

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2009-0070
ADMINISTRATIVE CIVIL LIABILITY ORDER
IN THE MATTER OF
JAIME AND RAMONA RODRIGUEZ TRUST
SACRAMENTO COUNTY

This Order is issued to Jaime and Ramona Rodriguez Trust (hereafter Rodriguez Trust) pursuant to California Water Code (CWC) section 13268(a) and (b)(1), which authorizes the imposition of Administrative Civil Liability. This Order is based on a finding of failure to submit a technical report pursuant to CWC section 13267.

The Central Valley Regional Water Quality Control Board (hereafter Central Valley Water Board) finds, with respect to Rodriguez Trust's acts, or failure to act, 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 Central Valley Water Board regulates waste that may be discharged to waters of the state. (CWC section 13263.)
2. CWC section 13267 authorizes the Central Valley Water Board 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. Central Valley Water Board staff developed a list of landowners in Sacramento County, including Rodriguez Trust, 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, Central Valley 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 CWC. 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 three parcels of agricultural land on the developed list were owned by Rodriguez Trust in Sacramento County (APN 15600300010000, 144 acres; APN 15600200120000, 113.6 acres; and APN 15600200140000, 44.4 acres).
6. On 29 July 2008, the Central Valley Water Board issued a CWC section 13267 Order (hereafter Order) to Rodriguez Trust, sent via certified mail, requiring the submission of a written technical report 15 calendar days from receipt of the Order.
7. The Order provides, *"Your irrigated agricultural operations may discharge waste in a manner that requires regulatory action by the Regional Water Board (CWC sections 13260-13269). This is based on the (1) geographic location, (2) review of pesticide use, land use and public records, (3) proximity to surface water bodies and (4) participant lists provided by Coalition Groups."*
8. As detailed in the Order, Rodriguez Trust could comply by completing a one-page report form enclosed with the Order that calls for information on parcel location; assessor parcel number; acres; crop; 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 required information is needed to determine if you discharge "waste" to surface waters, and if so, whether you have obtained regulatory coverage."*
10. The certified mail receipt for the Order issued to Rodriguez Trust was signed as received by Jaime Rodriguez on 1 August 2008. Rodriguez Trust did not respond or submit a technical report to the Central Valley Water Board.
11. Thereafter, a Notice of Violation (NOV) was issued and sent via certified mail on 27 August 2008 to Rodriguez Trust, for failure to submit a technical report as required by the Order. The certified letter was returned as "Unclaimed".
12. On 4 December 2008, staff contacted Jaime Rodriguez by phone. Mr. Rodriguez did not seem to speak English, so a staff person who speaks Spanish assisted in communicating with him. Staff explained that his technical report had not yet been received, and that consequently he may receive a fine. Mr. Rodriguez stated that he thought he had already sent in the required paperwork. He then provided staff with his fax number and asked that staff fax him the form for him to fill out. Staff faxed the technical report form to Mr. Rodriguez. Despite staff's efforts, he did not submit the completed technical report.
13. On 9 February 2009, staff left a message explaining that the Central Valley Water Board had yet to receive Mr. Rodriguez's technical report and gave him a deadline of 18 February 2009 to submit the technical report and avoid fines.
14. On 11 February 2009, staff left a final message with Mr. Rodriguez explaining that the Central Valley Water Board has yet to receive his technical report, that he could be

facing a fine and that the Central Valley Water Board will not be attempting to contact him again before assessing a fine.

15. Central Valley Water Board staff checked the compliance tracking system and case files and it was verified that the Central Valley Water Board had not received a response or technical report from Rodriguez Trust.
16. Administrative Civil Liability Complaint R5-2009-0540, proposing civil liability in the amount of \$3,000, was issued to the Rodriguez Trust on 19 May 2009 and mailed by certified mail to the Rodriguez Trust along with proposed Hearing Procedures. The Central Valley Water Board received a return receipt for the certified letter that showed it had been signed by Ramona Rodriguez on 21 May 2009. A Spanish speaking staff member additionally left a message on Mr. Rodriguez's voice mail on July 21 2009 reiterating that a Tentative Order based on the ACL Complaint would be heard before the Board on 13 August 2009.
17. The civil liability proposed in ACL Complaint No. R5-2009-0540 was not paid or settled.
18. As of the date of this Order, Rodriguez Trust has failed to submit the technical report.
19. 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.*"
20. 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.*"
21. 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).*"
22. 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.*"

23. Based on the July 29 2008 date of the CWC section 13267 Order, as of 12 August 2009, Rodriguez Trust's technical report was 362 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 three hundred sixty-two thousand dollars (\$362,000).
24. CWC section 13327 states: *"In determining the amount of civil liability, the regional board . . . shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require."*
25. The Central Valley Water Board has determined the following with respect to the factors in CWC section 13327 that are relevant:

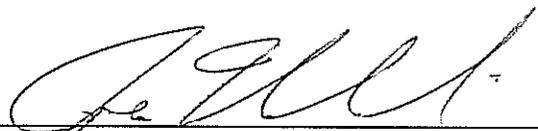
Nature	Failure to submit technical report per a CWC section 13267 Order to determine whether Rodriguez Trust discharges waste to waters of the state and requires regulatory coverage.
Circumstances	Rodriguez Trust has not responded to the CWC section 13267 Order and subsequent phone calls made by staff.
Extent	The technical report is 362 days overdue.
Gravity	This is a relatively simple ACL for failure to submit a technical report. The violation has prevented the Central Valley Water Board from making a determination as to whether Rodriguez Trust discharges waste to waters of the state, requiring regulation.
Ability to pay	Rodriguez Trust has substantial land holdings in Sacramento County; staff expects the Trust can pay this liability.
Effect on ability to continue in business	The relatively small ACL amount likely will not pose a threat to the landowners' business operations.
History of violations	None known
Culpability	Despite landowner signing for receipt of the CWC section 13267 Order and pledging over the phone to submit the technical report, it has not been received.
Economic benefit or savings	Rodriguez Trust may have avoided paying membership dues for the local Grower Coalition under a waiver of waste discharge requirements or paying fees for waste discharge requirements.
Other matters the justice may require	Staff spent approximately 21 hours preparing this Order and associated documents (staff costs of \$2,730).

26. A \$3,000 Administrative Civil Liability is appropriate based upon the determination in Finding 23 and a review of the factors in Finding 25.
27. Issuance of this Administrative Civil Liability Order to enforce CWC Division 7, Chapter 5.5 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).
28. Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 through 2068. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

IT IS HEREBY ORDERED, pursuant to CWC section 13268 and section 13323 that:

Rodriguez Trust shall be assessed **an administrative civil liability in the amount of three thousand dollars (\$3000)**, to be paid no later than 30 days from the date on which this Order is issued by check made payable to the *State Water Pollution Cleanup and Abatement Account*. The check shall have written upon it the number of this 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 13 August 2009.



For PAMELA C. CREEDON, Executive Officer