

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

**NOTICE OF SETTLEMENT OF ADMINISTRATIVE CIVIL LIABILITY
COMPLAINT NO. R4-2010-0026**

Written Comments due by **5:00 P.M., September 5, 2012**

Notice is hereby given that on August 6, 2012, a Settlement Agreement was entered into between the Executive Officer of the Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board), on behalf of the Los Angeles Water Board Prosecution Team, and California Nurseries.

On February 18, 2010, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R4-2010-0026 to California Nurseries for its failure to submit a Notice of Intent to comply with the Los Angeles Water Board's Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands with the Los Angeles Region, Order No. R4-2005-0080 or, alternatively, by failing to submit a report of waste discharge for an individual waste discharge permit, for two separate nurseries owned and operated by California Nurseries. Under the proposed settlement, California Nurseries will pay \$6,400 in administrative civil penalties to resolve the Complaint. Please see the attached Settlement Agreement and proposed Stipulated Order.

You may submit written comments, which must be received by **5:00 p.m. on September 5, 2012**. Comments must be addressed to Jenny Newman, Regional Water Quality Control Board, 320 West 4th Street, Suite 200, Los Angeles, CA 90013 or emailed to jnewman@waterboards.ca.gov. Please refer to Complaint No. R4-2010-0026. The Settlement Agreement, proposed Stipulated Order, and other relevant documents may be examined at the Los Angeles Water Board's office at 320 West 4th Street, Suite 200, Los Angeles, CA 90013. For additional information, please contact Jenny Newman at (213) 576-6691.

SETTLEMENT AGREEMENT
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2010-0026

This Settlement Agreement (“Agreement”) is made and entered into by California Nurseries and the Prosecution Team of the California Regional Water Quality Control Board, Los Angeles Region (“Los Angeles Water Board”) (collectively, the “Parties”) with reference to the following facts:

RECITALS:

- A. California Nurseries owns and operates at least two nurseries in Los Angeles County. The Arleta Nursery is located at 14301 Van Nuys Boulevard in Arleta, California. The Northridge Nursery is located at 18955 Roscoe Boulevard in Northridge, California. California Nurseries lease the properties on which it operates from the City of Los Angeles Department of Water and Power. Both nurseries are commercial irrigated farming operations that are subject to the Los Angeles Water Board’s Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands within the Los Angeles Region, Order Nos. R4-2005-0080 and R4-2010-0186 (“Conditional Waiver”).
- B. On February 18, 2010, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R4-2010-0026 to California Nurseries for both the Arleta Nursery and the Northridge Nursery.
- C. The Complaint alleges that California Nurseries violated California Water Code section 13260 by failing to submit a Notice of Intent to comply with the Conditional Waiver (either individually or as a member of a Los Angeles Water Board approved Discharger Group) or, alternatively, by failing to submit a report of waste discharge for an individual waste discharge permit, despite at least two requests by the Los Angeles Water Board. The Complaint proposed to assess an administrative civil liability of \$32,100 against California Nurseries for these violations.
- D. In addition to seeking the civil liability noted above, the intent of the Complaint was to encourage compliance with California Water Code 13260. Accordingly, the Complaint sought higher penalties if California Nurseries did not submit a Notice of Intent to comply with the Condition Waiver or submit a report of waste discharge for an individual waste discharge permit within 30 days from the date of the Complaint.
- E. In response to the Complaint, California Nurseries promptly came into compliance by enrolling both the Arleta Nursery and the Northridge Nursery in the Conditional Waiver on April 1, 2010 by joining the Nursery Growers Association – Los Angeles County Irrigated Lands Group (“NGA”), which is a Los Angeles Water Board approved Discharger Group. Since that time, California Nurseries has maintained its membership in NGA.

- F. Subsequent to the issuance of the Complaint, the Parties entered into settlement negotiations because of a desire to resolve this matter and settle the allegations described herein without the need for a formal hearing. At that time, Jose Gutierrez, owner of California Nurseries, informed the Prosecution Team that California Nurseries' noncompliance was both unintentional and due to confusion. The Prosecution Team also learned that California Nurseries specific irrigation practices at both nurseries, which utilizes hand watering irrigation, generally reduces the potential for irrigation runoff. Lastly, California Nurseries did not receive an economic benefit from its noncompliance since it was required to pay past membership dues and fines to NGA in the amount of \$6,900 to become a member of NGA.
- G. The Parties have reached this settlement for the violations alleged in the Complaint. The terms of the settlement are that California Nurseries will pay \$6,400 to resolve the allegations in the Complaint. In order to facilitate the approval of the proposed settlement, and to carry out its terms, this proposed settlement includes the issuance of an Administrative Civil Liability Stipulated Order ("Stipulated Order").
- H. In reaching this settlement, the Prosecution Team has considered each of the factors prescribed in California Water Code section 13327 and the penalty calculation methodology in the State Water Resources Control Board's Enforcement Policy. In addition to these factors, the administrative civil liability in this Agreement recovers the costs incurred by the staff of the Los Angeles Water Board in evaluating the incidents of violations and preparing the Complaint and related documents.
- I. This proposed settlement is subject to public comment and approval by the Los Angeles Water Board.

NOW, THEREFORE, the Parties agree as follows:

1. California Nurseries waives its right to a hearing before the Los Angeles Water Board to dispute the allegations of violations described in the Complaint.
2. In settlement of the violations alleged in the Complaint, California Nurseries agrees to pay administrative civil liability in the amount of \$6,400 by check that references "ACL Complaint No. R4-2010-0026" made payable to the "State Water Pollution Cleanup and Abatement Account." Full payment must be submitted to the Los Angeles Water Board no later than 10 days after the date California Nurseries receives written notice that the proposed Stipulated Order has become effective.
3. California Nurseries promises and agrees that it will not contest or otherwise challenge this Agreement before the Los Angeles Water Board, the State Water Resources Control Board, or any court. The Prosecution Team likewise promises and agrees that it will not contest or otherwise challenge this Agreement before the Los Angeles Water Board, the State Water Resources Control Board, or any court, provided that it does not exercise its authority to declare this Agreement to be null and void as the result of public comment, as specifically detailed below.

4. Within 7 days of execution of this Agreement by California Nurseries and the Prosecution Team, the Prosecution Team will post this Agreement on the Los Angeles Water Board's website for the purpose of accepting public comments on this Agreement for a period of at least 30 days. If the Prosecution Team receives significant new information that reasonably affects the propriety of entering into this Agreement, the Prosecution Team may unilaterally declare this Agreement null and void. Otherwise, within 7 days of the close of the public comment period, the Prosecution Team will present this Agreement and Stipulated Order on Complaint No. R4-2010-0026 to the Chief Deputy Executive Officer for the Los Angeles Water Board's approval. The Stipulated Order shall become effective immediately upon the Chief Deputy Executive Officer's signature.
5. In the event that this Agreement does not take effect, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing for the Los Angeles Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations in the Complaint.
6. Each person executing this Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Agreement on behalf of and to bind the person or entity on whose behalf he or she executes this Agreement.
7. California Nurseries understands that this settlement is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject California Nurseries to further enforcement, including additional civil liability.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set forth below.

FOR THE LOS ANGELES WATER BOARD PROSECUTION TEAM:

By: Samuel Unger
Samuel Unger
Executive Officer

Date: Aug. 6, 2012

FOR CALIFORNIA NURSERIES:

By: Jose Gutierrez
Jose Gutierrez

July-26-2012
Date

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the matter of:

California Nurseries

Arleta Nursery
14301 Van Nuys Boulevard
Arleta, CA 91331

Northridge Nursery
18955 Roscoe Boulevard
Northridge, CA 91324

**Stipulated Order on
Complaint No. R4-2010-0026**

**Administrative Civil Liability Pursuant to
California Water Code § 13261**

**For Violations of
California Water Code § 13260**

The California Regional Water Quality Control Board, Los Angeles Region (“Los Angeles Water Board”) finds:

- A. On February 18, 2010, the Los Angeles Water Board’s Assistant Executive Officer issued Administrative Civil Liability Complaint No. R4-2010-0026 (“Complaint”) to California Nurseries for both the Arleta Nursery and the Northridge Nursery. Both nurseries are commercial irrigated farming operations that are subject to the Los Angeles Water Board’s Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands within the Los Angeles Region, Order Nos. R4-2005-0080 and R4-2010-0186 (“Conditional Waiver”).
- B. The Complaint alleged that California Nurseries violated California Water Code section 13260 by failing to submit a Notice of Intent to comply with the Conditional Waiver or, alternatively, by failing to submit a report of waste discharge for an individual waste discharge permit, despite at least two requests by the Los Angeles Water Board. The Complaint proposed to assess an administrative civil liability of \$32,100 against California Nurseries for these violations.
- C. Subsequent to the issuance of the Complaint, California Nurseries and the Prosecution Team (collectively, the “Parties”) entered into settlement negotiations because of a desire to resolve this matter and settle the allegations described herein without the need for a formal hearing. At that time, Jose Gutierrez, owner of California Nurseries, informed the Prosecution Team that California Nurseries’ noncompliance was both unintentional and due to confusion. The Prosecution Team also learned that California Nurseries specific irrigation practices at both nurseries, which utilizes hand watering irrigation, generally reduces the potential for irrigation runoff. Lastly, California Nurseries did not receive an economic benefit from its noncompliance since it was required to pay past membership dues and fines to NGA in the amount of \$6,900 to become a member of NGA.

- D. The Los Angeles Water Board has been presented with a proposed settlement of the claims alleged in the Complaint that was developed during negotiations between the Parties. The proposed settlement represents a mutually agreed-upon resolution of the Prosecution Team’s claims through the payment of an administrative civil liability in the amount of \$6,400. The Parties’ settlement agreement is attached hereto as Attachment 1. The Parties recommend that the Los Angeles Water Board adopt this Stipulated Order to effectuate the Parties’ proposed settlement.
- E. The Prosecution Team provided public notice of and an opportunity to comment upon the settlement agreement for at least 30 days.
- F. In adopting this Stipulated Order, the Los Angeles Water Board has considered each of the factors prescribed in California Water Code section 13327 and the penalty calculation methodology in the State Water Resources Control Board’s Enforcement Policy. The Los Angeles Water Board’s consideration of these factors is based upon information and comments provided by the Parties and members of the public. In addition to these factors, the proposed settlement recovers the costs incurred by the staff of the Los Angeles Water Board in evaluating the incidents of violations and preparing the Complaint and related documents.
- G. This Stipulated Order and assessment of administrative civil liability in the amount of \$6,400 provides for the full and final resolution of the alleged violations in the Complaint.
- H. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 *et seq.*) in accordance with section 15321, Chapter 3, Title 14, California Code of Regulations.
- I. Any person aggrieved by this action of the Los Angeles Water Board may petition the State Water Resources Control Board (“State Water Board”) to review the action in accordance with California 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 of this Stipulated Order, except that if the thirtieth day following the date of this Stipulated Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State 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.

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IT IS HEREBY ORDERED that:

1. Pursuant to the settlement agreement executed by the Parties, administrative civil liability pursuant to California Water Code section 13261 is imposed upon California Nurseries in the amount of \$6,400 for the violations alleged in the Complaint.

2. California Nurseries shall pay the administrative civil liability of \$6,400 by check that references “ACL Complaint No. R4-2010-0026” made payable to the “State Water Pollution Cleanup and Abatement Account.” Full payment must be submitted to the Los Angeles Water Board no later than 10 days after the date California Nurseries receives written notice that this Stipulated Order has become effective.
3. In the event that California Nurseries fails to comply with the requirements of this Order, the Executive Officer or his delegee is authorized to refer this matter to the Office of the Attorney General or a debt collective agency for enforcement and/or collection of penalties.

IT IS SO ORDERED.

Deborah Smith
Chief Deputy Executive Officer

Date

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