

IX.

Condition E25-8 (SM1) of the Permit states, in pertinent part:

Volatile organic compounds (VOC) emitted from this source (57-0035-41) shall not exceed 57.61 tons during all intervals of 12 consecutive months. TAPCR 1200-03-07-.07(2)

Compliance Method: The permittee shall assure compliance with the yearly VOC limitation by assuring compliance with Conditions E25-1(SM1), E25-2(SM1) and E25-3(SM1); and by calculating the monthly VOC emissions and the VOC emissions during all intervals of 12 consecutive months. The permittee shall maintain the following log or a similar log that contains the same information. The permittee shall use the emission factors contained in the Confidential Information dated December 18, 2014.

X.

Conditions E7-10, E22-1, E22-2, E22-4, E22-5, E22-8(SM1), and E22-9(SM1) of the Permit indicate that the facility is considered an area source for HAP emissions.

XI.

Line 21 at the facility, which is source 57-0035-41 of the Permit, is a cracker processing line. Line 21 was installed and first became operational in 2015.

XII.

In February 2021, Pringles conducted a self-investigation of VOC emissions from the cracker processing Line 21 (source 57-0035-41). This investigation included a stack test of emissions from this source on February 8-10, 2021.

XIII.

The stack test results indicate that the VOC emission factor referenced in the Permit for the cracker processing Line 21 (source 57-0035-41) is incorrect. As a result, VOC emissions from this source are and have been in excess of the permit limit.

XIV.

Actual and potential VOC emissions at the facility have never exceeded applicable Prevention of Significant Deterioration (PSD) thresholds.

XV.

Had the correct emissions factor for VOC emissions been used at the time of permitting of the cracker processing Line 21 (source 57-0035-41), the permitting requirements for this source would have been the same, except for the changed emission factor and a higher VOC emission limit based on the changed emission factor.

XVI.

The stack test results from the cracker processing Line 21 (source 57-0035-41) also indicate that Pringles' facility-wide potential to emit one VOC hazardous air pollutant (HAP), acetaldehyde, is in excess of 10 tons per year. Based on this, the facility is a major source for HAPs, and as a result is currently subject to 40 CFR Part 63, Subpart DDDDD—National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (the "Boiler MACT"). The applicable NESHAP requirements apply to five boilers at the facility, require certain reporting and tuning and a one-time energy assessment, but do not require controls or reduced emissions.

XVII.

The actual emissions of acetaldehyde at the facility have at all times been below 10 tons per year, the potential emissions of each other HAP emitted at the facility are below 10 tons per year, and the total potential emissions of all HAPs emitted at the facility, including acetaldehyde, are below 25 tons per year.

XVIII.

Had the potential to emit acetaldehyde been known at the time of permitting, Pringles would have applied for, and would have complied with, a federally enforceable permit limit for facility-wide acetaldehyde emissions of less than 10 tons per year and would have been an area source for all HAPs, as currently in the Permit.

XIX.

On February 24, 2021, Pringles received the Source Test Report of the results of the February 8-10, 2021 stack test, and on February 28, 2021, submitted a disclosure pursuant to the Tennessee Department of Environment and Conservation Policy Encouraging Self-Policing and Voluntary Correction.

XX.

By the end of 2021, Pringles intends to move the cracker product currently produced at Line 21 (source 57-0035-41) to a new line that will produce crackers and other products. The new line will include a thermal oxidizer for emissions, which will result in much lower VOC and acetaldehyde emissions from the new line than current Line 21 emissions.

XXI.

After moving the cracker product, Line 21 will continue to operate but will run different products with much lower VOC emissions, and low or no acetaldehyde emissions. Some of these products will have ammonia emissions, which will need to be permitted.

XXII.

The planned additions and changes to operations will result in substantially lower actual and potential VOC and acetaldehyde emissions, both plant-wide and from Line 21. Plant-wide potential emissions for acetaldehyde will be less than 10 tons per year, the potential emissions of each other HAP emitted at the facility will remain below 10 tons per year, and the total potential emissions of all HAPs emitted at the facility will remain below 25 tons per year.

XXIII.

Pringles submitted a construction permit application to permit the planned additions and changes to operations described above, including adding an ammonia limit for Line 21 and the thermal oxidizer for the new line. The Division issued construction permit 979019 on August 6, 2021.

VIOLATIONS

XXIV.

Because VOC emissions from the cracker processing Line 21 (source 57-0035-41) have been in excess of the limit in E25-8 (SM1) of the Permit, Pringles violated Tenn. Comp. R. & Regs. 1200-03-09-.02(6), which states, in pertinent part:

Operation of each air contaminant source shall be in accordance with the provisions and stipulations set forth in the operating permit, all provisions of these regulations, and all provisions of the Tennessee Air Quality Act.

XXV.

By failing to comply with the Boiler MACT, Pringles violated Tenn. Comp. R. & Regs. 1200-03-09-.02(6), which states, in pertinent part:

Operation of each air contaminant source shall be in accordance with the provisions and stipulations set forth in the operating permit, all provisions of these regulations, and all provisions of the Tennessee Air Quality Act.

ORDER AND ASSESSMENT

XXVI.

Pursuant to the authority vested by Tennessee Code Annotated section 68-201-116, the Technical Secretary orders and Pringles agrees, as follows:

1. Pringles is assessed a Civil Penalty in the amount of \$8,000 for violations of Division Rules.
2. Pringles shall pay all additional fees as would have been due under the Permit since the cracker processing Line 21 (source 57-0035-41) became operational in 2015, had (i) the Line 21 VOC fees been based on a VOC limit calculated using the VOC emissions factor from the February 8-10, 2020 stack test, and (ii) the acetaldehyde fees been based on a permit limit of 9.9 tpy. These additional fees are in the amount of \$34,741.68. The requirement to pay these additional fees is not a penalty. This total fee amount is based upon the following annual calculations:

- 2016: 169.72 tons * 32.50 \$/ton = \$5,515.90;
- 2017: 169.72 tons * 32.50 \$/ton = \$5,515.90;
- 2018: 169.72 tons * 32.50 \$/ton = \$5,515.90;
- 2019: 169.72 tons * 33.50 \$/ton = \$5,685.62;
- 2020: 169.72 tons * 33.50 \$/ton = \$5,685.62; and
- 2021: 169.72 tons * 40.20 \$/ton = \$6,822.74.

3. Pringles shall pay the assessed Civil Penalty and additional fees in full to the “Treasurer, State of Tennessee” and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10th Floor, Nashville, Tennessee 37243. The case number, **APC21-0052**, should be clearly shown on the check or money order to ensure that the payment is properly credited. Payment shall be made on or before the 31st day after receipt of this Consent Order and Assessment.

4. Until such time as construction and operation of Pringles’ planned additions and changes to operations described above are complete, including installation and operation of the thermal oxidizer, Pringles shall comply with the following requirements:

- a. VOC emissions from the cracker processing Line 21 (source 57-0035-41) shall not exceed 226.88 tons during all intervals of 12 consecutive months. The permittee shall use the VOC emission factor from the February 8-10, 2021 stack test;
- b. Acetaldehyde emissions from the facility shall not exceed 9.9 tons during all intervals of 12 consecutive months;
- c. Records of VOC emissions from the cracker processing Line 21 (source 57-0035-41) shall be maintained and reported in accordance with the requirements set forth in the Permit, except that the Line 21 VOC emission factor from the February 8-10, 2021 stack test will be used; and
- d. Records of plant-wide acetaldehyde similar to those required for Line 21 VOC emissions pursuant to the preceding paragraph shall be maintained, which for Line 21 will use the acetaldehyde emission factor from the February 8-10, 2021 stack test, and emissions of acetaldehyde at the facility shall be included as an addendum to the reporting set forth in the Permit.

5. The Technical Secretary does not expressly or implicitly waive the authority pursuant to any provision of the Act or Division Rules by issuing this Consent Order and Agreement.

6. Failure to comply with any of the requirements of this Consent Order and Agreement could lead to further enforcement actions which may include additional civil penalties, assessment of damages and/or recovery of costs.

DEPARTMENT'S RESERVATION OF RIGHTS

In entering this Consent Order and Assessment, the Department does not implicitly or expressly waive any provision of the Act or the regulations promulgated thereunder or the authority to assess costs, civil penalties, and/or damages incurred by the State against Pringles. The Department expressly reserves all rights it has at law and in equity to order further corrective action, assess civil penalties and/or damages, and to pursue further enforcement action including, but not limited to, monetary and injunctive relief. Compliance with this order will be considered as a mitigating factor in determining the need for enforcement action(s) against Pringles in the future for any violation occurring then.

WAIVER OF RIGHT TO APPEAL

This Consent Order and Assessment fully resolves all matters and violations set forth herein. By signing below, Pringles knowingly and voluntarily waives any right it may have to appeal this Consent Order and Assessment pursuant to Tennessee Code Annotated section sections 68-201-108(a) and 68-201-116(b).

AUTHORITY TO SIGN

The undersigned representatives of the Department and Pringles hereby represent and warrant that they are fully authorized and competent to execute this Consent Order and Agreement on behalf of the entity for which they are signing.

Issued by the Technical Secretary of the Air Pollution Control Board and agreed to by Pringles Manufacturing Company on this 21st day of September 2021.

**THIS CONSENT ORDER AND AGREEMENT SHALL BE EFFECTIVE UPON BEING SIGNED
ON BEHALF OF BOTH PARTIES.**

Michelle W Owenby

Michelle W Owenby (Sep 21, 2021 13:33 CDT)

Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Burl Duffie

Burl Duffie
Plant Manager
Pringles Manufacturing Company

Reviewed by:

William Freeman Miller

William Freeman Miller
BPR Number 028826
Office of General Counsel
William R. Snodgrass TN Tower, 2nd Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243-1548
Telephone: (615) 532-0136
E-Mail: william.f.miller@tn.gov

John W. Dawson, IV

John W. Dawson, IV
BPR Number 027180
Counsel for Pringles
Bass, Berry & Sims, PLC
150 Third Avenue South, Suite 2800
Nashville, TN 37201
Telephone: (615) 742-7796
E-Mail: jdawson@bassberry.com