

ATTACHMENT B

May 2016 Pre-ACL Notification Letter



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

6 May 2016

Cynthia Betschart
14588 Atwater Jordan Road
Livingston, CA 95334

Federal Express
2nd Day Delivery

FORTHCOMING ASSESSMENT OF CIVIL LIABILITY FOR FAILURE TO SUBMIT FARM EVALUATIONS, VICTOR PRODUCE, INC., WATERFORD, STANISLAUS COUNTY

The purpose of this letter is to inform you of a forthcoming Administrative Civil Liability Complaint (Complaint), and to notify you of your opportunity to negotiate and settle the assessment of monetary penalties for your failure to submit a Farm Evaluation pursuant to section VII.B of the Waste Discharge Requirements General Order for Growers within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group (Order R5-2012-0116-R3 or "Order"). **Please read this notice carefully.**

Based on information available to the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board), you own or operate at least one parcel that contains irrigated agriculture and are a member of the East San Joaquin Water Quality Coalition (Coalition). In becoming a member of the Coalition, you became subject to the legal requirements of the Order.

According to the Coalition's records, you have failed to meet your obligation to submit a Farm Evaluation to the Coalition for the 2014 and 2015 growing seasons. Pursuant to the Order, the due dates for these evaluations were 1 March 2015 and 1 March 2016, respectively.

The Coalition mailed you two reminders to submit the required evaluations after the due date, including resending you another copy of the Farm Evaluation form. Additionally, on 25 February 2016 you received a Notice of Violation from the Board that urged you to avoid further potential fines by submitting the required Farm Evaluations to the Coalition.

Legal Authority

California Water Code (CWC) section 13267, subdivisions (a) and (b)(1) state:

“(a) 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.

(b)(1) 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, 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.”

Under California Water Code section 13268, failure to submit a technical report (in this case, a Farm Evaluation) when requested by the Central Valley Water Board may result in an administrative civil liability against you of up to \$1,000 per day for every day the report is late.

As of the date of this letter, your submittal of the 2014 Farm Evaluation is 432 days overdue; and your submittal of the 2015 Farm Evaluation is 66 days overdue. The sum of these days of violation is 498, and the **maximum penalty** for the violation described above is **four hundred and ninety eight thousand dollars (\$498,000)** based on a calculation of the total number of days of violation times the statutory maximum penalty (498 total days of violation multiplied by \$1,000).

Based on our review and after conducting a preliminary penalty calculation, the Assistant Executive Officer of the Central Valley Water Board intends to issue a Complaint seeking an administrative civil liability assessment against you for **twenty one thousand two hundred and ninety four dollars (\$21,294)**. This proposed penalty amount was calculated considering the methodology in the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy) and is based on facts known to date. This proposed penalty amount is preliminary and is subject to modification should additional information come to light. In addition, because the violation is continuing, the maximum and proposed penalty amounts will continue to increase until you resolve the violation. The full Enforcement Policy may be found here: http://www.swrcb.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf. To avoid further liability, you are urged to submit your Farm Evaluations and then contact Board staff to arrange a settlement meeting (see details below).

By way of this letter, you are being notified of the opportunity to meet to discuss the facts regarding the alleged violation, including the option of settlement. This meeting affords you the opportunity to potentially reduce the proposed penalty amount if you present new

information to the Central Valley Water Board staff, or other information you believe is relevant to determining an appropriate monetary penalty. All settlement communications would be kept confidential subject to California Evidence Code sections 1152 and 1154. If a settlement is reached at this meeting, the Assistant Executive Officer will forego issuing the Complaint.

If you intend to argue that you have an inability to pay the proposed penalty amount, you must bring supporting documentation with you to the meeting. Appropriate documentation **must include** the last three years of signed federal income tax returns including schedules **and may also include** credit card or line of credit statements, mortgage loan statements, bank account statements, or any other document that explains the special circumstances regarding past, current, or future financial conditions. This information may be used in determining an appropriate monetary penalty assessment to resolve this matter without a hearing.

In order to initiate any discussions to settle this matter, you must contact Brett Stevens at (916) 464-4642 by **20 May 2016** to schedule a day and time to meet with Central Valley Water Board staff. If you do not respond by this date, the Assistant Executive Officer will issue you a Complaint and this matter will proceed to a formal enforcement hearing before the Central Valley Water Board; or the Assistant Executive Officer may refer the matter to the Attorney General's Office or other prosecution agency.

Before settlement discussions can occur, you must submit the Farm Evaluations to the Coalition. A Farm Evaluation form is enclosed for your convenience. Complete the evaluation and submit it to:

East San Joaquin Water Quality Coalition
1201 L Street
Modesto, CA 95354

Failure to submit the Farm Evaluation and to schedule a settlement meeting with Central Valley Water Board staff will result in a Board hearing so that the Board can consider your enforcement case.

If you have any questions, please contact Brett Stevens by phone at (916) 464-4642 or by email at Brett.Stevens@waterboards.ca.gov.

Original signed by

Sue McConnell, Manager
Irrigated Lands Regulatory Program

cc via email: Andrew Altevogt, Central Valley Water Board, Rancho Cordova
Kailyn Ellison, SWRCB Office of Enforcement
Parry Klassen, East San Joaquin Water Quality Coalition

Encl: Farm Evaluation Form

My Profile Support Locations English Search or tracking number Subr



Shipping Tracking Manage Learn

FedEx Office®

Login

FedEx® Tracking

808229734163

Ship date:
Fri 5/06/2016

Actual delivery:
Tue 5/10/2016 1:02 pm

RANCHO CORDOVA, CA US

Delivered

CA US

Signed for by: G.BACA

Travel History

Date/Time	Activity	Location
- 5/10/2016 - Tuesday		
1:02 pm	Delivered	CA
9:58 am	On FedEx vehicle for delivery	MERCED, CA
- 5/09/2016 - Monday		
10:49 am	At local FedEx facility	MERCED, CA
10:45 am	At local FedEx facility	MERCED, CA
	Package not due for delivery	
9:26 am	At local FedEx facility	MERCED, CA
3:15 am	Departed FedEx location	OAKLAND, CA
- 5/08/2016 - Sunday		
5:42 pm	Arrived at FedEx location	OAKLAND, CA
3:47 pm	Departed FedEx location	MEMPHIS, TN
- 5/07/2016 - Saturday		
12:21 pm	Arrived at FedEx location	MEMPHIS, TN
- 5/06/2016 - Friday		
8:33 pm	Left FedEx origin facility	RANCHO CORDOVA, CA
4:13 pm	Picked up	RANCHO CORDOVA, CA

Shipment Facts

Tracking number	808229734163	Service	FedEx 2Day
Delivered To	Receptionist/Front Desk	Total pieces	1
Terms	Shipper	Packaging	FedEx Envelope
Special handling section	Deliver Weekday		



Search or tracking number Subr

Customer Focus
 New Customer Center
 Small Business Center
 Service Guide
 Customer Support

Company Information
 About FedEx
 Careers
 Investor Relations
 Subscribe to FedEx email

Featured Services
 FedEx Delivery Manager
 FedEx SameDay
 FedEx Home Delivery
 FedEx TechConnect
 Healthcare Solutions
 Online Retail Solutions
 Packaging Services
 Ancillary Clearance Services

Other Resources
 FedEx Compatible
 Developer Resource Center
 FedEx Ship Manager Software
 FedEx Mobile

Companies
 FedEx Express
 FedEx Ground
 FedEx Office
 FedEx Freight
 FedEx Custom Critical
 FedEx Trade Networks
 FedEx CrossBorder
 FedEx SupplyChain

Follow FedEx

United States - English