ORDER NO. PROPOSED

ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING
for
Kerry Inc
33063 Western Ave, Union City, CA 94587

ALLEGED VIOLATION AND NOTICES OF VIOLATION

Kerry Inc (Discharger) violated section XVI of the *General Permit for Storm Water Discharges Associated with Industrial Activities*, Order No. -DWQ, NPDES No. CAS000001 (Industrial Stormwater General Permit), by failing to submit an annual report for the 2017/2018 reporting year by July 15, 2018. As required by California Water Code (Water Code) section 13399.31, the San Francisco Bay Regional Water Quality Control Board (Water Board) issued notices of noncompliance to the Discharger on August 22, 2018, and October 1, 2018. By statute, the Discharger is now subject to a minimum penalty of $1,000 for failing to submit the annual report by the deadlines established in the notices of noncompliance.

ACCEPTANCE AND WAIVER

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Water Board, the Discharger hereby accepts the conditional offer to settle the alleged violation through payment of mandatory minimum penalties and waives its right to a hearing before the Water Board to dispute the alleged violation.

The Discharger agrees that the conditional offer (enclosed with this Acceptance and Waiver) shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Water Board to assert jurisdiction over the alleged violation. The Discharger agrees to pay the penalties authorized by Water Code section 13399.33, which shall be deemed payment in full of any civil liability pursuant to Water Code section 13399.31 that otherwise might be assessed for the violation described above. The Discharger understands that this Acceptance and Waiver waives its right to contest the alleged violation and the amount of civil liability for the violation.

The Discharger understands that this Acceptance and Waiver does not address or resolve liability for any violation not specifically identified herein. Upon execution by the Discharger, the Acceptance and Waiver shall be returned to the following:

San Francisco Bay Regional Water Board
Attention: Jerry Xu
1515 Clay Street, Suite 1400
Oakland, CA 94612
or
Jerry.Xu@waterboards.ca.gov

The Discharger understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii), require the Water Board to publish notice of, and provide at

least 30 days for, public comment on any proposed resolution of an enforcement action. Accordingly, this Acceptance and Waiver, prior to execution by the Executive Officer of the Water Board, will be published for public comment as required by law.

If no comments are received within the notice period that cause the Executive Officer to reject the settlement, the Executive Officer may execute the Acceptance and Waiver. Water Board resolution of this violation will preclude State Water Resources Control Board action for the same violations.

The Discharger understands that, if significant comments are received in opposition to the conditional offer, the offer may be withdrawn. In that circumstance, the Discharger will be advised of the withdrawal and an administrative civil liability complaint may be issued and the matter may be set for a hearing before the Water Board or State Water Resources Control Board. For such a liability hearing, the Discharger understands that this Acceptance and Waiver will be treated as if it were a settlement communication and will not be used as evidence in that hearing.

The Discharger understands that funds collected for violations pursuant to Water Code section 13399.31 shall be deposited in the Waste Discharge Permit Fund. The discharger has the option to contribute half of the funds to a supplemental environmental project instead by checking (placing a "✓" or "×" into) the box below. Selecting this option does not change the total amount the Discharger must pay.

☑ The Discharger agrees to pay half the penalty ($500) to a supplemental environmental project.

Payment Option
Contribute to a Supplemental Environmental Project

By checking the box above, **$500** of the $1,000 penalty will go to a supplemental environmental project for the San Francisco Estuary Institute to fund Regional Monitoring Program studies within the San Francisco Bay estuary; the remaining **$500** will go to the State Waste Discharge Permit Fund.

By not checking the box above, the entire **$1,000** penalty will go to the State Waste Discharge Permit Fund.

If the Discharger directs funds to the supplemental environmental project, the Water Board will consider the Discharger to have fulfilled its obligation for the supplemental environmental project when the San Francisco Estuary Institute receives the funds.

The Discharger understands that once the Executive Officer of the Water Board executes the Acceptance and Waiver, payment no later than 30 days after the date of the Executive Officer's signature is a condition of this Acceptance and Waiver. If the Discharger does not select the supplemental environmental project option above, the Discharger shall pay the total assessed civil liability in full to the Waste Discharge Permit Fund. If the Discharger selects the supplemental environmental project option, the Discharger shall pay the portion not paid toward the supplemental environmental project to the Waste Discharge Permit Fund and pay the balance to

the San Francisco Estuary Institute for the Regional Monitoring Program. The Water Board will send invoices for all payments.

Please do not send a check for payment with this Acceptance and Waiver. After posting for public comment for 30 days, if the Executive Officer finds this Acceptance and Waiver acceptable, the Executive Officer will counter-sign the Acceptance and Waiver and send an invoice to the Discharger for payment within 30 days.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Discharger in the making and giving of this Acceptance and Waiver.

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Kerry Inc

By: Luis Dominguez
Printed or typed name

HSE Manager
Title

Signature

03/20/2019
Date

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IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13399.31

By: _____
Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region

_____
Date