



# California Regional Water Quality Control Board

## Central Valley Region

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### PROSECUTION TEAM OF REGIONAL WATER BOARD REACHES NEW TENTATIVE SETTLEMENT WITH HILMAR CHEESE

**RANCHO CORDOVA**—The Prosecution Team of the Central Valley Regional Water Board has reached a revised tentative settlement agreement with Hilmar. If approved by the board members, and any challenges are resolved in favor of the settlement, the \$3 million agreement would resolve a long series of alleged violations at the Hilmar facility and would constitute the largest payment resulting from a Regional Water Board enforcement action ever. The tentative agreement, if finally approved, will allow the Regional Water Board to avoid substantial time and expense in proposed enforcement and litigation with Hilmar and will allow the board to allocate more of its limited enforcement resources throughout the region.

The revised tentative settlement agreement would consist of a \$2 million payment to State, with \$1.85 million to be used for cleanup and abatement purposes and \$150,000 to reimburse the Attorney General's Office, and a \$1 million supplemental environmental project (SEP) study of wastes and associated environmental impacts of food processing in the Central Valley. According to the prosecution team, the new tentative settlement represents a significant improvement over an earlier tentative settlement.

The release of the revised tentative settlement terms (to be posted today on the board's web site at <http://www.waterboards.ca.gov/centralvalley/> and in hard copy at the board's offices) is only one step towards the resolution of this case. Because the board's staff must provide both prosecution and adjudicatory personnel, the two functions are legally required to be kept separate in this case. Therefore today's tentative agreement represents only the prosecution team's evaluation that the terms are a fair and reasonable way to resolve issues related to discharges from the facilities of Hilmar Cheese Co., Inc. and Hilmar Whey Protein, Inc. (Hilmar). The adjudicatory staff and the board members are seeing the terms for the first time today. The board's final decision can only be made by board members. Attorneys for both sides hope to present the revised tentative settlement at the board's March 16-17 meeting.

The board members directed the two sides' lawyers to reopen negotiations after a first settlement agreement was considered in November 2005. There are both similarities and differences between the earlier draft and the current one. Prosecution team members believe the new tentative settlement addresses many of the concerns expressed last year.

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According to Ken Landau, head of the Regional Board's Prosecution Team, "The renegotiated settlement agreement is significantly stronger and more enforceable than the initial agreement. Hilmar Cheese is now clearly prohibited from expanding the processing plant during the term of the settlement agreement. Hilmar Cheese is now required to submit an updated permit application this year, rather than at some indefinite time years from now. Modifications to the supplemental environmental project assure that the people of the state will obtain a meaningful evaluation of salt issues in the food processing industry for the one million dollars to be spent by Hilmar Cheese on the studies."

The revised tentative settlement agreement would make clear that the board's release is limited to its right to seek civil liability against Hilmar only for certain violations related to its existing waste treatment and disposal performance levels and that, among other things, the board retains the right to use all of its regulatory enforcement tools to require Hilmar to clean up any discharges that have caused or cause pollution or nuisance. The Prosecution team recognizes that Hilmar needs additional time to finalize its long-term waste treatment and disposal proposals. The Prosecution team believes that the revised tentative settlement agreement appropriately resolves Hilmar's ongoing alleged violations while maintaining a reasonably expeditious deadline for Hilmar to submit its revised permit application.

The revised tentative agreement would significantly shorten the interim period in which Hilmar can continue to discharge at its current rate and levels by requiring that Hilmar submit a new report of waste discharge not later than October 2006. It would require that Hilmar, like all other dischargers, comply with new Waste Discharge Requirements unless it can obtain a stay from the State Water Board through ordinary processes available to all dischargers.

The revised tentative settlement agreement also makes clear that maintaining the status quo of the existing discharge situation through interim operating limits in no way prejudgets how Hilmar will be regulated through Waste Discharge Requirements in the future.

The revised tentative agreement would also make significant improvements to the supplemental environmental project (SEP) previously proposed. (A regional board may allow a discharger to satisfy some portion of a fine by completing a SEP that will "enhance the beneficial uses of the waters of the State, provide a benefit to the public at large, and . . . [is] not otherwise required of the discharger," according to the State Water Board's Water Quality Enforcement Policy, pp. 42-43).

The revised SEP study would place much greater emphasis on environmental and water quality aspects of the study to address the board's concerns that the earlier SEP proposal was too economically motivated. It also envisions a role for accommodating input from both stakeholder and peer review panels. (The peer review process will be conducted in much the same way as those of scientific studies in academic journals.)

Interested parties and the public have an opportunity to express views on the draft settlement during a written public comment period and before the Central Valley Regional Water Board when it meets next month.

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