MONITORING AND REPORTING PROGRAM NO. R3-2004-0066
Modified for Natural Selection Foods, Inc. – DBA Earthbound Farm
Revised June 6, 2007

for

DISCHARGES ENROLLED UNDER GENERAL WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES OF FRUIT AND VEGETABLE PROCESSING WASTE CENTRAL COAST REGION

Dischargers regulated by the General WDRs for Discharges of Fruit and Vegetable Processing Waste are subject to the following monitoring and reporting requirements, unless such requirements are modified or waived by the Executive Officer. Additional requirements may be added by the Executive Officer, as needed to adequately ensure compliance with the General WDRs.

WATER SUPPLY MONITORING

Representative samples of the Facility's water supply (Well Nos. 3 and 4) shall be collected and analyzed as follows:

Constituent	Units	Sample Type	Minimum Frequency of Sampling and Analysis
Total Dissolved Solids	mg/L	Grab	Annually (March)
Chloride	mg/L	Grab	Annually (March)
Sodium	mg/L	Grab	Annually (March)
Boron	mg/L	Grab	Annually (March)
Sulfate	mg/L	Grab	Annually (March)
Nitrate (as N)	mg/L	Grab	Annually (March)

PRODUCTION MONITORING

Facility production shall be reported as follows:

Parameter	Units	Sample Type	Reporting Frequency
Start and End of Processing Season	Dates	--	Annually (December)
Fruits and Vegetables Processed	Tons/year	Measured	Annually (December)

CHEMICAL USAGE MONITORING

A summary of volumes and types of any chemicals used at the Facility shall be included with each monitoring report.

INFLUENT MONITORING

Representative samples of influent to the treatment system shall be collected and analyzed as follows:

Constituent	Units	Sample Type	Minimum Frequency of Sampling and Analysis Peak Wastewater Flow **50,000-500,000 gpd**
Flow	gpd	Metered	Daily
Peak Daily Flow	gpd	Calculated	Monthly
Avg. Daily Flow	gpd	Calculated	Monthly
pH	pH	Grab	Weekly
Biochemical Oxygen Demand (BOD_5)[1]	mg/L	Composite[2]	Semiannually[3]
Nitrite (as N)[1]	mg/L	Composite	Semiannually[3]
Nitrate (as N)[1]	mg/L	Composite	Semiannually[3]
Total Kjeldahl Nitrogen (as N)[1]	mg/L	Composite	Semiannually[3]
Total Nitrogen[1]	mg/L	Composite	Semiannually[3]

Notes:

1. Influent sampling for BOD_5, nitrite, nitrate, TKN, and total nitrogen may not be required for facilities with low organic and nutrient load wastewater. The Discharger must submit sufficient documentation to support the removal of influent monitoring for BOD_5, nitrite, nitrate, TKN, and total nitrogen in its NOI; if documentation is not sufficient, the discharger may request removal of monitoring after one year of full compliance and monitoring reports support removal.
2. Composite samples will cover discharge through one day of operation. Facilities with peak wastewater flow less than 50,000 gpd may utilize grab samples rather than composite samples.
3. Semiannual influent monitoring shall occur in March and September.

POND MONITORING

Representative samples of wastewater contained in each pond shall be collected and analyzed as follows:

Constituent	Units	Sample Type	Minimum Frequency of Sampling and Analysis Peak Wastewater Flow **50,000-500,000 gpd**
Freeboard	ft	Measured	Weekly
pH	pH units	Grab	Weekly
Dissolved Oxygen	mg/L	Grab	Weekly

EFFLUENT MONITORING

Representative samples of effluent from the treatment system, immediately prior to spray disposal onto 67 acres of irrigated fields, before the treated wastewater is blended with any other water source, shall be collected and analyzed as follows:

Constituent	Units	Sample Type	Minimum Frequency of Sampling and Analysis Peak Wastewater Flow **50,000-500,000 gpd**
Flow	gpd	Metered	Daily
Peak Daily Flow	gpd	Calculated	Monthly
Avg. Daily Flow	gpd	Calculated	Monthly
pH	pH units	Grab	Weekly
Biochemical Oxygen Demand (BOD_5)[1]	mg/L	Composite[2]	Quarterly[4]
Fixed Dissolved Solids	mg/L	Composite	Quarterly[4]
Chloride	mg/L	Composite	Quarterly[4]
Sodium	mg/L	Composite	Quarterly[4]
Boron	mg/L	Composite	Quarterly[4]
Sulfate	mg/L	Composite	Quarterly[4]
Nitrite (as N)[1]	mg/L	Composite	Quarterly[4]
Nitrate (as N)	mg/L	Composite	Quarterly[4]
Total Kjeldahl Nitrogen (as N)[1]	mg/L	Composite	Quarterly[4]
Total Nitrogen[1]	mg/L	Composite	Quarterly[4]
Priority Pollutants (Inorganics)[5]	mg/L	Composite	Semianually[3]
In addition to the above, facilities which use any form of chlorine for cleaning and/or disinfection shall analyze effluent samples for the following:			
Total Trihalomethanes[6]	mg/L	Composite	Semianually[3]
Total Haloacetic Acids[7]	mg/L	Composite	Semianually[3]

Notes:

1. Effluent sampling for BOD_5, nitrite, TKN, and total nitrogen may not be required for facilities with low organic and nutrient load wastewater. The Discharger must submit sufficient documentation to support the removal of effluent monitoring for BOD_5, nitrite, TKN, and total nitrogen in its NOI; if documentation is not sufficient, the discharger may request removal of monitoring after one year of full compliance and monitoring reports support removal.
2. Composite samples will cover discharge through one day of operation. Facilities with peak wastewater flow less than 50,000 gpd or have effluent discharge from a pond with greater than 10 days detention time may utilize grab samples rather than composite samples.
3. Semiannual effluent monitoring shall occur in March and September.
4. Quarterly effluent monitoring shall occur in March, June, September, and December.
5. Includes the following: antimony, arsenic, beryllium, cadmium, chromium III, chromium VI, copper, cyanide, lead, mercury, nickel, selenium, silver, thallium, zinc.
6. Includes the following: chloroform, bromodichloromethane, dibromochloromethane, and bromoform.
7. Includes the following: monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid.

GROUNDWATER MONITORING

The Discharger shall implement groundwater monitoring. In general, facilities which discharge fruit and vegetable processing waste that is not adequately treated (biologically stabilized and neutralized) to unlined ponds, leach fields, or spreading basins, or in areas where depth to groundwater is shallow, may be required to perform regular groundwater monitoring. Groundwater samples shall be collected from at least three representative monitoring wells, one upgradient and two downgradient of the disposal area, and analyzed as follows:

Constituent	Units	Sample Type	Minimum Frequency of Sampling and Analysis
Depth to groundwater	Feet	Measured	Quarterly (March, June, September, and December)
pH	pH units	Grab	Quarterly (March, June, September, and December)
Total Dissolved Solids	mg/L	Grab	Quarterly (March, June, September, and December)
Chloride	mg/L	Grab	Quarterly (March, June, September, and December)
Sodium	mg/L	Grab	Quarterly (March, June, September, and December)
Boron	mg/L	Grab	Quarterly (March, June, September, and December)
Sulfate	mg/L	Grab	Quarterly (March, June, September, and December)
Nitrate (as N)	mg/L	Grab	Quarterly (March, June, September, and December)
Chemical Oxygen Demand	mg/L	Grab	Quarterly (March, June, September, and December)

DISPOSAL AREA MONITORING

The Discharger shall inspect and document the condition of the spray disposal property located adjacent to the facility (approximately 67 acres) once daily during operation. Notations shall be made in a bound log book and include observations of excessive ponding and soil clogging in spreading basins, evidence of erosion, field saturation, runoff, odors, insects, or other potential nuisance conditions that may be present. Any problems shall be promptly corrected. A record shall be kept of the dates and nature of observations and corrective actions taken. A summary of the entries made in the log shall be submitted with each monitoring report. The following information regarding irrigation management at the 67 acres of spray disposal area shall also be recorded daily and submitted with each monitoring report:

- Inches of precipitation.
- Irrigated areas.
- Daily acreage applied (acres).
- Daily application rate (gal/acre/day)
- Total nitrogen loading rate as a monthly average (lbs/acre/day)
- BOD_5 loading rate as a monthly average (lbs/acre/day)

DISPOSAL AREA SOILS MONITORING

The Discharger shall implement disposal area soils monitoring. In general, large facilities that discharge concentrated wastewater that is not adequately neutralized (to between pH 6.5 and 8.4) to soils with poor buffering capacity must perform soils monitoring according to the following instructions. The Discharger shall establish a soil profile monitoring location that is representative of the disposal area. This sampling location shall be provided on a map submitted to the Regional Board for concurrence by the Executive Officer. Samples shall be collected and analyzed for the following constituents:

Constituent	Unit	Method	Sample Depths[2]	Frequency
Soil pH	pH units	1:2 DI Water (soil to solution ratio)	6 inches and 2 ft.	Annually (September)
Total Acidity	meq H^+ / 100 g soil	Measured by $BaCl_2$ – TEA (pH 8.3)[1]	6 inches and 2 ft.	Annually (September)

Notes:
1. See Methods of Soil Analysis (cosponsored by ASTM), American Society of Agronomy, Inc., Madison, WI.
2. Below base of disposal area.

Lime Application – If Soil pH is less than or equal to 6.0, the Discharger shall add lime to neutralize the disposal area soils. The amount of lime required for full neutralization is directly related to Total Acidity. For any representative sample of disposal area soils, multiply the Total Acidity value (meq of H^+/ 100 g soil) by

2000 to get the maximum lime application rate in lbs. pure lime per acre. The amount of lime applied should not exceed the calculated value.

NOTE: Gypsum ($CaSO_4*2H_2O$) applied to increase hydraulic conductivity does not neutralize acidity (gypsum is a neutral salt).

SOLID WASTE DISPOSAL MONITORING

A summary of estimated volumes and disposal locations of screenings, sludge, and solids shall be included with each monitoring report.

SAMPLING AND ANALYSIS PROVISIONS

1. All sampling, sample preservation, and analysis shall be performed in accordance with the latest edition of 40 CFR Part 136 "Guidelines Establishing Test Procedures for the Analysis of Pollutants". The Executive Officer may specify test methods that are more sensitive than those specified in 40 CFR Part 136.

2. Periodic samples shall be taken at regular intervals and be representative of the monitored activity. For example, where quarterly samples are required, samples shall be collected on a representative day of March, June, September, and December of each year.

3. All analytical services shall be conducted at a laboratory certified for such analyses by the State Department of Health, or at a laboratory approved by the Executive Officer.

4. All analytical data shall be reported with method detection limits (MDLs) and with identification of either practical quantitation levels (PQLs) or limits of quantitation (LOQs).

5. All monitoring instruments and devices used by the discharger to fulfill this Monitoring and Reporting Program shall be properly maintained and calibrated, as necessary to ensure their continued accuracy.

REPORTING PROVISIONS

1. Monitoring reports shall be submitted to the Regional Board semiannually, **by January 30th and July 30th of each year**. Monitoring reports shall contain all monitoring data obtained during the previous six months (eg., monitoring reports due July 30th shall include sampling events occurring from January through June). The report shall discuss the compliance record and corrective actions taken, or which may be needed, to bring the discharge into full compliance with the General WDRs. Monitoring reports may be required more frequently as deemed necessary by the Executive Officer, based on review of the NOI and site and facility specific information.

2. Monitoring data shall be arranged in tabular format so that the date, constituents, and concentrations are readily discernible. The data shall be summarized in such a manner to clearly illustrate whether the discharge complies with effluent limitations.

3. The Discharger shall also submit monitoring data and the monitoring reports electronically upon request. Electronic data should be formatted into a Microsoft Excel or equivalent spreadsheet. Electronic report templates are available by contacting Regional Board staff at (805) 549-3147. Electronic submittal should be provided on either 3.5-inch disk or optical compact disk. Electronic data storage media should be labeled with facility name and period of monitoring.

4. If the Discharger monitors any pollutant or parameter more frequently than is required by this monitoring program, the results of such monitoring shall be included in the monitoring reports (i.e., quarterly groundwater elevation, etc.).

5. All monitoring reports shall be signed and certified in accordance with Section E.10 and 11 of the General WDRs.

6. The Discharger shall deliver a copy of each monitoring report in the appropriate format to the Central Coast Regional Water Quality Control Board at the following address:

   California Regional Water Quality Control Board
   Central Coast Region
   895 Aerovista Place, Suite 101
   San Luis Obispo, CA 93401

7. The Discharger shall ensure that records of all monitoring information are maintained and accessible for a period of at least five years from the date of the sample. This period of retention shall be extended during the course of any unresolved litigation regarding this discharge or by the request of the Executive Officer. Records of monitoring information shall include:

   a. The date, exact place, and time of sampling or measurements;
   b. The individual(s) who performed the sampling, and/or measurements;
   c. The date(s) analyses were performed;
   d. The individual(s) who performed the analyses;
   e. The analytical techniques or methods used;
   f. All sampling and analytical results;
   g. All monitoring equipment calibration and maintenance records.

8. The Discharger shall immediately report any non-compliance potentially endangering public health or the environment to the Regional Board (805/549-3147) and any additional appropriate agency. Any information shall be provided orally within 24 hours from the time the Discharger becomes aware of the circumstances. A written report shall also be submitted to the Executive Officer within five (5) days of the time the Discharger becomes aware of the circumstances. The written report shall contain (1) a description of the non-compliance and its cause; (2) the period of non-compliance, including dates and times, and if the non-compliance has not been corrected, the anticipated time it is expected to continue; and (3) steps taken or planned to reduce, eliminate, and prevent reoccurrence of the non-compliance.

9. The Discharger shall report all instances of non-compliance not reported under Reporting Provision No. 8 at the time monitoring reports are submitted along with the information required in Reporting Provision No.8.

Ordered By _____
Roger W. Briggs
Executive Officer

_____
Date

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION

ADMINISTRATIVE CIVIL LIABILITY
COMPLAINT NO. R3-2007-0015

IN THE MATTER OF:

NATURAL SELECTIONS FOODS, LLC
SAN BENITO COUNTY

The California Regional Water Quality Control Board, Central Coast Region (hereafter "Central Coast Water Board") alleges that Natural Selections Foods, LLC (hereafter "Discharger") has violated provisions of an Order of the Central Coast Water Board, for which the Central Coast Water Board may impose civil liability pursuant to California Water Code Sections 13268, 13350, and 13385.

Unless the Discharger waives its right to a hearing, a public hearing on this matter will be held before the Central Coast Water Board on July 6, 2007, at the Watsonville City Council Chambers, 250 Main Street, Watsonville, California. The Discharger and its authorized representatives will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Central Coast Water Board.

An agenda will be mailed to the Discharger separately, not less than ten days before the public hearing date. At the public hearing, the Central Coast Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the State Attorney General for recovery of judicial civil liability.

DISCHARGER

The Discharger owns and operates a vegetable processing facility located at 1721 San Juan Highway in San Juan Bautista, San Benito County (hereafter Facility). The Discharger does business as Earthbound Farm. According to its website (www.ebfarm.com), "Earthbound Farm is the largest grower and shipper of organic produce in North America, offering more than 100 organic salads, fruits, and vegetables. Earthbound Farm produce is available in 74% of all supermarkets and can be found in every major city in the United States."

The Discharger is subject to *Waste Discharge Requirements Order No. 99-99 for Natural Selections Foods, Inc., San Benito County* (Order No. 99-99), which was adopted by Central Coast Water Board and became effective on October 22, 1999.

The Discharger generates process wastewater by washing farm produce. According to Order No. 99-99, "Process water will be routed through three 1,500 gallon septic style settling tanks for solids removal, followed by a percolation pond and/or used to irrigate Natural Selections' 36 acres of alfalfa. This system is designed to handle 80,000 gpd [gallons per day] of process water, however flows will not exceed 70,000 gpd."

A creek commonly called San Juan Creek flows north-northeast along the western boundary of the fields where process wastewater is currently discharged. This is the same creek to which the City of San Bautista is permitted to discharge its treated wastewater. The City of San Juan

Bautista discharge point is approximately 2 miles upstream of the Facility. The San Benito River is approximately 1.5 miles downstream from the Facility. San Benito River then flows for approximately 0.3 mile before reaching the Pajaro River. According to the Water Quality Control Plan, Central Coast Basin (Basin Plan), the beneficial uses of the San Benito and Pajaro Rivers include domestic and municipal supply, agricultural supply, industrial service supply, groundwater recharge, non-contact water recreation, water-contact recreation, wildlife habitat, warm freshwater habitat, fish spawning, freshwater replenishment, and commercial and sport fishing. The San Benito and Pajaro Rivers support the threatened California red-legged frog and the endangered steelhead trout.

DISCHARGER REQUIREMENTS

Order No. 99-99 includes, in part, the following requirements:

"Prohibition No. 3 – Discharge of any wastes from the process waste treatment system including overflow, bypass, and seepage from transport, treatment, or disposal systems to adjacent drainageways or adjacent properties is prohibited.

"Prohibition No. 1 – Discharge to areas other than those designated in Attachment A, is prohibited." [Attachment A specifies that the location of the 36 acre disposal field as on the east side of San Juan Highway.]

"Discharge Specification No. 1 – Daily flow...shall not exceed 70,000 gallons for process and stormwater discharges to the irrigation fields.

"Provision No. 2 – Discharger shall comply with all items of the attached "Standard Provisions and Reporting Requirements for Waste Discharge Requirements" dated January 1984.

"Provision No. 5 – Pursuant to Title 23, Division 3, Chapter 9, of the California Code of Regulations, the Discharger must submit a written report to the Assistant Executive Officer not later than April 22, 2004, addressing: a) Whether there will be any changes in the continuity, character, location or volume of the discharge; and, 2) Whether, in their opinion, there is any portion of the Order that is incorrect, obsolete, or otherwise in need of revision.

"Standard Provision E.3 – The discharger and any person who violates waste discharge requirements and/or who intentionally or negligently discharges waste or causes or permits waste to be deposited where it is discharged into surface waters of the state may be liable for civil and/or criminal remedies, as appropriate, pursuant to sections 13350, 13385, and 13387 of the California Water Code."

ALLEGED VIOLATIONS

Violation No. 1 – The Discharger failed to submit a written report required by Provision No. 5 of Order No. 99-99 by **April 22, 2004**. The report required the Discharger to address whether there were any changes to its discharge. The Discharger's website indicates that the Discharger produced process wastewater at this time, so there is a discharge associated with this violation. The Discharger thereby violated Provision No. 5 and is liable civilly pursuant to California Water Code Section 13350. The requirement of Provision No. 5 was eventually

replaced by the requirement to submit a Notice of Intent by January 31, 2006, which is described under Violation No. 2 below. For the purpose of enumerating penalties, the report required by Provision No. 5 was 649 days late, which is the time period from April 22, 2004, to January 31, 2006.

Violation No. 2 – On **October 25, 2005**, Central Coast Water Board staff sent a letter to the Discharger requiring submittal of a Notice of Intent for enrollment under *General Waste Discharge Requirements Order No. R3-2004-0066 for Discharges of Fruit and Vegetable Processing Waste* (General WDRs) by **January 31, 2006**. The requirement was made pursuant to California Water Code Sections 13260 and 13267. The Discharger submitted its Notice of Intent on **July 10, 2006**, which is 160 days late. The Discharger is therefore liable civilly pursuant to California Water Code Sections 13261 and 13268.

Violation No. 3– The Discharger's Notice of Intent revealed that the Facility discharges an average of 274,000 gpd and a maximum of 582,000 gpd of process wastewater, well in excess of its permitted flow limitation of 70,000 gpd. The Discharger's self-monitoring reports submitted on **June 5** and **October 2, 2006**, further revealed that process wastewater flow exceeds its flow limitation nearly every day of the processing season. Reported process wastewater flows and days of violation are summarized as follows:

Month	Average Flow (gpd)	Maximum Flow (gpd)	Days of Violation (Flow > 70,000 gpd)
April 2005	310,634	498,469	27
May 2005	269,561	466,902	31
June 2005	315,727	520,171	30
July 2005	282,875	582,307	31
August 2005	319,353	467,094	31
September 2005	250,138	448,736	27
October 2005	233,920	376,810	29
November 2005	199,290	431,818	22
The Facility generated no wastewater flow from December 2005 through March 2006 because it was shut down for the off-season.			
April 2006	235,978	442,134	28
May 2006	231,966	419,777	30
June 2006	202,420	425,753	29
July 2006	189,712	464,566	29
August 2006	176,348	334,106	29
September 2006	251,959	459,463	28
		Total days of violation:	**401**

Process wastewater flows prior to April 2005 have not been reported by the Discharger; therefore, Water Board staff can not evaluate potential violations prior to this date. The Discharger thereby violated Discharge Specification No. 1 for a minimum of 401 days and is liable civilly pursuant to California Water Code Section 13350.

Violation No. 4 – The Discharger's Notice of Intent, signed July 7, 2006, indicates that the Facility currently discharges process wastewater to 78 acres, well in excess of the 36 acres permitted by Order No. 99-99. The expanded disposal fields include approximately 42 acres on

the west side of San Juan Highway, abutting the previously described creek tributary to San Benito River. The Discharger thereby violates Prohibition No. 1 and is liable civilly pursuant to California Water Code Section 13350. Assuming the Discharger has only discharged to these expanded fields since signing the Notice of Intent (this is a conservative assumption because the Discharger has likely discharged to these expanded spray fields for several years), the Discharger has violated Prohibition No. 1 for 118 days (period ending November 1, 2006).

Violation No. 5 – Central Coast Water Board staff inspected the Facility on **October 4, 2006**, and found it discharging several thousand gallons of process wastewater directly to the creek by runoff from the unauthorized disposal fields. In a letter dated October 9, 2006, the Discharger's consultant reported the discharge as two distinct spills of process wastewater to the creek. The Discharger's consultant estimated the first spill as 18,000 gallons and the second spill as 6,000 gallons. The Discharger thereby violated Prohibition No. 3 and discharged waste to waters of the United States in violation of the Clean Water Act, therefore is liable civilly pursuant to California Water Code Sections 13350 and 13385.

MAXIMUM CIVIL LIABILITY

California Water Code Section 13261 authorizes the Central Coast Water Board to administratively impose civil liability in an amount not to exceed $1,000 for each day in which any person fails to furnish a report or pay a fee under California Water Code Section 13260, when so requested by the Central Coast Water Board.

California Water Code Section 13268 authorizes the Central Coast Water Board to administratively impose civil liability in an amount not to exceed $1,000 for each day in which any person fails to submit technical or monitoring program reports required pursuant to California Water Code Section 13267.

California Water Code Section 13350 authorizes the Central Coast Water Board to administratively impose civil liability in an amount not to exceed $5,000 for each day in which any person discharges waste in violation of any waste discharge requirement.

California Water Code Section 13385 authorizes the Central Coast Water Board to administratively impose civil liability in an amount not to exceed $10,000 for each day in which any person violates the Federal Clean Water Act. Where there is a discharge to surface waters, additional civil liability may be imposed in an amount not to exceed $10 per gallon, for each gallon in excess of 1,000 that is not cleaned up.

The maximum civil liability for the above violations is $6,240,000. This maximum civil liability is enumerated as follows. Where the violation is ongoing, the number of days of violation is based on the end date of November 1, 2006.

Violation No. (see above)	Water Code Section	Maximum Liability	No. of Days of Violation	Sub-Total
1	13350	$5,000 per day	649	$3,245,000
2	13261	$1,000 per day	160	$160,000
3	13350	$5,000 per day	401	$2,005,000
4	13350	$5,000 per day	118	$590,000
5	13385	$10,000 per day plus $10 per gallon	1 day and 23,000 gallons	$240,000
			Total:	**$6,240,000**

MINIMUM CIVIL LIABILITY

Water Code Section 13385(e) provides that, at a minimum, civil liability shall be assessed at a level that recovers the economic benefit or savings, if any, derived from the acts that constitute Violation No. 5. As discussed below, the Discharger likely realized $1,000 of economic benefit from Violation No. 5.

FACTORS TO CONSIDER IN ASSESSMENT OF CIVIL LIABILITY

Pursuant to Water Code Section 13327, in determining the amount of liability for waste discharge requirements violations, the Water Board shall:

> *...take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require.*

Also, when determining the amount of liability for Water Code Section 13385 violations (Violation No. 5), at a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

These factors are considered as follows:

a. The Nature, Circumstances, Extent, and Gravity of the Violations

The Discharger's failure to submit and late report violations (Violation Nos. 1 and 2) are significant due to Water Board staff's inability to determine the Discharger's compliance with waste discharge requirements. Staff still has no way of definitively knowing how long the Discharger has been violating Waste Discharge Requirements Order No. 99-99. Consideration of this factor supports assessment of the maximum liability for Violations Nos. 1 and 2.

The flow violations described in Violation No. 3 are significant in that the Discharger has nearly quadrupled the flow volume of its process wastewater discharge without the Water Board's knowledge, authorization, or consent. In its annual self-monitoring report dated September 30, 2006 (as prepared by compliance consultant Bracewell Engineering, Inc. and signed by Facility

Engineer Joe Torquato), the Discharger explains the cause and corrective action of Violation No. 3:

> "The permitted flow volumes have been exceeded due to the rapid growth in the company's food packaging business over the last few years...Natural Selection prepared and filed the Notice of Intent for Enrollment under the General Waste Discharge Requirements [for Discharges of Fruit and Vegetable Processing Waste]. With that in mind Natural Selection was waiting for the new permit and only realized earlier this month that since a new permit had not yet been issued by the Regional Board that the old permit was still in effect..."

The 70,000 gpd flow limitation of Order No. 99-99 is based in part on the ability of the Discharger's original 36-acre disposal field to absorb the process wastewater flow without its running off into adjacent drainageways. The Discharger has nearly quadrupled the flow volume of its process wastewater discharge, but has only doubled its disposal area (the total disposal area is now 78 acres). This limited disposal area likely contributed to the spill violations described in Violation No. 5.

The expansion of the disposal area violations described in Violation No. 4 are significant in that the expanded disposal areas abut the creek, whereas the original 36-acre disposal area was far removed from the creek. This greatly increases the likelihood that wastewater runoff will reach the creek. Had the Discharger pursued approval for the expanded spray disposal fields, the Water Board would have required safeguards (e.g., set disposal fields back appropriately from creek, limit wastewater application rates, etc.) and monitoring to ensure that process wastewater does not enter into the creek.

The Discharger's monitoring data indicates the spray disposal fields may be overloaded with nitrogen. The Discharger reported that on May 2, 2006, process wastewater flow was 203,056 gpd, and contained 10.3 mg/L nitrate as N. Assuming this wastewater is distributed throughout the entire 78 acres of disposal fields, this nitrate loading rate is 101 grams (as N) per acre per day. By comparison, this is more than double the Basin Plan standard of 40 grams total nitrogen per acre per day. Data is not available for groundwater around the entire 78-acre spray disposal fields because the Discharger does not currently have such a groundwater monitoring well network. However, the Discharger has provided data for groundwater surrounding its process wastewater storage/percolation pond. This data suggests the discharge has caused a significant increase in groundwater nitrate concentrations. The Discharger reports that on September 26, 2006, the groundwater upgradient of the pond contained 5.9 mg/L nitrate as N, while groundwater downgradient of the pond contained 10.1 mg/L as N. This exceeds the drinking water standard of 10 mg/L as N. The downgradient groundwater nitrate concentration nearly matches the average process wastewater concentration. In order to bring the nitrogen-loading rate down to the Basin Plan standard, the Discharger would either have to treat the process wastewater flow to decrease the effluent nitrogen concentration by more than 50%, or more than double the size of the spray disposal fields. Considering the groundwater impacts caused by the process wastewater surrounding the storage/percolation pond, it is reasonable to assume there are similar nitrate impacts to the groundwater beneath the disposal fields.

Consideration of this factor supports assessment of significant liability, albeit less the maximum, for Violation Nos. 3 and 4.

The first spill described in Violation No. 5 occurred when Facility operations and management staff failed to properly connect an irrigation pipe section. When the Facility staff began pumping wastewater to the irrigation piping, water pressure caused the irrigation piping to separate and concentrate wastewater in a small area, rather than distribute it to sprinkler heads. After turning on the irrigation system flow, the Facility staff left for a lunch break. In the 1.5 hours before Facility staff discovered the problem was shut off the irrigation system, 18,000 gallons discharged from the disconnected irrigation piping, flowed across the disposal field and dirt access road, and entered the creek.

The second spill described in Violation No. 5, "originated from over-watering an irrigation field inadvertently with a split irrigation pipe facing the ground." The split irrigation pipe caused a low point in the disposal field to become saturated. Because the area was saturated, subsequent irrigation onto that area ran off the field and into the creek. The saturated field was irrigated for 8 hours, from 12 a.m. to 8 a.m., before the spill was discovered and corrected.

These reported causes are symptoms of greater wastewater management problems. Water Board staff toured the Facility and interviewed Facility Manager Richard Paules on October 4, 2006. According to Mr. Paules, wastewater is normally applied to the spray fields with a water reel irrigation system. Such a system facilitates good wastewater distribution and easy rotation, because the sprinkler gun is mechanically pulled across the field, slowly spreading the wastewater along the way, and then is easily moved to the next disposal field section. Mr. Paules pointed out that the water reel irrigation system was broken, so the Facility staff had to instead lay irrigation piping. This is very labor-intensive and likely contributed to the mistakes that caused these violations. During an inspection on November 15, 2006, Facility Engineer Joe Torquato informed Water Board staff that the disposal field sections immediately adjacent to the creek are always irrigated with piping because those sections are triangular in shape, which does not facilitate use of the water reel system. These triangular sections are smaller than the other rectangular field sections but are loaded with the same wastewater volume. These triangular sections also have clayey soil and high groundwater, which inhibits wastewater percolation. On November 15, 2006, Water Board staff confirmed the poor percolation of these areas when they observed a large volume of process wastewater puddled in the lowest area of one of these triangular sections, immediately adjacent to the creek. Facility staff were building up a soil berm with a tractor to prevent the puddled wastewater from entering the creek. Facility Engineer Joe Torquato suggested that this section has always been a problem area.

Use of these triangular sections would not be necessary if other rectangular sections were available. When asked why the 60 acres of rectangular sections just across San Juan Highway from the Natural Selections building (and further removed from the creek) could not be used for process wastewater disposal, facility staff replied that it could, and that Natural Selections' owner had just authorized them to take it out of crop production to be used for process wastewater disposal. The Discharger has not used those particular rectangular sections for disposal previously because it preferred those fields be used for vegetable production, partly for aesthetic reasons. Had the Discharger been using these large rectangular sections with its water reel irrigation system for disposal, instead of the triangular sections near the creek with piping, the spills described in Violation No. 5 likely would have not occurred.

Further evidence of wastewater management problems is that the existing disposal fields are irrigated all day and night. The second spill described above was caused in part by irrigation

occurring from 12 a.m. to 8 a.m. Constant irrigation indicates that process wastewater storage volume and disposal field area may not be sufficient for the volume of process wastewater generated.

The Discharger's consultant reports that the process wastewater, "originated from a settling pond and had a chlorine residual...Coliform samples taken on the wash water pond effluent, a procedure started in the last few weeks, have all been less than 1.1 MPN/100 mL." The wastewater may not have contained bacteria, but the residual chlorine could kill aquatic life in the creek, especially the sensitive steelhead trout, if discharged in significant concentrations. For comparison, the City of San Juan Bautista wastewater treatment plant is prohibited from discharging *any* chlorine to this creek. In a November 8, 2006, email, the Discharger's consultant reported that discharged process wastewater typically contains 5 mg/L chlorine. This concentration is great enough to kill aquatic life in the receiving water. However, these spills occurred during warm and dry weather, so it is likely that some of the residual chlorine volatilized before it reached the creek. Nevertheless, since the process wastewater contains residual chlorine, the Discharger should have been taking extra precautions to ensure the process wastewater did not reach the creek.

The Discharger sampled its process wastewater for biochemical oxygen demand (BOD) and total suspended solids (TSS) on the same day its spills occurred. The samples contained 178 mg/L BOD and 56 mg/L TSS. BOD is an important indicator of the wastewater's potential to depress dissolved oxygen and cause eutrophication of the receiving water. The reported BOD concentration is similar in organic strength to partially treated sewage, and is an unacceptable level for discharge to this creek. For comparison, the City of San Juan Bautista's wastewater treatment plant effluent discharge to this creek must not exceed a 30-day average BOD of 20 mg/L and 30-day average TSS of 20 mg/L. Facility process wastewater could adversely affect water quality, and is another reason why the Discharger should have been taking extra precautions to ensure the wastewater did not reach the creek.

Consideration of this supports assessment of significant liability, albeit less than the maximum, for Violation No. 5.

b. Degree of Culpability

The Discharger is highly culpable for the failure to submit and late report violations (Violation Nos. 1 and 2).

The Discharger claims its failure to submit reports and late report violations were caused by a change in facility staffing. On May 29, 2006, the self monitoring report submitted by the Discharger states:

> "At the time that Natural Selection applied for, and obtained the original discharge permit, Bob Wright was the facility, and plant engineer and he was the individual of record, and Natural Selection's contact for the Water Board. After his departure from Natural Selection in September 2002, there was no transfer of information pertaining to this permit and its monitoring and reporting requirements to his successor or any other engineer at Natural Selection. It was the understanding of the Natural Selection engineers, that the only ongoing monitoring and reporting required, was for the three monitoring wells on their property as required by the County Use Permit. Based on that understanding, the monitoring well data was dutifully submitted to San Benito County annually. This process,

as Natural Selection understood, was followed precisely. Data from monitoring wells placed above, and below the retention pond was collected, logged and reported annually, to San Benito County Planning."

Water Board staff contends that it was the Discharger's organizational structure, not Bob Wright's departure, which led to Violations Nos. 1 and 2. Order No. 99-99 is issued to the Discharger, not Bob Wright. It is the Discharger's collective responsibility, not Bob Wright's individual responsibility, to ensure the Discharger complies with Order No. 99-99.

Consideration of this factor supports assessment of the maximum liability for Violation Nos. 1 and 2.

The Discharger is highly culpable for Violation Nos. 3 and 4. Even if Water Board staff assumed the Discharger was unaware of Order No. 99-99 for five years, the Discharger's County of San Benito Use Permit 779-99, dated October 28, 1999, includes several conditions parallel to Order No. 99-99. For example, the conditions include:

"The total amount of wash water used shall be limited to a maximum of 70,000 gallons per day. Any utilization in excess of 70,000 gallons per day shall be subject to an amendment of the use permit and the waste discharge permit approval of the Central Coast Regional Water Quality Control Board.

"In order to avoid adverse affects to adjoining agricultural lands, the release of excess washwater or wastewater onto adjoining property or into the creek bordering the subject property is prohibited."

The Discharger's representative to the Water Board at the time, Facility Manager Bob Wright, acknowledged these requirements in a September 13, 2000, memo to Lloyd Bracewell of Bracewell Engineering. Bracewell Engineering operates the City of San Juan Bautista wastewater treatment plant and recently became the Discharger's compliance consultant. Bob Wright's memo states, in part:

"Our county use permit restricts our process water use to 9 months per year and limits our usage to nominally 75,000 [sic] gallons per day. We would like your consideration in discharging this quantity with a potential increase of 200,000 GPD over the next 6 years to the City [of San Juan Bautista] treatment plant."

The Discharger exhibits prior knowledge of County Use Permit conditions. Yet, the Discharger did not pursue Water Board approval when it increased process wastewater flows beyond 70,000 gpd and expanded the disposal areas onto the west side of San Juan Highway. Consideration of this factor supports assessment of the maximum liability for Violation Nos. 3 and 4.

The Discharger is highly culpable for Violation No. 5. Process wastewater generation, treatment, and disposal are all within control of the Discharger. The spills were not caused by poor weather conditions or anything beyond the control of the Discharger. The Discharger could have taken a variety of measures to prevent the spills, including decreasing wastewater generation, or rotating disposal to another area. Consideration of this factor supports assessment of the maximum liability for Violation No. 5.

c. Voluntary Cleanup Efforts Undertaken by the Violator

The Discharger did not voluntarily undertake any cleanup efforts. In its October 9, 2006 report, the Discharger's consultant states:

> "The spill consisted of lightly chlorinated processing wash water pumped from a settling pond and contained no domestic wastewater and so no cleanup was necessary as the spill remaining on Earthbound's property and adjacent to the drainage ditch was absorbed into the ground."

Consideration of this factor justifies no change in the civil liability amount for Violation No. 5.

In its annual self-monitoring report dated September 30, 2006, the Discharger's consultant highlights several wastewater-related projects the Discharger has recently undertaken, including entering an agreement with the City of San Juan Bautista to discharge up to 100,000 gpd to its wastewater system. These projects do not justify a reduction in the proposed civil liability. These projects are necessary to catch up with major expansions of the Facility in the last 8 to 10 years[1]. The projects should have been completed concurrent with or prior to the Facility expansions.

d. Susceptibility to Cleanup or Abatement

The spills described in Violation No. 5 were not susceptible to cleanup or abatement. The spills entered the creek at a stretch that is heavily vegetated and not easily accessible. The spills were likely flushed downstream by creek flow. Stopping creek flow to contain the spills was not practical. Consideration of this factor justifies no reduction in the civil liability amount for Violation No. 5.

e. Degree of Toxicity of the Discharge

As discussed previously, the Discharger reports that the process wastewater, "originated from a settling pond and had a chlorine residual." The residual chlorine could be toxic to aquatic life in the creek, especially the sensitive steelhead trout, if discharged in significant concentrations. The Discharger reported that discharged process wastewater typically contains approximately 5 mg/L chlorine, which is great enough to kill aquatic life in the receiving stream. However, these spills occurred during warm and dry weather, so it is likely that some of the residual chlorine volatilized before it reached the creek. Water Board staff therefore concludes the degree of toxicity of the spills was medium. Consideration of this factor supports no reduction in the civil liability amount for Violation No. 5.

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[1] According to the Discharger's website (www.ebfarm.com):

"1995 – 1998, The company moves to a new, 25,000-square-foot, state-of -the-art production facility in San Juan Bautista, California.

"2003, The company expands its San Juan Bautista, California, facility, bringing its total production space to 135,000-square-feet. Earthbound Farm is the largest grower and shipper of organic produce in North America.

"2004, The company expands its San Juan Bautista, California, facility, bringing its total production space to 203,200-square-feet."

f. Prior History of Violations

The Water Board has regulated the Discharger since October 1999, when it issued Order No. 99-99. The Discharger did not inform Water Board staff or submit any reports to indicate when it expanded its Facility and increased its process wastewater discharges and disposal fields across San Juan Highway. Due to lack of communication from the Discharger, Water Board staff does not know how long the Discharger has violated Order No. 99-99. The Discharger's website indicates it expanded its facility from 25,000 square feet to 135,000 square feet in 2003, and again to 203,200 square feet in 2004. It is reasonable to infer the process wastewater discharge has likely exceeded 70,000 gpd and the disposal area has exceeded the permitted 36 acres since the Discharger expanded its facility in 2003. The Discharger has conceivably violated Order No 99-99 for the past three years. This is a poor compliance history and supports assessment of significant liability.

g. Economic Benefit or Savings Resulting from the Violations

The Discharger realized a small economic benefit as a result of its failure to submit and late report violations. The expense of putting together the report addressing whether there were any changes to its discharge (Violation No. 1) would be approximately $3,000.

The economic benefit of preparing and submitting the Notice of Intent (Violation No. 2) is negligible, because the Discharger eventually submitted the Notice of Intent. However, it is important to point out that had the Discharger submitted its Notice of Intent on time – it was 248 days late – it would have had to comply with the terms of the General WDRs that much sooner. Considering the more stringent prohibitions and comprehensive monitoring and reporting requirements of the General WDRs, the Discharger's expense to comply with the General WDRs could be significant. For example, the General WDRs state that the discharge shall not cause nitrate concentrations in groundwater downgradient of the disposal area to exceed 10 mg/L (as N). As mentioned previously, the Discharger's groundwater monitoring data indicates its discharge has caused a significant increase in groundwater nitrate concentrations, and groundwater downgradient of the process wastewater storage/percolation pond exceeds 10 mg/L nitrate as N. In order to come into compliance with this General WDRs' requirement, the Discharger must likely decrease its nitrogen loading rate by half. This means the Discharger must either treat the process wastewater to decrease the effluent nitrogen concentration by more than 50%, or more than double the size of the spray disposal fields. Design and construction of a treatment process to reduce effluent nitrogen concentrations would cost anywhere from $300,000 to $1 million. Doubling the size of the spray disposal fields may cost even more. According to a survey of nine active local real estate listings, the average asking price for farm and ranch land in San Benito County is $14,000 per acre. Using this value, acquiring another 78 acres of farm or ranch land to expand the spray disposal fields would cost the Discharger $1.1 million. This does not include the cost to install and operate infrastructure needed to spread process wastewater throughout the new disposal fields. Again, the Discharger may not actually realize these economic benefits if it actually implements these improvements to comply with the General WDRs

The economic benefit or savings the Discharger realized by committing Violation Nos. 3 and 4 is essentially the cost of obtaining proper permission from the Water Board to expand its flow rate beyond 70,000 gpd and expand its spray disposal areas beyond its originally permitted 36 acres. Assuming that the Water Board would have granted authorization as the wastewater treatment system is now, the cost would simply be the Discharger's staff or consultant's time

required to request and negotiate the permit, which would be only approximately $10,000. However, if the Water Board were to require nitrogen treatment or further expansion of the spray disposal fields, then the Discharger's expense would be considerable. But again, the Discharger may not actually realize these economic benefits because it will have to comply with the General WDRs.

The economic benefit or savings the Discharger realized by committing Violation No. 5 is the cost of maintaining the equipment and manpower necessary to ensure the Discharger's existing spray disposal fields are not hydraulically overloaded. If the Water Board considers the Discharger's existing manpower sufficient when it used its water reel irrigation system, and that the water reel irrigation system effectively prevented the disposal field from being hydraulically overloaded, then the Discharger's cost savings was simply the cost of repairing its water reel irrigation system. According to the Discharger's Facility Engineer, the water reel system repair has been repaired and it cost $1,000.

If the Discharger improves its process wastewater management (e.g., adds additional treatment and/or additional disposal fields) in the near future to comply with the General WDRs, the Discharger's economic benefit by committing these violations is only $14,000 ($3,000 + $10,000 + $1,000). However, if the Discharger does not improve its process wastewater management to comply with the General WDRs, then it will realize significant economic benefit, ranging from $314,000 to $1,114,000.

In an interview on November 15, 2006, Facility Engineer Joe Torquato indicated that the owner of Natural Selections has already committed to $2 million in improvements to its process wastewater management. Water Board staff anticipate receiving the Discharger's written plans for improving its process wastewater management in the form of a revised Notice of Intent in the near future. Assuming the Discharger will commit to completing these improvements, the Discharger's economic benefit resulting from these violations is $14,000. If the Discharger does not improve its process wastewater management as indicated, then this figure should increase accordingly.

h. Discharger's Ability to Pay Civil Liability and Ability to Stay in Business

The Discharger has not provided any information that would indicate an inability to pay the proposed civil liability. Natural Selections Foods is a privately held company and its financial information is not readily available. A Spring 2006 article in *The Natural Farmer*, a publication of the Northeast Organic Farming Association, reports that the Discharger completed $261 million in sales in the 52 weeks ending September 10, 2005. According to Dunn and Bradstreet, (www.hoovers.com) the Discharger employs 1,025 people. The Discharger moves its employees and equipment every year to its facility in Yuma, Arizona, for the winter, at a reported cost of $2 million. The Discharger should be capable of paying the proposed civil liability.

i. Other Matters that Justice May Require

The Discharger prides itself for environmental stewardship. Its website states that it was awarded the California Department of Pesticide Regulation's 2004 *Integrated Pest Management Innovator* award and the *2005 California Governor's Environmental & Economic Leadership Award*. Such awards may justify a reduction in assessed liability. However, Water Board staff contends such awards demonstrate the Discharger's

awareness of environmental matters, and that it should have been more aware of its process wastewater management problems.

Responding to these violations and preparing this Administrative Civil Liability Complaint required approximately 90 hours of Water Board staff time. Estimated staff costs are $6,750 (90 hours staff time x $75/hour).

NATURAL SELECTIONS FOODS, INC. IS HEREBY GIVEN NOTICE THAT:

1. Upon consideration of factors as required by California Water Code Section 13327 and 13385, the Assistant Executive Officer recommends civil liability in the amount of **ninety-five thousand dollars ($95,000)**.

2. The Water Board will hold a public hearing on this matter on **July 6, 2007**, unless the Discharger agrees to waive its right to a public hearing by filling out, signing, and submitting the enclosed "Waiver of Hearing." If the Discharger chooses not to waive its right to a public hearing, the Water Board will proceed with the scheduled hearing, consider testimony received from interested persons during the hearing, and decide whether to accept the penalty amount proposed by the Assistant Executive Officer or to increase the liability. The Water Board may also decide to continue the matter to a future hearing, direct the Assistant Executive Officer to reissue the Complaint to propose additional penalties, or refer the matter to the State Attorney General. The public hearing is scheduled at the regularly scheduled Water Board meeting on July 6, 2007, at the Watsonville City Council Chambers, 250 Main Street, Watsonville, California. The meeting is scheduled to begin at 8:30 a.m.; however, no specific time has been set for consideration of this item.

3. If by **June 1, 2007**, Natural Selections Foods LLC does not submit written confirmation of its commitment to complete process wastewater management improvements necessary to comply with the General WDRs, Water Board staff may withdraw and reissue this complaint to recover any economic savings by not completing such improvements in a timely manner.

If you have questions regarding this matter, please direct them to Water Board staff, **Matt Thompson, at (805) 549-3159** or Harvey Packard at (805) 542-4639.

Michael Thomas
Assistant Executive Officer

April 30, 2007
Date

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PROCEDURAL INFORMATION
FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
PUBLIC HEARING AND PAYMENT

WAIVER OF PUBLIC HEARING

You may waive your right to a public hearing. If you wish to waive your right to a public hearing, a duly authorized person[2] must check the *first* box, sign, and submit the following ***Waiver of the Right to a Public Hearing*** form and pay the mandatory minimum penalty amount specified in the Complaint **no later than June 1, 2007, 5:00 P.M.** Please follow the payment instructions below.

If you choose to waive your right to a public hearing, and if full payment and a signed *Waiver of the Right to a Public Hearing* form are received before the hearing, the hearing will not be held, and the violation will be settled. If full payment and a signed *Waiver of the Right to a Public Hearing* form are not received, the matter will be placed on the Central Coast Water Board's agenda for a hearing as stated below.

If you do not waive your right to a public hearing, the Assistant Executive Officer will present an Order to the Central Coast Water Board for the amount proposed in this Complaint at the Central Coast Water Board meeting on July 6, 2007, at the Watsonville City Council Chambers, 250 Main Street, Watsonville, California. The Central Coast Water Board will proceed with the scheduled hearing, consider testimony received from interested persons during the hearing, and decide whether to accept the amount of the mandatory minimum penalty proposed by the Assistant Executive Officer, or direct the Assistant Executive Officer to reissue the complaint alleging increased liability pursuant to Water Code Section 13385(c) and (e). If the proposed Order is adopted, payment of the mandatory minimum penalty to the State Water Resources Control Board will be due and payable no later than August 6, 2007, in accordance with the Order. If the proposed Order is rejected, the Central Coast Water Board may direct the Assistant Executive Officer to issue a new complaint and schedule another public hearing. The Central Coast Water Board may also decide to continue the matter to a future hearing or refer it to the State Attorney General. The meeting is scheduled to begin at 8:30 A.M.; however, no specific time has been set for consideration of the Order.

PAYMENT OF ADMINISTRATIVE CIVIL LIABILITY

No later than June 1, 2007, please make your check payable to *State Water Resources Control Board*, and note "MMP Complaint No. R3-2007-0015" on the check. Please mail the check and signed waiver form to *SWRCB Accounting, Attn: Enforcement, P.O. Box 100, Sacramento, CA 95812-0100.*

Please also mail copies of the check and signed waiver form to *Regional Water Quality Control Board, Attn: Matt Thompson, 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401.*

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[2] A duly authorized person is defined as a principal executive officer of at least the level of vice president in a corporation, a general partner or the proprietor in a partnership or sole proprietorship, a principal executive officer or ranking elected official in a public agency, or a duly authorized representative.

REQUEST FOR HEARING DATE EXTENSION FOR SUPPLEMENTAL ENVIRONMENTAL PROJECT

If you would like to select a Supplemental Environmental Project, please contact Water Board staff as soon as possible. If staff determines your proposed Supplemental Environmental Project meets applicable requirements, you can elect to settle this matter without a hearing, using a form settlement agreement that Water Board staff will provide. In some cases, finalizing a settlement that includes a Supplemental Environmental Project takes several weeks or months.

Unless waived, California Water Code Section 13323(b) requires the Water Board to hold a hearing on Complaint No. R3-2007-0015 within 90 days after the date of service of the complaint. Before any hearing date extension is granted, you must waive the 90-day requirement. In order to request an extension, a duly authorized person must check the *second* box, sign, and submit the following ***Waiver of the Right to a Public Hearing*** form **no later than June 1, 2007, 5:00 P.M.**

A waiver and request for extension do not guarantee that the Water Board will grant the extension request or that you will be able to reach a settlement agreement. In many cases, a settlement agreement including a SEP can easily be completed within 90 days and no extension is necessary. The Water Board will set a new hearing date if a settlement agreement is not finalized in a timeframe acceptable to Water Board staff.

The due date for written comments is not automatically extended when the hearing date is changed.

WAIVER OF THE RIGHT TO A HEARING AND/OR WAIVER OF TIME FOR HEARING

By signing below, I acknowledge that I have read and understand the PROCEDURAL INFORMATION FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT, PUBLIC HEARING AND PAYMENT that was attached to this waiver form.

Check one of the following boxes:

[ ] By checking this box, I agree to waive Natural Selection Foods, LLC's right to a hearing before the Central Coast Water Board with regard to the violations alleged in Complaint No. R3-2007-0015. Also, I agree to remit payment for the civil liability proposed. I understand that I am giving up Natural Selection Foods, LLC's right to argue against the allegations made by the Assistant Executive Officer in this Complaint, and against the imposition or amount of proposed civil liability. [Check this box if Natural Selections Foods, LLC, will pay the full amount of proposed liability without a hearing, and initial here: _____]

[ ] By checking this box, I agree to waive the 90-day requirement of California Water Code Section 13323(b). I understand this means the Water Board may hold a hearing more than 90 days after the date of service as long as I receive at least ten calendar days' notice of the new hearing date. I understand that Natural Selections Foods, LLC's waiver of the 90-day requirement does not extend the original due date for written comments, unless the Water Board also extends that due date. I understand that the Water Board may deny the request for extension. [Check this box if Natural Selections Foods, LLC, requests an extension of the hearing date for any reason, including an extension to discuss settlement and/or Supplemental Environmental Projects with Water Board staff. After checking the box, initial here: _____].

_____
Signature

_____
Printed Name

_____
Title/Position*

_____
Date

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* A duly authorized person must sign the waiver. A duly authorized person is defined as a principal executive officer of at least the level of vice president in a corporation, a general partner or the proprietor in a partnership, a principal executive officer or ranking elected official in a public agency, or a representative authorized in writing by a vice president or higher ranking corporate officer, general partner, principal executive officer or ranking elected official.