State of California
California Regional Water Quality Control Board
San Francisco Bay Region

IN THE MATTER OF:

Stay Cal HMB, LLC 2110 South El Camino Real San Mateo, California 94403	))))))))))	Complaint No. R2-2020-1004 for Mandatory Minimum Penalty

The Assistant Executive Officer of the San Francisco Bay Regional Water Board (Regional Water Board) hereby gives notice that:

1. Stay Cal HMB, LLC (Stay Cal) violated provisions of law for which the Regional Water Board must impose liability under section 13399.33 of the California Water Code (Water Code).

2. Unless waived, a hearing concerning complaint No. R2-2020-1004 (Complaint) will be held before the Regional Water Board at its regular meeting on April 8, 2020, at the First Floor Auditorium, Elihu M. Harris Building, 1515 Clay Street, Oakland, California. Stay Cal will have an opportunity to appear and be heard and to contest the allegations in this Complaint and imposition of a monetary penalty by the Regional Water Board. An agenda for the meeting will be provided to Stay Cal not less than 10 days before the hearing date. A meeting agenda will also be available at http://www.waterboards.ca.gov/sanfranciscobay/board_info/agendas/. Stay Cal must submit all comments and written evidence concerning this Complaint to the Regional Water Board not later than 5 p.m. on March 9, 2020, so that such comments may be considered. Any written evidence submitted to the Regional Water Board after this date and time will not be accepted or responded to in writing.

3. Stay Cal can waive its right to a hearing to contest the allegations contained in this Complaint by signing and submitting the enclosed Waiver Form (Attachment A) and paying the liability in full or taking other actions described in the form. If this matter proceeds to a hearing, the Assistant Executive Officer of the Regional Water Board reserves the right to seek an increase in the penalty amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing. The enforcement costs may be recovered pursuant to Water Code section 13399.33, subdivision (d).

4. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed mandatory minimum penalties and assessment of costs pursuant to Water Code section 13399.33, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

FACTUAL BASIS

5. Stay Cal owns the property at 1410 Cabrillo Highway South, Half Moon Bay, California 94019 (Site) where Cameron's Best Western Inn Half Moon Bay is located.

6. Stay Cal filed for coverage under the State's General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ as amended by Order No. 2010-0014 and Order No. 2012-0006, NPDES No. CAS000002 (Permit), by submitting a Notice of Intent for permit coverage on December 21, 2015. The Site is registered as having Permit coverage in the Stormwater Multiple Application and Report Tracking System (SMARTS) database under the following waste discharger identification number: WDID No. 2 41C374988.

7. Section XVI.A of the Permit requires submission of an annual report of stormwater discharges (Annual Report) by September 1 each year to SMARTS. Stay Cal did not submit the Annual Report for the 2017-2018 reporting year by the September 1, 2018, deadline.

8. On October 31, 2018, Regional Water Board staff issued a notice of non-compliance (Attachment B) informing Stay Cal that the Regional Water Board had not received the 2017-2018 Annual Report by the required date and directed Stay Cal to submit it by November 30, 2018, to avoid a penalty. A signed certified mail receipt establishes that Stay Cal received the notice of non-compliance. Regional Water Board staff received no response to the October 31, 2018, notice by February 13, 2019.

9. On February 13, 2019, Regional Water Board staff issued a second notice of non-compliance (Attachment B) informing Stay Cal that the Regional Water Board had not received the 2017-2018 Annual Report and instructing Stay Cal to submit it by March 13, 2019, to avoid a penalty. A signed certified mail receipt establishes that Stay Cal received the notice of non-compliance.

10. On February 28, 2019, Regional Water Board staff contacted Mr. Hiten Suraj, Stay Cal's contact person listed on SMARTS, reminding him to submit the 2017-2018 Annual Report by March 13, 2019. Staff noted that failure to submit the Annual Report would trigger another mandatory minimum penalty of $1,000. (Stay Cal failed to submit an Annual Report for the prior reporting year [2016-2017] and agreed to settle the violation for the $1,000 mandatory minimum penalty.) By March 13, 2019, Stay Cal had not submitted the 2017-2018 Annual Report.

11. On May 6, 2019, Regional Water Board staff again contacted Mr. Suraj about the missing 2017-2018 Annual Report and the notices sent to him about the $1,000 mandatory minimum penalty. Mr. Suraj uploaded the 2017-2018 Annual Report to SMARTS on

May 7, 2019, significantly after the deadlines established in the Permit and the notices of non-compliance. Mr. Suraj informed staff on May 9, 2019, that the Annual Report had been uploaded to SMARTS.

12. On July 24, 2019, the Assistant Executive Officer of the Regional Water Board sent Stay Cal an offer to settle the violation for the $1,000 mandatory minimum penalty (Attachment C). Stay Cal had the opportunity to accept the offer, contest the alleged violation, or reject the offer by August 23, 2019.

13. Throughout August and September of 2019, Regional Water Board staff exchanged communications with Mr. Suraj to remind him of the July 24, 2019, settlement offer and to try to resolve the late reporting violation, as discussed in emails from Mr. Suraj dated August 23 and September 26, 2019, and emails staff sent on September 18 and 26, 2019.

14. During October 2019, Mr. Suraj ceased communicating with Regional Water Board staff despite multiple attempts by staff to reach him, including an email sent on October 9, 2019, informing Mr. Suraj that failure to respond by October 11, 2019, may result in issuance of a formal complaint to impose a monetary penalty.

15. This complaint seeks fair and consistent enforcement of the Permit's Annual Report requirement. Of approximately 190 dischargers that did not submit an Annual Reports by September 1, 2018, for the 2017-2018 reporting year, Stay Cal is the only remaining discharger that has not submitted the Annual Report in accordance with a notice of noncompliance or otherwise resolve the alleged violation through a challenge or agreement to settle for a mandatory minimum penalty of $1,000. This complaint seeks imposition of a mandatory minimum penalty that includes staff costs incurred for enforcement as specified in Water Code section 13399.33.

LEGAL AUTHORITY

16. The Stormwater Enforcement Act, Water Code section 13399.25 et seq., describes a notification and enforcement process for Annual Reports not submitted as required by the Permit:

    a. Water Code section 13399.31, subdivision (d), provides, "If a discharger to which a notice is sent pursuant to subdivision (c) fails to submit the annual report … to the regional board within 60 days from the date on which the notice is sent pursuant to subdivision (b), the regional board shall impose the penalties described in subdivision (c) of Water Code section 13399.33."

    b. Water Code section 13399.33, subdivision (c), requires the Regional Water Board to assess a mandatory minimum penalty of $1,000 for each violation when a discharger fails to submit an annual report in accordance with Water Code section 13399.31.

    c. Water Code section 13399.33, subdivision (d), requires the Regional Water Board to recover from the persons described in subdivision (c) the costs incurred by the Regional Water Board in regard to those persons.

17. While this Complaint only seeks the mandatory minimum penalty pursuant to Water Code section 13399.33, including staff costs, the maximum amount of administrative civil liability assessable pursuant to Water Code section 13385, subdivision (c), is $10,000 per day per violation.

18. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code Section 21000 et seq.) pursuant to Title 14, California Code of Regulations sections 15308 and 15321, subdivision (a), paragraph (2).

ALLEGED VIOLATION

19. Stay Cal HMB LLC failed to submit the 2017-2018 Annual Report by September 1, 2018, as the Permit requires and must be assessed a mandatory minimum liability pursuant to Water Code sections 13399.31 and 13399.33. In accordance with Water Code section 13399.31, subdivisions (b) and (c), Stay Cal was served with two notices of non-compliance, sent on October 31, 2018, and February 13, 2019. Stay Cal failed to submit the required Annual Report by the deadlines established in the notices of non-compliance. Therefore, Stay Cal failed to comply with the Permit and is subject to civil liability as described below.

PROPOSED LIABILITY

20. Pursuant to Water Code section 13399.33, subdivisions (c) and (d), the Regional Water Board shall administratively impose a penalty in an amount not less than $1,000 plus staff costs for the violation cited above.

21. Stay Cal violated the Permit for 248 days (from September 1, 2018, when the Annual Report was due, to May 7, 2019, when the Annual Report was uploaded to SMARTS). The maximum penalty the Regional Water Board could impose pursuant to Water Code section 13385, subdivision (c), is $2,480,000.

22. Water Code section 13399.33, subdivision (d), requires the recovery of costs incurred by the Regional Water Board for enforcement actions against dischargers who fail to submit the required annual report. Regional Water Board staff spent 38.5 hours on this enforcement action. The costs calculated for this staff time are based on 28.5 hours of line staff time at $118 per hour, 8 hours of senior supervisor time at $163 per hour, 1 hour of program chief time at $197 per hour, and 1 hour of the Assistant Executive Officer time at $260 per hour. The staff costs incurred are $5,100.

23. The total proposed liability is $6,100 ($1,000 penalty and $5,100 in staff costs).

HEARING WAIVER

Stay Cal may waive its right to a hearing and pay the proposed liability as discussed in the attached Waiver Form. To do so, Stay Cal's representative should sign the enclosed Waiver Form and return it, together with a check for **$6,100. The check should indicate "R2-2020-1004" and be made payable to "Waste Discharge Permit Fund."** The check should be sent to the following address:

State Water Resources Control Board
Division of Administrative Services
Accounting Branch
P.O. Box 1888
Sacramento, CA 95814

The Waiver Form and a copy of the check must be mailed to the Regional Water Board at the following address:

San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Attention: Cleet Carlton

If Stay Cal HMB, LLC waives its right to a hearing and pays the assessed amount, the Regional Water Board may not hold a hearing regarding this Complaint.

Thomas Mumley
Assistant Executive Officer

January 21, 2020
Date

Attachments: Attachment A - Waiver Form
Attachment B - Notices of Non-Compliance and Proof of Service
Attachment C - Conditional Offer to Settle and Proof of Service