

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2008-0519

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

MR. GARY D. GILMORE
GLENN COUNTY

This Administrative Civil Liability Complaint (hereafter Complaint) is issued to Mr. Gary D. Gilmore based on a finding of failure to submit a technical report pursuant to California Water Code (CWC) section 13267, for which administrative civil liability may be imposed pursuant to CWC section 13268.

The Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) finds the following:

1. Growers within the Central Valley Region who have irrigation water and/or stormwater leaving their irrigated lands may contribute, or have the potential to contribute waste to surface waters. The term "waste" is very broadly defined in CWC section 13050(d) and includes runoff of sediment or agricultural chemicals. The term "waters of the state" includes all surface water and groundwater within the state. (CWC section 13050(e).) The Regional Water Board is required to regulate the amount of waste that may be discharged to waters of the state. (CWC section 13263.)
2. CWC section 13267 authorizes Regional Water Boards to conduct investigations and to require technical or monitoring reports from any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste to waters of the state.
3. Regional Water Board staff developed a list of landowners in Glenn County, including Mr. Gary D. Gilmore, that, based upon available data, were likely to be discharging wastewater from irrigated lands to surface waters and did not have regulatory coverage under waste discharge requirements (i.e., permits) or waivers of waste discharge requirements.
4. In developing this list, Regional Water Board staff used county assessor data and geographical land use data (i.e., the California Department of Conservation Farmland Mapping and Monitoring Program (FMMP) land use data) to assist in identifying potential discharges of agricultural wastewater to surface waters and to identify owners and operators of agricultural lands who may not have complied with the California Water Code. Both data sets were used to develop lists of parcels for which CWC section 13267 Orders were issued that require parcel owners to provide a technical report that includes information on whether an irrigated agricultural operation is taking place on the parcel, the nature of the operation, if regulatory coverage has been obtained, and if not, why it has not been obtained.

5. Evaluation of county assessor and FMMP data indicated four parcels of agricultural land were owned by Mr. Gary D. Gilmore in Glenn County (APN 037-190-002, 99.68 acres; APN 037-190-003, 98.46 acres; APN 044-120-001, 37.54 acres; and APN 044-120-002, 38.11 acres).
6. On 11 April 2006, the Regional Water Board issued a CWC section 13267 Order (hereafter Order) to Mr. Gary D. Gilmore, sent via certified mail, requiring the submission of a written technical report by 19 May 2006.
7. The Order provides, *“Central Valley Water Board staff has determined that you discharge, or have high potential to discharge, directly from your property to a surface water of the State and that any discharges from your irrigated land could affect the quality of waters of the State. This determination has been based on the (1) geographic location and topographic features of all or part of your irrigated lands, (2) record of pesticide use, (3) local government land use designation, and/or (4) proximity to known water quality problems.”*
8. As detailed in the Order, Mr. Gary D. Gilmore could comply by completing a one-page report form enclosed with the Order that calls for information on parcel location; assessor parcel number; parcel size; nature of the agricultural operations that have or are taking place on the property; if regulatory coverage had been obtained; and if not, the reason coverage was not obtained.
9. In requiring the technical report, the Order explains, *“The technical report is necessary for Central Valley Water Board staff to determine compliance with the Irrigated Lands Conditional Waiver Program and the CWC, and to assure protection of the quality of the waters of the State.”*
10. The certified mail receipt for the Order issued to Mr. Gary D. Gilmore was signed as received by Bobby Hendrix on 14 April 2006. Mr. Gary D. Gilmore did not respond or submit a technical report to the Regional Water Board.
11. Thereafter, a Notice of Violation (NOV) was issued and sent via certified mail on 31 August 2006 to Mr. Gary D. Gilmore, for failure to submit a technical report as required by the Order. The certified mail receipt was signed as received by Gary D. Gilmore on 5 September 2006. A response to the NOV was required by 2 October 2006.
12. Regional Water Board staff checked the compliance tracking system and case files and it was verified that the Regional Water Board had not received a response or technical report from Gary D. Gilmore.

On 10 September 2007 the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R5-2007-0520 to Mr. Gary D. Gilmore in the amount of three thousand dollars (\$3,000) for violation of California Water Code section 13267(b).

13. Following issuance of Complaint No. R5-2007-0520, Johnny Gray, on behalf of Mr. Gary D. Gilmore, submitted written comments and evidence to the Regional Water Board on 29 February and 12 March 2008 regarding steps taken to comply with the Order and the circumstances that impeded compliance. Information was submitted on 29 February and 12 March 2008, which complies with the Order.
14. According to the information submitted by Johnny Gray on 29 February and 12 March 2008, following the death of Gary and Billy Gilmore's Father, the parcels included in the Order issued were divided between Mr. Gary D. Gilmore, his brother Billy Gilmore and his cousin Johnny Gray in the spring of 2005.

VIOLATIONS

15. Failure to submit a technical report required by CWC section 13267(b). The CWC section 13267 Order was issued to Mr. Gary D. Gilmore on 11 April 2006 and required the submission of a technical report by 19 May 2006. Required information was submitted on 29 February and 12 March 2008 in response to Administrative Civil Liability Complaint No. R5-2007-0520, and was 651 days past due. The 31 August 2006 Notice of Violation requested a response by 2 October 2006. Mr. Gary D. Gilmore's required information was 515 days past the response date for the Notice of Violation.

REGULATORY CONSIDERATIONS

16. CWC section 13267 (a) states: "*A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of any waters of the state within its region.*"
17. CWC section 13267 (b) states: "*In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region..., shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.*"

18. CWC section 13268 (a) states: *“Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).”*
19. CWC section 13268(b)(1) states: *“Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) or Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1000) for each day in which the violation occurs.”*
20. The information required by the Order was 651 days past due. The maximum liability under CWC section 13268(b)(1) for the nonsubmittal of the technical report is \$1000 per day late, for a total of seven hundred twenty three thousand dollars (\$651,000).
21. Regional Water Board staff spent a total of 25.6 hours preparing Administrative Civil Liability Complaint No. R5-2007-0520. The total cost for staff time is \$2048 based on a rate of \$80 per hour.
22. The Assistant Executive Officer has considered the nature, circumstances, extent, and gravity of Mr. Gary D. Gilmore’s failure to submit a technical report as required, Mr. Gary D. Gilmore’s ability to pay the proposed civil liability, the effect of the proposed civil liability on Mr. Gary D. Gilmore’s ability to continue in business, any history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the failure to submit the technical report required, and other matters as justice may require, including the staff time required to prepare the Complaints. This consideration takes into account the additional information and evidence submitted by Johnny Gray, on behalf of Mr. Gary D. Gilmore on 29 February and 12 March 2008.
23. The Assistant Executive Officer accordingly now issues ACL Complaint No. R5-2008-0519, with a proposed liability of one thousand dollars (\$1,000). This Complaint rescinds and replaces ACL Complaint No. R5-2007-0520.
24. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2), as an Enforcement Action by a Regulatory Agency.

MR. GARY D. GILMORE IS HEREBY GIVEN NOTICE THAT:

1. Administrative Civil Liability Complaint No. R5-2007-0520 is hereby rescinded and replaced with this Complaint.

2. The Assistant Executive Officer of the Regional Water Board proposes that Mr. Gary D. Gilmore be assessed **an administrative civil liability in the amount of one thousand dollars (\$1,000)**. The amount of the proposed liability is based upon a review of the factors cited in CWC sections 13268 and 13327, as well as the State Water Resources Control Board's Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
3. A hearing on this matter will be held at the Regional Water Board meeting scheduled on **12/13 June 2008** unless Mr. Gary D. Gilmore agrees to complete the following by **22 April 2008**:
 - i. Waive the hearing by completing the attached form and returning it to the Regional Water Board; and
 - ii. Pay the proposed civil liability of one thousand dollars (\$1,000) in full.

The hearing waiver and payment (in the form of a check made payable to the *State Water Pollution Cleanup and Abatement Account*) should be sent to the Regional Water Board's office at 11020 Sun Center Drive, Suite #200, Rancho Cordova, CA 95670, by **22 April 2008**.

4. If a hearing is held, the Regional Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

KENNETH D. LANDAU, Assistant Executive Officer

9 April 2008

(Date)

KDL:4/9/08

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Mr. Gary D. Gilmore in connection with Administrative Civil Liability Complaint No. R5-2008-0519 (hereafter the "Complaint");
2. I am informed of the right provided by California Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of service of the Complaint;
3. I hereby waive Mr. Gary D. Gilmore's right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of service of the Complaint; and
4. I certify that Mr. Gary D. Gilmore will remit payment for the civil liability imposed in the amount of one thousand dollars (\$1,000) by check, which contains a reference to "ACL Complaint No. R5-2008-0519" and is made payable to the "*State Water Pollution Cleanup and Abatement Account*";
5. I understand the payment of the above amount constitutes a settlement of the Complaint.
6. 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 Mr. Gary D. Gilmore to further enforcement, including additional civil liability.

(Name)

(Title)

(Date)