

CITY OF PETALUMA

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Mayor

Brian Barnacle
D'Lynda Fischer
Mike Healy
Dave King
Kevin McDonnell
Dennis Pocekay
Councilmembers

March 11, 2021

Mr. Larry Peter, Owner
Spring Hill Cheese dba Petaluma Creamery
621 Western Avenue
Petaluma, CA 94952

Re: Wastewater Discharge Permit No. 1203 and CUPA Application

Dear Mr. Peter:

As per our discussions, enclosed please find a Consent Order by and between the City of Petaluma and Spring Hill Jersey Cheese, Inc. dba Petaluma Creamery.

Respectfully,

Peggy Flynn
City Manager

cc: George Bennett (georgeb@mpeservicesinc.com)
Michael Brook (mbrooklaw@gmail.com)
Eric Danly, City Attorney
Jordan Green, Assistant City Attorney

Encl:
Consent Order

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**CONSENT ORDER BY AND BETWEEN THE CITY OF
PETALUMA AND SPRING HILL JERSEY CHEESE, INC.
DBA PETALUMA CREAMERY**

In consideration of the City reinstating Springhill Jersey Cheese, Inc. DBA Petaluma Creamery's ("Creamery") Wastewater Discharge Permit, Significant Industrial User Permit No. 1203 (attached as Exhibit A), the Creamery and the City of Petaluma ("City") hereby enter into this Consent Order ("Order").

The terms of this Order supersede all prior orders relating to Wastewater Discharge Permit No. 1203.

Permit No. 1203 currently expires at midnight on June 4, 2021. To maintain consistency with this Order, the City is hereby extending Permit No. 1203 to expire at midnight on December 1, 2021. The Creamery is required to submit an application for a new permit by 4:00 p.m. on September 1, 2021. The application shall be consistent with the below discussed Plan and include the operations and maintenance manuals for the Plan.

The Creamery understands and agrees full compliance is the sole responsibility of the Creamery and failure to satisfy any of the below listed requirements by the date specified in this Order and/or any attempt to contest the City's lien shall be grounds for the City to revoke Permit No. 1203, effective upon written notice to the Creamery.

If the City revokes Permit No. 1203 for violating this Order, the City will not reinstate it. Rather, the Creamery will need to apply for a new permit. Consistent with prior permit review lead times, the City requires three-month to review a Significant Industrial User permit application. If the permit is revoked, the City will provide the Creamery with a two-week production draw down.

The Effective Date of this Order is the date the last party signs this Order. This Order will remain in full force and effect until all requirements have been completed, including payment of the outstanding permit violation fines.

If the parties mutually agree to amend this Order, the amendment must be in writing and signed by both parties.

1. Wastewater and Pretreatment Plan

With the goal of ensuring that the Creamery is able to maintain local wastewater discharge permit compliance in accordance with Local, State, and Federal laws and regulations concerning the facility's wastewater discharge to the Ellis Creek Water Recycling Facility, the Creamery agrees to do the following:

- Develop plans and specifications for wastewater monitoring and pretreatment facilities for the Creamery's current wastewater streams designed to 120% of current permitted capacity ("Plan"). The Plan shall be prepared, signed, dated, and sealed by a California professional registered engineer, and be submitted to the city for review in accordance with accepted engineering practices within (90) days of the Effective Date of this Order.

- Within fourteen days of the City receiving the Plan, the parties will make best efforts to meet and confer relating to the Plan and establish a project timeline to implement the components of the Plan.
- The full Plan must be fully constructed by December 1, 2021.
- Once the parties agree to the specific Plan, the Creamery may not make alterations, modifications, and/or design changes unless they have submitted their proposed changes and the City accepts those changes.
- Once the Parties agree to the Plan, including the implementation timeline, the City requires the following before the Creamery may begin construction:
 - Letter of Credit or other verifiable proof establishing a funding mechanism for implementing the Plan.
 - A signed contract that a licensed contractor has been retained to construct the engineer's Plan.
 - A confirmed construction timeline, including time for submittal and approval of any and all applicable permits such as building, fire, etc.
- In coordination with the Plan, develop, implement and fund an annual written training program ("Training Program") which includes attendance logs for primary and secondary operators of the Creamery pre-treatment facilities.
 - Provide a copy of training attendance logs to City within 30 days of implementation of Plan.
 - City may inspect Creamery's training attendance logs at any time.

2. Payment for and Cooperation with 3rd Party Monitoring

The Creamery agrees to allow the City to retain an independent 3rd party to conduct supplemental monitoring and reporting for the Creamery. The agreement will be between the City and the 3rd party.

- The Creamery will pay all 3rd party monitoring invoices from the City within 30 days of the invoice date.
- The 3rd party shall establish a 30-day continuous sample run baseline of BOD, FOG, TSS and pH, resulting in 30.
- If the ratio of non-compliant to compliant samples collected during the 30-day 3rd party monitoring is above 10%, but less than 20%, the monitoring must continue for another 30 days.
- 3rd party will create and submit all reports to the City and provide a copy to the Creamery.
- The City may request additional 3rd party sampling.
- The Creamery cannot alter any sampling equipment installed by a 3rd party vendor.
- Creamery staff shall not refuse entry to the 3rd party to collect samples or inspect sampling equipment.
- Once the new system is integrated, the Creamery must conduct a new 30-day baseline.

3. Payment Plan for Existing Permit Violation Fines

The Creamery stipulates and agrees that it owes the City \$552,248.30 in fines resulting from violating Permit No. 1203 and waives any due process proceedings to contest the permit violation fines that occurred before the Effective Date of this Consent Order.

- The Creamery agrees to pay the City \$20,000 each month towards the balance of its permit violation fines that it incurred prior to the Effective Date of this Consent Order and will continue to do so until the fines are paid in full.
- The Creamery consents and agrees that the City may record a lien against the Creamery property for the full balance of outstanding permit violation fines.

4. Wastewater Discharge Requirements

- During the term of this Order, the Creamery cannot exceed permitted limit on more than 20% of samples taken or any one exceedance cannot be over 140% of permitted limit.
- The Creamery shall self-report a violation of its permit.

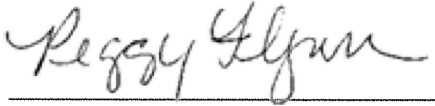
5. Timely Payment of Fines Incurred During the Term of this Consent Order

- When and if the Creamery violates its permit during the term of this Order and incurs a fee related to that violation, the Creamery shall pay the fee within 30 days of issuance.
 - Under the term of this Consent Order, if the Creamery violates its permit, the City will not credit any fines it incurs with money the Creamery spent towards capital improvements to its pretreatment system.
 - The City's Enforcement Response Plan, as adopted by Resolution No. 2016-083 N.C.S., states that when a user violates its permit, the baseline fee is \$100 per violation and may increase as outlined in the Fine Policy for categorical industrial users, significant industrial users, industrial users, and zero dischargers. If the Creamery violates its permit during the term of this Consent Order, the initial fine will be \$100 and the fine will increase pursuant to the current Fine Policy, which is attached as Exhibit B for reference purposes.

6. Timely Payment of Wastewater Discharge Charges and Wastewater Capacity Fee Charges During the Term of this Consent Order

- All charges and fees shall be paid within 30 days of the invoice date.

CITY OF PETALUMA



Peggy Flynn, City Manager

DATED: 3/12/21

PETALUMA CREAMERY



Larry Peter, Owner

DATED: 3/11/21

Enclosures:

Ex. A: 1/21/21 Letter to Mr. Peter from Dir. of Public Works Beatty (Wastewater Discharge Permit, Significant Industrial User Permit No. 1203)

Ex. B: Fine Policy for Industrial Sewer Users