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BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of	)	
Star-Kist Caribe, Inc.	)	NPDES Appeal No. 88-5
Petitioner	)	
NPDES Permit No. PR0022012	)	

DECLARATION OF GARY W. HUDIBURGH, JR.

1. I, Gary W. Hudiburgh, Jr., declare that the following statements are true and correct to the best of my knowledge and belief and are based on my personal knowledge, or on information contained in the records of the United States Environmental Protection Agency ("EPA" or "the Agency") or supplied to me by current EPA employees within my area of oversight.

2. I am the Chief of the Regulatory Implementation Section, NPDES Program Branch, in the Permits Division, Office of Wastewater Enforcement and Compliance ("OWEC"), a position I have held since 1989. OWEC is one of four offices that report to the Assistant Administrator for Water.

3. As part of my responsibilities, I oversee the issue regarding the question of compliance schedules for water quality-based effluent limitations in permits issued under section 402 of the Clean Water Act.

4. The purpose of this declaration is describe the information obtained for the Status Report requested by Judge McCallum, and the process used to obtain such information.

I. Process Used to Collect Information for Status Report

5. On March 19, 1992, a memorandum signed by Cynthia Dougherty, Director of the Permits Division, and William R. Diamond, Director of the Standards and Applied Science Division, was sent to each of EPA's ten Regional Water Management Division Directors, with copies to each of the Regional Water Quality Branch Chiefs and Regional Water Permit Branch Chiefs, requesting information for the Status Report. Specifically, the memorandum requested information on changes to laws, policies and permit programs of each State which would affect their ability to comply with the April 16, 1990 Star-Kist Order, to be submitted to my staff by March 27, 1992.

6. Regional staff responded to this request by sending written or oral information on a State by State basis. My staff made numerous phone calls to clarify the information provided and to fill in gaps. In a number of instances, the information appears to have been provided by the States without an opportunity for independent review by EPA of the laws, regulations, or policies involved. Therefore, the following State by State information, while representing the best information available by April 3, 1992, has not been independently verified.

II. Information Gathered

A. Status of Agency Guidance

7. The Supplemental Information submitted on August 24, 1990, described the progress in developing agency guidance

through that date. Following that date, agency staff continued to work on the draft guidance. However, the guidance has not yet been issued in final form, for several reasons.

8. The plan of the Criteria and Standards Division ("CSD," now part of the Standards and Applied Science Division, Office of Science and Technology) in the summer of 1990 was to issue the guidance (once its terms were final) as part of the preamble to proposed amendments to the water quality standards regulations. Those amendments were then going through the clearance process to go into Red Border review. This procedure offered the advantages of wide public dissemination of the guidance, an opportunity for public comment, and an emphasis on the relationship between schedules of compliance for water quality-based effluent limitations and State standards programs. Concurrently, CSD staff were working with staff from the Office of Water Enforcement and Permits (now Office of Wastewater Enforcement and Compliance), to produce a stand-alone version of the guidance for easy distribution.

9. However, before that proposed rulemaking or the stand-alone version could be finalized, work on them was temporarily suspended to make staff available to work on other more pressing matters pursuant to the 1987 Amendments to the Clean Water Act. These included the Office of Water's need to identify States which had failed to promulgate numerical criteria for toxics as required under section 303(c)(2)(B) and to propose and promulgate Federal criteria in their stead. This major undertaking resulted

in a proposal to promulgate water quality criteria for 22 States on November 19, 1991. 56 Fed. Reg. 58420. That rule is expected to be promulgated in final form in approximately a month. In addition, the Office of Water has developed application regulations to implement the storm water program on November 16, 1990 (55 Fed. Reg. 47990), as revised March 21, 1991 (56 Fed. Reg. 12098), November 5, 1991 (56 Fed. Reg. 56548) and April 2, 1992 (57 Fed. Reg. 11394). The Office of Water has undertaken numerous activities to assist the States in implementation of the storm water program, including assumption of general permits authority. In addition, the Office was responsible for developing a complex regulation implementing the 1987 statutory amendments to the NPDES program, which is likely to be proposed in the next one to two months, as well as regulations governing the treatment of Indian tribes as States (final water quality standards regulations on December 12, 1991 (56 Fed. Reg. 64876) and proposed NPDES regulations on March 10, 1992 (57 Fed. Reg. 8522)). As a result of these competing demands on staff, the draft guidance remains unpublished.

10. However, the Office of Water, as well as the Office of General Counsel and the Regions, in their oversight capacity, have worked with the States to make clear their intentions with regard to schedules of compliance, and to modify their standards or implementing regulations to make those intentions explicit, where necessary. In addition, as part of the Great Lakes Water Quality Initiative, EPA has helped draft language which will

ensure that a proper regulatory basis exists for schedules of compliances for water quality based effluent limitations in the Great Lakes States. The results of those efforts are described below, State by State.

B. Changes in State laws, policies and permit programs

11. As explained in the affidavit submitted to the Administrator on August 24, 1990, following issuance of the March 8, 1989, and April 16, 1990, Orders in this case, the Office of Water, in concert with the Regions, took steps to bring those orders to the attention of their State counterparts. Through their normal NPDES and water quality standard oversight efforts, the Regions have continued to work with the States to ensure that the States' laws, regulations and standards reflect their intentions with respect to schedules of compliance in NPDES permits for effluent limitations based on post-July 1, 1977 water quality standards (hereinafter referred to as "schedules of compliance for post-1977 standards"). The following sets out our current understanding of the status of each State in this regard.

12. Several States have incorporated provisions into their water quality standards or related regulations which explicitly authorize schedules of compliance for effluent limitations based on post-July 1, 1977 standards.[1] These States are Arkansas,

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[1]We were not able to reliably determine in all cases whether these provisions were adopted in response to the Star-Kist Orders or were pre-existing. Therefore, this Status Report lists States according to their present status.

Texas, New Mexico, Wisconsin, Mississippi[2], Alabama2/, Florida2/, Georgia2/, South Carolina2/, North Carolina2/, Kentucky2/, Tennessee2/, Maryland[3], West Virginia3/, Colorado, Wyoming2/, Montana2/, North Dakota2/, South Dakota2/, Guam2/, Missouri, Arizona, and California.

13. Several other States have begun, but not yet completed, the process for changing their standards or implementing regulations to provide for schedules of compliance. These States include New Jersey, Puerto Rico, Delaware, Virginia, Oklahoma, and Oregon (Oregon is only in the preliminary stages of considering such a change; it has not yet proposed any regulatory change).

14. A number of States have provisions which, while set out in their permit regulations programs, nonetheless express a State's intention to allow schedules of compliance for post-1977 standards as well as for technology-based requirements. Such provisions would appear to meet the April 16th Order, if permit regulations are deemed to be implementing regulations. These States include New York, Pennsylvania, Hawaii, Iowa, Kansas, and Nebraska. (The States listed in the text at footnote 2 may actually belong here.)

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[2]. For certain states which have explicitly authorized schedules of compliance for post-1977 standards, we have not been able to verify by the deadline for this Status Report which regulation(s), NPDES or standards, sets forth the authorization.

[3] While Maryland and West Virginia believe that they have such provision, the Region has raised questions about their adequacy.

15. Some States have no explicit authorization for schedules of compliance for post-1977 standards, and no plans to add such authorization. In some cases, this appears to reflect a State decision not to allow such schedules. States in this category include Maine, Massachusetts, New Hampshire, Connecticut, Rhode Island, Vermont, and Illinois (latter has statutory impediment). In other cases, there is some uncertainty as to the State's intentions. Such States include the Virgin Islands, Washington, Alaska, Idaho, Indiana, Michigan, Minnesota, Ohio, Louisiana, Nevada, Commonwealth of the Northern Mariana Islands, and the Pacific Trust Territories.

Signed:_____

Gary W. Hudiburgh, Jr.,
Chief, Regulatory
Implementation Section

CERTIFICATE OF SERVICE

On the 3rd of April, 1992, a true and correct copy of the foregoing Status Report was mailed postage prepaid to:

John Ciko, Jr.
Dan L. Vogus
H.J. Heinz Company
P.O. Box 57
Pittsburgh, PA 15230-0057

and delivered by hand to:

Judge Ronald L. McCallum
Environmental Appeals Board
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Washington, D.C. 20460