

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

Administrative Civil Liability Complaint R1-2014-0054

In the Matter of

Spring Hill Jersey Cheese, Inc.
WDID No. 1B12013DSO

Sonoma County

This Complaint is issued to Spring Hill Jersey Cheese, Inc. (hereafter Discharger) pursuant to California Water Code (Water Code) section 13323. This Complaint is based on allegations that the Discharger violated provisions of the General Waste Discharge Requirements Order for Existing Cow Dairies in the North Coast Region, Order R1-2012-0002.

The Assistant Executive Officer of the Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) alleges, with respect to the Discharger's acts, or failure to act, the following:

1. Discharger owns and operates the Spring Hill Jersey Dairy (Dairy) located at 4235 Spring Hill Road Petaluma, Sonoma County.
2. Mr. Larry Peter is the principal of Spring Hill Jersey Cheese, Inc. and owns the real property located at 4235 Spring Hill Road, Petaluma, Sonoma County.
3. The Dairy is an organic milking operation that maintains approximately 280 milking and dry cows, 100 heifers, and 40 calves on 600 acres of pasture. Dairy facilities consist of small buildings, milk barn, pit, two ponds (North and South), calf hutches, pastures, commodity, silage, and manure storage areas.
4. Dairy operations include the daily management associated with caring for, feeding and milking cows, as well as handling, storing, and disposing of wastes. Dairy wastes include process water, manure, and other organic materials. Other wastes handled separately include medicines, pesticides, chemicals for cleaning, and fertilizers.
5. The Dairy is located in the Bodega Hydrologic Unit, Estero de San Antonio Hydrologic Area. Stemple Creek and the Estero de San Antonio watershed are considered waters of the State and of the United States. The Regional Water Board and the U.S. Environmental Protection Agency (EPA) have listed these watersheds under Clean Water Act section 303, subdivision (d), as impaired for nutrients and sediment. A Stemple Creek tributary flows through the Dairy's northern pastures approximately 0.2 miles northwest of the Dairy's North Pond. Also, another tributary of Stemple Creek flows directly adjacent to the Dairy property.

6. On January 19, 2012, the North Coast Water Board adopted the General Waste Discharge Requirements Order for Existing Cow Dairies in the North Coast Region, Order R1-2012-0002 (hereafter General Order). A Monitoring and Reporting Program (hereinafter MRP) accompanies the General Order. The General Order is a set of general waste discharge requirements that apply to owners and operators of existing milk cow dairies. It became effective on January 19, 2012. The General Order and the MRP contain reporting requirements for dairies regulated by the General Order.
7. On February 14, 2012, the Superior Court of California, County of Sonoma, adopted a Final Judgment and Permanent Injunction Pursuant to Stipulation between Mr. Larry Peter and the Sonoma County District Attorney. The judgment ordered Mr. Larry Peter to enroll in the Regional Water Board's dairy waste program, and to comply with that program's requirements and with the directives of the Regional Water Board. The judgment also prohibited Mr. Larry Peter from unlawfully depositing into the waters of the state materials deleterious to fish, plant life, mammals, or bird life.
8. On March 27, 2012, Regional Water Board staff conducted a site assessment at the Dairy, which revealed that the Dairy did not have a Nutrient Management Plan (NMP). The General Order and MRP require that the Discharger prepare and implement a Waste Management Plan (WMP) for the production area and a NMP for land application by January 19, 2013, and that those plans be available to Regional Water Board staff at inspections or upon request.
9. On April 17, 2012, Regional Water Board staff received a Notice of Intent for coverage of the Dairy under the General Order. On May 7, 2012, Regional Water Board Staff sent the Discharger a letter notifying it of enrollment under the General Order.
10. In April, June, and September 2012, representatives of the California Dairy Quality Assurance Program conducted workshops educating local dairy operators about the new requirements of the Regional Water Board's Dairy Program including those requirements under the General Order. The Discharger's representative attended workshops that included discussions about the requirement for submittal of an Annual Report due on November 30, 2012.
11. On December 4, 2012, the Discharger informed the Regional Water Board via email that its 2012 Annual Report would be submitted soon, and that the Southern Sonoma Resource Conservation District had just completed the maps for the Dairy. To date, a complete 2012 Annual Report has not been submitted.
12. On March 8, 2013, the Regional Water Board issued a Notice of Violation (NOV) to the Discharger for failing to submit a 2012 Annual Report by November 30, 2012, as required by the General Order. In that NOV, Regional Water Board staff also alerted the Discharger that staff was planning a site inspection to ensure that the Dairy was

in compliance with the General Order, including the WMP and NMP implementation requirements.

13. On August 29, 2013, Regional Water Board staff met onsite with attorney Michael Brook and organic consultant Mark Chass, both representing the Dairy, to inspect the Dairy and to help the representatives fill out the 2012 Annual Report. At that inspection, Regional Water Board staff asked to see the NMP and WMP. Dairy representatives admitted to Regional Water Board staff that the WMP and NMP were not complete and that representatives were not able to furnish those plans upon request at that time. Regional Water Board staff reviewed and helped Dairy representatives to fill in the Annual Report form item by item. Dairy representatives did not, however, finalize or submit the 2012 Annual Report at that meeting.
14. In September 2013, the California Dairy Quality Assurance Program mailed a flyer to all cow dairy producers in the North Coast Region informing them of an upcoming workshop in Rohnert Park, CA, on October 10, 2013, to help them fill out their Regional Water Board permit Annual Reports as due to the Regional Water Board by November 30, 2013. On November 25, 2013, the Regional Water Board sent all cow dairies a general letter reminding them of the dairy program requirement to submit an Annual Report by November 30, 2013. To date, the Discharger has not submitted a complete 2013 Annual Report.
15. On March 5, 2014, the Assistant Executive Officer of the Regional Water Board, issued a letter to the Discharger requesting that it furnish a NMP and WMP pursuant to the General Order. April 5, 2014, was listed as the deadline for submitting those documents.
16. On March 25, 2014, the Assistant Executive Officer of the Regional Water Board issued Administrative Civil Liability Complaint (ACLC) R1-2014-0022 to Spring Hill Jersey Cheese, Inc. pursuant to California Water Code (Water Code) section 13323, which was based on allegations that the Discharger violated provisions of the General Order by failing to submit annual reports for 2012 and 2013.
17. On April 17, 2014, the Regional Water Board agreed to extend the submittal date for the NMP and WMP until May 14, 2014 per a phone call with Dairy attorney Michael Brook. That agreement was memorialized in a letter issued to Mr. Larry Peter on April 25, 2014.
18. On April 23, 2014, Spring Hill Jersey Cheese, Inc. emailed the Regional Water Board a signed form waiving its right to a hearing within 90 days for ACLC R1-2014-0022, and indicating that it intended to engage in settlement negotiations.
19. On May 14, 2014, Spring Hill Jersey Cheese, Inc. representatives submitted to the Regional Water Board a partially completed 2013 Annual Report, which noted the following incomplete items: (a) Groundwater sampling data was not available, as groundwater sampling had not been conducted; (b) Photographs of best

management practices such as cleaned manure ponds were missing from the Annual Report, and; (c) Surface water sampling results or receipts showing paid membership of group monitoring that would cover the time period for the Annual Reports were not attached.

20. On May 27, 2014, Larry Peter and Michael Brook met with Regional Water Board staff to discuss a possible settlement of ACLC R1-2014-0022 and the Dairy's continuing responsibilities under the General Order. At that time, the total violations alleged against the Dairy included: (a) A violation for failing to submit the Dairy's 2012 Annual Report; (b) A second violation for failing to submit the Dairy's 2013 Annual Report, and; (c) A third violation for failing to submit the Dairy's Nutrient Management Plan (NMP) and Waste Management Plan (WMP) by the agreed-upon May 14, 2014, deadline.

STATEMENT OF STATUTORY AUTHORITY

21. An administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
22. Pursuant to Water Code section 13267, subdivision (b), a regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region..., shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.
23. Pursuant to Water Code section 13268, subdivision (a), any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).
24. Pursuant to Water Code section 13268, subdivision (b), paragraph (1), civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with section 13323) of Chapter 5 for a violation or subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

25. The Discharger is alleged to have violated the following sections of the General Order and MRP.

a. Provision 29 on page 6 of the General Order, which states:

“Pursuant to CWC [California Water Code] Section 13267, a MRP is attached to this Order. Monitoring must be consistent with the dairy’s WMP and NMP. The Discharger shall submit all reports as specified in the MRP.”

b. Provision 30 on page 6 of the General Order, which states:

“Reporting of efforts implemented to achieve sustained water quality protection is required in an Annual Report (MRP Appendix 3, Annual Report) that is due to the Regional Board by November 30 each year.”

c. Provision III. D. of the MRP, which states:

“The Discharger shall submit an Annual Report to the Regional Water Board by November 30 of each year starting in 2012. The reporting period is November 1 through October 31. A copy of each Annual Report shall be kept at the facility and be made available for review by Regional Water Board staff during inspections.”

d. Provision 40 on page 13 of the General Order, which states:

“The Discharger shall maintain a copy of this Order, the WMP, the NMP, and the MRP required documentation, and make them available at all times to site-operating personnel. The Discharger shall ensure that all site-operating personnel are familiar with the content of these documents and help to carry out the water quality protection measures.”

e. Provision 42 on page 14 of the General Order, which states:

“The Discharger shall create, maintain for five years, and make available to the Regional Water Board during inspections and upon request by the Regional Water Board staff, any reports or records required by this Order including those required under the MRP, WMP, or NMP.”

f. Provision III. B. of the MRP, which states:

“Waste Management Plan (WMP) - see MRP Appendix 1. The WMP must be prepared and implemented within one (1) year of Order adoption by the Regional Water Board (by January 19, 2013). A copy of the WMP must be kept on the dairy site and made available for review by Regional

Water Board staff during inspections and upon request by the Regional Water Board staff.”

g. Provision III. C. of the MRP, which states:

“Nutrient Management Plan (NMP) – see MRP Appendix 2. The NMP must be prepared and implemented as described in the Order. Large Concentrated Animal Feeding Operations (CAFOs) must implement an NMP prior to enrolling under the GWDR. Other dairies must prepare and implement the NMP within one (1) year of Order adoption by the Regional Water Board (i.e. by January 19, 2013). A copy of the NMP must be kept on the dairy site and made available for review by Regional Water Board staff during inspections and upon request by Regional Water Board staff.”

SUMMARY OF ALLEGED VIOLATIONS

26. Violation No. 1: The Discharger failed to submit an Annual Report for 2012 by November 30, 2012, as required by the General Order and the MRP. As of the date of ACLC R1-2014-0022 that report was 479 days late.
27. Violation No. 2: The Discharger failed to submit an Annual Report for 2013 by November 30, 2013, as required by the General Order and the MRP. As of the date of ACLC R1-2014-0022, that report was 114 days late.
28. Violation No. 3: The Discharger failed to furnish a NMP and WMP for the Dairy upon request by the May 14, 2014 deadline established by Regional Water Board staff. As of the date of this Complaint, those reports are now 120 days late.

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

29. On November 17, 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability. This policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf
30. The administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy. The proposed civil liability takes into account such factors as the Discharger’s culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.

31. The required factors have been considered using the methodology in the Enforcement Policy, as explained in detail in Attachment A which is hereby incorporated by reference.
32. Minimum Civil Liability: Pursuant to the Enforcement Policy, civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation plus ten percent. The economic benefit is calculated to be approximately \$7,112. The minimum civil liability which must be assessed pursuant to the Enforcement Policy is \$7,823.
33. Maximum Civil Liability: The maximum penalty for the violations is \$713,000 based on a calculation of the total number of per-day violations times the statutory maximum penalty (479 + 114 + 120 total days of violation X \$1000).

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

As described above, the maximum penalty for the violations is \$713,000. Based on consideration of the above facts, after applying the penalty methodology, and considering the Discharger's ability to pay, the Assistant Executive Officer of the Regional Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **thirty-seven thousand one hundred and twenty-five dollars (\$37,125)** for the three violations cited above. The specific factors considered in this penalty are detailed in Attachment A.

THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **thirty-seven thousand one hundred and twenty-five dollars (\$37,125)**.
2. A hearing on this matter will be conducted at the Regional Water Board meeting scheduled on November 20, 2014, unless one of the following occurs by October 9, 2014:
 - a. The Discharger waives the hearing by completing the attached form (checking the box next to Option #1) and returning it to the Regional Water Board, along with payment for the proposed civil liability of **thirty-seven thousand one hundred and twenty-five dollars (\$37,125)**; or
 - b. The Discharger requests to postpone the hearing by completing the attached form (checking the box next to Option #2) and returning it to the Regional Water Board along with a letter describing the necessity for the postponement. It remains within the discretion of the Regional Water Board to approve the extension.

3. If the Regional Water Board holds a hearing, it may choose to impose an administrative civil liability in the amount proposed or for a different amount, decline to seek civil liability, or refer the matter to the Attorney General to have a Superior Court consider enforcement. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.
4. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to “actions” and “special proceedings” and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees’ Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)
5. Notwithstanding the issuance of this Complaint, the Regional Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger’s waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
6. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).
7. Payment of the assessed liability amount does not absolve the Discharger from complying with the General Order or the MRP, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Discharger fails to comply with the General Order, the MRP, and/or future orders issued by the Regional Board.

Original Signed By

David F. Leland, P.E.
Assistant Executive Officer
Regional Water Board Prosecution Team

September 11, 2014

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