

Attachment A – ACL Complaint No. R1-2014-0054
Specific Factors Considered – Civil Liability
Spring Hill Jersey Cheese, Inc. (Complaint)

Each factor of the Enforcement Policy and its corresponding score for each violation are presented below:

Violation No. 1 (Failure to submit 2012 Annual Report): In accordance with General Waste Discharge Requirements Order for Existing Cow Dairies in the North Coast Region (General Order), Order R1-2012-0002, a 2012 Annual Report must be submitted for regulated facilities by November 30, 2012. To date, Spring Hill Jersey Cheese, Inc. (Discharger) has not submitted that report.

Calculation of Penalty for Failure to Submit 2012 Annual Report

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

The per day factor is 0.35.

This factor is determined by a matrix analysis using the potential for harm and the deviation from requirements. The potential for harm was determined to be minor. The Annual Report is the primary mechanism used by dairies to demonstrate compliance with the General Order and implementation of the Nutrient Management Plan and Waste Management Plan. The failure to submit the required technical report undermines the Regional Water Board's efforts to prevent water quality degradation and to implement the regulatory protection measures detailed in the General Order. However, the failure to turn in the 2012 Annual Report, alone, poses a low threat to beneficial uses. The deviation from requirements was determined to be major, as the requirement to submit technical reports has been rendered ineffective.

Initial Liability

The failure to submit a 2012 Annual Report is punishable under Water Code section 13268, subdivision (b), paragraph (1), by civil liability in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which a violation occurs. The Discharger failed to submit an Annual Report for 2012 by November 30, 2012, as required by the General Order and the Monitoring and Reporting Program (MRP). That Annual Report was 479 days late as of March 25, 2014, the date that ACLC R1-2014-0022 was issued.

However, the alternative approach for calculating liability for multiday violations in the Enforcement Policy is applicable. The failure to submit required technical reports does not cause a daily detrimental impact to the environment or the regulatory program and it does not result in an economic benefit that can be measured on a daily basis. Furthermore, the Discharger only receives an economic benefit by not submitting the required technical reports, and not a per-day benefit during the entire period of violation.

Applying the per-day factor to the adjusted number of days of violation rounded to the nearest full day equals 21 days of violation. A calculation of initial liability totals seven thousand three hundred- fifty dollars (\$7,350) (0.35 per day factor X 21 adjusted days of violation X \$1,000 per day penalty).

Step 4. Adjustment Factors

a) *Culpability*: 1.5

Discussion: The Discharger was given the score of 1.5. The Discharger is fully responsible for the failure to submit the 2012 Annual Report alleged in this Complaint. The requirement to submit an Annual Report was detailed in the General Order. In addition, the Discharger was issued a Notice of Violation on March 8, 2013, which requested that the report be submitted as soon as possible to minimize liability. On August 29, 2013, North Coast Water Board staff, performing a site inspection at Spring Hill Dairy, attempted to assist the Discharger in filling out the Annual Report line-by-line to help achieve compliance. Since that time, the Discharger has still failed to submit the 2012 Annual Report, and is therefore highly culpable for its failure to comply with the program.

b) *Cleanup and Cooperation*: 1

Discussion: Despite the fact that the Discharger received multiple notices regarding the requirements set forth in the General Order, including notice in the General Order, workshops, and NOV, the Discharger continues to fail to comply. The Discharger has not voluntarily cooperated to return to compliance. However, the violation of Water Code section 13267, subdivision (b), alleged herein, is a non-discharge violation, and thus cleanup is not applicable. Therefore, the Discharger was given the neutral score of 1, which neither increases nor decreases the fine.

c) *History of Violations*: 1

Discussion: The Discharger was given the score of 1 which neither increases nor decreases the fine. The Regional Board has no documentation of violations for the Discharger.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

a) *Total Base Liability Amount: \$11,025* (Initial Liability (\$7,350) x Adjustments (1.5)(1)(1)).

Steps 6 through 10 Are Applied to the Combined Total Base Liability Amount for All Violations and Will be Discussed After the Total Base Liability Amounts Have Been Determined for the Remaining Violation.

Violation No. 2 (Failure to submit 2013 Annual Report): In accordance with General Order, a 2013 Annual Report must be submitted for regulated facilities by November 30, 2013. To date, the Discharger has not submitted a complete report.

Calculation of Penalty for Failure to Submit 2013 Annual Report

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

The per day factor is 0.35.

This factor is determined by a matrix analysis using the potential for harm and the deviation from requirements. The potential for harm was determined to be minor due to the following: The Annual Report is the primary mechanism used by dairies to demonstrate compliance with the General Order and implementation of the Nutrient Management Plan and Waste Management Plan. The failure to submit the required technical report undermines the Regional Board's efforts to prevent water quality degradation and implement the regulatory protection measures detailed in the General Order. However, the failure to turn in the 2013 Annual Report, alone, poses a low threat to beneficial uses. The deviation from requirements was determined to be major, as the requirement to submit technical reports has been rendered ineffective.

Initial Liability

The failure to submit an Annual Report is punishable under Water Code section 13268, subdivision (b), paragraph (1), by civil liability in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which a violation occurs. The discharger failed to submit an Annual Report for 2013 by November 30, 2013 as

required by the General Order and the MRP. That Annual Report was 114 days late as of March 25, 2014, the date that ACLC R1-2014-0022 was issued.

However, the alternative approach for calculating liability for multiday violations in the Enforcement Policy is applicable. The failure to submit required technical reports does not cause a daily detrimental impact to the environment or the regulatory program and it does not result in an economic benefit that can be measured on a daily basis. Furthermore, the Discharger only receives an economic benefit by not submitting the required technical reports, and not a per-day benefit during the entire period of violation.

Applying the per-day factor to the adjusted number of days of violation rounded to the nearest full day equals 9 days of violation. A calculation of initial liability totals \$3,150 (0.35 per day factor X 9 adjusted days of violation X \$1,000 per day penalty).

Step 4. Adjustment Factors

a) *Culpability: 1.5*

Discussion: The Discharger was given the score of 1.5, which increases the fine. The Discharger is fully responsible for the failure to submit the 2013 Annual Report alleged in this Complaint. The requirement to submit a 2013 Annual Report was detailed in the 2012 General Order, and was discussed in outreach and education efforts. The North Coast Water Board staff has attempted to help the Discharger achieve compliance with regard to the filing of Annual Reports. Despite those efforts, the Discharger continues to ignore the requirements of the General Order. Therefore, the Discharger is highly culpable for its failure to comply with the program.

b) *Cleanup and Cooperation: 1*

Discussion: Despite the fact that the Discharger received multiple notices regarding the requirements set forth in the General Order, including notice in the General Order, workshops, and NOV, the Discharger continues to fail to fully comply. While the Discharger attempted to submit a 2013 Annual Report following issuance of ACLC R1-2014-0022, significant portions of that Annual Report were still missing. The violation of Water Code section 13267, subdivision (b), alleged herein, is a non-discharge violation, and thus cleanup is not applicable. Based on these facts, the Discharger was given the neutral score of 1, which neither increases nor decreases the fine.

c) *History of Violations: 1*

Discussion: The Discharger was given the score of 1 which neither increases nor decreases the fine. The Regional Board has no documentation of violations for the Discharger.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

- a) *Total Base Liability Amount: \$4,725* (Initial Liability (\$3,150) x Adjustments (1.5)(1)(1)).

Violation No. 3 (Failure to submit Nutrient Management Plan (NMP) and Waste Management Plan (WMP)): In accordance with General Waste Discharge Requirements Order for Existing Cow Dairies in the North Coast Region (General Order), Order R1-2012-0002, a NMP and WMP must be prepared, implemented, and made available for review by Regional Water Board staff during inspections and upon request by staff. To date, the Discharger has not furnished those reports after being requested to do so.

Calculation of Penalty for Failure to Submit NMP and WMP

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

The per day factor is 0.35.

This factor is determined by a matrix analysis using the potential for harm and the deviation from requirements. The potential for harm was determined to be minor. The WMP and NMP are intended to help ensure that the Dairy is designed, constructed, operated and maintained so that wastes generated are managed to prevent conditions of nuisance or adverse impacts to groundwater and surface water. The failure to submit the required technical reports undermines the Regional Water Board's efforts to prevent water quality degradation and to implement the regulatory protection measures detailed in the General Order. However, the failure to turn in the NMP and WMP, alone, poses a low threat to beneficial uses. The deviation from requirements was determined to be major, as the requirement to submit technical reports has been rendered ineffective.

Initial Liability

The failure to submit a WMP or NMP is punishable under Water Code section 13268, subdivision (b), paragraph (1), by civil liability in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which a violation occurs. The Discharger failed to submit a WMP and NMP by the May 14, 2014

deadline that was established in the Regional Water Board staff's request letter. The NMP and WMP are now 120 days late.

However, the alternative approach for calculating liability for multiday violations in the Enforcement Policy is applicable. The failure to submit required technical reports does not cause a daily detrimental impact to the environment or the regulatory program and it does not result in an economic benefit that can be measured on a daily basis. Furthermore, the Discharger only receives an economic benefit by not submitting the required technical reports, and not a per-day benefit during the entire period of violation.

Applying the per-day factor to the adjusted number of days of violation rounded to the nearest full day equals 10 days of violation. A calculation of initial liability totals three thousand one hundred- fifty dollars (\$3,500) (0.35 per day factor x 10 adjusted days of violation x \$1,000 per day penalty).

Step 4. Adjustment Factors

d) *Culpability*: 1.5

Discussion: The Discharger was given the score of 1.5. The Discharger is fully responsible for the failure to submit the WMP and NMP alleged in the Complaint. The requirement that the Dairy prepare and implement the NMP and WMP was detailed in the General Order. The Discharger was issued a letter on March 5, 2014, which requested that the NMP and WMP be submitted to Regional Water Board staff and described the potential consequences associated with failing to furnish those reports. To date, the Discharger has failed to furnish the NMP and WMP, and is therefore highly culpable for its failure to comply with the program.

e) *Cleanup and Cooperation: 1.5*

Discussion: On March 5, 2014, the Assistant Executive Officer of the Regional Water Board issued a letter to Spring Hill Jersey Cheese, Inc. requesting that it furnish a NMP and WMP by April 5, 2014. Upon the Discharger's request, the Assistant Executive Officer agreed to extend that due date until May 14, 2014. Despite the extension, the Discharger failed to submit the plans. On May 27, 2014, the Regional Water Board staff met with the Discharger to discuss the requirements set forth in the General Order, including the WMP and NMP requirements. However, following that meeting, the Discharger did not take the necessary steps to come into compliance. The Discharger exhibited a significant lack of cooperation despite the Regional Water Board staff's numerous attempts to accommodate the Discharger. Thus, a score of 1.5, which increases the fine, has been applied.

f) *History of Violations: 1*

Discussion: The Discharger was given the score of 1 which neither increases nor decreases the fine. The Regional Board has no documentation of violations for the Discharger.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

b) *Total Base Liability Amount: \$7,875* (Initial Liability (\$3,500) x Adjustments (1.5)(1.5)(1)).

COMBINED TOTAL BASE LIABILITY AND FACTORS APPLIED TO ALL VIOLATIONS

The Combined Total Base Liability Amount for the three violations is \$23,625 (\$11,025 + \$4,725 + \$7,875).

The following factors apply to the combined Total Base Liability Amounts for all of the violations discussed above.

Step 6. Ability to Pay and Continue in Business

a) *Adjusted Combined Total Base Liability Amount: \$23,625*

Discussion: The Discharger has the ability to pay the total base liability amount based on: 1) the Discharger owns the dairy and creamery, which are significant assets, and 2) the Discharger operates a dairy, an ongoing business that generates profits.

Additionally, Spring Hill Jersey Cheese, Inc. owns APN 008-032-009, which has a net assessment of \$7,453,950 and APN 008-031-015, which has a net assessment of \$1,120,028. According to a news article linked to the Discharger's website¹, the Discharger employs 50 people and generates \$212 million a year in sales.

Based on the reasons discussed above, an ability to pay factor of 1 has been applied to the Combined Total Base Liability Amount.

Step 7. Other Factors as Justice May Require

- a) *Adjusted Combined Total Base Liability Amount:* \$23,625 + \$13,500 (staff costs) = **\$37,125.**
- b) *Discussion:* The State and Regional Water Board has incurred \$13,500 in staff costs associated with the investigation and enforcement of the violations alleged herein. This represents approximately 90 hours of staff time devoted to investigating the violations, drafting the Notice of Violation, attending settlement meetings, and drafting the Complaints at \$150 an hour. In accordance with the Enforcement Policy, this amount is added to the Combined Total Base Liability Amount.

Step 8. Economic Benefit

- a) *Estimated Economic Benefit:* **\$7,112**

Discussion: The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency's (US EPA) Economic Benefit Model (BEN) penalty and financial modeling program. BEN calculates a discharger's monetary interest earned from delaying or avoiding compliance with environmental statutes. The Discharger has received an economic benefit from the costs saved in not drafting and preparing the Annual Reports and the WMP and NMP. This is based on the current consulting costs of producing two Annual Reports, which is estimated at \$800 each, and the cost of preparing both a NMP and a WMP, which is estimated at \$10,000. Applying the BEN to these costs, the economic benefit realized by the Discharger is estimated at \$7112, as shown in Attachment B.

Step 9. Maximum and Minimum Liability Amounts

- a) *Minimum Liability Amount:* **\$7,823**

¹ See "For Petaluma Creamery, the Future Lies in Burritos," available at <http://patch.com/california/petaluma/for-petaluma-creamery-the-future-lies-in-burritos>, accessed 8-25-14, linked to <http://www.springhillcheese.com/>.

Discussion: 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.

b) *Maximum Liability Amount: \$713,000*

Discussion: The maximum administrative liability amount is the maximum amount allowed by Water Code section 13268, subdivision (b), paragraph (1): one thousand dollars (\$1,000) for each day in which the violation occurs. Without the benefit of the alternative approach for calculating liability for multiday violations under the Enforcement Policy, the Discharger could face penalties for the total number of days in violation (713 total days X \$1,000 per day).

The proposed liability falls within these maximum and minimum liability amounts.

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the failure to submit the 2012 and 2013 Annual Reports and the WMP and NMP is **\$37,125**.