March 8, 2019
WDID: 2 01I026620 (JHX)

Kerry Inc
Attention: Muni Murti
33063 Western Ave
Union City, CA 94587

Subject: Conditional Offer to Settle Reporting Violation of Industrial Stormwater General Permit

Facility: Kerry Inc located at 33063 Western Ave, Union City, CA 94587

To Industrial Stormwater Discharger:

This is a conditional offer to settle an alleged reporting violation for a mandatory minimum penalty of $1,000. The Industrial Stormwater General Permit[1] requires an annual report to be submitted by July 15th following each reporting year. We did not receive an annual report for the 2017/2018 reporting year by July 15, 2018. We sent two notices of noncompliance and did not receive the report by the deadlines in those notices. The California Water Code now requires the Water Board to impose a mandatory penalty. The Water Board is extending this offer to settle for the minimum penalty required by statute. To avoid further enforcement, sign and submit the "Acceptance of Conditional Resolution and Waiver of Right to Hearing" included below by April 6, 2019, and agree to pay the mandatory minimum penalty of $1,000.

Acceptance of this conditional offer will settle the alleged reporting violation for the minimum penalty required by statute. By settling, there will be no additional costs to you, including costs we could recover by bringing this matter to a hearing before the Water Board. In addition, we will not pursue discretionary enforcement to seek a higher penalty of up to $10,000 per day of violation under Water Code section 13385. The remainder of this conditional offer letter further explains the alleged violation, statutory liability, and how to respond (i.e., accept the offer, contest the alleged violation, or reject the offer).

This conditional offer does not address any violation not specifically identified above.

ALLEGED VIOLATION AND NOTICES OF NONCOMPLIANCE

Kerry Inc (Discharger) violated section XVI of the Industrial Stormwater General Permit by failing to submit an annual report for the 2017/2018 reporting year by July 15, 2018. The Water

[1] General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ, National Pollutant Discharge Elimination System (NPDES) No. CAS000001

Board sent notices of noncompliance as required by Water Code section 13399.31 on August 22, 2018, and October 1, 2018. The Discharger failed to submit the annual report by the deadlines in those notices of noncompliance.

STATUTORY LIABILITY

Water Code sections 13399.31 and 13399.33 require the Water Board to impose an administrative civil liability (a fine) in an amount not less than $1,000 when a facility fails to submit an annual report after receiving two notifications. Water Code section 13399.31(b) requires the Water Board to notify the Discharger of its noncompliance first. If a response is not received within 30 days, Water Code section 13399.31(c) requires the Water Board to send a second notice of noncompliance before assessing a penalty. If the Discharger fails to certify and submit an annual report via the State Board's Stormwater Multiple Application and Report Tracking System (SMARTS) within 60 days from the date of the first notice of noncompliance, Water Code section 13399.31(d) requires the Water Board to impose a $1,000 penalty as described in Water Code section 13399.33(c) and recover the costs the Water Board incurred to enforce the permit. Through settlement of this violation as discussed below, no additional costs will be assessed.

If the violation is not settled as discussed below, we may pursue discretionary penalties under Water Code sections 13385(a)(2) and 13385(c)(1), where administrative civil liabilities may be as high as $10,000 for each day in which the violation occurs, beginning from the date the violation first occurred. Alternatively, we may refer the matter to the Office of the Attorney General for prosecution and seek up to $25,000 per violation per day pursuant to Water Code section 13385(b)(1).

CONDITIONAL OFFER TO SETTLE

As explained below, the Discharger has three options for responding to this conditional offer. The Discharger can avoid a hearing before the Water Board and the possibility of discretionary penalties by accepting this conditional offer and paying $1,000 as explained under Choice A. More details about the terms of this option are included in the enclosed "Acceptance of Conditional Resolution and Waiver of Right to Hearing" (Acceptance and Waiver).

- **Choice A – Accept the Offer**

  If the Discharger accepts this conditional offer, then complete and return the Acceptance and Waiver (enclosed) on or before April 6, 2019, 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

  When we receive the signed Acceptance and Waiver, this offer will become a proposed settlement and part of publicly available Water Board files. We will post the Acceptance and Waiver publicly for 30 days for comments. Based on the content of any comments received, the Executive Officer will decide whether to accept this proposed settlement. If acceptable,

the Executive Officer will sign the Acceptance and Waiver and an invoice will be sent to the Discharger for payment within 30 days. This process is discussed further below under "Conditions for Water Board Acceptance of Resolution."

- **Choice B – Contest the Alleged Violation**

  If the Discharger wishes to contest the alleged violation, we must receive the challenge by April 6, 2019. To contest, please identify in writing, and send to the address above, the basis for the challenge (factual error, affirmative defense, etc.). We will evaluate the contested violation and take one of two actions:

  1) Determine that the alleged violation is not supported, take no further action against the Discharger for the alleged violation, and notify the Discharger of that determination; or
  2) Determine that the alleged violation has merit and notify the Discharger of that determination. The Discharger will then have 15 days from the date of the determination to accept the conditional offer. If the Discharger chooses not to accept, or does not reply to the determination, the Discharger should expect an enforcement investigation and further action as described under Choice C.

- **Choice C – Reject the Offer**

  If the Discharger chooses to reject this conditional offer or does not complete and return the Acceptance and Waiver by the deadline, we will pursue additional enforcement including discretionary enforcement, and the Discharger will receive notice of that action. In pursuing additional enforcement, we will conduct a more thorough investigation and potentially use information from the investigation to address additional violations. We will also seek to recover staff costs associated with the issuance of an Administrative Civil Liability Complaint. Therefore, penalties may be significantly greater than the mandatory minimum liability set forth in this conditional offer.

CONDITIONS FOR WATER BOARD ACCEPTANCE OF RESOLUTION

Federal regulations require the Water Board to publish and allow the public at least 30 days to comment on any settlement of an enforcement action addressing a violation (40 C.F.R. § 123.27(d)(2)(iii)). Upon receipt of the Discharger's Acceptance and Waiver, we will publish a notice of the proposed settlement of the violation.

If we receive no comments within the 30-day period and there are no new material facts available, we will ask the Executive Officer to execute the Acceptance and Waiver as a stipulated order assessing the uncontested penalty amount pursuant to Water Code section 13399.33.

If significant comments are received in opposition to the proposed settlement, this offer may be withdrawn. In that case, we will also treat as withdrawn the Acceptance and Waiver, and address the alleged violation in a formal liability assessment proceeding. At the liability assessment hearing, the Discharger will be free to make arguments as to the alleged violation. Acceptance of this conditional offer will not in any way be binding or used as evidence against the Discharger. The Discharger will be provided with further information on the liability assessment proceeding under such circumstances.

If the Executive Officer executes the Acceptance and Waiver, payment shall be due to the Waste Discharge Permit Fund within 30 calendar days in accordance with Water Code sections 13399.37(a) and 13399.33. Failure to pay in full by the required deadline may subject the Discharger to further liability.

OPPORTUNITY FOR SUPPLEMENTAL ENVIRONMENTAL PROJECT

In lieu of paying the entire settlement amount to the Waste Discharge Permit Fund, the Discharger may elect to apply 50 percent of the penalty to fund a supplemental environmental project.[2] This option is discussed in the enclosed Acceptance and Waiver.

There is currently only one option for funding a supplemental environmental project: a fund to supplement the Regional Monitoring Program.[3] The Regional Monitoring Program collects data and communicates information about water quality in the San Francisco Estuary in support of management decisions to restore and protect the region's waters. Regional Monitoring Program funds are managed and administered by the non-profit San Francisco Estuary Institute. More information about the Regional Monitoring Program is available at http://www.sfei.org/rmp. The funding would supplement water quality studies that would not otherwise be conducted through the Regional Monitoring Program's annually approved cost allocations. No funds would go to the Water Board.

WATER BOARD CONTACT

If you want to discuss or have questions regarding this matter, please contact Jerry Xu at (510) 622-2469 or Jerry.Xu@waterboards.ca.gov.

Sincerely,

Thomas Mumley
Assistant Executive Officer

Enclosures: (1) Acceptance and Waiver
(2) Notices of Noncompliance

[2] Pursuant to the Policy on Supplemental Environmental Projects (2017) (https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/seps/20180503_sep_policy_amd.pdf), up to 50 percent of the penalty may be applied to a supplemental environmental project.

[3] See State Water Board Resolution No. 2017-0074 (https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/rs2017_0074.pdf).