



San Francisco Bay Regional Water Quality Control Board

December 20, 2019
WDID: 2 49I028404 (JHX)

Spring Hill Jersey Cheese, Inc.
Attention: Larry Peter
621 Western Ave
Petaluma, Ca 94952

Subject: Conditional Offer to Settle the Unauthorized Discharge from an Industrial Facility without a Stormwater Permit, Spring Hill Jersey Cheese, Inc., Sonoma County.

To Mr. Peter:

This is a conditional offer to settle an alleged lack of coverage violation for a mandatory minimum penalty of \$5,000 and staff cost of \$1,200 for a total of \$6,200. The Industrial Stormwater General Permit (Permit)¹ requires facilities with industrial stormwater discharges to obtain Permit coverage. Spring Hill Jersey Cheese, Inc. (Discharger) failed to obtain Permit coverage for the Petaluma Creamery at 621 Western Avenue, Petaluma, for all of 2018. We sent two notices of noncompliance, and the Discharger failed to obtain Permit coverage or did not otherwise demonstrate that the Permit does not apply by the deadlines in those notices. The California Water Code now requires the Regional Water Quality Control Board (Water Board) to impose a mandatory penalty. The Water Board is extending this offer to settle for the minimum penalty and staff costs, as required by statute. To avoid further enforcement, sign and submit the "Acceptance of Conditional Resolution and Waiver of Right to Hearing" included below by January 21, 2020, and agree to pay the penalty of \$6,200.

Acceptance of this conditional offer will settle the alleged reporting violation for the minimum penalty and staff costs 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 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.

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

ALLEGED VIOLATION AND NOTICES OF NONCOMPLIANCE

The Discharger violated section II of the Industrial Stormwater General Permit by failing to submit the required notice of intent to obtain Permit coverage for all of 2018. The Water Board sent notices of noncompliance as required by Water Code section 13399.30 on September 13, 2018, and December 19, 2018. The Discharger failed to obtain Permit coverage by the deadlines in those notices of noncompliance. The Discharger submitted the required notice of intent to obtain Permit coverage on October 25, 2019.

STATUTORY LIABILITY

Water Code sections 13399.30 and 13399.33 require the Water Board to impose an administrative civil liability (a fine) in an amount not less than \$5,000 per year of noncompliance or fraction thereof when a facility fails to submit the required notice of intent to obtain coverage after receiving two notifications. Water Code section 13399.30(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 13399.30(c) requires the Water Board to send a second notice of noncompliance before assessing a penalty. If the Discharger fails to submit the required notice of intent to obtain coverage 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 13399.30(c)(2) requires the Water Board to impose a \$5,000 penalty per year of noncompliance or fraction thereof as described in Water Code section 13399.33(a). Water Code section 13399.33(d) requires the Water Board to also recover the costs it 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 \$6,200 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 it shall complete and return the Acceptance and Waiver attachment (see below) on or before January 21, 2020, 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 for 30 days for public comment. Based on any comments received, the Water Board’s 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, the Discharger must deliver the challenge to us by January 21, 2020. The Discharger must identify in writing the basis for the challenge (factual error, affirmative defense, etc.) and send it to the address above. 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 this conditional offer. If the Discharger chooses not to accept this offer or does not reply to the determination, the Discharger should expect 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 may conduct a more thorough investigation and potentially use information from that investigation to address additional violations. We will also seek to recover staff costs associated with the issuance of an Administrative Civil Liability Complaint. Therefore, the 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 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 San Francisco Bay Regional Monitoring Program.³ The San Francisco Bay 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. San Francisco Bay Regional Monitoring Program funds are managed and administered by the non-profit San Francisco Estuary Institute. More information about the San Francisco Bay 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 San Francisco Bay Regional Monitoring Program's annually approved cost allocations. No funds would go to the Water Board.

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).

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,

A handwritten signature in black ink, appearing to read 'T. Mumley', with a long horizontal flourish extending to the right.

Thomas Mumley
Assistant Executive Officer

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

ORDER NO.

**ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING**

for

Spring Hill Jersey Cheese, Inc.

Petaluma Creamery

621 Western Ave, Petaluma, CA 94952

ALLEGED VIOLATION AND NOTICES OF VIOLATION

Spring Hill Jersey Cheese, Inc. (Discharger) violated section II of the *General Permit for Storm Water Discharges Associated with Industrial Activities*, Order No. 2014-0057-DWQ, NPDES No. CAS000001 (Industrial Stormwater General Permit), by failing to submit the required notice of intent to obtain Permit coverage for all of 2018. As required by California Water Code section 13399.30, the San Francisco Bay Regional Water Quality Control Board (Water Board) issued notices of noncompliance to the Discharger on September 13, 2018, and December 19, 2018.

The Discharger submitted the required notice of intent on October 25, 2019. By statute, the Discharger is now subject to a minimum penalty of \$5,000 plus staff costs of \$1,200 for failing to submit the required notice of intent to obtain Permit coverage 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 plus staff costs 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 13399.30 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, the Discharger shall return the Acceptance and Waiver 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 Water Board's Executive Officer, 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 13399.30 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 to a supplemental environmental project.

<p style="text-align: center;">Payment Option Contribute to a Supplemental Environmental Project</p> <p>By checking the box above, \$3,100 of the \$6,200 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 \$3,100 will go to the State Waste Discharge Permit Fund.</p> <p>By not checking the box above, the entire \$6,200 penalty will go to the State Waste Discharge Permit Fund.</p>

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 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 San Francisco Bay Regional Monitoring Program.

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 an invoice will be sent 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.

By: _____
Printed or typed name Title

Signature Date

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13399.30

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

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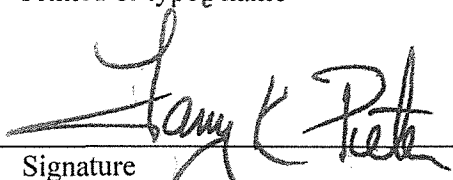
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I hereby affirm that I am duly authorized to act on behalf of and to bind the Discharger in the making and giving of this Acceptance and Waiver.

By: LARRY K Peter
Printed or typed name

Owner
Title


Signature

1/21/20
Date

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13399.30

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

Date