



EDMUND G. BROWN, JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

October 30, 2014

Matthias St. John, Executive Officer  
North Coast Regional Water Quality Control Board  
5550 Skylane Blvd., Ste. A  
Santa Rosa, CA 95403-1072

**SUBJECT: PROSECUTION TEAM CASE-IN-CHIEF SUMMARY FOR  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R1-2014-0054**

Dear Mr. St. John:

Please find enclosed ten copies of the Prosecution Team's Rebuttal Brief, a revised Exhibit List, and rebuttal evidence ("Exhibit 18" and "Exhibit 19"), in accordance with the hearing procedures for the Spring Hill Jersey Cheese, Inc. matter referenced above. As described in the Prosecution Team's Rebuttal Brief, the Prosecution Team continues to support the imposition of \$37,125 for the violations alleged in Administrative Civil Liability Complaint R1-2014-0054.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Naomi Kaplowitz".

Naomi Kaplowitz, Staff Counsel  
Prosecution Team

Enclosures: Prosecution Team's Rebuttal Brief  
Revised Exhibit List  
Exhibit 18  
Exhibit 19

cc: Samantha Olson, Senior Staff Counsel, North Coast Regional Water Board  
Larry Peter, Spring Hill Jersey Cheese, Inc., 621 Western Avenue, Petaluma, CA 94952  
Michael Brook, Attorney for Spring Hill Jersey Cheese, Inc.

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
NORTH COAST REGION

In the matter of Administrative Civil Liability  
Complaint No. R1-2014-0054 (Spring Hill  
Jersey Cheese, Inc.)

Prosecution Team's Response to Letter  
Submitted by Discharger's Counsel and  
Rebuttal Evidence

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The Prosecution Team for the California Regional Water Quality Control Board, North Coast Region ("Regional Water Board" and "Prosecution Team") hereby submits a response to the October 21, 2014 letter submitted by counsel for Spring Hill Jersey Cheese, Inc. ("Discharger").

The Prosecution Team continues to recommend a penalty in the amount of \$37,125 for the Discharger's failure to file a 2012 Annual Report and a 2013 Annual Report, and for the Discharger's failure to furnish a Nutrient Management Plan ("NMP") and a Waste Management Plan ("WMP").

**I. The Discharger's Attempt at Justifying its Failure to Comply is without Merit**

The Discharger asserts that, ". . . Spring Hill has done extensive work, costing ten's of thousands of dollars, on work improving the property, directly improving water discharge and nutrient use." (October 21, 2014 Letter.) The Discharger's assertion that it has allegedly expended financial resources on improving conditions at its dairy has little relevance to the alleged violations and the proposed liability, unless the Discharger is, by this statement, proposing that it does not have the financial ability to pay the proposed penalty and continue in business.

To this end, on September 11, 2014, the Prosecution Team provided the Discharger with a balance sheet that the Discharger could submit if it planned to rebut the presumption in the Complaint regarding an ability to pay. To date, the Discharger has not asserted that it does not

have the ability to pay the proposed penalty nor did it provide the financial documents, which were due by October 9, 2014, necessary for the Prosecution Team to conduct a thorough ability to pay analysis.

The Discharger also asserts that, "Spring Hill has also had a great deal of difficulty employing the requisite professional to prepare the documents required. We have been working with, for instance, the USDA- NRCS, and they have been able to assist directly so far." (October 21, 2014 Letter.) The General Waste Discharge Requirements Order for Existing Cow Dairies in the North Coast Region, Order R1-2012-0002 ("General Permit") required that the WMP and NMP be developed and implemented by January 19, 2013. The Discharger did not, by its own admission, begin attempts at developing these documents until the Prosecution Team began the process of formal enforcement far after the deadlines imposed under the General Permit.

The Discharger alleges that, "[r]ecently, we were able to engage the requisite professional and hope the plans will be ready before the hearing, if such is necessary. We are unfortunately facing a hearing due to the extraordinary length of time spent in finding a professional to complete the plans: the demand apparently far exceeds the supply." (October 21, 2014 Letter.)

This statement is without merit. As of 2014, there were 30 technical service providers on the National Resources Conservation Service ("NRCS") Technical Service Provider list serving Sonoma County, California that specialize in Nutrient Management (attached as Rebuttal Evidence, "Exhibit 18"). Furthermore, the Discharger is the only dairy regulated by the North Coast Region under the General Permit that has failed to find a requisite professional and complete the documents. (See "Table of North Coast Dairies with NMPs," attached as Rebuttal Evidence, Exhibit 19; Prosecution Team Case in Chief, Attachment A, "Policy Statement.")

## **II. The Potential Submission of a Nutrient Management Plan and Waste Management Plan Does not Constitute Evidence of Compliance**

Spring Hill Jersey Cheese, Inc. in its case in chief, proposes to submit as evidence "the nutrient management plan and waste management plan (nearing completion), which will be provided upon completion." (October 21, 2014 Letter.) The Prosecution Team encourages the submittal of the NMP and WMP in order to cease the accrual of penalties for continuing days of violation, which subjects the Discharger to potential liability outside of the violation period alleged in the subject Complaint. Upon receipt of the NMP and WMP, Regional Board staff will conduct review and approval to ensure that the documents are complete and include the requisite components delineated in the General Order.

While Regional Board staff is eager to receive the NMP and WMP, submission of those documents at a future date does not constitute evidence of compliance in regard to the violation alleged in the subject Complaint. The violation period alleged in the Complaint ends on September 11, 2014, which is the day that the Complaint was issued. The Discharger's proposal to submit the NMP and WMP, which are still in the process of being developed, only strengthens the position that the Discharger was out of compliance for the time period alleged.

### **III. The 2007 NMP Does Not Constitute Evidence of Compliance**

The Discharger proposes to enter into evidence "[p]rior plan (already provided to the Board)." (October 21, 2014 Letter.) The Prosecution Team assumes that this is a reference to the 2007 NMP, submitted into evidence by the Discharger on October 29, 2014. The 2007 NMP, although perhaps relevant to the matter, does not constitute evidence of compliance or change the proposed liability. The 2007 NMP does not contain a Waste Management Plan for the dairy production area. WMP contents must include the following: Certification by a specialist that the current dairy retention ponds meet Title 27 requirements; current wellhead protection and backflow prevention documentation by a trained professional; discussion of current erosion control for surface water protection; discussion of salt minimization strategies; an emergency

spill prevention plan; current pond storage volume details; current stormwater runoff information for the protection of surface water; discussion of pond freeboard minimums; discussion of contingency plans in case the storage volume is inadequate; current manure pond solids removal schedule; current pond inspections and cleanout details; current pond liner information; discussion of current practices to minimize infiltration of manure to soils for groundwater protection; list of current livestock watercourse crossing protections; and current details on diversions of clean stormwater runoff. The General Permit requires that a Nutrient Management Plan contain current soil and nutrient tests needed, changes in herd size, varying nutrients being hauled in to the dairy, current pasture conditions, acreage changes, current crop rotations, a map with current configurations of the items listed as required by the GWDR, current nutrient budget calculations, current land application practices, current water quality protection, manure, soil, and plant tissue sampling and analysis, current field risk assessment, record keeping, and NMP review. The NRCS recommends updating NMPs whenever there is a change at the dairy such as in cow numbers, nutrients to land application, crops, or management style. The 2007 NMP lacks most of the information listed for a WMP and NMP, and does not contain current information to meet the GWDR requirements listed above.

**IV. The Prosecution Team Objects to the Discharger's Assertion that it "Reserves the Right to introduce any Other Documents at Hearing"**

The Discharger proposes in its case in chief that it "reserves the right to introduce any other documents at hearing." (October 21, 2014 Letter.) The Prosecution Team respectfully requests that the Discharger be barred from introducing surprise evidence or testimony at hearing. The Hearing Procedures provide that "[i]n accordance with California Code of Regulations, title 23, section 648.4, the Regional Water Board endeavors to avoid surprise testimony or evidence." (R1-2014-0054 Hearing Procedures, at page 5).

The purpose of discouraging surprise testimony and evidence is to provide all parties, as well as interested persons and the public, with ample time to review evidence in order to participate at hearing. The Hearing Procedures provide deadlines, in part, to ensure that all parties are provided with ample time to conduct discovery and develop their cases. The introduction of surprise evidence or testimony at the hearing would prejudice the Prosecution Team because it would be deprived of the opportunity to adequately prepare for cross-examination or rebuttal.

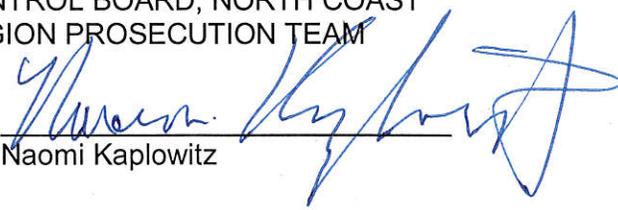
**V. Conclusion**

The only relevant issue in this proceeding is whether the Discharger submitted the 2012 and 2013 Annual Reports by the deadlines as required by the General Permit, and whether the Discharger furnished the NMP and WMP upon the request of Regional Water Board staff as required by the General Permit. The Prosecution Team contends, and the Discharger admits in its case in chief, that these documents were not provided by the requisite deadlines. Thus, the Prosecution Team recommends to the Regional Water Board the imposition of an administrative civil liability penalty of \$37,125, as proposed.

Dated: 30 October 2014

Respectfully submitted,

CALIFORNIA REGIONAL WATER QUALITY  
CONTROL BOARD, NORTH COAST  
REGION PROSECUTION TEAM

By:   
Naomi Kaplowitz

## Revised Prosecution Team Evidence List (Rebuttal Evidence Added)

Spring Hill Jersey Cheese Inc.  
Administrative Civil Liability Complaint R1-2014-0054  
November 20, 2014 Board Meeting

The Prosecution Team's evidence consists of materials presented as Items 1 through 19 below.

<b>Exhibit</b>	<b>Title of Document</b>	<b>Location</b>
Exhibit 1	Annual Report, Submitted May 14, 2014 (Incomplete Annual Report)	Attached
Exhibit 2	April 25, 2014 Letter Granting Final Extension to Submit Nutrient Management Plan and Waste Management Plan	Attached
Exhibit 3.A	March 2014 Administrative Civil Liability Complaint R1-2014-0022 with Attachment A, Methodology	Attached
3.B	Transmittal Letter (3/25/2014)	
3.C	Hearing Notice	
3.D	Fact Sheet	
3.E	Certified Mail Return Receipt (3/27/2014)	
3.F	Signed Hearing Waiver (4/23/2014)	
Exhibit 4	March 5, 2014 Request to Furnish Nutrient Management Plan and Waste Management Plan Letter	Attached
Exhibit 5.A	December 13 and 16, 2013 Annual Report Correspondence	Attached
5.B	December 27, 2013 Annual Report Correspondence	
Exhibit 6	November 25, 2013 Annual Report Reminder Letter (Report Due November 30, 2013)	Attached
Exhibit 7.A	August 2013 Meeting and Inspection Memo	Attached
7.B	August 9-16 Correspondence	
7.C	August 30, 2013 Correspondence	
Exhibit 8	July 2013 Annual Report Correspondence	Attached
Exhibit 9	March 2013 Notice of Violation for Past Due Annual Report	Attached
Exhibit 10	December 2012 Annual Report Correspondence	Attached
Exhibit 11.A	GWDRs Notice of Intent from Discharger	Attached
11.B	(4/17/2012) GWDRs Enrollment Letter from Staff (5/7/2012)	
Exhibit 12	March 27, 2012 Site Assessment Checklist	Attached
Exhibit 13	February 2012 Final Judgment and Permanent Injunction Pursuant to Stipulation issued to Larry Peter by Sonoma County Superior Court	Attached

Exhibit 14.A	General Waste Discharge Requirement Order No. R1-2012-0002	Attached
14.B	Monitoring and Reporting Program	
14.C	2011-2012 Fee Schedules	
14.D	Notice of Intent	
14.E	Attachment B	
14.F	Attachment C	
14.G	Appendix 1	
14.H	Appendix 2	
14.I	Appendix 3	
Exhibit 15.A	Topographic Map	Attached
15.B	Dairy Image	
15.C	Dairy Production Area Image	
15.D	Geographic Map	
Exhibit 16.A	Tax Assessor Record APN 008-031-015	Attached
16.B	Tax Assessor Record APN 008-032-009	
Exhibit 17	News Article Regarding Spring Hill Dairy	Attached
Exhibit 18	Technical Service Provider List for Sonoma County	Attached
Exhibit 19	Table of North Coast Dairies with NMPs	Attached

## **Exhibit 18**

### **Technical Service Provider List for Sonoma County**



**Search USDA**

**TechReg Resources**

- Categories & Criteria Options
- Conservation Activity Plan Options
- State TSP Coordinators
- TechReg Program Web Site

**Training Resources**

- Register for AgLearn

**Feedback**

- Comment to TechReg Team

**Locate Technical Service Provider**

[Back to US Map](#) [Back to State Map](#)

**California**

Select the category and service you are interested in

Select County:

Select Category:

Select Service:

**Technical Service Providers**

[View/Print TSP List](#)

Name	Type	TSP ID	Address	City	ST	Zip	Phone	eMail	Organic	
BAYNE, RYAN	Individual	TSP-04-4479	14496 N. Sheldon Rd., Suite 200	Plymouth	MI	48170	5172300741	rbayne@croworld.com	N	<a href="#">Resume</a>
BEERENDS, MICHAEL	Individual	TSP-10-6562	7086 N MAPLE AVE STE 101	FRESNO	CA	93720	5593265900	mbeerends@croworld.com	N	<a href="#">Resume</a>
Bommelje, Steven Carl	Individual	TSP-11-7732	3104 W. Ceres Ct	Visalia	CA	93291	5597337509	sbommelje@sbcglobal.net	N	<a href="#">Resume</a>
BOWMAN, MICAH	Individual	TSP-09-6135	4703 W GIBSON AVE	FRESNO	CA	93722	5598241229	fourbowmans@att.net	N	<a href="#">Resume</a>
Captein, Jacqueline C	Individual	TSP-11-7089	11936 Alta Mesa Rd.	Galt	CA	95632	2097485020	dcomprecords@yahoo.com	N	<a href="#">Resume</a>
CARDOSO, MARIANN B	Individual	TSP-09-6245	1306 Main Street	NEWMAN	CA	95360	2092772817	aggiemariann@yahoo.com	N	<a href="#">Resume</a>
CREQUE, JEFFREY A	Individual	TSP-03-1731	908 WESTERN AVE	PETALUMA	CA	94952	7077651059	jacreque@sonic.net	Y	<a href="#">Resume</a>
EASTERLING CONSULTANTS LLC	Business	TSP-B-04-512	525 E LANETT DR	DESOTO	TX	75115	2149247386	vhelm43@yahoo.com	N	<a href="#">Resume</a>
ESPINOSA, TISH	Individual	TSP-10-6669	12960 IVIE RD	HERALD	CA	95638	2098102538	caliag@att.net	N	<a href="#">Resume</a>
F&R Ag Services, Inc.	Business	TSP-B-13-2299	2857 Geer Road, Suite A	Turlock	CA	95382	2093244097	vfurtado@fragservices.com	N	<a href="#">Resume</a>
FURTADO, VINCENT	Individual	TSP-09-6244	1401 SHOSHONE PL	MODESTO	CA	95358	2093244097	vfurtado@fragservices.net	N	<a href="#">Resume</a>
GEOLOGICAL TECHNICS	Business	TSP-B-04-456	1172 KANSAS AVE	MODESTO	CA	95351	2095224119	gti@gtienv.com	N	<a href="#">Resume</a>
GOLDSMITH, BRUCE	Individual	TSP-10-6546	P.O. Box 1056	GALT	CA	95632	2093270770	acorn2222@gmail.com	N	<a href="#">Resume</a>
HEERINGA, NATHAN LEE	Individual	TSP-09-6438	1201 Delta View Rd. Suite 5	Hanford	CA	93230	5595872800	nheeringa@innovativeag.net	N	<a href="#">Resume</a>
HELM, VIRGIL	Individual	TSP-03-1319	808 DENNIS DR	DESOTO	TX	75115	9722304481	Vhelm43@yahoo.com	N	<a href="#">Resume</a>
HUTCHINGS, JARED	Individual	TSP-09-6175	1201 Delta View Road	Hanford	CA	93230	5595872800	jhutchings@innovativeag.net	N	<a href="#">Resume</a>
IKEMIYA, DONALD	Individual	TSP-03-1777	130 N. Garden Street	Visalia	CA	93291	5596361166	dikemiya@ppeng.com	N	<a href="#">Resume</a>
Owens, Breanna	Individual	TSP-11-7702	25020 Marek Rd	Los Molin	CA	96055	5305143107	bre_owens@yahoo.com	N	<a href="#">Resume</a>
RAMOS, JOE	Individual	TSP-09-6115	22301 KILBURN RD	CROWS LANDING	CA	95313	2092262375	jramos@fragservices.com	N	<a href="#">Resume</a>
RIORDAN, TIMOTHY ALEX	Individual	TSP-09-6243	946 N. Joshua Ave.	Clovis	CA	93611	5593133584	ariordan@fragservices.com	N	<a href="#">Resume</a>
ROCHA CORDEIRO, KRISTY	Individual	TSP-09-6249	1228 KERN ST	NEWMAN	CA	95360	7075489214	krcordeiro@yahoo.com	N	<a href="#">Resume</a>

										<a href="#">Resume</a>
SHN Engineers & Geologist	Business	TSP-B-12-1921	812 West Wabash	Eureka	CA	95501	7074418855	gwilliston@shn-engr.com	N	<a href="#">Resume</a>
SMITH, ROBERT	Individual	TSP-08-6054	2312 LASSEN PL	DAVIS	CA	95616	5307589244	robertsmith2312@gmail.com	N	<a href="#">Resume</a>
SOUSA, PAUL	Individual	TSP-08-6094	1315 K ST	MODESTO	CA	95354	2095276453	psousawud@yahoo.com	N	<a href="#">Resume</a>
SUYAMA, HITOSHI	Individual	TSP-08-6046	1910 W MCKINLEY AVE	FRESNO	CA	93728	5592336129	hitoshis@dellavallelab.com	N	<a href="#">Resume</a>
The Source Group, Inc.	Business	TSP-B-12-1906	3213 Liberty Square Parkway	Turlock	CA	95382	2096691800	bwhitney@thesourcegroup.net	N	<a href="#">Resume</a>
WHITNEY, BRIDGET	Individual	TSP-09-6134	3213 LIBERTY SQUARE PKWY	TURLOCK	CA	95382	2096691800	bwhitney@thesourcegroup.net	N	<a href="#">Resume</a>
Wiens, Daniel	Individual	TSP-11-8018	2191 Piccardo Circle	Stockton	CA	95207	2095185848	Dan@CropView.net	N	<a href="#">Resume</a>
Wilcox, Cindy	Individual	TSP-12-8155	812 W. Wabash Ave.	Eureka	CA	95501	7074418855	cwilcox@shn-engr.com	N	<a href="#">Resume</a>
Wilkins, Kathryn	Individual	TSP-10-6906	P.O. Box 2382	Oakdale	CA	95361	2096047444	kagrzd@yahoo.com	N	<a href="#">Resume</a>

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[Back to State Map](#)

## **Exhibit 19**

### **Table of North Coast Dairies with NMPs**

**From: Cherie Blatt, Water Resource Control Engineer, NCRWQCB**

**Date: October 30, 2014**

**Subject: Number of existing cow dairies in the North Coast Regional Water Quality Control Board region with Nutrient Management Plans**

<b>Year that Nutrient Management Plan was developed</b>	<b>No. of dairies</b>
None or unknown	69
1986-2012	37
2013-2014	20

The North Coast Regional Water Board regulates 126 existing cow dairies under the Dairy Program orders:

Waiver Order R1-2012-0003  
General Order R1-2012-0002  
NPDES Permit R1-2012-0001

The North Coast Regional Water Board staff has tallied the number of dairies that have Nutrient Management Plans (“NMPs”) and the year that these NMPs were developed. These numbers were tallied both from dairy Annual Report submittals and from inquiries made during onsite staff inspections. The table above shows that 20 dairies have acquired a NMP in the past two years. That is a rate of about 10 dairies per year. Also, at least 5 dairies are expected to have NMPs completed in 2015. This is based on recent inspections and our knowledge of the State 319(h) grant for dairy Nutrient Management Plan development within the Laguna de Santa Rosa watershed of the Russian River Basin.