



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board Central Coast Region



Arnold Schwarzenegger
Governor

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July 1, 2008

**CERTIFIED MAIL 7004 1350 0003 9897 8985
RETURN RECEIPT REQUESTED**

Mr. Jack Dilbeck
Transportation Manager
Western Farm Service Corporate Office
2787 West Bullard
Fresno, CA 93711

NOTICE OF HEARING AND ISSUANCE OF ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO COMPLY WITH WASTE DISCHARGE REQUIREMENTS ORDER NO. 00-30 AND CLEAN WATER ACT SECTION 301; WESTERN FARM SERVICE, INC., SALINAS, MONTEREY COUNTY, WDID# 3 27 207 3002

Dear Mr. Dilbeck:

In response to the failure of Western Farm Service, Inc., to comply with the discharge prohibitions, reporting requirements, and proper operations and maintenance requirements of Waste Discharge Requirements Order No. 00-30 (Permit) and Clean Water Act Section 301, the Assistant Executive Officer of the Central Coast Regional Water Quality Control Board (Central Coast Water Board) hereby issues the enclosed Administrative Civil Liability Complaint No. R3-2008-0047 (Complaint). Western Farm Service is still required to comply with the Permit and the Clean Water Act, if it has not already done so, and failure to comply could result in further penalties.

Pursuant to California Water Code section 13323, the Central Coast Water Board will hold a hearing on the Complaint no later than 90 days after it is served. If Western Farm Service elects to waive its right to a public hearing and agrees to pay the proposed liability, then an authorized agent of Western Farm Service must sign the attached waiver form, and return it to the Central Coast Water Board **no later than July 31, 2008**.

Alternatively, if you elect to proceed to hearing, it will occur on September 5, 2008, at our offices in San Luis Obispo. At that time, the Central Coast Water Board will accept testimony and public comment and decide whether to affirm, reject, or modify the proposed liability, or whether to refer the matter for judicial civil action.

Enclosed you will find a draft of the procedures I am recommending that the Central Coast Water Board follow in conducting the hearing. Please note that comments on these proposed procedures are **due by July 14, 2008**, to the Central Coast Water Board's advisory attorney, Frances McChesney (mailing address shown below).

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On behalf of the Central Coast Water Board prosecution staff, I would like to extend an invitation to meet with you if you wish to discuss the underlying facts that give rise to the liability in this case. Please contact our attorney, Christian Carrigan, on or before **July 15, 2008**, to let him know if you are interested in such a meeting. If we do not hear from you by then, we will proceed to hearing as described above and in the proposed hearing notice attached (subject to change).

If you have questions, please contact **Todd Stanley at (805) 542-4769**, Harvey Packard at (805) 542-4639, or State Water Resources Control Board Office of Enforcement attorney Christian Carrigan at (916) 322-3626.

Sincerely,



Michael J. Thomas
Assistant Executive Officer

- Enclosures:
1. Administrative Civil Liability Complaint No. R3-2008-0047
 2. Waiver of Hearing Form
 3. Proposed Hearing Notice

Cc via email (with Enclosures):

Mr. Christian Carrigan
Senior Staff Counsel
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814

Frances McChesney (via email)
Senior Staff Counsel
State Water Resources Control Board
Office of Chief Counsel
1001 I Street, 22nd Floor
Sacramento, CA 95814

Cc by mail (with Enclosures):

Christine Waltrip
Western Farm Service, Salinas Facility
1143 Terven Avenue
Salinas, CA 93901

Ron Cole
City of Salinas
Maintenance Service Department
426 Work Street
Salinas CA 93901

Mr. Dilbeck

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July 1, 2008

Larry Tokiwa
Western Farm Service, Salinas Facility
1143 Terven Avenue
Salinas, CA 93901

Carl Nizawa
City of Salinas
200 Lincoln Avenue
Salinas, CA 93901

Bob Meyer, Asst. General Manager
Monterey County Water Resources
Agency
P.O. Box 930
Salinas, CA 93902

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California Environmental Protection Agency



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

In the matter of:

Western Farm Service, Inc.

1143 Terven Avenue

Salinas, CA

WDID No. 3 27 207 3002

Complaint No. R3-2008-0047

Administrative Civil Liability

For

Violations of

**Waste Discharge Requirements and
the Clean Water Act**

WESTERN FARM SERVICE, INC., IS HEREBY GIVEN NOTICE:

Western Farm Service, Inc., (Discharger) is alleged to have violated provisions of law and an Order of the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board), for which the Central Coast Water Board may impose civil liability pursuant to Sections 13350 and 13385 of the California Water Code.

Unless the Discharger waives its right to a hearing, the Central Coast Water Board will hold a public hearing on this matter within 90 days of the Discharger's receipt of this Administrative Civil Liability Complaint (Complaint). The Discharger and/or the Discharger's representative(s) will have the opportunity to be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Central Coast Water Board. A public hearing is tentatively scheduled for September 5, 2008, in San Luis Obispo.

Staff will mail the Discharger an agenda not less than ten days before the hearing date. At the hearing, the Central Coast Water Board will consider whether to affirm, reject, decrease, or increase the proposed administrative civil liability, whether to refer the matter to the State Attorney General to recover civil liability judicially, or whether to take any other appropriate action as a result of the hearing.

ALLEGATIONS

1. The Discharger is the owner/operator of a fertilizer/pesticide sales and application business with locations throughout the Central Coast Region

and California. The subject of this proposed action is the Discharger's facility located at 1127, 1143, and 1151 Terven Avenue, Salinas, in Monterey County. The Discharger has operated the facility since 1979. Previous tenants operated this business since 1950.

2. On April 17, 1997, the Central Coast Water Board Executive Officer issued Cleanup and Abatement Order (CAO) No. 97-10 to address fertilizer and pesticide impacts to groundwater and soil underlying the Discharger's Salinas Facility. CAO No. 97-10 remains in effect, and will continue until the Discharger meets the prescribed groundwater and soil concentrations.
3. Pollutant discharges from the facility to surface waters, or conveyances thereto, flow into the Salinas Reclamation Canal, which is tributary to Tembladero Slough, Old Salinas River, and Moss Landing Harbor/Pacific Ocean.
4. The Salinas Reclamation Canal, Tembladero Slough, Old Salinas River, and Moss Landing Harbor are on the Clean Water Act Section 303(d) list of waters impaired by pesticides. All except Moss Landing Harbor are also listed as impaired by un-ionized ammonia. The Discharger's unauthorized discharge of waste contributed pesticides and un-ionized ammonia to these waters.
5. On May 31, 2000, the Central Coast Water Board adopted *Waste Discharge Requirements Order No. 00-30 for Western Farm Services, Inc., Salinas Facility, Salinas, Monterey County* (WDR Order No. 00-30). The Order established discharge prohibitions, specifications, provisions, and monitoring and reporting requirements to prevent the discharge of fertilizers and pesticides to groundwater and surface waters. The Central Coast Water Board has regulated the facility since 1985.
6. This Complaint alleges that the Discharger failed to prevent discharges of water containing pesticides and un-ionized ammonia from its facility to impaired surface waters, and failed to properly report the incident to the Central Coast Water Board as required by WDR Order No. 00-30.
7. On March 7, 2007, City of Salinas Stormwater Monitoring Program Manager, Ron Cole, inspected the Discharger's facility storm drains and observed and sampled water flowing from the facility storm drain. These storm drains are connected to and flow into the Salinas Reclamation Canal. Chemical analysis of the water by certified laboratories indicated elevated concentrations of the pesticides Diazinon, Chlorpyrifos, and Dimethoate, as well as un-ionized ammonia.
8. On March 21, 2007, Central Coast Water Board staff, accompanied by the City of Salinas Stormwater Monitoring Program Manager and the

Discharger's Operations Manager, conducted a routine inspection of the Discharger's Salinas Facility. Water Board staff detected multiple violations or threatened violations of WDR Order No. 00-30, including: (1) inadequate storage of pesticides and fertilizers; (2) inadequate secondary containment for hazardous materials; (3) inadequate staff training on operation of facility underground sump valves; (4) improper storm drain connections between pesticide and fertilizer storage and handling areas and surface waters; (5) improper rinsing of pesticide and fertilizer containers to facility drains discharging to surface waters; (6) failure to clean up dry fertilizer product covering a dock area before a rain event; and (7) deteriorating concrete in secondary storage containment.

During the inspection, the City of Salinas Stormwater Monitoring Program Manager also informed Water Board staff about the Discharger's unauthorized discharge of waste from the facility to waters of the state and the U.S. (Salinas Reclamation Canal) on March 7, 2007. Water Board staff then confirmed the Discharger's failure to report the unauthorized discharge within 24 hours (orally) and within five days (in writing). The Discharger later estimated that the volume of the spill was 100 gallons.

9. On August 13, 2007, the Central Coast Water Board Executive Officer issued a Notice of Violation to the Discharger for the alleged violations detected during the March 21, 2007 inspection, as summarized above.
10. WDR Order No. 00-30, Discharge Prohibition A.1 states:

Discharge, overflow, bypass, leakage, seepage, and overspray of any waste¹ or contaminated site runoff water to drainageways and adjacent properties are prohibited.

The Discharger violated Discharge Prohibition A.1 on March 7, 2007, by discharging waste to state and federal waters.

11. California Water Code Section 13385(a)(5) states that any person who violates any requirement of Section 301 of the Clean Water Act, as amended, shall be liable civilly.
12. Clean Water Act Section 301 states that the discharge of any pollutant by any person shall be unlawful except as in compliance with Clean Water Act Sections 302, 306, 307, 318, 402, or 404. The Discharger's pollutant discharge was not authorized by any of these Clean Water Act sections.

¹ California Water Code, Section 13050(d) defines waste to include "[...] sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, [...] from any producing, manufacturing, or processing operation [...]."

13. California Water Code Section 13385(c) authorizes the Central Coast Water Board to impose civil liability for up to \$10,000 for each day in which the violation occurs. The unauthorized waste discharge occurred on March 7, 2007: therefore the Discharger is subject to a maximum civil liability of \$10,000 for this violation.

14. WDR Order No. 00-30, Discharge Specification B.6, states:

All storm drainage contaminated as a result of operations at this facility shall be contained and properly disposed.

According to the City of Salinas Notice of Violation dated August 1, 2007, the source of the Discharger's unauthorized discharge on March 7, 2007, was a spill of collected stormwater from a personal protective equipment waste disposal container. The Discharger therefore violated Discharge Specification B.6 for one day on March 7, 2007.

15. WDR Order No. 00-30, Provision C.5, states:

Discharger shall notify the (Central Coast Water) Board's Executive Officer and the Monterey County Health Department of significant spills, that pose a danger to human health and the environment, within twenty-four hours of occurrence.

In addition, Provision C.10 states:

Discharger shall comply with items of the attached "Standard Provisions and Reporting Requirements for Waste Discharge Requirements (Standard Provisions),

which includes General Reporting Requirement C.3, stating:

Any noncompliance that may endanger health or the environment shall be reported orally within 24 hours from the time the discharger becomes aware of the circumstances (telephone: 805-549-3147). Unless waived by the Executive Officer of the Regional Board, a written report shall be submitted within five (5) days of awareness and shall contain a description of the noncompliance and its cause; the period of noncompliance (including exact dates and times) or anticipated duration; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. This provision includes, but is not limited to:

a. violation of a discharge prohibition;

- b. any upset, overflow, or bypass;
- c. violation of a discharge limitation for any "hazardous substance".

The spill occurred on March 7, 2007, and the Discharger or its representatives were aware of the spill on the same day. The City of Salinas inspectors were at the facility on this day, and required the Discharger's representatives to take corrective action in addition to the actions they were already taking in response to the spill. The discharge of pesticides can endanger human health or the environment, and should have prompted the Discharger to report the spill to the Central Coast Water Board as required by General Reporting Requirement C.3. The Discharger failed to notify the Water Board within 24 hours by telephone, or within 5 days in writing.

Notification of the unauthorized discharge was due no later than March 8, 2007. The Discharger did not report the unauthorized discharge to the Central Coast Water Board until June 21, 2007, and therefore violated the reporting provisions of WDR Order No 00-30 for 106 days. Central Coast Water Board staff conducted a routine inspection of the Discharger's facility on March 21, 2007, at which time City of Salinas staff informed Central Coast Water Board staff about the spill. In this Complaint, staff is recommending the imposition of liability only for the days from March 8, 2007 (24 hours after the spill) through March 21, 2007 (the date of staff's inspection), or 14 days, because staff was aware of the discharge from that date forward.

16. WDR Order No. 00-30, Standard Provisions, Prohibition A.12, states:

Facilities and systems for collection, treatment, and control of wastewater shall be properly operated and maintained. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staff and training, and adequate laboratory and process controls, including appropriate quality assurance procedures.

The inlets to the Discharger's facility storm water drainage system are equipped with manual control valves to prevent the discharge of wastes to waters of the state. During the waste discharge from the facility on March 7, 2007, City of Salinas staff determined that the storm water inlet near the source of the spill within the facility was opened, allowing discharge to state waters to occur.

During Central Coast Water Board staff's inspection on March 21, 2007, the Discharger's employees did not know whether valves were open or closed,

and could not describe how the drainage system operated to prevent unauthorized discharges from the facility. The ineffective performance of the system, and inadequate operator staff knowledge about how to operate the system demonstrated from March 7, 2007, through March 21, 2007, violated the WDR's proper operation and maintenance requirements for at least 14 days.

17. Violations of WDR Order No. 00-30, Discharge Specification B.6, Provision C.5, and Provision C.10 (which requires compliance with Standard Provisions C.3 and A.12) subject the Discharger to liability under California Water Code Section 13350.
18. Water Code Section 13350 states that the Central Coast Water Board may impose liability upon any person who discharges waste, or causes or permits waste to be deposited where it is discharged, into waters of the state in violation of any waste discharge requirement issued, reissued, or amended by the Central Coast Water Board or the State Water Resources Control Board. The liability may not exceed \$5,000 for each day each violation occurs.
19. The above allegations indicate the Discharger violated WDR Order No. 00-30 by:
 - a. Failing to contain and properly dispose contaminated stormwater for one day,
 - b. Failing to report a spill for at least 14 days; and,
 - c. Failing to properly operate and maintain the facility for 14 days.

This accounts for a total of 29 days of violation, and therefore subjects the Discharger to a maximum civil liability of \$145,000 pursuant to Water Code Section 13350.

In addition, and as stated in allegation 13 above, the Discharger is also subject to a maximum civil liability of \$10,000 pursuant to Water Code Section 13385(c). The Discharger is therefore subject to a combined maximum civil liability of \$155,000.

PROPOSED CIVIL LIABILITY

In determining the amount of any liability to be imposed for these violations, California Water Code Sections 13327 and 13385 require the Central Coast Water Board to consider the following factors, and any other factors as justice may require:

- a. **Nature, circumstances, extent, and gravity of the violations:** The Discharger violated WDR Order No. 00-30 by failing to prevent unauthorized waste discharges to waters of the state and of the U.S., failing to properly

contain and dispose of stormwater contaminated by facility operations, failing to report the discharge to the Central Coast Water Board, and failing to properly operate its site runoff control system. The above allegations provide further details regarding this consideration.

The requirements of WDR Order No. 00-30 are intended to prevent the type of violations that occurred here, are long standing (the Water Board adopted the Order in 2000), and are therefore well known to the Discharger. Despite the well-known and longstanding requirements of WDR Order No. 00-30, the Discharger's employees did not know, and could not describe, how to operate the drainage system to prevent unauthorized discharges from the facility.

These considerations do not warrant less than the maximum liability because the violation resulted in the discharge of toxic pesticides and un-ionized ammonia to federal and state waters that are already impacted by pesticides.

- b. **Discharge susceptibility to cleanup or abatement:** Stormwater discharges generally are not susceptible to complete cleanup because pollutants or contaminants in such discharges often move rapidly downstream to other receiving waters, and disperse over extensive areas. In this case, the pollutant discharges to the Salinas Reclamation Canal were not susceptible to cleanup or abatement, thereby contributing to the anthropogenic pollutant loading to receiving waters already impaired by pesticides and unionized ammonia.

This consideration does not warrant less than the maximum liability because the discharge was not cleaned up or abated.

- c. **Discharge toxicity:** The unauthorized discharge to federal and state waters included pesticides and un-ionized ammonia that are highly toxic to fish and aquatic organisms.

Historical monitoring results from the Central Coast Ambient Monitoring Program (most recently from June 15, 2006) indicate that samples taken from the storm drain outfall² downstream of the Discharger's facility were toxic to laboratory test organisms³. These samples contained elevated concentrations of chlorpyrifos, diazinon, and un-ionized ammonia, which were also detected in the sample taken directly from the Discharger's facility on March 7, 2007. It is plausible, therefore, that the Discharger has contributed to past conditions of pollution and the impairment of receiving waters.

Central Coast Water Board staff uses California Department of Fish and Game water quality guidelines to determine whether waterbodies should be

² This sampling location represents multiple sources in the vicinity of the Discharger's facility.

³ Laboratory results indicated 100% mortality within 48 hours for the test organism *Ceriodaphnia dubia*.

listed on the Clean Water Act Section 303(d) list of impaired waters, and the Central Coast Water Board has adopted revisions to that list based on such recommendations⁴. For the pesticides chlorpyrifos and diazinon, staff uses the Criterion Maximum Concentration (CMC), or the concentration above which negative effects are expected. The CMC for chlorpyrifos (one-hour average for freshwater) is 0.025 $\mu\text{g/L}$; the waste discharge sample collected from the Discharger's facility on March 7, 2007, indicated a chlorpyrifos concentration of 3.8 $\mu\text{g/L}$. The CMC for diazinon (one-hour average for freshwater) is 0.16 $\mu\text{g/L}$; the waste discharge sample collected from the Discharger's facility on March 7, 2007, indicated a diazinon concentration of 25 $\mu\text{g/L}$. For each pollutant, the concentration detected at the facility was more than 100 times higher than the applicable CMC, and therefore 100 times higher than the concentration above which staff would recommend that the Water Board designate a receiving water as impaired according to the Clean Water Act.

The Water Quality Control Plan, Central Coast Region (Basin Plan), Chapter 3, Section II.A.2, *Objectives for All Inland Surface Waters, Enclosed Bays, and Estuaries, Toxicity*, states that waste discharges shall not cause concentrations of un-ionized ammonia to exceed 0.025 mg/L (as Nitrogen) in receiving waters. The sample collected from the Discharger's facility on March 7, 2007, indicated an un-ionized ammonia concentration of 0.05 mg/L (as Nitrogen), or two times more than the Basin Plan's water quality objective.

This consideration does not warrant less than the maximum liability because the Discharger's failure to comply with the requirements of WDR Order No. 00-30 resulted in a discharge of toxic pollutants to waters of the state and of the U.S.

- d. **Discharger's Ability to Pay the Liability, and the Effect on the Discharger's Ability to Continue Business:** The Discharger has the apparent ability to pay because it operates more than 100 pesticide and fertilizer sales and application facilities in California, Arizona, Washington, Oregon and Idaho. Western Farm Service is an operating segment of Agrium, a global producer and distributor of nitrogen, phosphate, potash and sulfate. Western Farm Service has a sister company in the Midwestern United States, Crop Production Services, which provides services from the Midwest to the east coast. In addition, the Discharger has provided no information that would indicate that it cannot pay the maximum statutory penalty of \$155,000, or that imposition of such a penalty would impact its ability to continue business. The Discharger has the burden of producing evidence to support a penalty reduction on the basis of this factor. (See *eg.*, *State of California v. City & County of San Francisco* (1979) 94 Cal.App.3d 522, 531-32.)

⁴ Staff Report, Revision of the Clean Water Act Section 303(d) List of Water Quality Limited Segments, November 2006.

Because the Discharger has provided no information upon which the Central Coast Water Board could make a finding that it does not have the ability to pay, or that imposing the maximum penalty would impact its ability to do business, this consideration does not warrant less than the maximum liability.

- e. **Violation history:** August 13, 2007 Notice of Violation (NOV) – In addition to the violations alleged in this complaint, Central Coast Water Board staff's NOV dated August 13, 2007, cited other violations or threatened violations of WDR Order No. 00-30, including inadequate storage of pesticides and fertilizers; inadequate secondary containment for hazardous materials; inadequate staff training on operation of facility drainage valves; improper drainage connections between pesticide and fertilizer storage and handling areas and surface waters; improper rinsing of pesticide and fertilizer containers to facility drains discharging to surface waters; the Discharger's failure to clean up dry fertilizer product covering a dock area before a rain event; and deteriorating concrete in secondary storage containment.

Central Coast Water Board met with the Discharger's representatives on October 4, 2007, to discuss the August 13th NOV and some of the corrective actions taken by the Discharger to address the violations.

By letter dated November 2, 2007, the Discharger formally responded to the NOV.

By letter dated January 23, 2008, Central Coast Water Board staff notified the Discharger that some information required in previous correspondence had not yet been submitted. The Discharger provided further information by letter dated March 24, 2008. Water Board staff continues to work with the Discharger to obtain all information necessary to evaluate compliance. At this time, staff is not recommending the imposition of liability for the violations described above.

July 3, 2002 Staff Enforcement Letter – On July 3, 2002, Central Coast Water Board staff sent the Discharger a Staff Enforcement Letter citing inadequate pumping of sumps and deteriorating concrete in secondary containment structures (similar to violations cited in the August 13, 2007 NOV) detected during an inspection. Staff recommended no formal enforcement action.

December 5, 2001 NOV – On December 5, 2001, Central Coast Water Board staff sent the Discharger a Notice of Violation for violating or threatening to violate WDR Order No. 00-30 and Cleanup and Abatement Order No. 97-10, including failure to comply with the Western Farm Service Best Management Practices requirements for good housekeeping; surface coating deterioration on loading pads and in secondary containment structures; failure to provide secondary containment for liquid fertilizer tanks; and failure to operate the two groundwater extraction pumps as required in Cleanup and Abatement Order

No. 97-10. Staff detected these violations during an inspection on November 27, 2001. Some of these violations are also similar to those cited in the August 13, 2007 NOV.

Cleanup and Abatement Order No. 97-10 – On April 17, 1997, the Central Coast Water Board Executive Officer issued Cleanup and Abatement Order No. 97-10 to address fertilizer and pesticide impacts to groundwater and soil underlying the Discharger's Salinas Facility. CAO No. 97-10 remains in effect, and will continue until the Discharger meets the prescribed groundwater and soil concentrations.

The above consideration does not warrant less than the maximum liability because the Discharger's violation history indicates a pattern of non-compliance with the requirements of WDR Order No. 00-30, and a history of creating or threatening to create conditions of pollution or nuisance.

- f. **Voluntary cleanup efforts:** The Discharger did not conduct voluntary cleanup efforts in receiving waters. Pesticide-laden stormwater discharged to waters of the state and of the U.S. This factor is neutral with respect to liability, because there were no voluntary cleanup activities the Discharger could have undertaken once the discharge occurred.
- g. **Degree of culpability:** As the owner of the regulated facility, the Discharger is responsible for compliance, and has the highest degree of culpability. The Central Coast Water Board has regulated the Discharger's Salinas Facility since 1985, and the current provisions of WDR Order No. 00-30 have been in effect since 2000.

This consideration does not warrant less than the maximum liability because the Discharger apparently failed to properly train its staff on the operation of the manual shut off valves designed to prevent unauthorized discharges from the facility and, accordingly, because the March 7, 2007, spill may have been preventable had the Discharger done so

- h. **Economic benefit or savings:** During the period of violation addressed by this complaint, staff knows of no significant economic benefit by the Discharger. The Discharger could have contained the pesticide-laden discharge at the facility by properly operating the drainage valves, requiring little extra staff time to complete. The Discharger could then have contained and recycled the discharge at the facility, thereby eliminating the costs of third-party disposal. Lastly, the Discharger did eventually report the spill several months later, and so spent the time required to compile the report.

Given the above consideration, it is reasonable to conclude that staff's recommended civil liability recovers the Discharger's economic benefit derived from the alleged violations.

- i. **Other matters as justice may require:** Central Coast Water Board staff spent time preparing and reviewing documents related to this enforcement action. Estimated staff costs (including Central Coast Water Board technical staff, administrative staff, supervisors, and legal counsel) are ten thousand dollars (\$10,000).

\$125/hour X 80 hours = \$10,000

RECOMMENDATION

Maximum Liability – Pursuant to California Water Code Section 13350, the Central Coast Water Board can impose civil liability for up to five thousand dollars (\$5,000) per day for each violation of WDR Order No. 00-30. The Discharger violated multiple requirements of WDR Order No. 00-30 from March 7, 2007, through March 21, 2007. Per the above allegations, 29 violations are subject to the maximum civil liability of \$5,000 per day per violation. The maximum liability the Central Coast Water Board may impose on the Discharger per Water Code Section 13350 is therefore **one hundred and forty-five thousand dollars (\$145,000)**.

Pursuant to California Water Code Section 13385, the Central Coast Water Board can impose civil liability for up to ten thousand dollars (\$10,000) per day for each violation of Clean Water Act Section 301. The Discharger was in violation of Clean Water Act Section 301 on March 7, 2007. Per the above allegations, one violation is subject to the maximum civil liability of \$10,000 per day per violation. The maximum liability the Central Coast Water Board may impose on the Discharger per Water Code Section 13385 is therefore **ten thousand dollars (\$10,000)**.

The combined maximum liability the Central Coast Water Board may impose upon the Discharger is **one hundred and fifty-five thousand dollars (\$155,000)**.

The following table summarizes the maximum liability for each allegation.

Allegation No.	Daily Violations	Max. Liability per Daily Violation	Max. Liability
13	1	\$10,000	\$10,000
14	1	\$5,000	\$5,000
15	14	\$5,000	\$70,000
16	14	\$5,000	\$70,000
Total Maximum Liability			\$155,000

Minimum Liability – California Water Code Section 13327, in establishing the factors for consideration in determining civil liability for violations of WDR Order No. 00-30, does not specify a minimum liability.

In accordance with California Water Code Section 13385, the minimum liability the Central Coast Water Board may impose is recovery of economic benefits (if any) derived from the violations. Staff has concluded that the Discharger derived no significant economic benefit from the unauthorized discharge, improper operation, or failure to report the spill.

Upon consideration of factors as required by California Water Code Sections 13327 and 13385, the Assistant Executive Officer recommends civil liability in the amount of **thirty thousand dollars (\$30,000)** for the Discharger's violations of WDR Order No. 00-30, and Clean Water Act Section 301.



Michael J. Thomas
Assistant Executive Officer



Date

WAIVER OF HEARING

By signing below, I hereby affirm and acknowledge the following:

1. I am duly authorized to represent Western Farm Service, Inc. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R3-2008-0047 (hereinafter "Complaint");
2. I am informed of the right provided by Water Code Section 13323, Subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint;
3. I hereby waive the Discharger's right to a hearing before the California Regional Water Quality Control Board, Central Coast Region, within ninety (90) days of issuance of the date of issuance of the Complaint;
4. I certify that the Discharger will remit payment for the civil liability imposed in the amount of thirty thousand dollars (\$30,000) by two checks; one check for fifteen thousand dollars (\$15,000) that contains a reference to "ACL Complaint No. R3-2008-0047 and is made payable to the "State Water Pollution Cleanup and Abatement Account", and one check for fifteen thousand dollars (\$15,000) that contains a reference to "ACL Complaint No. R3-2008-0047 and is made payable to the "Waste Discharge Permit Fund";
5. I understand that payment of the above amount constitutes settlement of violations alleged in the Complaint that will not become effective until after a public comment period;
6. I understand that the Executive Officer has complete discretion to modify or terminate this settlement; and
7. 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.

Date

Signature

Printed Name and Title

Check Number

PROPOSED DRAFT

NOTICE OF PUBLIC HEARING
TO CONSIDER ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

NO. R3-2008-0047
ISSUED TO

Western Farm Service, Inc.

NOTICE IS HEREBY GIVEN THAT A HEARING WILL BE HELD
BEFORE THE REGIONAL WATER QUALITY CONTROL BOARD,
CENTRAL COAST REGION, ON SEPTEMBER 5, 2008

Background

The Assistant Executive Officer of the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (CWC) Section 13350 and Section 13385 against Western Farm Service, Inc. (Discharger) alleging that it has violated Waste Discharge Requirements Order No. 00-30 by failing to comply with its provisions, and CWC Section 13385(a)(5) by failing to comply with provisions of Clean Water Act Section 301. The Complaint proposes that administrative civil liability in the amount of \$30,000 be imposed as authorized by CWC Section 13350(e)(1) and Section 13385(c)(1). Unless the Discharger waives its right to a hearing and pays the proposed liability, a hearing will be held before the Central Coast Water Board during its meeting of September 5, 2008.

Purpose of Hearing

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the Central Coast Water Board will consider whether to adopt, modify, or reject the proposed assessment, or whether to refer the matter to the Attorney General's Office to seek recovery of judicial civil liability. If it adopts an assessment, the Central Coast Water Board will issue an Administrative Civil Liability Order.

The public hearing on September 5, 2008, will commence no earlier than 10 a.m. or as soon thereafter as practical, or as announced in our Central Coast Water Board meeting agenda. The meeting will be held at the Water Board office located at 895 Aerovista Place, Suite 101, in San Luis Obispo. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the Central Coast Water Board's web page at:

www.waterboards.ca.gov/centralcoast.

Hearing Procedures

A copy of the procedures governing an adjudicatory hearing before the Central Coast Water Board may be found at Title 23 of the California Code of Regulations, § 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. Except as provided in Title 23 of the California Code of Regulations (CCR), § 648(b), Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not apply to adjudicatory hearings before the Central Coast Water Board. This Notice provides additional requirements and deadlines related to the proceeding. THIS NOTICE MAY BE AMENDED BY THE ADVISORY STAFF AS NECESSARY. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participation

Participants in this proceeding are designated as either “parties” or “interested persons.” Designated parties to the hearing 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. Both designated parties and interested persons may be asked to respond to clarifying questions from the Central Coast Water Board, staff or others, at the discretion of the Water Board.

The following participants are hereby designated as parties in this proceeding:

- (1) Central Coast Water Board Prosecution Staff
- (2) Western Farm Service, Inc.

Contacts

Advisory Staff:

Frances McChesney, Esq.
Senior Staff Counsel
State Water Resources Control Board
Office of Chief Counsel
P.O. Box 100
Sacramento, CA 95812

Roger Briggs
Executive Officer
Regional Water Quality Control Board, Central Coast Region
895 Aerovista Place, Suite 101

San Luis Obispo, CA 93401

Prosecution Staff:

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Regional Water Quality Control Board, Central Coast Region
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Regional Water Quality Control Board, Central Coast Region
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Harvey Packard
Pollution Prevention Section Manager
Regional Water Quality Control Board, Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Cecile DeMartini
Permitting Unit
Regional Water Quality Control Board, Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Discharger:

Western Farm Service, Inc.
Mr. Jack Dilbeck
Transportation Manager
Western Farm Service Corporate Office
2787 West Bullard
Fresno, CA 93711

Separation of 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 Central Coast Water Board (Prosecution Staff) have been separated from those who will provide advice to the Water Board (Advisory Staff). Members of the Advisory Staff are: Frances McChesney, Senior Staff Counsel, and Roger Briggs, Executive Officer. Members of the Prosecution Staff are: Christian Carrigan, Senior Staff Counsel, Michael Thomas, Assistant Executive Officer, Todd Stanley, Enforcement Unit, Harvey Packard, Pollution Prevention Section Manager, and Cecile DeMartini, Permitting Unit. This Notice has been issued by the Advisory Staff based on a draft proposed by the Prosecution Staff.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Advisory Staff or members of the Central Coast Water Board. An *ex parte* contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested party on the one hand, and a Central Coast Water Board member or an Advisory Staff member on the other hand, unless the communication is copied to all other designated and interested parties or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted. Communications among the designated and interested parties themselves are not *ex parte* contacts.

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party, and not already listed above, shall request party status by submitting a request in writing (with copies to the designated parties) no later than 5 p.m. on **July 25, 2008**, to Frances McChesney, Senior Staff Counsel, State Water Resources Control Board, P.O. Box 100, Sacramento, CA, 95812. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Central Coast Water Board affect the person) and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be submitted by 5 p.m. on **August 1, 2008**. The parties will be notified by 5 p.m. on **August 6, 2008**, as to whether the request has been granted or denied.

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 30 minutes to testify, present evidence, and cross-examine witnesses, and 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. Additional time may be provided at the discretion of the hearing officer upon a showing that additional time is necessary.

Written Evidence, Exhibits and Policy Statements

Designated parties shall submit in writing 15 copies of the following information to Frances McChesney, Senior Staff Counsel, State Water Resources Control Board, P.O. Box 100, Sacramento, CA, 95812 no later than 5 p.m. on **August 15, 2008**.

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

In addition to the foregoing, each designated party shall send (1) one copy of the above written materials to each of the other designated parties at the address or addresses provided above by 5 p.m. on **August 15, 2008**.

Interested persons may submit one (1) copy of non-evidentiary policy statements by the close of the hearing.

Evidentiary Objections

A designated party objecting to evidence proposed by another party must submit a written objection by 5 p.m. on **August 22, 2008**, to Frances McChesney, Senior Staff Counsel, State Water Resources Control Board, P.O. Box 100, Sacramento, CA, 95812, with a copy to all other designated parties. The Advisory Staff will notify the parties about further action to be taken on such objections.

Questions

Questions concerning this proceeding may be addressed to Frances McChesney, Senior Staff Counsel, State Water Resources Control Board, P.O. Box 100, Sacramento, CA, 95812.

IMPORTANT DEADLINES

July 1, 2008	ACL Complaint issued to Discharger by Prosecution Team; Prosecution Team Sends draft Hearing Notice to Discharger and Advisory Team.
July 14, 2008	Comments due on draft Hearing Notice
July 21, 2008	Advisory Team issues final Hearing Notice
July 25, 2008	Deadline for submission of request for designated party status.
August 1, 2008	Deadline for opposition to request for designated party status.
August 6, 2008	Decision issued on request for designated party status, if any.
August 15, 2008	Deadline for submission of evidence and legal argument.
August 22, 2008	Deadline for submission of evidentiary objections.
August 29, 2008	Rulings on evidentiary objections, if any.
September 5, 2008	Hearing Date

Roger Briggs
Executive Officer

DATE