

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

In the matter of:	)	
	)	
<b>SUPER STORE INDUSTRIES, A</b>	)	<b>SETTLEMENT AGREEMENT AND</b>
<b>CALIFORNIA GENERAL</b>	)	<b>STIPULATION FOR ENTRY OF</b>
<b>PARTNERSHIP, SOLANO</b>	)	<b>ADMINISTRATIVE CIVIL LIABILITY</b>
<b>COUNTY</b>	)	<b>ORDER</b>
	)	
<b>Violations of the Industrial</b>	)	<b>PROPOSED</b>
<b>Stormwater General Permit</b>	)	<b>ORDER</b>
<b>(NPDES No. CAS000001)</b>	)	
	)	
	)	

**Section I: INTRODUCTION**

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) is entered into by and between the California Regional Water Quality Control Board, San Francisco Bay Region Prosecution Team (Prosecution Team), and Super Store Industries (SSI), (collectively, Parties). The California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board) or its delegate may adopt this Stipulated Order as an Order by settlement pursuant to Government Code section 11415.60.
2. The alleged violations discussed herein were identified during a joint investigation conducted by the Prosecution Team, Solano County District Attorney's Office, and California Department of Fish and Wildlife of alleged industrial stormwater program and other violations at or associated with SSI's Fairfield Facility between September 2015 and January 10, 2018. This Stipulated Order resolves all of the alleged California Water Code (Water Code) and associated Federal Water Pollution Control Act violations by imposition of administrative civil liability against SSI in the total amount of **\$230,000**. The Prosecution Team proposes this Stipulated Order in consideration of SSI's cleanup and cooperation, proactive commitment in making capital improvements to address stormwater issues, and its willingness to concurrently resolve the violations alleged by the Solano County District Attorney's Office, which will be documented in a Stipulated Judgment that will be submitted for approval to the Solano County Superior Court.

**Section II: RECITALS**

3. SSI owned and operated a dairy facility located at 199 Red Top Road in the City of Fairfield (Facility), at which SSI manufactured and distributed dairy products to grocery retail chains until it sold and ceased operating the Facility on January 10, 2018. On April 29, 2015, SSI submitted a notice of intent for the Facility to obtain coverage under the General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ, National Pollutant Discharge Elimination System (NPDES) No. CAS000001 (General Permit). The General Permit regulates industrial stormwater discharges and authorized non-stormwater discharges from the Facility.
4. The Prosecution Team alleges the following violations:
  - a. From September 17, 2015, to December 9, 2015, SSI failed to implement adequate spill and leak prevention and response, a best management practice (BMP) required under General Permit section X.H.1(c). During an SSI contractor's stormwater pollution prevention inspection of the Facility on September 17, 2015, SSI used a 5-gallon bucket to collect overflow from a leaking heat exchanger unit. The overflow was a mixture of propylene glycol cooling fluid and milk. SSI did not complete repairs of the leaking heat exchanger until December 9, 2015. Using the bucket to capture overflow was an inadequate BMP that resulted in a discharge to an onsite storm drain inlet, located approximately 15 feet from the bucket. Spilt milk and propylene glycol entering the Facility's storm drain system and not recovered at the oil/water separators could discharge to the City of Fairfield (City) storm drain system that eventually leads to an outfall near Jameson Canyon Creek, located approximately 200 yards to the north of the Facility.
  - b. On November 5, 2015, and from November 7 through 19, 2015, SSI violated General Permit section III.B by discharging milk and propylene glycol to the City storm drain system that leads to Jameson Canyon Creek. Two storm drain valves controlling all stormwater discharge from the Facility were in the open position although storms were not forecasted. The Facility's normal practice was to keep the valves in the closed position during dry weather. The open valves allowed milk and propylene glycol that had entered the Facility's storm drain and oil/water separator system to discharge from the Facility to Jameson Canyon Creek. SSI closed the storm drain valves and ceased the discharge after first becoming aware of it on November 19, 2015. On November 23, 2015, SSI flushed the Facility's storm drains and engaged a contractor who recovered approximately 5,800 gallons of water, milk, and propylene glycol from Jameson Canyon Creek to the satisfaction of the California Department of Fish and Wildlife representative on site.
5. SSI enters into this Stipulated Order for the purpose of avoiding prolonged and costly litigation. It denies that it has violated the General Permit, Water Code, or Federal Water Pollution Control Act at any time. Nothing in this Stipulated Order shall be

construed as, and SSI does not intend to imply, any admission as to any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Stipulated Order constitute or be construed as an admission by SSI of any fact, finding, conclusion, issue of law, or violation of law. Among other things, SSI does not agree with the Prosecution Team's allegations in Paragraph 4 or with its calculations, assertions, and allegations in Exhibit A hereto.

6. To resolve the alleged violations in Section II, Paragraph 4, by consent and without further administrative proceedings, the Parties have agreed to the imposition of a total administrative civil liability of **\$230,000** against SSI. SSI shall make payment in accordance with Section III, Paragraph 10. Payment of \$115,000 of this total amount to the "State Water Pollution Cleanup and Abatement Account" is due no later than 30 days after the Regional Water Board or its delegate executes this Order. The remaining \$115,000 shall be permanently suspended upon completion of SSI's payment constituting the Supplemental Environment Project (SEP) described in Paragraphs 10(b) and 11.
7. The settlement amount of \$230,000 is less than the liability the Prosecution Team calculated using Steps 1 through 10 of the State Water Resources Control Board's Water Quality Enforcement Policy (May 2010) (Enforcement Policy) as shown in Exhibit A. The final proposed administrative civil liability amount for the two alleged violations (\$273,300) was reduced by approximately 15% in consideration of hearing and/or litigation risks related to equitable factors and mitigating circumstances, and in consideration of the following:
  - a. SSI's agreement to resolve by consent the following violations alleged by the Solano County District Attorney's Office:
    - i. The discharge of deleterious materials to waters of the State in violation of California Fish and Game Code section 5650; and
    - ii. The failure to properly date procedures and operations documents to ensure that only the most current procedures were in use in violation of California Code of Regulation, title 19, sections 2755.3 and 2760.3.
  - b. SSI's agreement to implement updated Standard Operating Procedures and Best Management Practices (BMPs) as memorialized in SSI's revised Storm Water Pollution Prevention Plan (SWPPP) dated January 2018.
  - c. SSI's willingness to go beyond enhancing BMPs and to make significant capital improvements relating to stormwater issues across the Facility at a cost in excess of \$200,000, some of which eliminated the need for BMPs.
8. The Parties have agreed to settle the Water Code and associated Federal Water Pollution Control Act matters without administrative or civil litigation and to present this Stipulated Order to the Regional Water Board or its delegate for adoption.

9. The Prosecution Team believes this resolution of all alleged Water Code violations is fair and reasonable, and fulfills all of its enforcement objectives; that no further action is warranted concerning the violations, except as provided in this Stipulated Order; and that this Stipulated Order is in the public's best interest.

**Section III: STIPULATIONS**

The Parties incorporate the foregoing Recitals and stipulate to the following:

10. **Administrative Civil Liability:** SSI hereby agrees to the imposition of an administrative civil liability totaling \$230,000 to resolve the alleged violations as set forth in Paragraph 2 and Section II as follows:

- a. No later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, SSI shall submit a check for \$115,000 made payable to the "State Water Pollution Cleanup and Abatement Account," reference the Order number on page one of this Stipulated Order, and mail the check to:

State Water Resources Control Board Accounting Office  
Attn: ACL Payment  
P.O. Box 1888  
Sacramento, CA 95812-1888

SSI shall e-mail a copy of the check to the State Water Resources Control Board, Office of Enforcement ([Paul.Ciccarelli@Waterboards.ca.gov](mailto:Paul.Ciccarelli@Waterboards.ca.gov)) and the Regional Water Board ([Margaret.Monahan@Waterboards.ca.gov](mailto:Margaret.Monahan@Waterboards.ca.gov)).

- b. SSI agrees that the remaining \$115,000 of the administrative civil liability shall be paid to the Regional Monitoring Program, care of the San Francisco Estuary Institute (SFEI), for SFEI's implementation of a SEP, the Napa River and Sonoma Creek Sediment Transport Monitoring Study, as follows:
- i. \$115,000 (SEP Amount) shall be paid, in the manner described in Paragraph 10(b)(ii) herein, solely for use toward the Napa River and Sonoma Creek Sediment Transport Monitoring Study. The study will monitor sediment loads entering San Francisco Bay from tributary sources. Specifically, the study will address sediment load data gaps in the North Bay watersheds. The study will also provide valuable information on sediment loads following the 2017 North Bay fires. A complete description of this study is provided in Exhibit B, incorporated herein by reference.
- ii. No later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, SSI shall submit the check for \$115,000 described in Paragraph 10(b)(i) herein made payable to the "Regional Monitoring Program," referencing the Regional Water Board Order number on page one of this Stipulated Order, and mail the check to:

Regional Monitoring Program  
c/o San Francisco Estuary Institute

4911 Central Avenue  
Richmond, CA 94804

SSI shall also e-mail a copy of the check to the Office of Enforcement and the Regional Water Board at the e-mail addresses set forth above.

11. **SEP:** The Parties agree that SSI's payment of the SEP Amount to SFEI is a SEP, and that the SEP Amount will be treated as a permanently suspended administrative civil liability for purposes of this Stipulated Order. SSI's SEP obligations will be satisfactorily and fully completed upon SFEI's written notification to Regional Water Board staff and SSI, which shall be provided within ten days of SFEI's receipt of SSI's check identified in Paragraph 10(b)(ii). The written notification shall acknowledge that the Regional Monitoring Program received payment of the SEP Amount from SSI and the payment will be spent on the project described in Section III, paragraph 10(b)(i), in accordance with the terms of this Stipulated Order. The San Francisco Estuary Institute's annual and quarterly financial reports to the Regional Water Board shall be considered a final post-project accounting of expenditures.
12. **SEP Oversight Costs:** SFEI will oversee SEP implementation in lieu of Regional Water Board staff oversight and will report solely to the Regional Water Board. SSI shall not have any implementation or oversight role for the SEP; rather, all of its obligations with respect to the SEP will be completed upon SFEI's receipt of the SEP Amount and SFEI's written notification described in Paragraph 11. SFEI has agreed to voluntarily cover any SEP-related oversight costs. Oversight costs are not included in the SEP Amount.
13. **Publicity Associated with the SEP:** Whenever SSI or its agents or subcontractors publicize one or more elements of the SEP, they shall state in a **prominent manner** that the project is undertaken as part of a settlement of a Regional Water Board enforcement action against SSI.
14. **Regional Water Board is Not Liable:** Neither the Regional Water Board, its members, nor its staff shall be held as parties to or guarantors of any contract entered into by SSI, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.
15. **Compliance with Applicable Laws:** SSI understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws.

**16. Party Contacts for Communications related to this Stipulation and Order:**

**For the Regional Water Board:**

Margaret Monahan  
San Francisco Bay  
Regional Water Quality Control Board  
1515 Clay Street, 14th Floor  
Oakland, CA 94612  
[Margaret.Monahan@Waterboards.ca.gov](mailto:Margaret.Monahan@Waterboards.ca.gov)  
(510) 622-2377

**For SSI:**

Tracy Twomey  
President  
Super Store Industries, Inc.  
16888 McKinley Avenue  
Lathrop, CA 95330  
[ttwomey@ssica.com](mailto:ttwomey@ssica.com)  
(209) 858-2010

17. **Attorney's Fees and Costs:** Each Party shall bear all of its attorneys' fees, expert fees, staff time, and all other expenses or costs arising in connection with the matters set forth herein, including those described in Paragraph 2.
18. **Matters Addressed by this Stipulation:** Upon the Regional Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the alleged violations as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability and SEP Amount by the deadlines specified in Section III, Paragraph 10, and SFEI's written notification as specified in Paragraph 11.
19. **Public Notice:** SSI understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board or its delegate for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board or its delegate. SSI agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order so long as it is presented for approval to and approved by the Regional Water Board or its delegate in the exact form agreed to by the Parties, except that SSI may rescind or withdraw its approval of the Stipulated Order before the end of the 30-day public comment period if the Stipulated Judgment identified in Paragraph 2 is not approved by the Solano County Superior Court.
20. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Regional Water Board's or its delegate's adoption of the Order, and public review of this Stipulated Order, is lawful and adequate. The Parties understand that the Regional Water Board or its delegate has the authority to require a public hearing on this Stipulated Order. If procedural objections are raised or the Regional Water Board requires a public hearing prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may or may not agree to revise or adjust the procedure and/or this Stipulated Order as necessary or advisable under the circumstances. SSI is under no obligation to agree to any modifications to the procedure or this Stipulated Order and has the right to unilaterally declare this Stipulated Order null and void if the

Prosecution Team decides not to submit the Stipulated Order for approval in any form other than the exact form agreed to by the Parties.

21. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. Each Party is represented by counsel in this matter.
22. **Modification:** The Parties shall not modify this Stipulated Order by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegate.
23. **If the Order Does Not Take Effect:** If the Order does not take effect because the Regional Water Board or its delegate does not approve it, or the State Water Resources Control Board (State Water Board) or a court vacates it in whole or in part, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will be inadmissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including but not limited to the following:
  - a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors, and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violation alleged herein in this matter; or
  - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent that this period has been extended by these settlement proceedings.
24. **Waiver of Hearing:** SSI has been informed of the rights Water Code section 13323, subdivision (b) provides and hereby waives its right to a hearing before the Regional Water Board prior to the Order's adoption, so long as the Order is presented for approval and adopted in the exact form originally agreed to by the Parties or is modified in a manner agreed to in advance by the Parties.
25. **Waiver of Right to Petition or Appeal:** SSI hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate-level court, so long as the Order is presented for approval and adopted in the exact form originally agreed to by the Parties or is modified in a manner agreed to in advance by the Parties.

26. **Covenants Not to Sue:** SSI covenants not to sue or pursue any administrative or civil claim against any State agency or the State of California, its officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order or the SEP. The Regional Water Board covenants not to sue or pursue any administrative or civil claim against SSI, its partners, officers, directors, employees, representatives, agents or attorneys, or their respective successors and assigns, arising out of or relating to the matters identified in Paragraph 2 and Section II. Nothing in this Stipulated Order shall be construed as a release of any unknown claims or a waiver of rights under California Civil Code section 1542.
27. **No Admission of Liability:** In settling this matter, SSI does not admit to any of the factual or legal allegations stated herein, or that it has been or is in violation of the Water Code, or any other federal, State, or local law or ordinance. SSI understands that, in the event of any future enforcement action against SSI, the Regional Water Board, the State Water Board, or another Regional Water Quality Control Board may attempt to use this Stipulated Order as evidence of a prior enforcement action consistent with Water Code section 13327 or section 13385, subdivision (e). The Regional Water Board understands that SSI shall retain all of its rights to challenge on any factual, legal, or other grounds the use of the Stipulated Order for such purposes.
28. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Stipulated Order shall be promptly communicated to SSI in writing. No oral advice, guidance, suggestions, or comments from Regional Water Board employees or officials regarding submissions or notices shall be construed to modify SSI's obligations under the Stipulated Order.
29. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Stipulated Order.
30. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
31. **Severability:** This Stipulated Order is severable; if any provision is found to be invalid, the remainder shall remain in full force and effect.
32. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be




binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

33. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board or its delegate enters the adopted Order incorporating all of the terms of this Stipulated Order.

**IT IS SO STIPULATED.**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION, PROSECUTION TEAM**

Date: February 15, 2018

By:   
Thomas Mumley  
Assistant Executive Officer

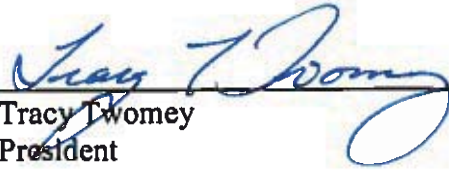
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by Paul Ciccarelli  
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Approved as to form:

By: \_\_\_\_\_  
Paul Ciccarelli, Staff Counsel  
State Water Resources Control Board  
Office of Enforcement

**SUPER STORE INDUSTRIES**

Date: 2/16/18

By:   
Tracy Twomey  
President  
Super Store Industries

**ORDER OF THE REGIONAL WATER BOARD**

34. This Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.
35. In accepting this Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e), and has applied the Penalty Calculation Methodology set forth in the Enforcement Policy, which is incorporated herein by this reference. The Regional Water Board’s consideration of these factors and application of the Penalty Calculation Methodology is based on information the Prosecution Team obtained in investigating the allegations set forth in the Stipulation or otherwise provided to the Regional Water Board.
36. This is an action to enforce the laws and regulations administered by the Regional Water Board. This Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, § 21000 et seq.) in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations. Additionally, this Order generally accepts the plans proposed for the SEP prior to its implementation by SFEI. Mere submittal of plans is exempt from CEQA because submittal will not cause a direct or indirect physical change in the environment.
37. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if SSI fails to perform any of its obligations under the Order.

**IT IS HEREBY ORDERED** pursuant to Water Code section 13323 and Government Code section 11415.60, on behalf of the California Regional Water Quality Control Board, San Francisco Bay Region.

\_\_\_\_\_  
Bruce H. Wolfe  
Executive Officer  
California Regional Water Quality Control Board  
San Francisco Bay Region

\_\_\_\_\_  
Date

Attachments

## **EXHIBIT A**

### **Factors in Determining Administrative Civil Liability**

#### **SUPER STORE INDUSTRIES SPILL AND LEAK PREVENTION AND RESPONSE VIOLATION AND DISCHARGE OF MILK AND PROPYLENE GLYCOL TO JAMESON CANYON CREEK FAIRFIELD, SOLANO COUNTY**

The State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy) (May 2010) establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors required by California Water Code (Water Code) section 13385, subdivision (e). Each factor in the Enforcement Policy and its corresponding category, adjustment, and amount for the alleged violation is presented below. The Enforcement Policy should be used as a companion document in conjunction with this administrative civil liability assessment since the penalty methodology and definition of terms are not replicated herein. The Enforcement Policy is at:

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf)

### **ALLEGED VIOLATIONS**

Super Store Industries (SSI) allegedly violated a best management practice (BMP) requirement of the General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ, National Pollutant Discharge Elimination System (NPDES) No. CAS000001 (General Permit), which allegedly resulted in a prohibited discharge to Jameson Canyon Creek. These two violations occurred at the SSI dairy facility located at 199 Red Top Road, Fairfield, California (Facility).

The penalty assessment for each violation is presented in the following sections. The calculated total administrative civil liability, prior to applying settlement considerations, for the alleged violations is \$273,300.

### **VIOLATION 1**

SSI allegedly violated Water Code section 13385(a)(2) and General Permit section X.H.1(c) by failing to implement adequate spill and leak prevention and response, a BMP requirement, from September 17, 2015, to December 9, 2015. During an SSI contractor's stormwater pollution prevention inspection of the Facility on September 17, 2015, SSI used a 5-gallon bucket to collect overflow from a leaking heat exchanger. The Facility's Storm Water Pollution Prevention Plan (SWPPP) dated January 2017, states that the overflow was a mixture of milk and propylene glycol. The overflow stopped when SSI completed repairs of the leaking heat exchanger on December 9, 2015. SSI is subject to administrative civil liability pursuant to Water Code section 13385(c)(1) for this violation. The calculated liability, prior to applying settlement considerations, is \$233,300 based on the following factors in the Enforcement Policy.

Super Store Industries  
 Exhibit A - Administrative Civil Liability Factors

PENALTY FACTOR	ASSESSMENT	DISCUSSION
Per Day Factor for Non-Discharge Violations	0.3	<p><b>Potential for Harm:</b> Moderate            The failure to implement adequate BMPs for spill and leak prevention and response posed a substantial potential for harm. Leaking milk and propylene glycol cooling fluid were captured in a bucket in close proximity, approximately 15 feet, to an onsite storm drain inlet. Overflow or spillage entering the storm drain system and not recovered at the oil/water separators would discharge to the City of Fairfield storm drain system that eventually leads to an outfall near Jameson Canyon Creek located approximately 200 yards to the north of the Facility. The biochemical oxygen demand (BOD) of milk and propylene glycol cooling fluid poses a significant threat to available oxygen in this creek.</p> <p><b>Deviation from Requirement:</b> Moderate            The General Permit requires spill and leak response procedures to prevent industrial materials from discharging through the stormwater conveyance system and for the prompt clean up and proper disposal of spilled or leaked materials. Using a bucket to catch a leak is an inadequate BMP and not accepted industry practice. It took almost three months to complete repairs or replace the heat exchanger and stop the source of the leak. The continued use of a bucket as spill response over the three-month period to repair a known piece of leaking equipment is considered a moderate deviation from the requirement.</p>
Adjustment for Multiple Day Violations	No	There is no adjustment for multiple days of violation.
<b>Initial Liability</b>	<b>\$216,000</b>	The initial liability is calculated as follows: per-day factor (0.30), multiplied by the maximum per-day amount of liability allowed (\$10,000), multiplied by the number of days of violation (72). The violation started as early as September 17, 2017, and continued until December 9, 2015, for a total of 84 days. Saturdays and certain other days were not included as days of violation because SSI reported that the Facility did not operate on these days. The resulting number of days of violation is 72.
Culpability	1.2	SSI was aware of the leak and did not take immediate action to fix it. The leak was reported on or before September 17, 2017, when it was noted during a stormwater inspection, and was documented in Facility log books on November 1, 4, 8, 19, and 23, and December 1 and 3, 2015. SSI continued to try and capture leaking milk and propylene glycol in a bucket during this time. SSI neglected to stop the source of the leak over a period of months, which allegedly resulted in a prohibited discharge to Jameson Canyon Creek.
Cleanup and Cooperation	0.9	A reasonable response to address an inadequate BMP (in this case, spill and leak prevention and response) would be improving BMP development and implementation. SSI went beyond enhancing BMPs and made significant capital improvements across the Facility in excess of \$200,000. Some of the capital improvements eliminated the need for BMPs (e.g., installing trench drains to route spills to an onsite treatment plant and installing cover to eliminate stormwater exposure).
History of Violations	1.0	The Facility does not have a history of similar violations.

PENALTY FACTOR	ASSESSMENT	DISCUSSION
<b>Total Base Liability</b>	<b>\$233,280</b>	The initial liability is multiplied by each factor related to SSI's conduct to determine the total base liability as follows: $\$233,280 =$ $\$216,000 \times 1.2$ (culpability) $\times 0.9$ (cleanup and cooperation) $\times 1.0$ (history)
Ability to Pay and Continue in Business	No adjustment	The Enforcement Policy provides that if there is sufficient financial information to assess the violator's ability to pay the total base liability or to assess the effect of the total base liability on the violator's ability to continue in business, then the liability may be adjusted downward if warranted. Current estimates by the Prosecution Team show SSI has an annual revenue of \$10 to \$20 million for this Facility. A downward adjustment is unwarranted.
Economic Benefit	No adjustment	The Regional Water Board Prosecution Team did not find a significant economic benefit associated with the violation. The economic benefit would be the time-value of money for the cost of the heat exchanger repair (reported as \$7,672.21) during the days of violation. The proposed liability is far in excess of the calculated economic benefit (plus 10 percent) and is therefore above the minimum liability.
Maximum Liability	\$720,000	Water Code section 13385 allows up to \$10,000 for each day in which the violation occurs. The maximum liability is based on 72 days of violation.
<b>Final Liability</b>	<b>\$233,300 (rounded)</b>	The final liability amount is the total base liability after adjusting for ability to pay, economic benefit, other factors, and maximum and minimum liabilities.

## VIOLATION 2

SSI allegedly violated Water Code section 13385(a)(2) and General Permit section III.B by discharging milk and propylene glycol to Jameson Canyon Creek on November 5, 2015, and from November 7 through 19, 2015. SSI is subject to administrative civil liability pursuant to Water Code section 13385(c)(1) for this violation. The calculated liability, prior to applying settlement considerations, is \$40,000 based on the following factors in the Enforcement Policy.

PENALTY FACTOR	ASSESSMENT	DISCUSSION
Harm or Potential Harm to Beneficial Uses for Discharge Violations	3	<b>Harm or Potential for Harm: Moderate</b> The alleged discharges of milk and propylene glycol cooling fluid to Jameson Canyon Creek on November 5 and from November 7 through 19 impaired water quality. The Prosecution Team estimates that the total volume of the discharge was at least 5,800 gallons (5,800 gallons of water, milk and propylene glycol were removed from the creek during cleanup). According to a November 2015 California Department of Fish and Wildlife Investigation Report, the discharge lowered dissolved oxygen levels in the creek to concentrations ranging from 0.15 to 0.33 milligrams per liter (mg/L) from an ambient, upstream concentration of 4.12 mg/L. This ambient concentration was consistent with the desired concentration for warm water habitats (5 mg/L). This observed impairment is reasonably expected to have harmed or suffocated aquatic species, but cleanup efforts were relatively timely once the leak was discovered, no actual injuries to identified aquatic organisms were documented, and appreciable medium or long-term acute or chronic effects are not expected to have occurred.

Super Store Industries  
 Exhibit A - Administrative Civil Liability Factors

PENALTY FACTOR	ASSESSMENT	DISCUSSION
Physical, Chemical, Biological, or Thermal Characteristics (Degree of Toxicity)	3	<b>Degree of Toxicity:</b> Above Moderate Milk and propylene glycol pose an above moderate risk to aquatic species. While the apparent toxicity is low, the BOD of milk and propylene glycol is significant and has the propensity to deplete oxygen in receiving waters. The BOD of milk is on the order of 100,000 mg/L, and the BOD of propylene glycol is higher. The discharge effluent limit for BOD is typically around 30 mg/L. The concentration of BOD in very high quality to moderately polluted waters is between 1 and 8 mg/L.
Susceptibility to Cleanup or Abatement	0	<b>Susceptibility to Cleanup:</b> yes 50 percent or more of the alleged discharge was susceptible to cleanup or abatement. SSI flushed Facility storm drains and removed up to 5,800 gallons of water, milk and propylene glycol from Jameson Canyon Creek to the satisfaction of the California Department of Fish and Wildlife representative onsite.
Per Gallon and Per Day Factor for Discharge Violations	0.22	<b>Deviation from Requirement:</b> major The alleged discharge of milk and propylene glycol was an unauthorized discharge prohibited by the General Permit. It did not coincide with rain and was not a stormwater discharge. The essential function of the General Permit prohibition was rendered ineffective.
Adjustment for High Volume Discharges	None	There is no adjustment for high volume discharge.
Adjustment for Multiple Day Violations	None	There is no adjustment for multiple days of violations.
<b>Initial Liability</b>	<b>\$30,800</b>	The initial liability is calculated as follows: per-day factor (0.22), multiplied by the maximum per-day amount of liability allowed (\$10,000), multiplied by the number of days of violation (14). Days of violation are assessed for November 5 and November 7 through 19. This assessment is based only on days of violation, not discharge volume, due to SSI's spill recovery and cleanup efforts.
Culpability	1.3	SSI did not follow internal practice to keep storm drain valves closed until a predicted storm and only open the valves if the storm drain is empty or pumped out. The valves were open on or prior to November 5 and again on November 7 when storms were not forecasted and milk allegedly discharged from the storm drain system into Jameson Canyon Creek.
Cleanup and Cooperation	1.0	There is no adjustment to the penalty for cleanup and cooperation. SSI was very cooperative and prudent in implementing timely cleanup once notified of the discharge.
History of Violations	1.0	The Facility does not have a history of similar violations.
<b>Total Base Liability</b>	<b>\$40,040</b>	The initial liability is multiplied by each factor related to SSI's conduct to determine the total base liability as follows: $\$40,040 = \$30,800 \times 1.3 \text{ (culpability)} \times 1.0 \text{ (cleanup)} \times 1.0 \text{ (history)}$
Ability to Pay and Continue in Business	No adjustment	See above assessment for this factor in Violation 1.

Super Store Industries  
 Exhibit A - Administrative Civil Liability Factors

PENALTY FACTOR	ASSESSMENT	DISCUSSION
Economic Benefit	\$2,232	<p>The economic benefit includes the costs avoided for not treating up to 5,800 gallons of milk and propylene glycol fluid. The cost of wastewater from the Facility (charged by Fairfield-Suisun Sewer District) is \$2,126 per million gallons and \$329.40 per thousand pounds of BOD. A BOD of 140,000 mg/L (1.1683 pounds per gallon) was assumed. The economic benefit was calculated as follows:</p> $\$2,232 = 5,800 \text{ gallons} \times 1.1683 \text{ pounds/gallon} \times \$329.40 / 1,000 \text{ pounds}$
Maximum Liability	\$140,000	<p>Water Code section 13385 allows up to \$10,000 for each day in which the violation occurs, and \$10 for each gallon exceeding 1,000 gallons that is discharged and not cleanup. The maximum liability is based on 14 days of violation.</p>
Minimum Liability	\$2,455	<p>To comply with the Enforcement Policy, the minimum liability that may be assessed is the economic benefit gained plus ten percent, \$2,455.</p>
<b>Final Liability</b>	<b>\$40,000 (rounded)</b>	<p>The final liability amount is the total base liability after adjusting for ability to pay, economic benefit, other factors, and maximum and minimum liabilities.</p>



## EXHIBIT B

### **Study Description for Supplemental Environmental Project Fund**

#### **Basic Information**

Study Name: Napa River and Sonoma Creek Sediment Transport Monitoring

Study Budget, Total: \$115,000

SFEI Contact: Philip Trowbridge, [philt@sfei.org](mailto:philt@sfei.org), 510-746-7345

USGS Contact: Scott Wright, [sawright@usgs.gov](mailto:sawright@usgs.gov), 916-278-3024

#### **Study Description**

The calculation and monitoring of sediment loads entering San Francisco Bay are important for a variety of reasons, such as to inform dredging and tidal wetland restoration projects and to assess aquatic ecology, among others. While the information on sediment loads from many tributary sources is up-to-date, for other areas, such as the North Bay watersheds, there is little or no recent data.

The objective of the work proposed herein, which the San Francisco Estuary Institute (SFEI) will carry out through the Regional Monitoring Program for Water Quality in San Francisco Bay (RMP) under Regional Water Board oversight, is to address this data gap by monitoring sediment loads at two existing USGS gages in the North Bay watersheds: 11458000 NAPA R NR NAPA CA, and 11458500 SONOMA C A AGUA CALIENTE CA. These two existing USGS gages currently monitor water flow rates following standard USGS methods. The addition of sediment load monitoring at these two gages is particularly important now because it will also provide information on sediment loads following the recent and extensive North Bay fires in these watersheds. Both gages have burned areas upstream. For this reason, it is critical that the monitoring begin as soon as possible.

The scope and budget of this study assumes that the ongoing water flow rate monitoring at both sites will continue. The study will employ the following methods:

1. Suspended sediment monitoring will use a combination of physical sample collection and in situ continuous turbidity monitoring following standard USGS methods. Sensors will be deployed and programmed to collect turbidity measurements every 15-minutes (the same frequency as flow rate measurements). Physical samples will be collected using pump samplers deployed at the sites and cross-section integrated samples collected during site visits. Samples will be processed for suspended-sediment concentration (SSC) and a subset of samples will be processed for particle size distribution. A calibration will be developed to correlate turbidity and SSC, and will be used to develop a 15-minute time series of SSC. The SSC time series will then be used with the ongoing water flow rate time series to compute the continuous suspended sediment loads at each gage.

2. Bedload sediment samples will be collected following standard USGS methods. Approximately 5 to 10 bedload sediment samples will be collected per year, primarily during high flow conditions. In addition, at least 2 samples of bed material will be collected. These data will be used to develop a rating curve between the bedload transport rate and flow rate, which will then be used to estimate a continuous record of bedload sediment flux.
3. The records of suspended load and bedload will be analyzed and compared with historical data at both gages. In addition, the potential impact of North Bay fires on sediment loads will be evaluated.

### **Compliance with SEP Criteria**

This study complies with the following SEP criteria:

- It is a monitoring program and/or direct study of surface water quality or quantity and/or the beneficial uses of the water.
- Its nexus to the violations is that it will monitor and calculate sediment loading to northern San Francisco Bay from the North Bay watersheds, including the location in which the violations occurred.

This study goes above and beyond the discharger's applicable obligations because of the following:

- This project is a study and the associated product goes above and beyond what the Regional Water Board requires through permits or other orders, or what can be accomplished with dischargers' required monetary contributions to the RMP

This study will be funded by the direct payment of the full study budget to SFEI, in accordance with the Stipulated Order that approves this study as a SEP. SFEI has the institutional stability and capacity to complete this study and provide the identified work product, and will report directly to the Regional Water Board.

### **Study Milestone and Performance Measure**

Study milestones and performance measures will include the following:

- 15-minute records of turbidity at both gages, served on USGS public website
- Suspended sediment and bedload sediment sample results for both gages, served on USGS public website
- 15-minute records of SSC, suspended load, and bedload (depending on rating curves developed) for both gages, served on USGS public website
- Presentation slides showing an analysis of sediment loads and comparisons with historical data

Monitoring will commence as soon as possible and continue through the runoff season (June/July 2018). The data products and presentation will be available online by June 30, 2019.

### **Study Budget and Reports to Water Board**

Pursuant to the October 2015 Supplement to the Memorandum of Understanding between SFEI and the Regional Water Board, SFEI is responsible for identifying in each annual work plan and annual budget for the RMP those studies or elements, or a portion of a study or element, that are to be funded by SEP funds. SFEI will keep a copy of accounting records of SEP fund contributions and expenditures separately from regular RMP funds. In its annual and quarterly financial reports to the Regional Water Board, SFEI will separately itemize SEP fund contributions and expenditures by each SEP funder.