

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF JULY 16-17, 2020

Prepared on June 16, 2020

ITEM NUMBER: 13

SUBJECT: **Stipulated Order Settling Enforcement Actions Associated with Monterey Mushrooms, Inc. and Spawn Mate, Inc. Unauthorized Discharges of Process Wastewater and Polluted Stormwater to Unnamed Tributaries of Elkhorn Slough (Administrative Civil Liability Order No. R3-2020-0048)**

STAFF CONTACTS: **Thea Tryon, 805/542-4776,**
thea.tryon@waterboards.ca.gov
Paul Ciccarelli, 916/322-3227,
paul.ciccarelli@waterboards.ca.gov

KEY INFORMATION

Location: From January 8, 2017 through April 19, 2017, there were 14 unauthorized discharges of mushroom growing process wastewater and/or polluted stormwater from two mushroom facilities in Royal Oaks, northern Monterey County, to tributaries of Elkhorn Slough

Type of Discharge: Unauthorized discharges of compost leachate and/or compost-laden stormwater

Estimated Volume: Approximately 4,634,245 gallons of mushroom process wastewater and/or polluted stormwater

Existing Orders: Waste Discharge Requirements Order No. R3-2000-0037
Waste Discharge Requirements Order No. R3-2000-0038

ACTION: **Adopt Proposed Stipulated Order**

SUMMARY

Monterey Mushrooms, Inc., either directly or through its wholly owned subsidiary Spawn Mate, Inc., (Discharger) owns and operates four mushroom growing facilities in California. Proposed Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R3-2020-0048 (Stipulated Order) resolves alleged violations associated with two of the four California facilities, which are located in Monterey County and regulated under Waste Discharge Requirements (WDRs) Order No. R3-2000-0037 (Maher Court Permit) and No. R3-2000-0038 (Hall Road Permit).

The Maher Court Permit regulates the discharge of wastewater at the Discharger's 279-acre facility located at 777 Maher Court in Royal Oaks, northern Monterey County (Maher Court Facility), where mushrooms are spawned, grown, harvested, and packaged. Compost—typically containing horse and/or poultry manure, urea, and gypsum—used in the mushroom growing process is manufactured onsite. Compost leachate, a process wastewater, is recycled and stored onsite and reused to add nutrients to compost.

The Hall Road Permit regulates the discharge of wastewater at the Discharger's 14.3-acre facility located at 415 Hall Road in Royal Oaks, northern Monterey County (Hall Road Facility). When the alleged violations occurred, the Discharger spawned, grew, harvested, and packaged mushrooms at the Hall Road Facility, which required the onsite use and storage of compost leachate. In January 2020, the Discharger informed Central Coast Water Board program staff that it ceased mushroom growing operations at the Hall Road Facility, but still conducts a mushroom dehydration process that generates significantly reduced volumes of wastewater.

All process wastewater, including stormwater commingled with process wastewater and/or other wastes, generated at the Maher Court and Hall Road Facilities is required by the respective permits to be placed and contained in the facilities' wastewater ponds. Both the Maher Court Permit and Hall Road Permit prohibit the discharge of any wastes to waters of the United States (U.S.), adjacent drainage ways, or adjacent properties.

Over the course of eight separate discharge events between January 8, 2017 and April 19, 2017, the Discharger discharged approximately 4,014,245 gallons of process wastewater and/or polluted stormwater from the Maher Court Facility to an unnamed tributary of Elkhorn Slough. Over the course of six separate discharge events between January 8, 2017 until on or about February 20, 2017, the Discharger discharged approximately 620,000 gallons of process wastewater from the Hall Road Facility into an unnamed tributary of Elkhorn Slough. Ammonia, excessive nutrients, and suspended and floating material observed in the unauthorized discharges from both facilities, caused or had the potential to cause harm to beneficial uses.

The Central Coast Water Board enforcement team and the Discharger (collectively, Parties) entered into confidential settlement discussions and have agreed to settle the violations through the imposition of an administrative civil liability (ACL) of \$1,169,425 against the Discharger, which exceeds the delegated authority approval limit for the Executive Officer. The Parties have agreed that the Discharger will pay a portion of the ACL (\$569,650) to the State Water Pollution Cleanup and Abatement Account. Up to \$599,775 of the ACL will be suspended pending the funding and completion of a supplemental environmental project (SEP)¹.

¹ A SEP is an environmentally beneficial project that a person subject to an enforcement action voluntarily agrees to undertake in settlement of the action to offset a portion of a civil penalty. The State Water Board supports the inclusion of SEPs in the settlement of an enforcement action, so long as the projects meet the criteria specified in the [State Water Board Policy on Supplement Environmental Projects \(SEP Policy\)](#).

Resolving the violations through inclusion of a SEP is expected to improve drinking water for up to 20 disadvantaged community households located in the northern Monterey County area with groundwater wells impacted with 1,2,3-trichloropropane (1,2,3-TCP). Staff recommends that the Central Coast Water Board approves the Stipulated Order.

DISCUSSION

Background

The Parties entered into confidential settlement discussions to resolve the facts surrounding unauthorized discharges from the Maher Court and Hall Road Facilities that reached unnamed tributaries of Elkhorn Slough between January 8, 2017 through April 19, 2017. The unauthorized discharges from the two facilities are summarized as follows:

Maher Court Facility

- Violation 1: January 8 – 11, 2017, discharge of 515,631 gallons of process wastewater and polluted stormwater from pond.
- Violation 2: January 20 – 23, 2017, discharge of 1,017,933 gallons of process wastewater and polluted stormwater from pond.
- Violation 3: February 2 – 15, 2017, discharge of 848,651 gallons of process wastewater and polluted stormwater from pond.
- Violation 4: February 16 – 24, 2017, discharge of 1,053,241 gallons process wastewater and polluted stormwater from pond.
- Violation 5: March 21 – 31, 2017, discharge of 370,657 gallons process wastewater and polluted stormwater from pond.
- Violation 6: April 8 – 10, 2017, discharge of 6,948 gallons of process wastewater and polluted stormwater from pond.
- Violation 7: April 14 – 19, 2017, discharge of 146,812 gallons process wastewater and polluted stormwater from pond.
- Violation 8: April 7, 2017, discharge of 54,372 gallons of process wastewater and polluted stormwater from sump.

Hall Road Facility

- Violation 9: January 8, 2017, discharge of 24,000 gallons of process wastewater and polluted stormwater from lift station.
- Violation 10: January 9, 2017, discharge of 40,000 gallons of process wastewater and polluted stormwater from storage tanks.
- Violation 11: January 22, 2017, discharge of 220,000 gallons of process wastewater and polluted stormwater from storage tanks.
- Violation 12: January 23, 2017, discharge of 100,000 gallons of process wastewater and polluted stormwater from storage tanks.
- Violation 13: February 9, 2017, discharge of 180,000 gallons of process wastewater and polluted stormwater from storage tanks.
- Violation 14: February 20, 2017, discharge of 56,000 gallons of process wastewater and polluted stormwater from storage tanks.

Total volume discharged = 4,634,245 gallons

Violations of Permit and Assessment of Liability

All process wastewater, including stormwater commingled with process wastewater and/or other wastes, generated at the Maher Court and Hall Road Facilities must be placed and contained in the facilities' wastewater ponds as permitted. Both the Maher Court Permit and Hall Road Permit prohibit the discharge of any wastes to waters of the U.S., adjacent drainage ways, or adjacent properties.

Point source discharges of pollutants to waters of the U.S. without authorization under a National Pollutant Discharge Elimination System (NPDES) permit is a violation of federal Water Pollution Control Act (Clean Water Act) section 301 (33 U.S.C. section 1311). In California, NPDES permits are issued in accordance with California Water Code (Water Code) section 13376. The Discharger has never filed for a Report of Waste Discharge pursuant to Water Code section 13376 to obtain an NPDES permit authorizing point source discharges from the Maher Court and Hall Road Facilities to waters of the U.S.

Under Water Code section 13385, subdivision (a), a person that violates Water Code section 13376 and/or Clean Water Act section 301 is subject to administrative civil liability pursuant to Water Code section 13385, subdivision (c), in an amount not to exceed the sum of \$10,000 per day of violation and \$10 per gallon of discharge not cleaned up in excess of 1,000 gallons.

Following the requirements of the Water Code and State Water Board's Water Quality Enforcement Policy (Enforcement Policy), the enforcement team considered a variety of factors relating to the unauthorized discharges, including:

- The harm or potential harm of the discharges to the beneficial uses of the unnamed tributaries to Elkhorn Slough;
- The physical, chemical, biological, or thermal characteristics (also referred to as the degree of toxicity) of the wastewater prior to the discharge;
- Whether the discharges could be cleaned up, or whether the effects of the discharges could be stopped (abated);
- The estimated discharge volumes;
- The Discharger's conduct in matters relevant to and preceding the discharges, such as oversight, proper precautions, or negligence that may have caused or contributed to the discharges (also known as culpability);
- The Discharger's cooperation in returning to compliance;
- The Discharger's history of violations;
- The Discharger's ability to pay the recommended liability; and
- Any economic benefit the Discharger may have realized in relation to the discharges.

From the selected factors described above, the enforcement team then followed the Enforcement Policy's penalty calculation methodology and determined a recommended administrative civil liability of \$1,169,425 (\$1,009,383 for violations at the Maher Court Facility and \$160,042 for violations at the Hall Road Facility). The recommended liability amount includes \$37,103 for staff costs to investigate and resolve the violations through enforcement.

Supplemental Environmental Project (SEP)

The Water Code and Enforcement Policy allow dischargers to propose SEPs. SEPs are environmentally beneficial projects that a settling party agrees to undertake in the settlement of an action to offset a portion of a civil penalty. The Discharger proposes to implement a third party-performed SEP proposed by the Community Water Center, the *1,2,3-Trichloropropane (1,2,3-TCP) Treatment Pilot Project for DAC Households in Northern Monterey County*. The SEP consists of a pilot project for 1,2,3-TCP Point of Entry (POE) household-level water treatment for up to 20 disadvantaged community (DAC) households in unincorporated areas of northern Monterey County, where residents rely on groundwater wells with high levels of 1,2,3-TCP for drinking water. The objective of the POE household-level water treatment is to effectively treat 1,2,3-TCP to levels below the maximum contaminant level (MCL) for drinking water consistent with the Human Right to Water pursuant to Water Code section 106.3. The goal is to install the POE treatment systems by March 31, 2021, and continue maintaining and monitoring the POE systems through June 2023. Staff understands the Community Water Center is developing a workplan for Proposition 1 Technical Assistance funding from the State Water Board to conduct an alternatives analysis to identify and select a long-term solution for the area north of Moss Landing and will also seek separate funding to continue monitoring and maintenance of the POE systems after June 2023, if a long-term solution is not completed for the area where the POE systems are located.

The SEP Policy allows for the use of up to 50 percent of the total adjusted monetary assessment (total liability minus investigative and enforcement costs) for SEPs. However, the Director of the Office of Enforcement (OE Director) may approve a proposed settlement to fund a SEP in an amount greater than 50 percent of the total adjusted monetary assessment (50 percent limit) in cases where the SEP is located in or benefits a DAC or substantially furthers the Human Right to Water. Here, up to \$599,775 of the total liability will be suspended pending completion of the SEP; \$599,775 exceeds the 50 percent limit by \$33,614. The enforcement team provided written notification of the proposed SEP to the OE Director and on June 10, 2020, the OE Director agreed that the proposed SEP may exceed the 50 percent limit because the project benefits a DAC and, if successful, would substantially further the Human Right to Water. The OE Director does not have any objection to the SEP amount exceeding the 50 percent limit. For these reasons, the enforcement team has determined that the Discharger's proposed SEP complies with the SEP Policy's exception described above. The enforcement team reviewed the overall SEP and determined that it complies with the Enforcement Policy and the SEP Policy.

Additional Projects Addressing Process Wastewater Management

The Discharger has cooperated with Central Coast Water Board staff to begin implementation of corrective actions associated with the discharge violations. While the Discharger did not return to compliance with their permits in sufficient time, it has made progress to date in reducing the potential for additional unauthorized discharges to occur in the future.

The Discharger indicated that they have spent \$11,167,857 on various compliance, containment, and remediation projects to comply with its permit requirements for all of its facilities in California. Listed below are examples of some of these expenditures:

- Increased additional process wastewater storage capacity by 4,500,000 gallons as a result of the expansion of some of the existing process wastewater ponds and addition of rental tanks.
- Grading and preparation of areas required to receive rental and procured steel baker tanks as well as to separate stormwater and process wastewater.
- Purchase and installation of evaporators for the process wastewater ponds to maintain storage capacity.
- Purchased two water vacuum trailers to haul process wastewater to the wastewater treatment disposal site, and costs associated with the hauled disposal of process wastewater.
- Various projects to build additional piping and concrete areas for spent compost storage and associated runoff collection during the wet season.

At the Maher Court Facility, the Discharger has increased wastewater storage capacity by installing storage tanks. The Discharger is relying on increased storage capacity from the tanks, increased offsite wastewater hauling to the City of Watsonville wastewater treatment plant during rain events, increased separation of stormwater and process wastewater, and spray irrigation to avoid future violations. The Discharger has also constructed a stormwater concrete drainage swale to reduce stormwater from entering the wastewater pond.

At the Hall Road Facility, the Discharger staged rental storage tanks during the rainy season and hauls wastewater to the City of Watsonville wastewater treatment plant to decrease the likelihood of spills. The Discharger has also constructed an earthen berm between the wharf area (where composting occurs) and the unnamed tributary to Elkhorn Slough to help prevent offsite discharges. Additionally, an overflow pipe that discharged to land adjacent to a large holding pond was relocated to the wharf where the overflow was less likely to contribute to a discharge to the tributary. Filtration screens at the Hall Road Facility's southwest section that historically overflowed to the tributary were replaced with increased capacity vibratory screens to handle the flow of process wastewater directed in that area of the facility.

In January 2020, Central Coast Water Board program staff learned that the Discharger is no longer growing mushrooms at the Hall Road Facility and is only cleaning and dehydrating mushrooms. In compliance with a request from Central Coast Water Board

program staff, the Discharger submitted a letter and operations update report for the Hall Road Facility on May 28, 2020. The Discharger clarified that it ceased mushroom growing operations on September 27, 2019, and removed all spent compost from the facility by December 1, 2019. The operations update report also documented that the mushroom dehydration process does not produce wastewater, but up to 3,400 gallons per week of wastewater is generated from cleaning inside the dehydration room.

Going forward, the Discharger is committed and required to spend hundreds of thousands of dollars annually to haul commingled stormwater and process wastewater to the treatment plant, rent temporary tanks as required during the rainy season, continue to train its employees, and stay in compliance with various established stipulations, permits, laws, and regulations.

Compliance History since the Most Recent Violations

Since the Discharger's last unauthorized discharges as described in proposed settlement agreement, no additional documented discharges of wastewater have occurred to the unnamed tributaries at the Maher Court and Hall Road Facilities. The Maher Court and Hall Road Facilities have had minor violations of their permits associated with maintaining their wastewater ponds and irrigation of wastewater. The Discharger remedied these violations and returned into compliance with their permit requirements in a reasonable timeframe.

Proposed Settlement Agreement

The enforcement team and the Discharger have agreed to settle the matter without administrative or civil litigation and to present the Stipulated Order, included as Attachment 1, to the Central Coast Water Board for adoption as an Order by settlement pursuant to Government Code section 11415.60. The Stipulated Order becomes final Administrative Civil Liability Order No. R3-2020-0048 on the date of the Central Coast Water Board's approval, which then initiates the deadlines for payment of the due liability and the time schedule incorporated into the Order for the Discharger to implement the SEP that relates to the suspended liability.

Additional Enforcement Actions against the Discharger

In addition to this enforcement action, the Discharger has agreed to pay substantial administrative civil liability and civil penalties for same or similar discharge violations at its California facilities, including the Maher Court and Hall Road Facilities. A joint investigation between the Central Coast Water Board, the San Francisco Bay Regional Water Quality Control Board (San Francisco Bay Water Board), California Department of Fish and Wildlife, Santa Clara County District Attorney's Office, Monterey County District Attorney's Office, San Luis Obispo County District Attorney's Office, and Santa Cruz County District Attorney's Office has resulted in multiple injunctions against the Discharger and the imposition of an additional \$911,800 in administrative civil liability and over \$2,545,000 in civil penalties and other costs and damages. The court-imposed injunctions prohibit, among other things, the discharge of process wastewater and polluted stormwater at the Maher Court and Hall Road Facilities.

Human Right to Water

California Water Code section 106.3, subdivision (a) states: It is a policy of the State of California “that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation purposes.” On January 26, 2017, the Central Coast Water Board adopted Resolution No. R3-2017-0004, which affirms the realization of the human right to water and the protection of human health as the Central Coast Water Board's top priorities. This enforcement action addresses violations and reduces the potential of unauthorized discharges of wastewater in the future. If wastewater is not discharged to surface water, it will result in improved water quality, which will protect the municipal and domestic supply (MUN) drinking water beneficial use and improve drinking water quality for those that depend on groundwater as their drinking water source. Additionally, the SEP that the Discharger has proposed will treat 1,2,3-TCP below drinking water standards for up to 20 households in DAC communities.

Disadvantaged Communities

The Maher Court and Hall Road facilities are not located in a disadvantaged community. However, the SEP proposed by the Discharger will benefit households located in a DAC as described in further detail in the attached proposed Stipulated Order.

Climate Change

The Central Coast faces the threat and the effects of climate change for the foreseeable and distant future. To proactively prepare and respond, Central Coast Water Board staff has launched the Central Coast Water Board's Climate Action Initiative, which identifies how our work relates to climate change and prioritizes actions that promote adaptation and mitigation to improve resilience and protect beneficial uses. The Climate Action Initiative is consistent with the Governor's Executive Order B-30-15 and the State Water Board's Climate Change Resolution No. 2017-0012. Program staff will continue to work with the Discharger to ensure that the wastewater treatment systems at the Maher Court and Hall Road Facilities are designed to prevent future unauthorized discharges with climate change in mind.

COMMENTS

Enforcement staff publicly noticed the stipulated order from May 15, 2020 through June 14, 2020, and received no comments.

CONCLUSION

This proposed Stipulated Order resolves the violations associated with numerous unauthorized discharges from two mushroom growing facilities to unnamed tributaries to Elkhorn Slough by the imposition of administrative civil liability against the Discharger in the amount of \$1,169,425. The proposed liability fully eliminates any economic or unfair competitive advantage the Discharger may have obtained through its noncompliance with its permits and creates a meaningful, specific, and general deterrent to the Discharger and similarly situated person(s) in the regulated community from committing same or similar violations. Resolving these discharge violations through inclusion of a

SEP is expected to improve drinking water impacted with 1,2,3-TCP for up to 20 disadvantaged community households.

RECOMMENDATION

Adopt Administrative Civil Liability Order No. R3-2020-0048

ATTACHMENT

1. Proposed Administrative Civil Liability Order No. R3-2020-0048

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