

ORDER NO. R2-2017-1004
ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING
for
Discovery Foods
2395 American Ave, Hayward

ALLEGED VIOLATION AND NOTICES OF VIOLATION

Discovery Foods (Discharger) violated section II.B.4 of the State Water Resources Control Board General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ, NPDES No. CAS000001 (2014 Industrial General Permit), by failing to recertify for continued coverage under the new permit by July 1, 2015. The State Water Resources Control Board (State Water Board) issued notices of noncompliance as required by California Water Code (Water Code) section 13399.30 to the Discharger on October 30, 2015, and December 11, 2015. By statute, the Discharger is now subject to a minimum penalty of \$5,000 for failing to recertify by July 1, 2015.

ACCEPTANCE AND WAIVER

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the San Francisco Bay Regional Water Quality Control Board (Regional Water Board), the Discharger hereby accepts the conditional offer to settle the alleged violation through payment of mandatory minimum penalties (Conditional Offer) and waives the right to a hearing before the Regional Water Board to dispute the alleged violation.

The Discharger agrees that the letter enclosed with this Acceptance and Waiver shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Regional Water Board to assert jurisdiction over the alleged violation through its Assistant Executive Officer. The Discharger agrees to pay the penalties authorized by Water Code section 13399.33, which shall be deemed payment in full of any civil liability pursuant to Water Code section 13399.30 that otherwise might be assessed for the violation described above. The Discharger understands that this Acceptance and Waiver waives its right to contest the alleged violation and the amount of civil liability for such violation.

The Discharger understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified herein.

Upon execution by the Discharger, the Acceptance and Waiver shall be returned to:

San Francisco Bay Regional Water Board
Attention: Margaret Monahan
1515 Clay Street, Suite 1400
Oakland, CA 94612

The Discharger understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii), require the Regional Water Board to publish notice of, and provide at least 30 days for, public comment on any proposed resolution of an enforcement action. Accordingly, this Acceptance and Waiver, prior to execution by the Executive Officer of the Regional Water Board, will be published for public comment as required by law.

If no comments are received within the notice period that cause the Executive Officer of the Regional Water Board to reject the settlement amount, the Executive Officer may execute the Acceptance and Waiver. Regional Water Board resolution of these violations will preclude State Water Board action for the same violations.

The Discharger understands that if significant comments are received in opposition to the Conditional Offer, the offer may be withdrawn. In that circumstance, the Discharger will be advised of the withdrawal and an administrative civil liability complaint may be issued and the matter may be set for a hearing before the Regional Water Board or State Water Board. For such a liability hearing, the Discharger understands that this Acceptance and Waiver executed by the Discharger will be treated as a settlement communication and will not be used as evidence in that hearing.

The Discharger understands that funds collected for violations pursuant to Water Code section 13399.30 shall be deposited in the Waste Discharge Permit Fund.

The Discharger understands that in lieu of full payment of the assessed mandatory minimum penalty to the Waste Discharge Permit Fund, it may elect to pay a portion toward the Regional Monitoring Program (RMP) as a supplemental environmental project (SEP). This SEP will supplement RMP studies that would not otherwise be conducted through the Regional Water Board's annually approved RMP cost allocations. The guiding principal of the RMP is to collect data and communicate information about water quality in the San Francisco Estuary in support of management decisions to restore and protect beneficial uses of the region's waters. Information about the RMP is at <http://www.sfei.org/rmp>. RMP funds are managed and administered by the non-profit San Francisco Estuary Institute. No funds will go to the Regional Water Board. The Regional Water Board will consider the Discharger to have fulfilled its obligation for this SEP after its contribution to the SEP Fund has been received by the Institute. To select this option, place a "✓" or "✗" in the box below. By selecting this option, the Discharger agrees to pay the amount indicated below to the SEP Fund. Selection of this SEP Fund option does not change the total amount the Discharger will pay.

Select appropriate box (and fill in blanks if appropriate):

- I choose to pay a portion of the assessed liability to the RMP SEP Fund.

\$ 2,500 Maximum allowable portion that can be paid to the SEP Fund.

\$ _____ Leave blank unless the Discharger chooses to pay less than the maximum allowable to the SEP Fund; in this case, then indicate the amount to be paid to the SEP Fund.

\$ _____ Indicate the amount to be paid to the State, which is **\$ 2,500** unless the Discharger has chosen to pay less than the maximum allowable to the SEP Fund. If the Discharger has chosen to pay less than the maximum allowable to the SEP Fund, then enter the amount to be paid to the State, which shall be the balance of the total assessed mandatory minimum penalty and the amount the Discharger chooses to pay to the SEP Fund.

\$ 5,000 Total assessed mandatory minimum penalty. This amount must equal the sum of the above, either lines 1 plus 3, or lines 2 plus 3.

I choose to pay the total assessed mandatory minimum liability in full to the Waste Discharge Permit Fund.

The Discharger understands that once the Acceptance and Waiver is executed by the Executive Officer of the Regional Water Board, payment no later than 30 days after the date of the Executive Officer's signature is a condition of this Acceptance and Waiver. If the Discharger does not select the SEP Fund option above, the Discharger shall pay the total assessed civil liability in full to the Waste Discharge Permit Fund. If the Discharger selects the SEP Fund option, then the Discharger shall pay the portion not paid toward the SEP Fund to the Waste Discharge Permit Fund and pay the balance to the San Francisco Estuary Institute for the SEP Fund. The Regional Water Board will send an invoice for any payment due for the SEP Fund. Payment to the Waste Discharge Permit Fund must be submitted in accordance with an invoice for payment from the State Water Board.

Please do not send a check(s) for payment with this Acceptance and Waiver. If acceptable, the Executive Officer will counter-sign the Acceptance and Waiver and an invoice will be sent to the Discharger for payment within 30 days.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Discharger in the making and giving of this Acceptance and Waiver.

Discovery Foods

By: Saul Gallo
Printed or typed name

GENERAL MANAGER
Title

Saul Gallo
Signature

12/15/2016
Date

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13399.30

By: _____
Bruce H. Wolfe
Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region

_____ Date