

**Note: This document has been prepared by the  
Central Valley Water Board's Prosecution Team**

ITEM: 25

SUBJECT: California Sprouts, LLC, Sacramento County

BOARD ACTION: *Consideration of an Administrative Civil Liability (ACL) Order*

BACKGROUND: California Sprouts, LLC (Discharger) grows different varieties of sprouts in an indoor facility. Process wastewater is discharged to the City of Sacramento's storm drain system. The Discharger was formerly regulated by the Board under individual waste discharge requirements, and as required by that permit, submitted monthly monitoring reports.

In 2012, the Discharger applied for coverage under the *Waste Discharge Requirements for Limited Threat Discharges of Treated/Untreated Groundwater from Cleanup Sites, Wastewater from Superchlorination Projects, and Other Limited Threat Wastewaters to Surface Water* (Limited Threat General Order) R5-2008-0082 (NPDES Permit No. CAG995002). A Notice of Applicability became effective on 7 June 2012, and the individual WDRs were rescinded.

The Notice of Applicability informed the Discharger that monitoring reports were due on a quarterly basis, beginning with the third quarter 2012 report. The Notice of Applicability also states that failure to timely submit monitoring reports could result in mandatory minimum penalties.

ACL COMPLAINT

The Discharger did not submit seven quarterly monitoring reports, from the third quarter 2012 through the first quarter 2014, until after an email reminder from Board staff in June 2014. The California Water Code requires the assessment of mandatory minimum penalties for the failure to timely submit monitoring reports.

On 8 September 2014, the Assistant Executive Officer issued an ACL Complaint for late report violations occurring between 7 June 2012 and 31 March 2014. The ACL Complaint proposes imposing a penalty of \$210,000 pursuant to Water Code section 13385(h)(1).

The Discharger disagrees with the Prosecution Team's interpretation of Water Code section 13385.1 and therefore requested a hearing before the Central Valley Water Board.

**ACL ISSUE:** The Discharger does not dispute that it failed to submit monitoring reports. The issue is the legal interpretation of Water Code section 13385.1 and the proper amount of mandatory minimum penalties. The Prosecution Team's legal interpretation is that a penalty of \$210,000 is required, while the Discharger's legal interpretation is that a \$30,000 penalty should be assessed.

The legal argument hinges on the applicability of Water Code section 13385.1(b). Per section 13385.1(a), every 30-day period a report is late is a serious violation requiring a mandatory penalty of \$3,000. From 1 January 2011 through 1 January 2014, Water Code section 13385.1(b) removed the serious violations for each additional 30-day time period (beyond the first 30-day period) in which a report was not submitted. However, the subdivision was only applicable if (a) the discharger did not receive any notice that monitoring reports were required, (b) there were no effluent limitation violations for the period covered by the report, (c) the discharger filed the missing report within 30 days of receiving notice, and (d) the discharger paid all assessed penalties within 30 days after an order is issued.

The Prosecution Team contends that the Discharger received multiple notices of the requirement to submit quarterly monitoring reports and therefore the potential reduction afforded by 13385.1(b) does not apply. In addition, this section of the Water Code is no longer in effect, and even if it was determined that the Discharger did not receive sufficient notice, it could not be utilized to settle this liability.

The Discharger contends that the mandatory minimum penalty reductions afforded by 13385.1(b) should be applied to this case, and that therefore the penalty should be reduced to \$30,000.

**RECOMMENDATION:** The Prosecution Team recommends that the Board adopt the ACL Order as proposed, for a mandatory minimum penalty of \$210,000.

Mgmt. Review WSW

Legal Review LD

**4/5 December 2014 meeting**

Central Valley Regional Water Quality Control Board

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