

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING SEPTEMBER 2, 2010
Prepared on July 29, 2010

ITEM NUMBER: 12

SUBJECT: Enforcement Report

DISCUSSION

Violations Listing

Staff uses the California Integrated Water Quality System (CIWQS) to track Water Board data, including violations and enforcement actions. Attachment 1 is a CIWQS list of violations that occurred between April 1, 2010, and May 31, 2010. CIWQS has a sewer system overflow (SSO) module which provides tracking and reporting of such spills.

Summary of Enforcement Activities

The following information summarizes significant enforcement action taken by the Water Board during the period between May 1, 2010, and June 30, 2010.

Notices of Violation

Viborg Sand and Gravel, Inc., Paso Robles, San Luis Obispo County
City of Hollister Storm Water Management Program, Hollister, San Benito County
Santa Barbara County Storm Water Management Program, Santa Barbara County
Moon Glow Dairy, Moss Landing, Monterey County
Dole Berry, Watsonville, Santa Cruz and Monterey Counties
Monterey Regional Storm Water Permit Participants Group, Monterey County

Staff Enforcement Letters

Pacifico Azul, Inc. / Harvest Moon Ag Services, Watsonville, Santa Cruz and Monterey Counties
Darway-Ball-Avila Dry Land Farming, San Luis Obispo, San Luis Obispo County

13267 Orders

Nielson Farms, Inc. / Bardin Ranch AW#0204, Salinas, Monterey County
Jim Fanoie, Inc. / Home Ranch AW#0326, Salinas, Monterey County
Blanco Farms, LLC / Gabilan Ranch AW#0713, Salinas, Monterey County
Boulder Creek Golf & County Club CSA No. 7, Boulder Creek, Santa Cruz County
Martin Jefferson & Sons / Alisal Ranch AW#1817, Salinas, Monterey County
Santa Cruz County Canon Del Sol & Sand Dollar CSA No. 5, Santa Cruz County

Administrative Civil Liability Complaints

Greka Oil & Gas, Inc., Santa Maria, Santa Barbara County

Administrative Civil Liability Orders

City of Paso Robles, San Luis Obispo County

Mandatory Minimum Penalties

City of Paso Robles WWTP, San Luis Obispo County, \$69,000. Because Paso Robles proposed financing a supplemental environmental project, the Executive Officer approved a stipulated ACL order. Paso Robles paid \$27,000 to the Cleanup and Abatement Fund and \$42,000 to the SEP. The SEP is to help fund a project known as the 21st Street Green Design Assistance project. The project will eliminate flooding and the associated erosion and traffic hazards on 21st Street in Paso Robles. This street was established decades ago in a natural drainageway. Stormwater cannot infiltrate due to extensive impervious surfaces. This project will narrow roadways, create a vegetated swale, and will include infiltration features, multiple trees, pervious sidewalks, and storyboards explaining the design for the public. The street will be an example of low impact development and how environmental design can provide multiple community benefits including groundwater recharge. The Bay Foundation of Morro Bay will hire SvR Design Company to research the site, analyze hydrology, prepare a conceptual design and template that can be utilized by the City for other redevelopment street projects, and review the project during each design phase. Darla Inglis's Low Impact Development Initiative will provide additional technical assistance and third-party oversight of the project. This SEP will directly benefit surface water quality by reducing the volume and intensity of stormwater runoff to the Salinas River, where the city's violations occurred.

Agricultural Regulatory Program

The following section summarizes enforcement activities for the Agricultural Regulatory Program, with particular focus on efforts related to enrollment and monitoring program requirements.

On July 9, 2004, the Central Coast Water Board adopted Resolution No. R3-2004-0117 establishing the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Agricultural Order, extended in July 2009 and July 2010). Since the initiation of the Agricultural Order, the Central Coast Water Board has taken approximately 815 enforcement actions (810 notices of violation and five administrative civil liability orders) representing the highest number of enforcement actions taken by any Regional Board related to discharges from irrigated lands. Additionally, the Water Board has issued 1383 Water Code Section 13267 orders.

Initial enforcement actions focused primarily on failure to enroll under the Agricultural Order and failure to comply with monitoring program requirements (e.g., failure to pay monitoring fees). Staff is currently re-evaluating enforcement priorities to focus on compliance with the Agricultural Order in areas with the most severe surface water and groundwater pollution and on agricultural operations that pose the highest risk to water quality (e.g., tailwater discharge volume, nitrate hazard index, use of pesticides known to cause toxicity).

Most recently, staff issued Water Code Section 13267 orders to several ag operations in response to exceedances of the nitrate drinking water standard in groundwater in the San Jerardo area of the Salinas Valley. A likely major source of the pollution is fertilizers used in agricultural production. Staff issued Water Code Section 13267 orders requiring the growers to submit information regarding nitrate concentrations in groundwater wells, the installation and maintenance of well backflow protection devices, and nutrient management practices.

Enrollment -

Dischargers seeking authorization to discharge under the Agricultural Order must submit a completed notice of intent (NOI) to comply with the terms of the order. As reported at the May 12, 2010 agricultural workshop, 1719 out of approximately 3000 (57%) Dischargers have enrolled in the Agricultural Order—representing approximately 93% of the Central Coast Region's total irrigated

agricultural acreage. Currently, staff is focusing on securing and enforcing for enrollment in priority areas, rather than enrollment of all non-filers region-wide.

Farming and agricultural operations on the Central Coast are constantly in a state of flux. Farming operations move around, frequently acquiring and dropping individual ranches. In addition, production on individual ranches changes over time—one year a ranch may be in active production, and the following year it may be inactive. Individual operators also transition between different farming operations. Thus, it is not practical to measure or expect 100% enrollment in all areas and it is not efficient or effective to pursue enforcement of all non-filers.

Enrollment is further complicated by the fact that enrollment has focused on the operator (rather than the landowner) and due to challenges in the enrollment database currently managed by Preservation, Inc.

Staff is focusing on evaluating enrollment and pursuing related enforcement in priority areas. Current information indicates that there are significant gaps in enrollment in areas with the most severe water quality problems and adjacent to impaired waterbodies. In addition, staff is working towards improving the collection and management of enrollment data.

Monitoring Requirements -

The Agricultural Order requires Dischargers to conduct individual water quality monitoring or participate in cooperative water quality monitoring. Preservation, Inc. is a non-profit organization that manages the Cooperative Monitoring Program (CMP) on behalf of irrigated agriculture throughout the Central Coast. Preservation, Inc. represents agricultural Dischargers and is directed by an agricultural committee established by the grower community to represent agricultural interests.

Fifteen Dischargers have elected individual monitoring. None of these 15 Dischargers have submitted individual monitoring reports and all fifteen are out of compliance. In addition, as of May 2010, approximately 1677 Dischargers have elected to participate in cooperative monitoring and 368 Dischargers have not paid fees (totaling more than \$220,000) and are out of compliance with monitoring requirements.

Water Board staff is in the process of identifying these operators and landowners and pursuing appropriate enforcement action. As is the case with enrollment, evaluating compliance with monitoring requirements is also complicated by the fact that enrollment has focused on the operator (rather than the landowner) and due to challenges in the enrollment database currently managed by Preservation, Inc.

Improving the Enrollment Database -

Currently, the enrollment database is housed outside the Water Board and is managed and controlled by Preservation, Inc. Both Water Board staff and Preservation, Inc. have access to the data.

In 2005, Water Board staff collected data and information from the initial submittal of enrollment information. Access to this data was given to Preservation, Inc. for the purposes of collecting fees related to cooperative monitoring requirements. Because the Water Board did not have sufficient resources to support data management in the Agricultural Regulatory Program, staff allowed Preservation, Inc. to have the primary role of database management and support. While the enrollment database contains both regulatory and billing information, the primary focus of database management has been for the purposes of billing and collecting monitoring fees. In addition, no

clear or consistent business rules regarding the data entry or management of enrollment data has ever been implemented by the Water Board and Preservation, Inc. This situation presents significant challenges for Water Board staff in their current use of the database for regulatory purposes.

The following are examples of issues with the enrollment database. Currently, the Agricultural Order requires Dischargers to enroll by submitting an NOI to the Water Board. Similarly, Dischargers must submit a change of information form or terminate their enrollment when appropriate. Due to the lack of clear business rules for database management, changes to the database have resulted without the proper regulatory documentation. In addition, because the enrollment database does not effectively track regulatory history, it is not possible for the Water Board to evaluate the historical enrollment status of an operator, landowner, or piece of property. As a result, in many cases, the enrollment database does not match the Water Board's regulatory records.

As of July 2010, Water Board staff was working with Preservation, Inc. to bring a complete copy of the enrollment database into the Water Board. Once staff has a copy of the database, staff will evaluate and identify methods to improve the database to ensure that it can meet the regulatory needs of the program, including the proper management of Discharger information and regulatory compliance history to support enforcement. Staff will also work with Preservation, Inc. to ensure that accurate information is available so that they can conduct cooperative monitoring program billing in a timely manner.

Improving the Identification of Landowners -

Another area affecting Agricultural Regulatory Program enforcement is the identification of landowners as a responsible party. Under the Agricultural Order, both the operator and landowner are responsible for compliance. Currently, the Agricultural Regulatory Program and enrollment database are both set up to be "operator" centric. In the past, the NOI inconsistently required and Water Board staff inconsistently followed-up on the reporting of landowner information. In addition, landowner information is not routinely captured in the enrollment database and a ranch may be owned by numerous landowners, and a landowner may own numerous ranches. Because operators are constantly moving and changing, Agricultural Regulatory Program enforcement is often inefficient and ineffective.

To identify landowners and operators, staff often relies on information, including the Assessor Parcel Number (APN), identified from the county assessor's office, and the pesticide use permit number, identified from the Department of Pesticide Regulation (DPR). These were the source of information used for hundreds of NOVs issued in 2006 and 2007 for failure to enroll under the Agricultural Order. In some cases (when neither the APN nor the pesticide use permit numbers are available), staff must also work with county staff to review county crop, land use and APN maps to identify landowners. The situation is made more difficult when the landowner is absentee and out-of-state or out-of-county. The process of identifying landowners can be very time consuming and often delays enforcement.

Staff is in the process of revising the NOI to ensure better and consistent information gathering related to landownership to prevent the same problems in the future. In addition, staff is making it a program rule to include landowner on any enforcement correspondence. In cases where landowner is unknown, staff will include a requirement to identify landowner as part of Water Code Section 13267 orders. Staff will also review the enrollment database to ensure the collection and management of accurate landownership information.

RECOMMENDATION

This report is for Board information. The Board may provide direction to staff.

ATTACHMENTS

- 1) Violation List
- 2) List of Abbreviations

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