

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9**

75 Hawthorne Street  
San Francisco, California 94105

IN THE MATTER OF:	)	DOCKET NO. CWA-09-2018-0010
	)	
Taylor Farms Retail, Inc.	)	<b>COMPLAINT, CONSENT AGREEMENT</b>
150 Main Street	)	<b>AND FINAL ORDER</b>
Salinas, CA 93901	)	
	)	<i>Class II Administrative Penalty Proceeding under</i>
	)	<i>Section 309(g) of the Clean Water Act, 33 U.S.C.</i>
	)	<i>§ 1319(g), and 40 C.F.R. §§ 22.13(b) and 22.18</i>
<u>Respondent.</u>	)	

**CONSENT AGREEMENT AND FINAL ORDER**

**I. AUTHORITY AND PARTIES**

1. This is a Class II civil administrative penalty proceeding under Sections 309(g)(1)(A) and 2(B) of the Clean Water Act (CWA), 33 U.S.C. §§ 1319(g)(1)(A) and (2)(B), and 40 C.F.R. Part 22 (*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*).
2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342. The Administrator has delegated this authority to the Regional Administrator of the EPA Region 9, who in turn has delegated this authority to the Director of the Enforcement Division, hereinafter “Complainant.”
3. Respondent is Taylor Farms Retail, Inc. (“Taylor Farms” or “Respondent”).
4. This Consent Agreement and Final Order (CA/FO), which contains the elements of a complaint required by 40 C.F. R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by the EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

**II. STATUTORY AND REGULATORY FRAMEWORK**

5. CWA Section 301(a), 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants from a point source into waters of the United States, except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

6. CWA Section 402, 33 U.S.C. § 1342, establishes the NPDES program and authorizes the EPA and authorized states to issue permits governing the discharge of pollutants from point sources into waters of the United States and CWA Section 402(p), 33 U.S.C. § 1342(p), requires that NPDES permits be issued for storm water discharges “associated with industrial activity.”
7. 40 C.F.R. § 122.26(b)(14)(xi) defines storm water discharges associated with industrial activity to include activities classified under SIC Codes 2099 and 4222 for “Food Preparations, Not Elsewhere Classified” and “Refrigerated Warehousing and Storage” respectively.
8. CWA Section 402(p)(4), 33 U.S.C. § 1342(p)(4), requires dischargers of storm water associated with industrial activity to seek coverage under a promulgated general permit or seek individual permit coverage.
9. The State of California has an EPA-authorized NPDES program and issues permits, including industrial storm water permits, through its State Water Resources Control Board (“State Water Board”) and nine Regional Water Quality Control Boards. On April 17, 1997, the State Water Board adopted General Permit No. CAS000001 for *Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities*, Water Quality Order No. 97-03-DWQ, which was in effect through June 30, 2015 and subsequently revised by the State Water Board on April 1, 2014, Water Quality Order No. 2014-0057-DWQ, which became effective on July 1, 2015, hereinafter “General Permit.”
10. New dischargers obtaining coverage under the General Permit on or after July 1, 2015 must submit a Notice of Intent (NOI) to the State Water Board at least seven (7) days prior to commencement of industrial activities. 40 C.F.R. § 122.28(b)(2); 2015 General Permit NOI Instructions.
11. Pursuant to CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19.4, the EPA may assess a Class II civil administrative penalty of up to \$16,000 per day of violation, not to exceed \$187,500 in total, against a person for CWA Section 301(a) violations that occurred on or after December 6, 2013. For violations that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2018, the EPA may assess a penalty up to \$21,393 per day of violation, not to exceed \$267,415 in total.

### **III. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW**

12. Respondent is a California corporation and therefore, a person within the meaning of CWA Section 502(5), 33 U.S.C. § 1362(5). Respondent engages in the preparation of bagged lettuce and vegetables, and refrigerated warehousing and storage activities, at its facility located at 1275 Hansen Street, Salinas, California (referred to in this CA/FO as “the Facility.”)
13. Respondent has operated the Facility since at least 2011, on an exact date best known to Respondent. Respondent’s operations at the Facility fall within activities classified under SIC Codes 2099 (Food Preparations, not elsewhere classified) and 4222 (Refrigerated Warehousing and Storage), and is therefore an “industrial activity” for purposes of CWA Section 402(p), 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b)(14)(xi).
14. Storm water runoff from the Facility is a “storm water discharge associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(xi).

15. Storm water runoff from the Facility discharges to the City of Salinas' (City) municipal separate storm sewer system (MS4) from two piped subsurface connections along Airport Boulevard near the northwest corner of the Facility. The Facility's discharge points along Airport Boulevard and the City's MS4 are "point sources" within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).
16. Storm water discharges from the Facility includes discharges of organic slurry generated through the processing of vegetables and handling of vegetable wastes at the Facility that meets the definition of a "pollutant" as either "biological materials" and/or "agricultural waste" under CWA Section 502(6), 33 U.S.C. § 1362(6).
17. Discharges from the Facility enter the City MS4 and discharge into Alisal Creek a "waters of the United States" within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).
18. Respondent's discharge of pollutants in storm water into waters of the United States constitutes a "discharge of pollutants" within the meaning of CWA Section 502(12), 33 U.S.C. § 1362(12).
19. On November 17, 2016, EPA Region 9 representatives inspected the Facility to evaluate Respondent's compliance with the CWA. The EPA inspectors found that Respondent and the City's Storm Water Program had a cooperative working relationship. EPA inspectors, however, also found that Respondent had not submitted a NOI to the State Water Board for authorization to discharge industrial storm water under the General Permit. In addition, the EPA observed: the Facility was operating without the functional equivalent of a stormwater pollution prevention plan (SWPPP); Facility staff were unaware of the configuration of diversion valves that directed stormwater flows to either the City MS4 or to the City's Industrial Wastewater Treatment Facility (IWTF); a lack of good-housekeeping at the Facility evidenced by staining on impervious surfaces at the Facility's loading dock and loading bay #16; and the potential for vegetable waste and pollutants to mobilize to the City MS4 during a rain event.
20. On or around January 30, 2017, Respondent submitted an NOI to the State Water Board seeking coverage under the General Permit for the Facility' discharges of storm water associated with its industrial activity.
21. On or around March 14, 2017, the State Water Board granted Respondent coverage under the General Permit and assigned WDID Number 3 27I027087 for the Facility.
22. Between the start of Facility operations in 2011, on a date best known to Respondent, and the date of General Permit authorization on March 14, 2017, a number of rainfall events in excess of 0.5 inches were recorded at the Salinas Airport, including at least twenty-five (25) half-inch rain events that occurred between the dates of June 30, 2013 and March 14, 2017. Upon information and belief, each of these twenty-five (25) rainfall events resulted in a discharge of stormwater from the Facility.
23. On November 8, 2017, the EPA provided on-site compliance assistance to Respondent at the Facility, during which the EPA found the following compliance issues with the SWPPP:
  - a. The SWPPP had not been certified and signed as required by Section X.B.2 of the General Permit, which required Dischargers to implement their SWPPPs by July 1, 2015, and to certify and submit their SWPPP via the State Water Board's Storm Water Multiple Application and Report Tracking System (SMARTS) website within 30 days whenever the SWPPP contains significant revisions;

- b. The SWPPP did not identify the correct receiving water body as required by Section X.E of the General Permit;
  - c. The SWPPP did not include BOD as a Facility-specific potential pollutant for sampling and analysis as required by Section X.B.6.c of the General Permit;
  - d. The SWPPP site map did not describe the multiple onsite storm drain inlets at the Facility that drain to Discharge Point No. 1, as required by Sections X.E.3.a-b of the General Permit; and
  - e. The SWPPP site map did not describe the industrial activities occurring in the Facility's unpaved waste management area, as required by Section X.E.3.f of the General Permit.
24. On December 19, 2017, Respondent provided a revised and adequate SWPPP to the State Board via SMARTS.
25. Between March 14, 2017 and December 19, 2017, Respondent failed to comply with the SWPPP requirements of the General Permit.

#### **IV. ALLEGED VIOLATIONS**

26. Between June 30, 2013 and March 14, 2017, Respondent violated CWA Section 301(a), 33 U.S.C. § 1311(a), on at least twenty-five (25) days by discharging pollutants from a point source into waters of the United States without NPDES permit authorization, and between March 14, 2017 and December 19, 2017, violated a condition or limitation in a permit, *i.e.*, the General Permit, issued under CWA Section 402, 33 U.S.C. § 1342.

#### **V. ADMINISTRATIVE PENALTY**

27. In consideration of the penalty factors of CWA Section 309(g), 33 U.S.C. § 1319(g), Respondent shall pay to the United States a civil administrative penalty in the amount of sixty-seven thousand, six hundred and forty dollars (**\$67,640**) within thirty (30) calendar days of the Effective Date, as defined in Section X below, of this CA/FO.
28. Respondent shall make penalty payment by one of the options listed below:

- a. Check Payment. Payment by a cashier's or certified check shall be made payable to "Treasurer, United States of America" and be mailed as follows:

- i. *If by regular U.S. Postal Service Mail:*

U.S. Environmental Protection Agency  
Fines and Penalties  
PO BOX 979077  
St. Louis, MO 63197-9000

- ii. *If by overnight mail:*

U.S. Environmental Protection Agency  
Government Lockbox 979077  
USEPA Fines and Penalties  
1005 Convention Plaza

SL-MO-C2-GL  
St. Louis, MO 63101

- b. Automated Clearinghouse Payment: Payment by Automated Clearinghouse (ACH) via Vendor Express shall be made through the U.S. Treasury as follows:

U.S. Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

- c. Fedwire: Payment by wire transfer to the EPA shall be made through the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
(Field Tag 4200 of the Fedwire message should read: D 68010727 Environmental Protection Agency)

- d. Online Payment: This payment option can be accessed from the information below:

Go to [www.pay.gov](http://www.pay.gov)  
Enter “SFO Form Number 1.1.” in the search field  
Open “EPA Miscellaneous Payments – Cincinnati Finance Center” form and complete required fields

Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at (513) 487-2091.

29. To ensure proper credit, Respondent shall include the following transmittal information with the penalty payment: (i) Respondent’s name (as appeared on the CA/FO), complete address, contact person, and phone number; (ii) the EPA case docket number; (iii) the EPA contact person; and (iv) the reason for payment.

30. Concurrent with the payment, Respondent shall send a true and correct copy of the payment and accompanying transmittal information to the following addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Rich Campbell, Attorney-Advisor  
Office of Regional Counsel (ORC-2)

U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

31. Respondent shall not, and shall not allow any other person to, deduct any penalties and interest paid under this CA/FO from federal, state, or local taxes.
32. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay the assessed penalty on time, the EPA may request the U.S. Department of Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the CA/FO's Effective Date. In such an action, the validity, amount, or appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter, for each quarter during which such failure to pay persists. The EPA may also take other debt collection actions as authorized by law, including, but not limited to, the Debt Collection Act, 33 U.S.C. § 3711, and 33 C.F.R. Part 13.

#### **VI. APPLICABILITY**

33. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

#### **VII. RESPONDENT'S ADMISSIONS AND WAIVERS**

34. In accordance with 40 C.F.R. § 22.18(b), for the purpose of this proceeding, Respondent:
  - a. admits the jurisdictional allegations of the complaint;
  - b. admits the facts stipulated in the consent agreement;
  - c. consents to all conditions specified in this CA/FO and to the assessment of the civil administrative penalty set forth in Section V above;
  - d. waives any right to contest the allegations set forth in this CA/FO; and
  - e. waives its right to appeal this proposed Final Order.

#### **VIII. RESERVATION OF RIGHTS**

35. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged herein and does not in any case affect the right of the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

36. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

**IX. ATTORNEY FEES AND COSTS**

37. Unless otherwise specified, each party shall bear its own attorney fees and costs.

**X. EFFECTIVE DATE AND TERMINATION**

38. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the Effective Date of this CA/FO is the date the Final Order, as signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. This CA/FO shall terminate when Respondent has complied with the CA/FO's requirements in full.

**XI. PUBLIC NOTICE**

39. Pursuant to CWA Section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from the EPA that it no longer supports entry of this Consent Agreement.

40. Pursuant to CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), the EPA has consulted with the State of California regarding this penalty action.

For Respondent Taylor Farms Retail, Inc.:

\_\_\_\_\_/s/\_\_\_\_\_  
Name

\_\_\_\_\_/6/6/2018\_\_\_\_\_  
Date

\_\_\_\_\_  
Title



For Complainant the U.S. Environmental Protection Agency, Region 9:

\_\_\_\_\_/s/\_\_\_\_\_  
Kathleen H. Johnson, Director  
Enforcement Division  
U.S. EPA Region 9

Date \_\_\_\_\_6/14/2018\_\_\_\_\_

Of Counsel:

Rich Campbell  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 9

**FINAL ORDER**

It is Hereby Ordered that this Consent Agreement and Final Order (U.S. EPA Docket No. CWA-09-2018-0010) be entered and that Respondent shall pay a civil penalty in the amount of **\$67,640** in accordance with the terms of this Consent Agreement and Final Order.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name  
Regional Judicial Officer  
U.S. EPA, Region IX