



September 4, 2023

San Diego Regional Water Quality Control Board
Attention: Christina Arias
2375 Northside Drive, Suite 100
San Diego, CA 92108-2700
Via email: Christina.Arias@waterboards.ca.gov

**Re: San Diego Coastkeeper Comments on the Tentative Cease and Desist Order No. R9-2023-0129, Pine Hill Egg Ranch and Demler Brothers' Pullet Farm
PIN: 864333: CArias**

To Whom It May Concern,

Please accept the following comments on behalf of San Diego Coastkeeper (Coastkeeper) regarding the above-referenced matter. Coastkeeper is the San Diego region's leading clean water advocacy organization, member supported since 1995. Our mission is to protect and restore coastal and inland waters in San Diego County, using advocacy, community science, and education.¹ Coastkeeper also actively seeks agency implementation of federal, state, and local laws, regulations, and permits; regularly engages in the administrative review and public comment procedures for agency actions; and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

Coastkeeper supports the Tentative Cease and Desist Order No. R9-2023-0129 (Tentative CDO) issued to Demler Brothers LLC, Kevin Demler, and Alex Demler (collectively, Dischargers), and strongly encourages the Board to adopt this CDO. Dischargers have demonstrated a pattern and practice of willful non-compliance with multiple regulatory requirements, much to the detriment of groundwater and surface quality, and accordingly, to public health. As set forth in great detail in the Tentative CDO, Dischargers' failure to comply with state and federal regulations, along with their open defiance of this Regional Board's directives and enforcement authority, is well-documented.

The size and scale of Dischargers' operations, and the corresponding threat to water quality, underscores the need for this CDO. The Facility houses one million chickens, with the capability to house up to two million. The Pullet Farm houses 400,000 pullets. The Facility generates 2,000

¹ More detailed information on Coastkeeper can be found at www.sdcoastkeeper.org.

gallons of intensely polluting egg wash wastewater per day,² 375 tons of manure per week,³ and other types of waste, including broken eggs and chicken carcasses.⁴ Moreover, Dischargers have utterly failed to responsibly manage these wastes, and continue to shirk their legal obligations to obtain various permits and to implement the BMPs required by permits and other laws and regulations.

Without rehashing the many facts enumerated in the Tentative CDO, Dischargers' waste stream and storm water management practices are woefully inadequate. Furthermore, Dischargers have been notified of their inadequacy on numerous occasions, yet continue to fail make the required and requested improvements, and have failed to obtain the necessary permit coverage. In the Regional Board Staff's (Staff) letter dated March 2, 2020, over three and a half years ago, Staff informed Dischargers that 1) waste discharge requirements (WDRs) are required for the Facility and that as such, Dischargers must submit a report of waste discharge (ROWD); 2) the Facility qualifies as a CAFO and thus requires NPDES permit coverage; 3) the Facility must obtain IGP coverage and submit a nutrient management plan (NMP). To date, and despite numerous meetings and calls with Staff using up valuable agency resources, Dischargers have failed to adequately comply with any of these requirements.

Coastkeeper requests the Board strongly consider the litany of violations enumerated in the Tentative CDO. Dischargers' violations are not an isolated incident, or even a short series of events. The Dischargers' violations are systemic and ongoing. For example, Staff issued a Notice of Violation (NOV) on October 6, 2022. Not surprisingly, violations continued, and Staff issued another NOV on May 22, 2023 for multiple violations.⁵ Additionally, the LEA issued three NOVs and conducted 14 inspections between July 24, 2019, and December 13, 2022 finding violations of CCR 14 § 17820 (Agricultural Solid Waste as a Public Health/Well-being Hazard), and § 17823.5 (Agricultural Waste Management Practices), as well as the Dischargers' site-specific Composting Plan.⁶ Coastkeeper need not repeat every violation Dischargers have committed over the past few years. The record is replete with examples, all of which emphasize the need for the adoption of this CDO.

Dischargers must not be allowed to continue operating while they poison the surrounding community's ground water, pollute downstream surface waters, and otherwise cause a nuisance with foul odors (through actions such as routinely spreading compost that includes chicken manure and carcasses on its pastures without a permit). Adoption of the Tentative CDO is essential to the protection of our region's ground water and surface water resources.

In addition to adopting the Tentative CDO, the Regional Board should strongly consider issuing civil penalties for its many historical and ongoing violations. Dischargers have exhibited willful and

² Tentative CDO at ¶ 15.

³ *Id.* at ¶ 2.

⁴ *Id.* at ¶ 25.

⁵ *Id.* at ¶ 35.

⁶ *Id.* at ¶ 24.



wanton disregard for multiple laws, regulations, permits, and this Board's authority. In a letter dated February 8, 2022, Staff already explained that the failure to comply with various requirements may subject the Dischargers to monetary penalties of up to \$1,000 per day pursuant to Water Code section 13261 and up to \$10,000 per day pursuant to Water Code section 13385. Dischargers continuing failure to come into compliance, and their severely detrimental impact on groundwater and surface water resources, is precisely the type of violations that warrant civil penalties.

Coastkeeper appreciates the opportunity to provide comments regarding the Tentative CDO. Please contact me via email at patrick@sdcoastkeeper.org, or phone at 760-525-6838 if you have any questions or need more information regarding our comments.

Respectfully,

A handwritten signature in black ink that reads "Pat McDonough". The signature is written in a cursive, flowing style.

Patrick McDonough
Senior Attorney