

ITEM: 7

SUBJECT: Morning Star Packing Company, L.P. and Fred Gobel, The Morning Star Tomato Packing Plant, Colusa

BOARD ACTION: *Consideration of Resolution to Amend Cease and Desist Order R5-2016-0007*

BACKGROUND: The Morning Star Packing Company, L.P. owns and operates a tomato processing facility which includes approximately 609 acres of crop land that is used as land application areas, and an additional 95 acres of crop land owned by Fred Gobel. The facility is regulated by Waste Discharge Requirements (WDRs) R5-2013-0144, Cease and Desist Order (CDO) R5-2016-0007, and Monitoring and Reporting Program (MRP), Revision No. 2.

On 13 April 2016, Morning Star submitted a letter questioning the Prosecution Team's changes to the inaccurate Biochemical Oxygen Demand (BOD loading) calculation in the WDRs and the requirement in MRP Revision No. 1 to monitor for total nitrogen. This Resolution is a limited amendment to address these two issues.

With respect to the BOD loading calculation, shortly after adoption of the CDO, the Prosecution Team was informed by the Advisory Team that the formula in Section C.2.b of the WDRs for calculating the BOD mass loading rate contained an error, in that the "V" or Volume input should not account for gallons per day, but rather gallons per irrigation cycle. Board staff cannot change a Board-adopted Order, and therefore the CDO is being amended to correct the erroneous formula for an interim period during the effective term of the Amended CDO unless or until the 2013 WDRs are revised with a corrected formula.

With respect to the total nitrogen monitoring, the CDO states that the Discharger shall monitor the Settling Pond and Cooling Pond for nitrate, yet MRP Revision No.1 states that these ponds shall be monitored for total nitrogen. The lack of total nitrogen monitoring was an oversight when the CDO was drafted, as this information will be needed by the Board's Permitting staff when the Discharger applies to revise its WDRs. Therefore, the CDO is being amended to include the requirement to sample the Settling Pond and Cooling Pond for total nitrogen (and that total nitrogen will be reported as the sum of nitrate-nitrogen, nitrite-nitrogen, and total Kjeldahl nitrogen).

ISSUES: On 25 July 2016, the Prosecution Team, Advisory Team, and Morning Star engaged in a pre-hearing conference to discuss outstanding issues related to the proposed Amended CDO, specifically, the Parties' approach to the corrected formula for BOD mass loading and the scope of the hearing on the proposed

Amended CDO. The proposed Order reflect the Parties' common understanding and agreement on the following BOD mass loading issues as discussed during the pre-hearing conference:

- 1) The Parties agree that formula for the BOD mass loading calculation in the 2013 WDRs is incorrect as the "V" of Volume input should not account for gallons per day, but rather gallons per irrigation cycle;
- 2) The Parties agree that the BOD mass loading data Morning Star submitted to the Board during the 2014 and 2015 processing seasons did not strictly comply with the erroneous formula in the 2013 WDRs;
- 3) The Parties agree that strict compliance with the erroneous formula in the 2013 WDRs would yield no violations of the 100 lbs/day/acre BOD mass loading limit during 2014 and 2015, therefore, findings referring to BOD mass loading violations for those years will be removed from the Amended CDO; and
- 4) The Parties agree that Morning Star will prospectively use the corrected formula articulated in Ordered Paragraph 12 of the Amended CDO beginning with the 2016 processing season.

Subsequent to the 25 July 2016 pre-hearing conference, the Board Chair, in consultation with the Advisory Team, determined that the Board Chair will not expand the scope of the hearing to allow the Board to re-consider CDO findings regarding violations other than those related to BOD mass loading.

The proposed amendments to the CDO were issued for public comment on 5 May 2016. In response to comments submitted by Morning Star and pre-hearing conference discussions, the Prosecution Team prepared a 14 June 2016 update to the tentative Order which was then shared with Morning Star. Additional comments were submitted by Morning Star on 6 July 2016 and were discussed in the 26 July 2016 pre-hearing conference referenced above. The Prosecution Team then proposed amendments to the 14 June 2016 update to reflect the Parties' agreements; this 29 July 2016 version of the Tentative Order has been placed into the Board's agenda. Due to the agenda deadline for this Item, Morning Star did not have the opportunity to review the 29 July 2016 version of the proposed Order (i.e., the document in the agenda). If the Parties agree to additional changes to the 29 July 2016 version, then late revisions will be prepared for the Board's consideration.

RECOMMENDATION: Adopt the proposed Order amending Cease and Desist Order R5-2016-0007.