

## **STATEMENT OF BASIS**

**BIRDS EYE FOODS  
3303 SOUTH 35<sup>TH</sup> STREET  
TACOMA, WA 98409**

**PERMIT NO. WA0037419**

The purpose of this statement of basis is to explain the need to modify the discharge permit and provides the basis for changes.

### **I. GENERAL INFORMATION**

<u>Permittee:</u>	Birds Eye Foods 3303 South 35th Street Tacoma, WA 98409
<u>Facility:</u>	Birds Eye Foods 3303 South 35th Street Tacoma, WA 98409
<u>Discharge Location:</u>	Latitude: 47° 13' 42" N Longitude: 122° 28' 43" W

### **II. PERMIT APPEAL BACKGROUND**

1. On September 10, 2009, Ecology issued NPDES Permit (No. WA0037419) to Birds Eye Foods. The Permit authorized wastewater discharges for Birds Eye Foods' facility in Tacoma, Washington.
2. On, or about October 8, 2009, Birds Eye Foods appealed the Permit to the Pollution Control Hearings Board (PCHB) regarding permit requirements to monitor flow on a continuous basis using a flow meter. Birds Eye Foods' relief sought was to revert the flow monitoring requirements to those contained in the previously issued NPDES Permit. Previously, flow was to be monitored "quarterly" and by "grab" (which was meant one reported value was required).
3. Ecology and Birds Eye Foods have agreed to resolve the appeal of the Permit through a settlement agreement submitted to the PCHB on November 6, 2009. On November 12, 2009 the PCHB dismissed the case.

### **III. SETTLEMENT AGREEMENT TERMS**

1. In accordance with the Settlement Agreement, the Permit will be modified as follows: The monitoring schedule in Special Condition S2.A states that the Minimum Sampling Frequency for Flow is "continuous" and that the Sample Type is "metered." This schedule shall be modified to state that the Minimum Sampling Frequency for Flow is "quarterly" and the sample type is "estimated."
2. The parties jointly acknowledge that Ecology has agreed to the permit modification in Paragraph B(1) based on Birds Eye Foods' commitment to explore construction of a cooling water recycling system that would result in zero discharge to the City of Tacoma's storm sewers which drain to the Thea Foss Waterway via the "Twin 96ers." If Birds Eye Foods concludes, prior to expiration of the permit, that it does intend to

construct the zero discharge cooling water system, then Birds Eye Foods agrees to immediately inform Ecology of its decision.

3. If the condition described in Paragraph B(2) occurs, then Ecology, at its sole discretion, may modify Condition S2.A to require that Minimum Sampling Frequency for Flow is “continuous” and that the Sample Type is “metered.” Birds Eye Foods agrees to install an effluent flow meter to their cannery retort system in accordance with a schedule approved by Ecology. The approved compliance schedule for the flow meter will be included in the permit modification. Birds Eye Foods agrees not to appeal this permit modification.
4. This Agreement does not impact Ecology’s authority to modify other permit terms in accordance with federal and state requirements nor does it impact Birds Eye Foods’ right to appeal permit modifications other than the modification described in paragraph B(3).

This statement of basis will serve as an amendment to the fact sheet.

## APPENDIX A – RESPONSE TO COMMENTS

Comments were received on December 3, 2009, from Shayne Cothorn of Department of Natural Resources.

### Comment 1

1. A finding should be made in all documents related to this site that Thea Foss is an operable unit of the Commencement Bay NS/TF CERCLA Site and that contaminants from discharge may contribute to recontamination in the area. This contribution may lead to Birds Eye Foods being listed as a PRP for Thea Foss Unit of this CERCLA site.

### Ecology Response 1

1. Comment noted.

Comments received on December 29, 2009, from Leslie Ann Rose of Citizens for a Healthy Bay (excerpts of letter requiring responses)

### Comment 2

2. CHB is not confident that Birds Eye Foods will meet the requirements of the revised draft permit as during the history of its previous permit. Birds Eye Foods did not remain in compliance based on Discharge Monitoring Reports (DMRs) submitted to Ecology as well as findings during inspections conducted by Ecology. Additionally Birds Eye Foods failed to properly monitor copper as required in the permit. For this reason, CHB urges that the Dept. of Ecology strictly enforce the requirements of the revised draft permit and impose fines and/or more stringent monitoring requirements should Birds Eye Foods not comply with the requirements of the revised permit

### Ecology Response 2

2. It is Ecology's intent to enforce the requirements of all permits Ecology issues and provide enforcement, as appropriate.

### Comment 3

3. ...The City of Tacoma adopted a proactive storm water source control program and is making every effort to reduce or eliminate sources of contamination to storm water discharged to the Foss Waterway. Inherent in the City's efforts is the expectation that NPDES permits issued by the Dept. of Ecology will support these efforts by strictly limiting discharge of contaminated process water into the City's stormdrain system and, in cases of permit non-compliance, swiftly enforcing permit requirements.

### Ecology Response 3

3. Ecology shares the goal of preventing recontamination of the Thea Foss Waterway and works closely with the City of Tacoma to this end. In the case of Birds Eye Foods, Ecology is working towards addressing potential copper issues. This is considered a proactive approach since the Thea Foss has not been categorized as impaired for copper and there is without a doubt an inherent amount of dilution in the system. However, the amount of dilution is unquantifiable at this time without further study.