

Santa Ana Regional Water Quality Control Board

November 22, 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Alex Muniz
Smart and Final Stores, LLC
600 Citadel Drive
Commerce, CA 90040

TRANSMITTAL OF MANDATORY MINIMUM PENALTY (MMP) COMPLAINT NO. R8-2017-0054, SMART AND FINAL, WDID NO. 8 36I023712

Dear Mr. Muniz:

Enclosed is a certified copy of a Mandatory Minimum Penalty Complaint No. R8-2017-0054 (Complaint). The Complaint alleges that you have violated the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ, NPDES No. CAS000001 (General Permit) by failing to submit the 2016-2017 annual report by July 15, 2017 for Smart and Final in the City of Fontana.

The Complaint proposes that a penalty for three thousand, one hundred and twelve dollars (\$3,112) be imposed. The penalty amount is comprised of mandatory minimum penalties and staff costs as authorized by California Water Code sections 13399.33(c) and 13399.33(d).

A public hearing on this matter will tentatively be scheduled before the Regional Board on February 9, 2018 in a location to be determined. A tentative order, the staff report regarding this Complaint and the meeting agenda will be mailed to you not less than 10 days prior to the hearing. A meeting agenda will also be available at:

[http://www.waterboards.ca.gov/santaana/board info/agendas/](http://www.waterboards.ca.gov/santaana/board%20info/agendas/)

Pursuant to California Water Code section 13323, Smart and Final Stores, LLC (**Smart and Final**) has the option to waive its rights to a hearing. Should **Smart and Final** waive its rights to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If **Smart and Final** chooses to waive its rights to a hearing, please sign and submit the enclosed Waiver Form by December 22, 2017. Please make the check payable to the Waste Discharge Permit Fund for three thousand, one hundred and twelve dollars and include the Complaint Number on the memo line. Please send the following information to the appropriate location:

WILLIAM RUH, CHAIR | HOPE A. SMYTHE, EXECUTIVE OFFICER

3737 Main St., Suite 500, Riverside, CA 92501 | www.waterboards.ca.gov/santaana

♻️ RECYCLED PAPER

Mail Waiver Form to:

RWQCB
Attn: Keith Elliott
3737 Main Street, Suite 500
Riverside, CA 92501

Mail Payment to:

SWRCB – Accounting Office
Attn: Enforcement Payment
P.O. Box 1888
Sacramento, CA 95812-1888

If **Smart and Final** does not wish to waive its rights to a hearing, a pre-hearing meeting is recommended. Should you wish to schedule a pre-hearing meeting, please submit your request to Keith Elliott by phone at (951) 782-4925 or by email at Keith.Elliott@waterboards.ca.gov prior to December 6, 2017.

A Proposed Hearing Procedure pertaining to this Complaint is also enclosed. The Proposed Hearing Procedure sets forth important requirements and deadlines for participation in the hearing.¹ Additionally, a Fact Sheet describing the Complaint process is available at:

http://www.waterboards.ca.gov/santaana/public_notices/enforcement_actions.shtml

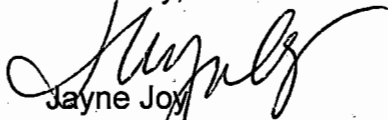
The Fact Sheet describes the complaint process and explains what **Smart and Final** can expect and its obligations as the process proceeds. If preferred, a hard copy of the Fact Sheet may be obtained by contacting Keith Elliott at (951) 782-4925.

Please read the Proposed Hearing Procedure carefully. The Board may adopt an Order requiring that you pay a penalty.

In addition, Smart and Final must also submit their past due 2016-17 Annual Report in the SMARTS system at <https://smarts.waterboards.ca.gov> before December 22, 2017.

If you have any questions regarding the Complaint or the enclosed documents, please contact Keith Elliott by email at Keith.Elliott@waterboards.ca.gov or by phone at (951) 782-4925. All legal questions should be directed to Catherine Hawe, Office of Enforcement, by email at Catherine.Hawe@waterboards.ca.gov or by phone at (916) 322-3538.

Sincerely,



Jayne Joy
Assistant Executive Officer
Regional Board Prosecution Team

¹ The Proposed Hearing Procedures establish a deadline of December 29, 2017 for the Advisory Team to adopt a Hearing Procedure. If no action is taken by the Advisory Team by that deadline, the Proposed Hearing Procedures will be considered the final hearing procedure.

Enclosure: MMP Complaint No. R8-2017-0054
Attachment 1: 1st Notice of Non-Compliance, dated August 7, 2017.
Attachment 2: 2nd Notice of Non-Compliance, dated September 12, 2017.
Hearing Procedures
Waiver Form

cc: Regional Board

Ms. Hope Smythe, Executive Officer, RWQCB, Riverside (Regional Board Advisory Team)

Mr. David Rice, Office of Chief Counsel, SWRCB, Sacramento (Regional Board Advisory Team Attorney)

Ms. Teresita Sablan, Office of Chief Counsel, SWRCB, Sacramento (Regional Board Advisory Team Attorney)

Ms. Catherine Hawe, Office of Enforcement, SWRCB, Sacramento;

Catherine.Hawe@Waterboards.ca.gov

Ms. Arlene Chun, San Bernardino County Public Works; Arlene.Chun@dpw.sbcounty.gov

Mr. Dan Chadwick, City of Fontana NPDES Coordinator; dchadwick@fontana.org

Mr. Alex Muniz, alex.muniz@smartandfinal.com

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Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

- | | | |
|--|----|-------|
| <input type="checkbox"/> Return Receipt (hardcopy) | \$ | _____ |
| <input type="checkbox"/> Return Receipt (electronic) | \$ | _____ |
| <input type="checkbox"/> Certified Mail Restricted Delivery | \$ | _____ |
| <input type="checkbox"/> Adult Signature Required | \$ | _____ |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$ | _____ |

Postmark
Here

Postage

\$

Total Postage

\$

Sent To

Street and Apt.

City, State, ZIP

Mr. Alex Muniz
Smart & Final Stores, LLC
600 Citadel Drive
Commerce, CA 90040

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

9009 0650 2000 0160 9102
7016 0910 0002 0530 6806



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

IN THE MATTER OF:

Smart and Final Stores, LLC)
600 Citadel Drive)
Commerce, CA 90040)
San Bernardino County)
741 Monroe Way)
Attn: Alex Muniz (Manager))

Complaint No. R8-2017-0054
for

Mandatory Minimum Penalty and Staff Costs

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), must impose liability under section 13399.33 of the California Water Code.
2. Unless waived, a hearing concerning this Complaint will be held before the Regional Board at its regular meeting on February 9, 2018, at a to be determined location. Smart and Final Stores, LLC, or its representative, will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of mandatory penalties by the Regional Board. An agenda for the meeting will be mailed to Smart and Final Stores, LLC not less than 10 days before the hearing date. A meeting agenda will also be available at: [http://www.waterboards.ca.gov/santaana/board info/agendas/](http://www.waterboards.ca.gov/santaana/board%20info/agendas/).
3. Smart and Final Stores, LLC can waive its right to a hearing to contest the allegation contained in this Complaint by signing and submitting the enclosed waiver and paying the liability in full or by taking other actions as described in the waiver form. If this matter proceeds to a hearing, the Prosecution Team reserves the right to seek an increase in the penalty amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing. Enforcement costs may be recovered pursuant to Water Code section 13399.33(d).
4. At the hearing, the Regional Board will consider whether to affirm, reject, or modify the proposed mandatory minimum penalties and assessment of costs pursuant to Water Code section 13399.33, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

THIS COMPLAINT IS BASED ON THE FOLLOWING FACTS:

5. Smart and Final Stores, LLC, located at 13055 Valley Boulevard in the City of Fontana, is regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ, NPDES No. CAS000001 (General Permit). The site's WDID Number is **8 336I023712**. The General Permit requires an annual report to be submitted by July 15th each year.
6. Smart and Final Stores, LLC's annual report for 2016-2017 was not received by Regional Board staff by the July 15, 2017 deadline. Therefore, a Notice of Non-Compliance (NNC) was issued to Smart and Final Stores, LLC by certified mail on August 7, 2017. The NNC requested that Smart and Final Stores, LLC submit the 2016-2017 annual report by September 7, 2017 to the Regional Board. The return receipt showed that Smart and Final Stores, LLC received the NNC on August 9, 2017. The NNC and return receipt are attached to this complaint as Attachment 1.
7. On September 12, 2017, Regional Board staff did not receive a response to the first NNC, therefore a second NNC was issued to Smart and Final Stores, LLC by certified mail on September 12, 2017. The return receipt showed it was received on September 14, 2017. The second NNC and return receipt are attached to this complaint as Attachment 2. The NNC requested that Smart and Final Stores, LLC submit the 2016-2017 annual report by October 9, 2017 to the Regional Board.
8. On July 18, 2017 a pre-Notice of Noncompliance email to Mr. Muniz, the contact person listed on SMART and Final, LLC's Notice of Intent (NOI), via email at alex.muniz@smartandfinal.com notifying him that his 2016-17 annual report is overdue.
9. On October 5, 2017, Regional Board staff sent an email to Mr. Muniz at alex.muniz@smartandfinal.com to warn him that the extended due date specified in the second NNC was quickly approaching.
10. In addition, emails with the first (August 8, 2017) and second NNCs (September 12, 2017) were also sent to Alex Muniz at alex.muniz@smartandfinal.com.
11. To date, the 2016-2017 annual report from Smart and Final Stores, LLC has not been received by the Santa Ana Regional Water Quality Control Board.

LEGAL AUTHORITY

12. Section 13399.33(c) of the California Water Code requires that the Regional Board impose a minimum penalty of \$1, 000 for any person who fails to submit an annual report in accordance with Section 13399.31 of the Water Code.

13. Section 13399.33(d) of the California Water Code further requires that the Regional Board recover the costs incurred by the Regional Board with regard to those persons.

PROPOSED MANDATORY MINIMUM PENAL TIES AND ASSESSMENT OF COSTS

14. Pursuant to Water Code section 13399.33(c), the Regional Board shall administratively impose a penalty in an amount that is not less than one thousand dollars (\$1,000) for a failure to submit an annual report.
15. Based on the non-submittal of the 2016-2017 annual report by July 15, 2017, Smart and Final Stores, LLC is alleged to have violated the General Permit for 130 days (from July 15, 2017 to November 22, 2017, the issuance date of this Complaint).
16. Water Code section 13399.33(d) allows for the recovery of costs incurred by the Regional Board for enforcement actions against dischargers who fail to submit the required annual report. Staff spent approximately fifteen (15) hours for this enforcement action resulting in total Staff costs of \$2112 (10 hrs at \$139/hr= \$1,390 + 4 hours at \$131/hr and 1 hour at \$198/hr). The total liability, including staff costs, is **\$3,112** (\$1,000 mandatory penalty+\$2,112 in staff costs).
17. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code Section 21000 et seq.) pursuant to title 14, California Code of Regulations Sections 15308 and 15321, subdivision (a), paragraph (2).

WAIVER OF HEARING

18. Smart and Final Stores, LLC may waive its right to a hearing. If Smart and Final Stores, LLC chooses to do so, please sign the enclosed Waiver Form and return it, together with a check for **\$3,112 dollars**. Indicate **"RS-2017-0054"** on the check and make it payable to the Waste Discharge Permit Fund. Send the check to the following address:

State Water Resources Control Board
Division of Administrative Services
Accounting Branch
P.O. Box 1888
Sacramento, CA 95814

19. The waiver and a copy of the check shall also be mailed to the Regional Board at the following address:

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348
Attention: Keith Elliott

If Smart and Final Stores, LLC waives its right to a hearing and pays the assessed amount, the Regional Board may not hold a hearing regarding this Complaint.

If you have any questions, please contact Keith Elliott at (951) 782-4925. For legal questions, contact Catherine Hawe, Office of Enforcement, at (916) 322-3538.

Date

Jayne Joy
Assistant Executive Officer
Regional Board Prosecution Team

Attachment 1:

**1st Notice of
Non-Compliance
Dated August 7, 2017**



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

August 7, 2017

Alex Muniz
Smart and Final Stores, LLC
600 Citadel Drive
Commerce, California 90040

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOTICE OF NONCOMPLIANCE: FAILURE TO COMPLY WITH THE GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES, ORDER NO. 2014-0057-DWQ, NPDES NO. CAS000001 (GENERAL PERMIT), WASTE DISCHARGE IDENTIFICATION (WDID) 8 36I023712

Dear Mr. Muniz:

Your facility located at 13055 Valley Boulevard in the city of Fontana, is regulated under the General Permit and is identified by **WDID 8 36I023712**. Section XVI of the General Permit requires that an Annual Report be submitted by July 15 of each year via the online SMARTS database. Our records show that your annual report for the July 1, 2016 to June 30, 2017 reporting period has not been submitted.

Fontana Distribution Center is consequently in violation of provisions of Section XVI of the General Permit, for failure to submit a complete 2016-2017 Annual Report. We request that you submit a complete 2016-2017 Annual Report via the online SMARTS database no later than 30 days from the date of this letter. The online SMARTS database is available at:

<https://smarts.waterboards.ca.gov>

The following links are to assist you with the online SMARTS database system:

Main page for the SMARTS guides:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/smarts/industrial/indst_help_guides.shtml

How to submit an Annual Report guide:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/annual_report_060216.pdf

How to submit an Ad Hoc (storm water sample) Report guide:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/dischargers_guide_adhocreport.pdf

You must also provide a statement along with the Annual Report as an Attachment, explaining why the Annual Report was not submitted by the July 15 deadline and the measures you have taken to ensure timely submittals in the future.

Failure to submit the 2016-2017 Annual Report via the online SMARTS database may result in enforcement action, including civil monetary penalties of up to \$10,000 for each day of violation. Please note that Section 13399.33 of the California Water Code stipulates a minimum penalty of \$1,000 to those permittees that do not submit their annual reports after notification.

Should you need assistance in completing the Annual Report or have any questions relating to SMARTS, please contact the SMARTS Helpdesk at stormwater@waterboards.ca.gov; or Keith Elliott at keith.elliott@waterboards.ca.gov or 951-782-4925.

Sincerely,



Hope Smythe
Division Chief

7016 2070 0000 6881

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Extra Services & Fees (check box, add fee *(\$2.70 rate)*)
 Return Receipt (hardcopy) \$
 Return Receipt (electronic) \$
 Certified Mail Restricted Delivery \$
 Adult Signature Required \$
 Adult Signature Restricted Delivery \$

7/2017 8:40:29 F

Postmark
Here
1st NNC

Postage **\$.47**

8 36I023712

Total Postage and Fees **\$6.47**

428885

Sent To **Mr. Alex Muniz**

Street and Apt. No., PO Box, or P.O. Stop **Smart and Fital Stores, LLC**

City, State, ZIP+4® **600 Citadel Drive
Commerce, California 90040**

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Certified Mail service provides the following benefits.

- A receipt (this portion of the Certified Mail label).
- A unique identifier for your mailpiece.
- Electronic verification of delivery or attempted delivery.
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Important Reminders:

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- Certified Mail service is *not* available for International mail.
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- For an additional fee, and with a proper endorsement on the mailpiece, you may request the following services:
 - Return receipt service, which provides a record of delivery (including the recipient's signature). You can request a hardcopy return receipt or an electronic version. For a hardcopy return receipt, complete PS Form 3811, *Domestic Return Receipt*; attach PS Form 3811 to your mailpiece;
 - for an electronic return receipt, see a retail associate for assistance. To receive a duplicate return receipt for no additional fee, present this USPS®-postmarked Certified Mail receipt to the retail associate.
 - Restricted delivery service, which provides delivery to the addressee specified by name, or to the addressee's authorized agent.
 - Adult signature service, which requires the signee to be at least 21 years of age (not available at retail).
 - Adult signature restricted delivery service, which requires the signee to be at least 21 years of age and provides delivery to the addressee specified by name, or to the addressee's authorized agent (not available at retail).
- To ensure that your Certified Mail receipt is accepted as legal proof of mailing, it should bear a USPS postmark. If you would like a postmark on this Certified Mail receipt, please present your Certified Mail item at a Post Office™ for postmarking. If you don't need a postmark on this Certified Mail receipt, detach the barcoded portion of this label, affix it to the mailpiece, apply appropriate postage, and deposit the mailpiece.

IMPORTANT: Save this receipt for your records.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
 - Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, on the front if space permits.

Article Addressed to:
Mr.

,s, LLC

Commerce, Virginia 90040

WDID: 8 361023712 AppID: 428885

8/7/2017 8:40:29 AM



9590 9403 0887 5223 0729 48

2. Article Number (Transfer from service label)

7016 2070 0000 6806 0681

COMPLETE THIS SECTION ON DELIVERY

A. Signature

[Handwritten Signature]

Agent

Addressee

B. Received by (Printed Name)

Jerry Diland

C. Date of Delivery

8/9/17

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below: No

3. Service Type

Adult Signature

Adult Signature Restricted Delivery

Certified Mail®

Certified Mail Restricted Delivery

Collect on Delivery

Collect on Delivery Restricted Delivery

Priority Mail Express®

Registered Mail™

Registered Mail Restricted Delivery

Return Receipt for Merchandise

Signature Confirmation™

Signature Confirmation Restricted Delivery

Restricted Delivery

USPS TRACKING



9590 9403 0887 5223 0729 48

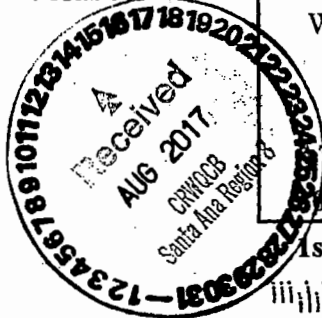


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United States
Postal Service

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SANTA ANA REGIONAL
WATER QUALITY CONTROL BOARD
3737 MAIN STREET, SUITE 500
RIVERSIDE, CA 92501-3348



ATTN: INLAND STORM WATER
16-2017 Industrial General Permit

1st NNC



Attachment 2:

**2nd Notice of
Non-Compliance
Dated September 12, 2017**



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

September 12, 2017

Alex Muniz
Smart and Final Stores, LLC
600 Citadel Drive
Commerce, CA 90040

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

FINAL NOTICE OF NONCOMPLIANCE FOR 2016-17 OUTSTANDING ANNUAL REPORT: FAILURE TO COMPLY WITH THE GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES, ORDER NO. 2014-0057-DWQ, NPDES NO. CAS000001 (GENERAL PERMIT), WASTE DISCHARGE IDENTIFICATION (WDID) 8 361023712

Dear Mr. Muniz:

Your facility located at 13055 Valley Boulevard in the city of Fontana is regulated under the General Permit and is identified by WDID **8 361023712**. Section XVI.A. of the General Permit requires that an Annual Report be submitted by July 15 of each year via the online SMARTS database. Our records show that your annual report for the July 1, 2016 to June 30, 2017 reporting period has not been submitted.

Smart and Final Stores, LLC is consequently in violation of Section XVI.A. of the General Permit, for failure to submit a complete 2016-2017 Annual Report. We request that you submit a complete **2016-2017 Annual Report** via the online SMARTS database no later than **October 9, 2017**.

The online SMARTS database is available at:

<https://smarts.waterboards.ca.gov>

The following links are to assist you with submitting your Annual Report through the online SMARTS database system:

Main page for the SMARTS guides:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/smarts/industrial/indst_help_guides.shtml

How to submit an Annual Report guide:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/annual_report_060216.pdf

How to submit an Ad Hoc (storm water sample) Report guide:

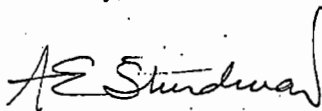
http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/dischargers_guide_adhocreport.pdf

You must also provide a statement, as an Attachment to the Annual Report, explaining why the Annual Report was not submitted by the July 15 deadline and the measures you have taken to ensure timely submittals in the future.

This is your second and final notice. The first notice was dated and sent to you on August 7, 2017. Failure to submit the 2016-2017 Annual Report via the online SMARTS database by **October 9, 2017** may result in enforcement action, including civil monetary penalties of up to \$10,000 for each day of violation. Please note that Section 13399.33 of the California Water Code stipulates a minimum penalty of \$1,000 to those permittees that do not submit their annual reports after notification.

Should you need assistance in completing the Annual Report or have any questions relating to SMARTS, please contact the SMARTS Helpdesk at stormwater@waterboards.ca.gov. You may also contact Keith Elliott at 951-782-4925 or keith.elliott@waterboards.ca.gov.

Sincerely,



Ann Sturdivant, PG, CEG, CHG
Supervising Engineering Geologist
Chief, Groundwater and Regulatory Division

7016 2070 0000 6806 0988

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Certified Mail Fee	\$3.30
\$	
Extra Services & Fees (check box, add fee \$2.70 rate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$ _____
<input type="checkbox"/> Return Receipt (electronic)	\$ _____
<input type="checkbox"/> Certified Mail Restricted Delivery	\$ _____
<input type="checkbox"/> Adult Signature Required	\$ _____
<input type="checkbox"/> Adult Signature Restricted Delivery	\$ _____
Postage	\$.47
\$	
Total Postage and Fees	\$6.47
\$	

Postmark
Here
2nd NNC

8 36I023712
428885

Sent To **Mr. Alex Muniz**
 Street and Apt. No., PO Box, or Rural Route **Smart and Final Stores, LLC**
 City, State, ZIP+4 **600 Citadel Drive**
Commerce, CA 90040

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Mr. Alex Muniz
Smart and Final Stores, LLC
600 Citadel Drive
Commerce, CA 90040
WDID: 8 361023712 AppID: 428885
9/11/2017



9590 9403 0887 5223 0811 62

2. Article Number (Transfer from service label)
16 2070 0000 6806 0988

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 X Agent
 Addressee

B. Received by (Printed Name) **Jerry Dillard** C. Date of Delivery **9/14/17**

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
- | | |
|--|---|
| <input type="checkbox"/> Adult Signature | <input type="checkbox"/> Priority Mail Express® |
| <input type="checkbox"/> Adult Signature Restricted Delivery | <input type="checkbox"/> Registered Mail™ |
| <input checked="" type="checkbox"/> Certified Mail® | <input type="checkbox"/> Registered Mail Restricted Delivery |
| <input type="checkbox"/> Certified Mail Restricted Delivery | <input checked="" type="checkbox"/> Return Receipt for Merchandise |
| <input type="checkbox"/> Collect on Delivery | <input type="checkbox"/> Signature Confirmation™ |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail | |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) | |

Domestic Return Receipt

USPS TRACKING#



9590 9403 0887 5223 0811 62



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

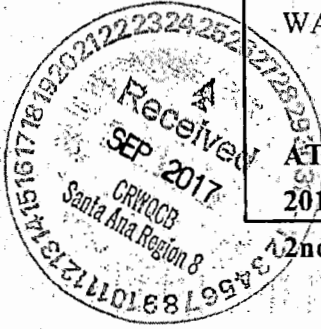
United States
Postal Service

* Sender: Please print your name, address, and ZIP+4® in this box*

SANTA ANA REGIONAL
WATER QUALITY CONTROL BOARD
3737 MAIN STREET, SUITE 500
RIVERSIDE, CA 92501-3348

ATTN: INLAND STORM WATER
2016-2017 Industrial General Permit

2nd NNC (KLE)





EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

California Regional Water Quality Control Board
Santa Ana Region

PROPOSED HEARING PROCEDURE
FOR MANDATORY MINIMUM PENALTY COMPLAINT
NO. R8-2017-0054

ISSUED TO

Smart and Final Stores, LLC
600 Citadel Drive
Commerce, CA 90040
San Bernardino County

SCHEDULED FOR FEBRUARY 9, 2018

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

On November 22, 2017, the Assistant Executive Officer, acting as head of the Santa Ana Regional Water Quality Control Board (Regional Board) Prosecution Team, issued a Mandatory Minimum Penalty Complaint (Complaint) pursuant to California Water Code (Water Code) Section 13323 against Smart and Final Stores, LLC, alleging that it violated the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ, NPDES No. CAS000001 (General Permit) by failing to submit the 2016-2017 annual report by July 15, 2017.

The Complaint proposes that the Regional Board impose a mandatory minimum penalty and staff costs in the amount of **three thousand, one hundred and twelve dollars (\$3,112)** pursuant to Water Code Section 13399.33. Unless Smart and Final Stores, LLC pays the proposed liability, a hearing will be held before the Regional Board during its **February 9, 2018** meeting.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the Complaint and any proposed Order. At the hearing, the Regional Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability.

WILLIAM RUH, CHAIR | HOPE A. SMYTHE, EXECUTIVE OFFICER

3737 Main St., Suite 500, Riverside, CA 92501 | www.waterboards.ca.gov/santaana

♻️ RECYCLED PAPER

The public hearing will be held on **February 9, 2018**, and will commence no earlier than 9:00 a.m., as soon thereafter as practical, or as announced in the Regional Board meeting agenda. The meeting will be held at a location to be determined.

Any proposed Order and an agenda for the meeting will be issued at least ten days before the meeting and posted on the Regional Board's web page at:

http://www.waterboards.ca.gov/santaana/board_info/agendas/

Hearing Procedure

The hearing will be conducted in accordance with this Proposed Hearing Procedure. If the Advisory Team takes no action in regard to the Proposed Hearing Procedure, this document will become the final hearing procedure on December 29, 2017. The procedures governing adjudicatory hearings before the Regional Board may be found at California Code of Regulations, title 23, section 648 *et seq.*, and are available at:

<http://www.waterboards.ca.gov>

Copies will be provided upon request. In accordance with Section 648(d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648(b) and herein, Chapter 5 of the Administrative Procedures Act (Gov. Code, § 11500 *et seq.*) does not apply to this hearing.

Smart and Final Stores, LLC, shall attempt to resolve objections to this Hearing Procedure with the Prosecution Team BEFORE submitting objections to the Advisory Team.

Separation of Prosecutorial and Advisory Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Board (the Prosecution Team) have been separated from those who will provide legal and technical advice to the Board (the Advisory Team). Members of the Advisory Team are: Hope Smythe, Executive Officer and David Rice, Staff Counsel. Members of the Prosecution Team are: Jayne Joy, Assistant Executive Officer; Adam Fischer, Senior Environmental Scientist; Keith Elliott, PE, Water Resource Control Engineer; and Catherine Hawe, Attorney, Office of Enforcement.

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Other members of the Prosecution Team act or have acted as advisors to the Regional Board in other unrelated matters but they are not advising the Regional Board in this proceeding. Members of the Prosecution Team have not had any *ex parte* communications with the members of the Regional Board or the Advisory Team regarding this proceeding.

Hearing Participants

Participants in this proceeding are designated as either "Designated Parties" or "Interested Persons." Designated Parties may present evidence and cross-examine witnesses and are

subject to cross-examination. Interested Persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested Persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). At the hearing, both Designated Parties and Interested Persons may be asked to respond to clarifying questions from the Regional Board, staff, or others, at the discretion of the Board Chair.

The following participants are hereby designated as Designated Parties in this proceeding:

1. Regional Board Prosecution Team
2. Smart and Final Stores, LLC.

Requesting Designated Party Status

Persons who wish to participate in the hearing as a Designated Party must request designated party status by submitting a request in writing so that it is received no later than the deadline listed under "Important Deadlines" below. The request shall include an explanation of the basis for status as a Designated Party (i.e., how the issues to be addressed at the hearing affect the person, the need to present evidence or cross-examine witnesses), along with a statement explaining why the parties listed above do not adequately represent the person's interest. Any objections to these requests for designated party status must be submitted so that they are received no later than the deadline listed under "Important Deadlines" below.

Primary Contacts

Advisory Team:

David Rice, Staff Counsel
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812
Phone: (916) 341-5182
David.Rice@waterboards.ca.gov

Prosecution Team:

Keith Elliott, PE
Regional Water Quality Control Board – Santa Ana Region
3737 Main Street, Suite 500, Riverside, CA 92501
Phone: (951) 782-4925
keith.elliott@waterboards.ca.gov

Discharger:

Smart and Final Stores, LLC
600 Citadel Drive
Commerce, CA 90040
Attn: Mr. Alex Muniz
alex.muniz@smartandfinal.com

Ex Parte Communications

Designated Parties and Interested Persons are forbidden from engaging in *ex parte* communications regarding this matter. An *ex parte* communication is a written or verbal communication related to the investigation, preparation, or prosecution of the Complaint between a Designated Party or an Interested Person and a Board Member or a member of the Board's Advisory Team (see Gov. Code, § 11430.10 *et seq.*). However, if the communication is copied to all other persons (if written) or is made in a manner open to all other persons (if verbal), then the communication is not considered an *ex parte* communication. Communications regarding non-controversial procedural matters are also not considered *ex parte* communications and are not restricted.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each Designated Party shall have a combined 20 minutes to present evidence (including evidence presented by witnesses called by the Designated Party), to cross-examine witnesses (if warranted), and to provide a closing statement. Each Interested Person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than the deadline listed under "Important Deadlines" below. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments, or legal argument requires extra time, and why it could not have been provided in writing by the applicable deadline.

A timer will be used, but will not run during Board questions or the responses to such questions, or during discussions of procedural issues.

Submission of Evidence and Policy Statements

The Prosecution Team and all other Designated Parties (including Smart and Final Stores, LLC) must submit the following information in advance of the hearing:

1. All documentary evidence and exhibits to be offered at the hearing.
2. All legal and technical arguments or analysis.

3. The name of each witness, if any, whom the Designated Party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony. Alternatively, the testimony of any witness may be presented by declaration, so long as that witness will be available for cross-examination at the hearing.
4. The qualifications of each expert witness, if any.

Prosecution Team: The Prosecution Team's information must include the legal and factual basis for its claims against Smart and Final Stores, LLC; a list of all evidence on which the Prosecution Team relies, which must include, at a minimum, all documents cited in the Complaint, Staff Report, or other material submitted by the Prosecution Team; and the witness information required under items 3-4 for all witnesses, including Board staff.

Designated Parties (including Smart and Final Stores, LLC): All Designated Parties shall submit comments regarding the Complaint along with any additional supporting evidence not cited by the Regional Board's Prosecution Team no later than the deadline listed under "Important Deadlines" below.

Rebuttal: Any Designated Party that would like to submit evidence, legal analysis, or policy statements to rebut information previously submitted by other Designated Parties shall submit this rebuttal information so that it is received no later than the deadline listed under "Important Deadlines" below. "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other submissions. Rebuttal shall be limited to the scope of the materials previously submitted. Rebuttal information that is not responsive to information previously submitted may be excluded.

Copies: For each evidentiary deadline, each Designated Party shall send one electronic copy of the above materials to each of the other Designated Parties at the address or addresses provided above by 5:00 p.m. on the deadline described above.

Interested Persons: Interested Persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by the deadline listed under "Important Deadlines" to be included in the Board's agenda package. Interested Persons do not need to submit written comments in order to speak at the hearing.

Prohibition on Surprise Evidence: In accordance with California Code of Regulations, title 23, section 648.4, the Regional Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Board Chair may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will *not* be considered by the Regional Board and will not be included in the administrative record for this proceeding.

Presentations: Power Point and other visual presentations may be used at the hearing, but their content shall not exceed the scope of other submitted written material. These presentations must be provided to the Advisory Team at or before the hearing both in hard copy and in electronic format so that they may be included in the administrative record.

Witnesses: All witnesses who have submitted written testimony shall appear at the hearing to affirm that the testimony is true and correct, and shall be available for cross-examination.

Questions

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information above).

IMPORTANT DEADLINES

All required submissions must be received by 5:00 p.m. on the respective due date.

November 22, 2017	<ul style="list-style-type: none"> • Prosecution Team issues Complaint and Proposed Hearing Procedure on Smart and Final Stores, LLC and other parties.
December 6, 2017	<ul style="list-style-type: none"> ▪ Smart and Final Stores, LLC deadline to request a pre-hearing meeting.
December 22, 2017	<ul style="list-style-type: none"> ▪ Smart and Final Stores, LLC deadline to submit 90-Day Hearing Waiver Form and payment. ▪ Smart and Final Stores, LLC deadline to submit the 2016-17 Annual Report in SMARTS https://smarts.waterboards.ca.gov. ▪ Objections due on Proposed Hearing Procedure. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
December 26, 2017*	<ul style="list-style-type: none"> ▪ Prosecution Team's deadline for submission of information required under "Submission of Evidence and Policy Statements," above. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic or Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney</p>
December 29, 2017	<ul style="list-style-type: none"> ▪ Deadline to request "Designated Party" status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
January 3, 2018*	<ul style="list-style-type: none"> ▪ Deadline to submit opposition to requests for Designated Party status. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
January 09, 2018	<ul style="list-style-type: none"> ▪ Advisory Team adopts Proposed Hearing Procedure with any applicable modifications. If the Advisory Team takes no actions with regard to the Hearing Procedure, the Proposed Hearing Procedure will become final. ▪ Advisory Team issues decision on requests for designated party status.
January 15, 2018*	<ul style="list-style-type: none"> ▪ Remaining Designated Parties' (including Smart and Final Stores, LLC) deadline to submit all information required under "Submission of Evidence and Policy Statements" above. This includes all written comments regarding the Order, and

	<p>any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections.</p> <ul style="list-style-type: none"> ▪ Interested Persons' comments are due. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
January 22, 2018*	<ul style="list-style-type: none"> ▪ Prosecution Team's deadline to submit any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections. ▪ Deadline to submit requests for additional time. ▪ If rebuttal evidence is submitted, all requests for additional time (to respond to the rebuttal at the hearing) must be made within 3 working days of <i>this</i> deadline. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney</p> <p><u>Electronic or Hard Copies to:</u> Prosecution Team Primary Contact, Advisory Team Primary Contact</p>
January 26, 2018*†	<ul style="list-style-type: none"> ▪ Prosecution Team submits Hearing information on the parties and Board. <p><u>Electronic or Hard Copies to:</u> All other Designated Parties, All known Interested Persons</p> <p><u>Electronic or Hard Copies to:</u> Advisory Team Primary Contact, Advisory Team Attorney</p>
February 9, 2018*	Hearing

* Smart and Final Stores, LLC has the right to a hearing before the Board within 90 days of receiving the Complaint, but this right can be waived (to facilitate settlement discussions, for example). By submitting the waiver form, Smart and Final Stores, LLC is not waiving the right to a hearing; unless a settlement is reached, the Board will hold a hearing prior to imposing civil liability. However, if the Board accepts the waiver, all deadlines marked with an "*" will be revised if a settlement cannot be reached.

† This deadline is set based on the date that the Board compiles the Board Members' agenda packages. Any material received after this deadline will not be included in the Board Members' agenda packages.

Santa Ana Regional Water Quality Control Board

WAIVER FORM FOR MANDATORY MINIMUM PENALTY COMPLAINT

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Smart and Final Stores, LLC in connection with Mandatory Minimum Penalty Complaint No. R8-2017-0054 (Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served with the complaint. The person(s) who have been issued a complaint may waive the right to a hearing."

(Check here if Smart and Final Stores, LLC waives the hearing requirement and will pay the liability in full.)

- a. I hereby waive any right Smart and Final Stores, LLC may have to a hearing before the Regional Water Board.
- b. I certify that Smart and Final Stores, LLC will remit payment for the proposed penalty in the full amount of **three thousand, one hundred and twelve dollars (\$3,112)** by submitting a check made payable to the "Waste Discharge Permit Fund," that references "Complaint No. R8-2017-0054." Payment must be received by the Regional Water Board by **December 22, 2017** or the Regional Water Board may adopt an Order requiring payment.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board (or the Regional Board's delegate), and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in Smart and Final Stores, LLC having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(Print Name and Title)

(Signature)

(Date)