

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2016-XXXX

IN THE MATTER OF

VICTOR PRODUCE, INC.
MERCED COUNTY

This Order is issued pursuant to California Water Code¹ section 13323 to Victor Produce, Inc., (Victor Produce or Discharger) for failing to submit a Farm Evaluation as required by the Waste Discharge Requirements for Growers within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group (Order R5-2012-0116-R3 or East San Joaquin Order).

The California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board) finds the following:

1. The East San Joaquin Order applies to owners and operators of irrigated lands within the Eastern San Joaquin River Watershed. Pursuant to the East San Joaquin Order, either the owner or operator may enroll an irrigated lands parcel for regulatory coverage under the East San Joaquin Order.
2. On 10 February 2015, Victor Produce enrolled nine parcels in the East San Joaquin Water Quality Coalition (Coalition) as an operator, thus obtaining coverage under the East San Joaquin Order. The parcels that the Discharger enrolled are Merced County Assessor's Parcel Numbers (APN) 049-050-087, 049-050-088, 049-050-089, 049-050-091, 049-060-073, 049-080-003, 049-080-006, 049-080-015, and 049-080-016. These parcels have a total area of 271 acres.
3. The East San Joaquin Order requires that all Coalition members complete a Farm Evaluation describing management practices implemented to protect surface and groundwater quality. The Farm Evaluation also includes information such as location of the farm, surface water discharge points, location of in service wells and abandoned wells and whether wellhead protection practices have been implemented.
4. The Farm Evaluation is intended to provide the third-party coalition and the Central Valley Water Board with information regarding individual member implementation of the East San Joaquin Order's requirements. Without this information, the Board would rely solely on regional surface and groundwater monitoring to determine compliance with water quality objectives. The regional monitoring cannot determine whether all members

¹ All references to the Water Code refer to the California Water Code unless otherwise noted.

are implementing protective practices, such as wellhead protection measures for groundwater. Regional monitoring also does not allow identification of which practices are protective in areas where impacts are observed and multiple practices are employed. For groundwater protection practices, it may take years in many areas (even decades in some areas) before broad trends in groundwater may be measured and associated with implementation of the East San Joaquin Order. Farm Evaluations are intended to provide assurance that members are implementing management practices to protect groundwater quality while trend data is collected.

5. The reporting of practices identified in the Farm Evaluation will allow the third-party coalition and Board to effectively implement the Management Practices Evaluation Plan. Evaluating management practices at representative sites (in lieu of farm-specific monitoring) only works if the results of the monitored sites can be extrapolated to non-monitored sites. One of the key ways to extrapolate those results will be to have an understanding of which farming operations have practices similar to the site that is monitored. The reporting of practices will also allow the Board to determine whether the Groundwater Quality Management Plan is being implemented by members according to the approved schedule.
6. On 21 December 2015, the Coalition sent a notice to the Discharger that the Farm Evaluation for 2015 (2015 Farm Evaluation) was due to the Coalition on 1 February 2016. The Discharger did not submit the 2015 Farm Evaluation in response to the notice.
7. On 22 February 2016, Board staff sent the Discharger a Notice of Violation (NOV) via certified mail for failure to submit the 2013 and 2014 Farm Evaluations. The NOV urged the Discharger to submit the evaluations to the Coalition and warned that failure to do so may result in enforcement action by the Central Valley Water Board. Board staff later discovered that Victor Produce did not join the Coalition until February 2015 and therefore was not required to submit Farm Evaluations for 2013 and 2014.
8. The Discharger received the NOV on 25 February 2016. The Discharger did not contact the Board in response to the NOV. A copy of the certified mail receipt is included with Attachment A.
9. In March 2016, the Coalition sent a postcard to the Discharger providing notice that submittal of the 2015 Farm Evaluation was past due and requesting that the Discharger submit the evaluation as soon as possible. The Discharger did not submit the 2015 Farm Evaluation in response to the postcard.

10. On 19 April 2016, the Coalition sent the Board a list of members who had not submitted the 2015 Farm Evaluation. The list indicated that Victor Produce had not submitted the 2015 Farm Evaluation.
11. In May 2016, the Coalition sent a final notice to the Discharger that the 2015 Farm Evaluation had not been submitted, and that failure to do so may lead to an enforcement action by the Central Valley Water Board. The notice urged the Discharger to submit the required 2015 Farm Evaluation as soon as possible. The Discharger did not submit the 2015 Farm Evaluation in response to the notice.
12. On 6 May 2016, Board staff sent the Discharger a pre-ACL letter indicating that an ACL Complaint was forthcoming and inviting the Discharger to engage in settlement negotiations prior to issuance of an ACL Complaint.
13. The pre-ACL letter was sent via Federal Express, which delivered the letter to the Discharger's address on 10 May 2016. The Discharger did not submit the missing Farm Evaluation or contact Board staff in response to the pre-ACL letter.

VIOLATION

14. On 8 August 2016, the Assistant Executive Officer of the Central Valley Water Board issued an Administrative Civil Liability Complaint (ACL Complaint) R5-2016-0550 to the Discharger in the amount of fifteen thousand two hundred and ten dollars (\$15,210) for failing to submit the 2015 Farm Evaluation as required by the East San Joaquin Order.
15. On 25 August 2016, the Discharger submitted the 2015 Farm Evaluation to the Coalition following issuance of the ACL Complaint.

REGULATORY CONSIDERATIONS

16. Water Code section 13267, subdivision (b)(1) provides that

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 proposed to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters 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.

17. Pursuant to Water Code section 13268, subdivision (b)(1), any person who fails or refuses to furnish a technical or monitoring report as required by Water Code section 13267, subdivision (b), may face an ACL in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
18. The required 2015 Farm Evaluation is 160 days past due. The maximum liability under Water Code section 13268 for the failure to furnish a report under Water Code section 13267 is \$1,000 per each day the violation occurs, for a total maximum of one hundred and sixty thousand dollars (\$160,000).
19. Pursuant to Water Code section 13327, in determining the amount of civil liability, the Central Valley Water 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.
20. 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 section 13327.

21. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment A. The 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.
22. **Maximum and Minimum Penalties.** As described above, the maximum penalty for the violations is \$160,000. The Enforcement Policy recommends that the minimum liability imposed be at least ten percent higher than the economic benefit so that liabilities are not construed as the cost of doing business and so that the assessed liability provides a meaningful deterrent to future violations. The economic benefit to the Discharger resulting from the failure to submit the 2015 Farm Evaluation is estimated at \$522 (see Attachment A for how this estimate was derived). Per the Enforcement Policy, the minimum penalty is the economic benefit plus ten percent (\$575).
23. Notwithstanding the issuance of this ACL Order, the Central Valley Water Board retains the authority to assess additional penalties for violations of the Water Code that may subsequently occur.
24. Issuance of this ACL Order is an enforcement action, and is therefore 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, section 15321, subdivision (a)(2).
25. This Order is effective and final upon issuance by the Central Valley Water Board. Payment must be received by the Central Valley Water Board no later than thirty (30) days from the date on which this Order is issued.
26. In the event that the Discharger fails to comply with the requirements of this Order, the Executive Officer or her delegate is authorized to refer this matter to the Attorney General's Office for enforcement.
27. 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 Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final 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 THAT:

1. Victor Produce, Inc., shall be assessed an Administrative Civil Liability in the amount of fifteen thousand two hundred and ten dollars (\$15,210).
2. Payment shall be made no later than 30 days from the date of issuance of this Order by check payable to the *State Water Pollution Cleanup and Abatement Account*, and shall have the number of this order written upon it.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order issued by the California Regional Water Quality Control Board, Central Valley Region.

Pamela C. Creedon
Executive Officer

Date

Attachment A: Penalty Calculation Methodology