

Executive Summary – Enforcement Matter – Case No. 47432

Frito-Lay, Inc.

RN100219229

Docket No. 2013-1539-IWD-E

Order Type:

Findings Agreed Order

Findings Order Justification:

People or environmental receptors have been exposed to pollutants which exceed levels that are protective.

Media:

IWD

Small Business:

No

Location(s) Where Violation(s) Occurred:

Frito Lay Rosenberg Facility, located on the north side of State Highway 36 and approximately three miles west of the intersection of State Highway 36 and U.S. Alternate Highway 90 near Rosenberg, Fort Bend County

Type of Operation:

Snack food production facility with an associated wastewater treatment facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: January 10, 2014

Comments Received: No

Penalty Information

Total Penalty Assessed: \$16,775

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$16,775

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Satisfactory

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

**Executive Summary – Enforcement Matter – Case No. 47432
Frito-Lay, Inc.
RN100219229
Docket No. 2013-1539-IWD-E**

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: July 25, 2013
Date(s) of NOE(s): July 31, 2013

Violation Information

1. Failed to comply with permitted effluent limits for total suspended solids, *E. coli*, and 5-day biochemical oxygen demand [Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0002443000, Effluent Limitations and Monitoring Requirements No. 1, Outfalls Nos. 002 and 003, 30 TEX. ADMIN. CODE § 305.125(1) and TEX. WATER CODE § 26.121(a)].
2. Failed to pay Non-Hazardous Waste Generation fees [TEX. HEALTH & SAFETY CODE § 361.134(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

- a. Within 15 days, pay outstanding fees, including any associated penalties and interest for Financial Administration Account No. 0301394N;
- b. Within 45 days, submit written certification of compliance with Ordering Provision a.; and
- c. Within 90 days, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0002443000, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.

Executive Summary – Enforcement Matter – Case No. 47432

Frito-Lay, Inc.

RN100219229

Docket No. 2013-1539-IWD-E

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Cheryl Thompson, Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5886; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456

TCEQ SEP Coordinator: N/A

Respondent: Michael Matthews, Vice President - Manufacturing Excellence, Frito-Lay, Inc., 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201-4234

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	5-Aug-2013	Screening	11-Aug-2013	EPA Due	
	PCW	8-Apr-2014				

RESPONDENT/FACILITY INFORMATION

Respondent	Frito-Lay, Inc.				
Reg. Ent. Ref. No.	RN100219229				
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	47432	No. of Violations	4
Docket No.	2013-1539-IWD-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Cheryl Thompson
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$13,750**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **22.0%** Enhancement **Subtotals 2, 3, & 7** **\$3,025**

Notes: Enhancement for four months of self-reported effluent violations and one NOV for dissimilar violations.

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$0**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts	\$916
Approx. Cost of Compliance	\$10,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$16,775**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$16,775**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$16,775**

DEFERRAL **0.0%** Reduction **Adjustment** **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$16,775**

Screening Date 11-Aug-2013

Docket No. 2013-1539-IWD-E

PCW

Respondent Frito-Lay, Inc.

Policy Revision 3 (September 2011)

Case ID No. 47432

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100219229

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	4	20%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 22%

>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for four months of self-reported effluent violations and one NOV for dissimilar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 22%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 22%

Screening Date 11-Aug-2013

Docket No. 2013-1539-IWD-E

PCW

Respondent Frito-Lay, Inc.

Policy Revision 3 (September 2011)

Case ID No. 47432

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100219229

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 1

Rule Cite(s)

Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0002443000, Effluent Limitations and Monitoring Requirements No. 1 Outfall No. 002, 30 Tex. Admin. Code § 305.125(1) and Tex. Water Code § 26.121(a)

Violation Description

Failed to comply with permitted effluent limits, as documented during a record review conducted on July 25, 2013. See attached table.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	x		
Potential			

Percent 30.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

A simplified model was used to evaluate biochemical oxygen demand (5-day) to determine whether the discharged amounts of pollutants exceeded levels that are protective of human health or the environment. Total suspended solids and E. coli were also considered. As a result of these discharges, human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 1

30 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$7,500

One monthly event is recommended for the month of April 2013 (Outfall No. 002).

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$916

Violation Final Penalty Total \$9,150

This violation Final Assessed Penalty (adjusted for limits) \$9,150

Economic Benefit Worksheet

Respondent Frito-Lay, Inc.
Case ID No. 47432
Reg. Ent. Reference No. RN100219229
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	31-Jul-2012	31-May-2014	1.83	\$916	n/a	\$916

Notes for DELAYED costs

The estimated cost to evaluate the causes of the effluent violations and to implement necessary rehabilitation to the wastewater treatment system. Date required is the month the first non-compliant excursion was documented. Final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$916

Screening Date 11-Aug-2013

Docket No. 2013-1539-IWD-E

PCW

Respondent Frito-Lay, Inc.

Policy Revision 3 (September 2011)

Case ID No. 47432

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100219229

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 2

Rule Cite(s)

TPDES Permit No. WQ0002443000, Effluent Limitations and Monitoring Requirements No. 1, Outfall Nos. 002 and 003 30 Tex. Admin. Code § 305.125(1) and Tex. Water Code § 26.121(a)

Violation Description

Failed to comply with permitted effluent limits, as documented during a record review conducted on July 25, 2013. See attached table.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 5.0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

A simplified model was used to evaluate biochemical oxygen demand (5-day) to determine whether the discharged amounts of pollutants exceeded levels that are protective of human health or the environment. Total suspended solids were also considered. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 2

62 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

Two quarterly events are recommended for the quarters containing the months of March 2013 (Outfall No. 002) and January 2013 (Outfall No. 003).

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Reduction	
	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$3,050

This violation Final Assessed Penalty (adjusted for limits) \$3,050

Economic Benefit Worksheet

Respondent Frito-Lay, Inc.
Case ID No. 47432
Reg. Ent. Reference No. RN100219229
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See economic benefit for violation no. 1

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$0

TOTAL \$0

Screening Date 11-Aug-2013

Docket No. 2013-1539-IWD-E

PCW

Respondent Frito-Lay, Inc.

Policy Revision 3 (September 2011)

Case ID No. 47432

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100219229

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 3

Rule Cite(s) TPDES Permit No. WQ0002443000, Effluent Limitations and Monitoring Requirements No. 1, Outfall No. 002, 30 Tex. Admin. Code § 305.125(1) and Tex. Water Code § 26.121(a)

Violation Description Failed to comply with permitted effluent limits, as documented during a record review conducted on July 25, 2013. See attached table.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (15.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0.0%).

Matrix Notes Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1 Number of violation days 31

Table for event frequency: daily, weekly, monthly (marked with x), quarterly, semiannual, annual, single event.

Violation Base Penalty \$3,750

One monthly event is recommended for the month of July 2012 (Outfall No. 002).

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x).

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$4,575

This violation Final Assessed Penalty (adjusted for limits) \$4,575

Economic Benefit Worksheet

Respondent Frito-Lay, Inc.
Case ID No. 47432
Reg. Ent. Reference No. RN100219229
Media Water Quality
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See economic benefit for violation no. 1

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

Screening Date 11-Aug-2013

Docket No. 2013-1539-IWD-E

PCW

Respondent Frito-Lay, Inc.

Policy Revision 3 (September 2011)

Case ID No. 47432

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100219229

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 4

Rule Cite(s)

Tex. Health & Safety Code § 361.134(c)

Violation Description

Failed to pay Non-Hazardous Waste Generation fees for TCEQ Financial Administration Account No. 0301394N for Fiscal Year 2013.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Adjustment \$25,000

\$0

Violation Events

Number of Violation Events

Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$0

No penalty is recommended at this time because penalty and interest will be assessed at the next billing.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$0

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$0

This violation Final Assessed Penalty (adjusted for limits) \$0

Economic Benefit Worksheet

Respondent Frito-Lay, Inc.
Case ID No. 47432
Reg. Ent. Reference No. RN100219229
Media Water Quality
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

There is no economic benefit associated with this violation.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

FRITO-LAY, INC.
 TPDES PERMIT NO. WQ0002443000; RN100219229
 DOCKET NO. 2013-1539-IWD-E; CASE NO. 47432

OUTFALL 002

	BOD5 Daily Average Conc.	BOD5 Daily Max. Conc.	<i>E. coli</i> Daily Average Conc.	<i>E. coli</i> Daily Max. Conc.	TSS Daily Average Conc.	TSS Daily Max. Conc.
Month/Year	20.54 mg/L	45 mg/L	126 CFU/100 ml	394 CFU/100 ml	20.54 mg/L	45 mg/L
July 2012	c	c	1100	1100	c	c
March 2013	43.6	62	c	c	34	52
April 2013	32.8	64	13000	13000	26.9	c

OUTFALL 003

	BOD5 Daily Max. Loading
Month/Year	941 lbs/day
January 2013	1,059

mg/L = milligrams per liter
 TSS = total suspended solids
E. coli = *Escherichia coli*
 Max. = maximum

BOD5= biochemical oxygen demand, 5-day
 CFU= colony forming units per 100 milliliters
 c=compliant ml=milliliters
 Conc.=concentration lbs/day=pounds per day

The TCEQ is committed to accessibility.
To request a more accessible version of this report, please contact the TCEO Help Desk at (512) 239-4357.



Compliance History Report

PUBLISHED Compliance History Report for CN600125686, RN100219229, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator:	CN600125686, Frito-Lay, Inc.	Classification: SATISFACTORY	Rating: 0.44
Regulated Entity:	RN100219229, FRITO LAY ROSENBERG FACILITY	Classification: SATISFACTORY	Rating: 1.16
Complexity Points:	19	Repeat Violator:	NO
CH Group:	14 - Other		
Location:	located on the north side of State Highway 36 and approximately three miles west of the intersection of State Highway 36 and United States Alternate Highway 90 near Rosenberg, Fort Bend County, Texas		
TCEQ Region:	REGION 12 - HOUSTON		

ID Number(s):

AIR OPERATING PERMITS ACCOUNT NUMBER FG0052I
PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0790169

AIR OPERATING PERMITS PERMIT 1104
WASTEWATER PERMIT WQ0002443000

WASTEWATER EPA ID TX0085782
AIR NEW SOURCE PERMITS REGISTRATION 47581
AIR NEW SOURCE PERMITS REGISTRATION 76013
AIR NEW SOURCE PERMITS AFS NUM 4815700034
AIR NEW SOURCE PERMITS REGISTRATION 112015
PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 42402
STORMWATER PERMIT TXR15VZ89
STORMWATER PERMIT TXR15VZ87
WASTEWATER LICENSING LICENSE WQ0002443000
INDUSTRIAL AND HAZARDOUS WASTE EPA ID TXD982306359
POLLUTION PREVENTION PLANNING ID NUMBER P02141

AIR NEW SOURCE PERMITS PERMIT 7727
AIR NEW SOURCE PERMITS ACCOUNT NUMBER FG0052I
AIR NEW SOURCE PERMITS REGISTRATION 76240
AIR NEW SOURCE PERMITS REGISTRATION 92118
AIR NEW SOURCE PERMITS REGISTRATION 112016
STORMWATER PERMIT TXR05AX95

STORMWATER PERMIT TXR15VZ88
WATER LICENSING LICENSE 0790169
AIR EMISSIONS INVENTORY ACCOUNT NUMBER FG0052I
INDUSTRIAL AND HAZARDOUS WASTE SOLID WASTE REGISTRATION # (SWR) 32497

Compliance History Period: September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 09/01/2012

Date Compliance History Report Prepared: August 15, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: August 15, 2008 to August 15, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Cheryl Thompson **Phone** (817) 588-5886

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CEEDS Inv. Track. No.):

Item 1	August 19, 2008	(714981)
Item 2	August 25, 2008	(681827)
Item 3	September 18, 2008	(714982)
Item 4	November 20, 2008	(730848)
Item 5	December 11, 2008	(730849)
Item 6	January 15, 2009	(730850)
Item 7	February 12, 2009	(754094)
Item 8	March 16, 2009	(754095)
Item 9	April 17, 2009	(754096)
Item 10	May 19, 2009	(771413)
Item 11	June 10, 2009	(771414)
Item 12	October 05, 2009	(814258)
Item 13	October 18, 2009	(814259)
Item 14	November 15, 2009	(814260)
Item 15	December 20, 2009	(814261)
Item 16	March 15, 2010	(834229)
Item 17	April 18, 2010	(834230)
Item 18	May 14, 2010	(834231)
Item 19	May 17, 2010	(800464)
Item 20	June 14, 2010	(847298)
Item 21	June 30, 2010	(861743)
Item 22	September 09, 2010	(875067)
Item 23	December 17, 2010	(897465)
Item 24	March 16, 2011	(917484)
Item 25	May 15, 2011	(939179)
Item 26	June 16, 2011	(946601)
Item 27	July 18, 2011	(953850)
Item 28	August 08, 2011	(960453)
Item 29	September 18, 2011	(966510)
Item 30	November 17, 2011	(978667)
Item 31	December 11, 2011	(985492)
Item 32	March 20, 2012	(1004650)
Item 33	April 16, 2012	(1011227)
Item 34	May 19, 2012	(1017584)
Item 35	June 18, 2012	(1025380)
Item 36	July 02, 2012	(1015106)
Item 37	July 17, 2012	(1032720)
Item 38	August 22, 2012	(1008087)
Item 39	September 19, 2012	(1048100)
Item 40	October 16, 2012	(1066854)
Item 41	November 19, 2012	(1066855)
Item 42	November 29, 2012	(1042032)
Item 43	December 19, 2012	(1066856)
Item 44	January 10, 2013	(1081501)
Item 45	March 20, 2013	(1090537)

E. Written notices of violations (NOV) (CEEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

1	Date:	12/18/2012	(1045948)	CN600125686	
	Self Report?	NO		Classification:	Minor
	Citation:	30 TAC Chapter 335, SubChapter C 335.69(f)(2) 30 TAC Chapter 335, SubChapter E 335.112(a)(8) 40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34(d)(2) 40 CFR Chapter 265, SubChapter I, PT 265, SubPT I 265.173(a)			
	Description:	Failed to maintain hazardous waste accumulation containers closed when waste was not being added or removed.			
2	Date:	01/31/2013	(1081500)	CN600125686	
	Self Report?	YES		Classification:	Moderate
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)			
	Description:	Failure to meet the limit for one or more permit parameter			
3	Date:	03/31/2013	(1096890)	CN600125686	
	Self Report?	YES		Classification:	Moderate
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)			
	Description:	Failure to meet the limit for one or more permit parameter			

4	Date:	04/30/2013	(1107854)	CN600125686	
	Self Report?	YES		Classification:	Moderate
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)			
	Description:	Failure to meet the limit for one or more permit parameter			
5	Date:	05/31/2013	(1111485)	CN600125686	
	Self Report?	YES		Classification:	Moderate
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)			
	Description:	Failure to meet the limit for one or more permit parameter			

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

Published Compliance History Report for CN600125686, RN100219229, Rating Year 2012 which includes Compliance History (CH) components from August 15, 2008, through August 15, 2013.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
FRITO-LAY, INC.
RN100219229

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

**AGREED ORDER
DOCKET NO. 2013-1539-IWD-E**

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Frito-Lay, Inc. ("Respondent") under the authority of TEX. WATER CODE chs. 5, 7, and 26 and TEXAS HEALTH & SAFETY CODE § ch.361. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that they have certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a snack food production facility with an associated wastewater treatment facility located on the north side of State Highway 36 and

approximately three miles west of the intersection of State Highway 36 and United States Alternate Highway 90 near Rosenberg, Fort Bend County, Texas (the "Facility").

2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. During a record review conducted on July 25, 2013, TCEQ staff documented that the Respondent did not comply with permitted effluent limits, as shown in the table below:

OUTFALL 002

	BOD ₅ Daily Average Conc.	BOD ₅ Daily Max. Conc.	<i>E. coli</i> Daily Average Conc.	<i>E. coli</i> Daily Max. Conc.	TSS Daily Average Conc.	TSS Daily Max. Conc.
Month/Year	20.54 mg/L	45 mg/L	126 CFU/100 ml	394 CFU/100 ml	20.54 mg/L	45 mg/L
July 2012	c	c	1100	1100	c	c
March 2013	43.6	62	c	c	34	52
April 2013	32.8	64	13000	13000	26.9	c

OUTFALL 003

	BOD ₅ Daily Max. Loading
Month/Year	941 lbs/day
January 2013	1,059

m/L = milligrams per liter
 TSS = total suspended solids
E. coli = *Escherichia coli*
 Max. = maximum

BOD₅=biochemical oxygen demand, 5-day
 CFU= colony forming units per 100 milliliters
 c=compliant ml=milliliters
 Conc.=concentration lbs/day=pounds per day

4. During a record review conducted on July 25, 2013, TCEQ staff documented that the Respondent did not pay the Non-Hazardous Waste Generation fees for fiscal year 2013, TCEQ Financial Administration Account No. 0301394N.
5. The Respondent received notice of the violations on August 5, 2013.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to comply with permitted effluent limits, as documented during a record review conducted on July 25, 2013, in violation of Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0002443000, Effluent Limitations and Monitoring Requirements No. 1, Outfall Nos. 002 and 003, 30 TEX. ADMIN. CODE § 305.125(1) and TEX. WATER CODE § 26.121(a).
3. As evidenced by Findings of Fact No. 4, the Respondent failed to pay Non-Hazardous Waste Generation fees, in violation of TEX. HEALTH & SAFETY CODE § 361.134(c).
4. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
5. An administrative penalty in the amount of Sixteen Thousand Seven Hundred Seventy-Five Dollars (\$16,775) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid the Sixteen Thousand Seven Hundred Seventy-Five Dollars (\$16,775) administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Sixteen Thousand Seven Hundred Seventy-Five Dollars (\$16,775) as set forth in Section II, Paragraph 5 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are

not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Frito-Lay, Inc., Docket No. 2013-1539-IWD-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall undertake the following technical requirements:
 - a. Within 15 days after the effective date of this Agreed Order, pay outstanding fees, including any associated penalties and interest for Financial Administration Account No. 0301394N;
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.a. as described in Ordering Provision No. 2.d. below;
 - c. Within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TCEQ Permit No. WQ0002443000, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.
 - d. The certifications required by Ordering Provision Nos. 2.b. and 2.c shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087

Austin, Texas 78711-3087

with a copy to:

Water Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

9. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Pam Moran
For the Executive Director

6/4/14
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Frito-Lay, Inc. I am authorized to agree to the attached Agreed Order on behalf of Frito-Lay, Inc., and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Frito-Lay, Inc. waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Michael Matthews
Signature

11/22/13
Date

Michael Matthews
Name (Printed or typed)
Authorized Representative of
Frito-Lay, Inc.

VP manufacturing Excellence
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section III, Paragraph 1 of this Agreed Order.