

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2016-PROPOSED

IN THE MATTER OF

THE MORNING STAR PACKING COMPANY, LP
THE MORNING STAR TOMATO PACKING PLANT
COLUSA COUNTY

This Order is issued to The Morning Star Packing Company, LP (hereafter Discharger or Morning Star) pursuant to California Water Code section 13350, which authorizes the imposition of administrative civil liability (ACL). This Order is based on findings that the Discharger violated provisions of Waste Discharge Requirements Order 95-160 and R5-2013-0144.

The Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds:

1. On 23 June 1995, the Central Valley Water Board adopted Waste Discharge Requirements (WDRs) Order 95-160. On 5 December 2013, the Central Valley Water Board adopted Waste Discharge Requirements (WDRs) Order R5-2013-0144 (the "2013 WDRs") for Morning Star Packing Company, L.P. (Morning Star) and Fred Gobel. The WDRs prescribe requirements for the discharge of industrial wastewater to land, and replace the previous WDRs, Order 95-160, except for enforcement purposes.
2. Morning Star Packing Company, L.P. owns and operates a tomato processing facility (Facility). According to the 2013 WDRs, the Facility includes approximately 609 acres of associated land application areas (LAAs). An additional 95 acres of LAA (known as "Field MS1") is owned by Fred Gobel and leased to Morning Star. Though the Board issued the 2013 WDRs to both Morning Star Packing Company and Fred Gobel, the Prosecution Team, in its discretion, issues this Order to Morning Star only as the alleged violations are associated with Morning Star's operations and activities occurring solely on its own property. Morning Star is also referred to as the Discharger throughout this Order.
3. The Facility, which consists of a tomato processing facility and associated LAAs, is located south of the City of Williams, east of Interstate 5, in Colusa County (Sections 19, 20, 29 and 30, T15N, R2W, MDB&M).
4. According to the 2013 WDRs, the Facility operates during the tomato harvest season, from about June to mid-October each year, making tomato paste and diced tomatoes. There are five wastewater streams: water softener reject, condensate from the evaporation process, boiler blowdown, plant cleaning water, and tomato waste generated in the flume system. The tomato waste enters a 5 acre-foot Settling Pond. The water softener reject, condensate, and boiler blowdown are directed to the 210 acre-foot Cooling Pond. Wastewater generated from sanitation or cleaning activities flows directly to the land application area. Wastewater from the Settling Pond, Cooling Pond, and cleaning activities is applied to 695 acres of cropland at agronomic rates as authorized by the 2013 WDRs.

5. The Cooling Pond is approximately 60 acres in size.¹ The Cooling Pond is not lined and the base of the pond is currently approximately 1.7 to 3.2 feet above groundwater.² The Cooling Pond receives water softener reject, condensate from the evaporation process, and boiler blowdown. Water softener reject and boiler blowdown are high strength wastes. Finding 17 of the 2013 WDRs states that the boiler blowdown has an average electrical conductivity of 1,200 to 1,400 $\mu\text{mhos/cm}$, while Finding 18 of the 2013 WDRs shows that the electrical conductivity of wastewater generated during the water softener regeneration cycle ranges from 850 to 8,600 mg/L.
6. As shown on the Facility Site Plan in Attachment B of the 2013 WDRs, the Cooling Pond is directly north of the plant and south of Fields MS20 and MS21. This Facility Site Plan also depicts the Cooling Pond as 60-acres in size. As discussed above, the 2013 WDRs state that wastewater is applied to 695 acres of cropland³.
7. On 20 August 2015 Board staff inspected the Facility in response to odor complaints. Subsequent to the inspection, Board staff issued a Notice of Violation and transmitted an inspection report on 11 September 2015 to the Discharger. The 11 September 2015 Notice of Violation listed a number of violations observed by staff during the inspection, including the unpermitted expansion of the Cooling Pond from 60 to 100 acres and the removal of 90.5 acres of land application area. In addition, Board staff also noted that organic matter was being discharged to the Cooling Pond in violation of the 2013 WDRs. The 11 September 2015 Notice of Violation required the Discharger to submit a response by 1 October 2015. The Discharger submitted a timely response; however, the content was inadequate to ensure that Morning Star would return to compliance with its 2013 WDRs in a timely manner. The Prosecution Team is proposing a separate Cease and Desist Order to address the Discharger's compliance with the 2013 WDRs.
8. As shown on the Facility Site Plan in Attachment B of the 2013 WDRs, the Settling Pond is a 5 acre-foot pond located to the southeast of the Cooling Pond and to the west of Field MS24. According the Discharger's 12 January 1995 letter submitted with its Report of Waste Discharge, the Settling Pond is 40,000 square feet (0.92 acres) by 5 feet deep.⁴ The 2013 WDRs state that Settling Pond is 5 acre-feet in volume. The Settling Pond was constructed with clay soils compacted in lifts and includes a mechanical aerator. The Settling Pond receives wastewater during the processing season including wash water from the flume systems and the unloading station.⁵ The 2013 WDRs require the Discharger to collect wastewater samples for BOD, fixed dissolved solids (FDS) and total nitrogen from flow metering Station 1 (shown in Attachment B of the WDRs). Samples

¹ Waste Discharge Requirements Order No. R5-2013-0144; Finding 12 and Attachment B.

² Finding 40 of the WDRs states that groundwater is 5-15 feet below the base of the Cooling Pond. However, the actual depth has been calculated using toe-of-berm elevation data provided in the engineering drawings included as Attachment A to the 1 October 2015 NOV response, and groundwater elevation data provided in Morning Star's First Quarter 2015 Groundwater Monitoring Report. The data includes: (a) a toe-of-berm elevation of 87.87 feet from a location along the southeastern portion of the pond near monitoring well MW 3, (b) a toe-of-berm elevation of 86.44 feet from a location along the northwest corner of the pond near MW 5, and (c), groundwater elevations of 86.22 feet for MW 3 and 83.27 feet for MW 5.

³ Waste Discharge Requirements Order No. R5-2013-0144; Findings 19, 28, and 60; Information Sheet.

⁴ 12 January 1995 letter *Description of liquid waste discharge to land by The Morning Star Packing Company tomato processing facility in Williams, California.*

⁵ Waste Discharge Requirements Order No. R5-2013-0144, Attachment C.

collected shall be representative of wastewater from the Settling Pond (including plant sanitation and clean-up water) prior to discharge to the LAAs.

PREVIOUS ENFORCEMENT

9. On 27 January 2005, the Central Valley Water Board issued Cease and Desist Order (CDO) R5-2005-0003 to Morning Star Packing Company, L.P. and Fred Gobel. The CDO was issued for the following violations of WDRs 95-160:
 - a. Discharges of wastewater to surface water.
 - b. Failure to comply with the dissolved oxygen limit in the Settling Pond.
 - c. Evidence that the discharge had degraded the groundwater with calcium, chloride, nitrate, sulfate, and total dissolved solids.
 - d. Application of excessive levels of nitrogen and salts to the LAAs. Monitoring reports for the year 2004 reported that nitrogen loading rates ranged from 296 to 811 pounds per acre (lb/ac); however, few crops can consume more than 400 lb/ac of nitrogen per year. The total dissolved solids loading rates ranged from 5,600 to 14,800 lb/ac.
10. The Discharger submitted the reports required by the 2005 CDO and implemented facility and operational improvements. The CDO also established a loading rate for BOD of 100 pounds per acre per day or 300 pounds per acre per irrigation cycle. However, as discussed in the 2013 WDRs, compliance with the biochemical oxygen demand and nitrogen loading rate limits has been inconsistent. The CDO was rescinded on 7 February 2014, after adoption of the 2013 WDRs.

REGULATORY CONSIDERATIONS

11. Discharge Prohibition A.3 of the WDRs states: *“Discharge of waste at a location or in a manner different from that described in the Findings is prohibited.”*
12. Provision H.11 of the WDRs states: *“The Discharger shall comply with the “Standard Provisions and Reporting Requirements for Waste Discharge Requirements”, dated 1 March 1991, which are attached hereto and made part of this Order by reference. This attachment and its individual paragraphs are commonly referenced as “Standard Provision(s).”*
13. Standard Provision A.4 of the WDRs states: *“Before making a material change in the character, location, or volume of discharge, the discharger shall file a new Report of Waste Discharge with the Regional Board.”*
14. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (hereafter Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Board. These

requirements implement the Basin Plan.

15. Local drainage is to the Colusa Basin Drain. The beneficial uses of Colusa Basin Drain as stated in the Basin Plan, are agricultural supply; water contact recreation; warm freshwater habitat; migration of aquatic organisms; spawning, reproduction, and/or early development; and wildlife habitat.
16. The beneficial uses of the underlying groundwater, as specified in the Basin Plan are municipal, domestic, and industrial supply.
17. The Central Valley Regional Water Board may impose administrative civil liabilities where a discharger in violation of a waste discharge requirement, discharges waste, or causes or permits waste to be deposited where it is discharged, into waters of the State pursuant to the procedures described in Water Code section 13323. This Administrative Civil Liability Order finds the Discharger's conduct constitutes a violation of the 1995 and 2013 WDRs, resulting in discharges to waters of the State of California, and seeks administrative civil liabilities pursuant to Water Code section 13350.
18. Issuance of this Administrative Civil Liability Order to enforce Division 7, Chapter 5.5 of the Water Code is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, 15321(a)(2) and all applicable law.

VIOLATIONS

Violation Category 1: Violation of Prohibition A.3 of WDRs Order R5-2013-0144 Discharge of Waste to Waters of the State from Unpermitted Expanded Cooling Pond

19. During the 20 August 2015 inspection, Board staff observed that the Cooling Pond had been expanded by 40 acres⁶ and that LAAs MS20A, MS20B, and MS21, a total of 90.5 acres, had been removed in order to construct the expansion to the Cooling Pond. The expansion of the Cooling Pond by an additional 40 acres is not authorized by the 2013 WDRs. During the 2015 processing season, unpermitted discharges of tomato material to the Cooling Pond occurred resulting in low dissolved oxygen readings as reported by the Discharger. The increased size of the Cooling Pond allowed for increased production, increased wastewater discharges to the Cooling Pond, and the potential to further impact groundwater beyond what was discussed in the Anti-degradation Analysis of the 2013 WDRs because of the decrease in acreage available for irrigation through wastewater application to land and because of increased seepage from the Cooling Pond.
20. On 2 November 2015, Board staff conducted another inspection of the Facility as a follow up to the 11 September 2015 Notice of Violation. Consistent with previous observations, Morning Star's owner, Mr. Chris Rufer, confirmed that the Cooling Pond was expanded from 60 to 100 acres during the spring of 2015. Mr. Rufer also indicated that the depth of the Cooling Pond ranges from 3 to 4 feet deep to the south (in the original 60 acre pond) to 6 to 8 feet to the north (in the expanded portion of the pond).

⁶ During the inspection, a Morning Star representative verbally stated that the pond had been expanded from 60 acres to 100 acres.

The bottom of pond is constructed from compacted native soil. According to Mr. Rufer, the larger surface area of the Cooling Pond was necessary because three additional evaporators were installed prior to the 2015 processing season. The Cooling Pond allows for wastewater discharged to the pond to cool from 120 degrees Fahrenheit to 100 degrees Fahrenheit while also allowing oxygen to diffuse into the pond to reduce the biochemical oxygen demand (BOD) before the Cooling Pond water is recirculated back to the processing plant.

21. The expansion of the Cooling Pond at the expense of decreasing the size of the LAA constitutes a material change in the character, location, or volume of discharge, triggering the requirement to submit a new Report of Waste Discharge as described in Standard Provision A.4. The expansion of the Cooling Pond is also a violation of Prohibition A.3 which prohibits the discharge of waste at a location or in a manner different from that described in the Findings of the WDRs. The Prosecution Team alleges that this violation took place for the entire 92 days of the 2015 processing season (1 July 2015 through 30 September 2015).
22. In a memorandum dated 6 November 2015⁷, Board staff estimated the amount of seepage from the unpermitted expanded portion of the Cooling Pond to groundwater to be approximately 276,300 gallons per day.

Violation Category 2: Violation of Provision E.2 of WDRs Order 95-160 and Violation of Prohibition A.3 of WDRs Order R5-2013-0144: Discharge of Waste to Waters of the State from Unpermitted Expanded Settling Pond

23. Board staff observed an empty Settling Pond during the 2 November 2015 site inspection, and suspected that Morning Star had increased size of the Settling Pond beyond the 5 acre-foot volume (i.e., 5 foot depth by 1 acre in area) approved by the 2013 WDRs. Subsequent to the site inspection, Board staff confirmed this increase in size⁸ by comparing one group of images including pictures taken during a 4 September 2008 Board staff inspection, a 9 October 2009 Google Earth aerial image, and a 20 September 2011 Board staff inspection against a second group of images including a 10 July 2013 Google Earth aerial image, field observations, and site inspection photos taken on 20 August 2015 and 2 November 2015. The second group of images confirmed that the Settling Pond had been enlarged sometime prior to 10 July 2013. Based on the latter group of images, Board staff concluded that the Discharger enlarged the Settling Pond beyond the 5 acre-foot volume permitted in the 2013 WDRs.
24. On 3 November 2015, Water Board staff issued a California Water Code section 13267 Order requiring Morning Star to submit a technical report certifying the dimensions of the Settling Pond and the calculated volume.
25. On 13 November 2015, Morning Star responded to the 13267 Order. A registered engineer determined that the top of the Settling Pond is now 440 feet by 196 feet (1.98 acres), and that the pond has a usable depth of 7.65 feet, allowing for two feet of freeboard. Based on the average length and width, Board staff determined that the

⁷ Memo from Howard Hold and Mike Fischer to Wendy Wyels, titled "*Pond Seepage Estimate, Morning Star Packing Company, Williams*"

⁸ 4 November 2015 memo from Howard Hold to Morning Star case file, titled "*Settling Pond Expansion*"

current volume of the Settling Pond is now 10.16 acre-feet⁹, as compared to the 5 acre-feet authorized by the 2013 WDRs. The increased size of the Settling Pond has allowed for increased production, increased wastewater discharges to the Settling Pond, and the potential for further impacts groundwater beyond what was discussed in the Anti-degradation Analysis of the 2013 WDRs.

26. In a memorandum dated 16 November 2015¹⁰, Board staff estimated that 3,672 gallons per day seeps into groundwater from the unpermitted expanded portion of the Settling Pond.
27. Based on the Discharger's response to the 13267 Order, it appears that the pond was expanded in 2011, but the actual date is not yet known. The Prosecution Team has made a conservative estimate that the Settling Pond was expanded after the 2011 processing season. The days of violation are the days in which the Settling Pond held wastewater, typically from the beginning of the processing season until a few days afterward. A review of Morning Star's monitoring reports shows that the 2012 processing season was 81 days (24 July through 12 October 2012), the 2013 processing season was 83 days (12 July through 2 October 2013), the 2014 processing season was 92 days (16 July through 15 October 2014), and the 2015 processing season was 92 days (1 July through 30 September 2015). The Prosecution Team assumed that the liquid in the settling pond was emptied on the last day of the processing season (although it is known that the solids remained for months afterward); therefore the days of violations are the cumulative days of each processing season, or 348 days.
28. The expansion of the Settling Pond constitutes a material change in the character, location, or volume of discharge triggering the requirement to submit a new Report of Waste Discharge as described in Standard Provision A.4 of both the 1995 and 2013 WDRs (as referenced by Provision E.2 of the 1995 WDRs and Provision H.11 of the 2013 WDRs). The expansion of the Settling Pond is also a violation of Prohibition A.3 of the 2013 WDRs, which prohibits the discharge of waste at a location or in a manner different from that described in the Findings of the 2013 WDRs.

CALCULATION OF CIVIL LIABILITIES UNDER WATER CODE SECTION 13350

29. Water Code section 13350, subdivision (a)(2) states, in part, that any person who in violation of a waste discharge requirement discharges waste, or causes or permits waste to be deposited where it is discharged, into waters of the State shall be liable civilly and remedies may be proposed, in accordance with subdivision (e).
30. Water Code section 13350, subdivision (e), states in part:

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis [per subsection (e)(1)] or on a per gallon basis [per subsection (e)(2)], but not on both.

⁹ See the 16 November 2015 memo from Howard Hold and Mike Fischer to Wendy Wyels titled "Settling Pond Seepage Increase Estimate, Morning Star Packing Company, Williams Facility, Colusa County."

¹⁰ *ibid*

(1) The civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(2) The civil liability on a per gallon basis shall not exceed ten dollars (\$10) for each gallon of waste discharged.

31. **Maximum Administrative Civil Liability for Violation Categories 1 and 2 Based on Volume Only Pursuant to Water Code Section 13350(e)(2):** Per Water Code section 13350, subdivision (e)(2), civil liability administratively imposed by the Central Valley Water Board may not exceed ten dollars (\$10) for each gallon of waste discharged.

a. With respect to the Cooling Pond (Violation Category 1), the Central Valley Water Board Prosecution Team alleges that Morning Star has been in violation of the 2013 WDRs from 1 July 2015 through 30 September 2015 and during that time, discharged 25,419,600 gallons of waste (276,300 gallons per day x 92 days) to waters of the State, as explained further in Attachment A to this Order.

b. With respect to the Settling Pond (Violation Category 2), the Central Valley Water Board Prosecution Team alleges that Morning Star has been in violation of the 1995 WDRs for a total of 164 days and the 2013 WDRs for a total of 184, for a portion of the time between 24 July 2012 and 30 September 2015. During a total of those 348 days, 1,277,856 gallons of waste (3,672 gallons per day x 348 days) were discharged to waters of the State.

The maximum administrative civil liability that may be assessed for the alleged violation based on the total volume discharged pursuant to Water Code section 13350, subdivision (e)(2) is **\$266,974,560 (two hundred sixty six million, nine hundred seventy four thousand, five hundred sixty dollars)** for Violation Categories 1 and 2.

32. **Minimum Administrative Civil Liability:** Pursuant to the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy), administrative civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation plus ten percent. The economic benefit gained by non-compliance has been stipulated to by the Parties as \$X. Therefore, the minimum civil liability which must be assessed pursuant to the Enforcement Policy is \$X (i.e., economic benefit \$X plus 10%).

ADMINISTRATIVE CIVIL LIABILITY

33. Pursuant to Water Code section 13227, the Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require.
34. On 17 November 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement

Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code sections 13327 and 13385(e). The entire Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11179.pdf

35. The recommended administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, and Water Code sections 13327 and 13350, subdivision (e)(2), as explained in detail in Attachment A to this Order. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
36. As described above, the maximum penalty for the violation on a per gallon basis pursuant to Water Code section 13385, subdivision (e)(2) is **\$266,974,560**. The minimum penalty is \$X. Based on consideration of the above facts, and after applying the penalty methodology, the Central Valley Water Board has determined that civil liability be imposed administratively on the Discharger in the amount of **\$1,500,000 (one million five hundred thousand dollars)** on a per gallon basis. The specific factors considered in this penalty are detailed in Attachment A.
37. Notwithstanding the issuance of this Order, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.

IT IS HEREBY ORDERED that The Morning Star Packing Company, L.P. shall pay a civil liability of \$1,500,000 as follows:

Within 30 days of adoption of the Order, the Discharger shall pay one million five hundred thousand dollars (\$1,500,000) by check made payable to the *Waste Discharge Permit Fund*. The check shall have written upon it the number of this ACL Order.

I, Pamela C. Creedon, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region on 18 February 2016.

PAMELA C. CREEDON, Executive Officer

Attachment A: Penalty Calculation Methodology