

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION**

In the Matter of:

**SETTON PISTACHIO OF  
TERRA BELLA, INC.**

**SETTLEMENT AGREEMENT AND  
STIPULATION FOR ENTRY OF  
ADMINISTRATIVE CIVIL LIABILITY  
ORDER**

**ORDER NO. R5-2021-0516**

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**Section I: Introduction**

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order, Order, or ACLO) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Board), on behalf of the Board Prosecution Team (Prosecution Team), and Setton Pistachio of Terra Bella, Inc. (Discharger) (collectively, Parties) and is presented to the Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60. This Settlement Agreement provides stipulations for settlement of administrative civil liability assessed to the Discharger under California Water Code section 13350.

**Section II: Background**

2. Waste Discharge Requirements (WDRs) Order 92-191, adopted by the Board on 25 September 1992, prescribes requirements for the Terra Bella Pistachio Facility (Facility) owned and operated by Setton Pistachio (Discharger). The WDRs authorize a maximum discharge of up to 1.5 million gallons per day of pistachio process wastewater to land.
3. Discharge Specification B.2 of WDRs Order 92-191 further provides as follows:

“Objectionable odors originating at this facility shall not be perceivable beyond the limits of property owned or controlled by the Discharger.”
4. The WDRs Order was originally issued to the Dole Dried Fruit and Nut Company. In August 1995, the Discharger informed Board staff that ownership of the Facility had changed and requested transfer of the WDRs.
5. The Facility is located in Section 3, T23S, R27E, MDB&M at 9370 Road 234 in Terra Bella, Tulare County.

6. The State of California has designated the unincorporated community of Terra Bella as a “disadvantaged community” in terms of pollution burden and socioeconomic disadvantage.<sup>1</sup>
7. Wastewater discharged from the Facility consists of pistachio processing wastewater (primarily generated from pistachio hulling, but also includes washwater generated from other processing activities), citrus washwater from a citrus packinghouse adjacent to the Facility, and stormwater runoff from the Facility and citrus packinghouse sites as well as from the unincorporated community of Terra Bella.
8. Wastewater from all sources is commingled in a gunite-lined pond at the Facility prior to being filtered and discharged to a 350-acre-foot lined effluent treatment/storage pond (Treatment/Storage Pond), which is located approximately 3,000 feet southwest of the Facility. Wastewater effluent from the Treatment/Storage Pond is blended with irrigation well water in three irrigation mixing ponds prior to disposal via discharge to land application areas (LAAs). The Discharger also has the ability to bypass the Treatment/Storage Pond and discharge wastewater from the gunite lined pond directly to the irrigation mixing ponds.
9. In response to complaints received by the Board from residents near the Facility regarding objectionable odors emanating from the Discharger’s operations, the Parties stipulated for the entry of Cease and Desist Order R5-2020-0038 (CDO). The Board adopted the stipulated CDO on 13 August 2020. The CDO specified certain Required Actions, including:
  - A.1. The Discharger shall immediately cease and desist its generation of objectionable odors as described in the findings, to achieve compliance with Discharge Specification B.2 of WDRs Order 92-191.
  - B.1. By 21 August 2020, the Discharger shall submit for Board staff review and concurrence a Pond Compliance Plan to be immediately implemented in the event that DO concentrations in any pond containing wastewater violate the limits in the WDRs, or upon detection of odors that violate Discharge Specification B.2 or Standard Provision A.11 in the WDRs Order. At a minimum, the plan shall:
    - a. Describe the quantity and dosing rates for all chemicals/additives that may be added to the wastewater system and/or the ponds to bring the discharge back into compliance in a timely manner.

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<sup>1</sup> According to the California Environmental Protection Agency’s (CalEPA) California Communities Environmental Health Screening Tool (<https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>), the unincorporated community of Terra Bella has a score of 80th-85th percentile (second-highest bracket among disadvantaged communities).

- b. Propose a method for ceasing wastewater discharge into wastewater ponds until wastewater in the ponds is in compliance with the WDRs. The method may include tanking and hauling of all generated waste to a permitted disposal facility or the use of temporary on-site storage in above ground tanks.
  - c. Propose a disposal plan for wastewater stored in ponds that is not in compliance with the limits specified in the WDRs.
10. On 21 August 2020 the Discharger submitted a Pond Compliance Plan (PCP).
  11. Subsequent to the adoption of the CDO, Board staff, as well as the San Joaquin Valley Air Pollution Control District (Air District), received additional complaints of objectionable odors that had migrated away from the Facility. Board staff personally observed multiple reported odors, confirming them as violations of the CDO. Moreover, the Prosecution Team determined that the PCP submitted by the Discharger failed to comply with the terms of the CDO. Additional details regarding these violations are contained in Attachment A to this Stipulated Order.
  12. In lieu of a contested hearing, the Parties have engaged in settlement negotiations and agree to the terms set forth herein.

### **Section III: Statutory and Regulatory Considerations**

13. Water Code section 13350, subdivision (a), provides, in relevant part, “A person who . . . violates a cease and desist order . . . shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).” Water Code section 13350, subdivision (e), provides, in relevant part, “The state board or a regional board may impose civil liability administratively . . . on a daily basis or on a per gallon basis, but not on both,” and “The civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs.” Pursuant to Water Code section 13350, this violation subjects the Discharger to administrative liabilities of up to \$5,000 per day of violation.
14. Pursuant to Water Code section 13327, in determining the amount of discretionary administrative civil liability, the Board is required to 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.
15. If this matter were brought to the Board in a contested hearing, it would be subject to the Water Quality Enforcement Policy adopted 4 April 2017 and made effective 5 October 2017 (2017 Enforcement Policy). The 2017 Enforcement Policy requires the calculation of an estimated economic benefit. The estimated economic benefit plus an additional 10% is the minimum amount for an administrative civil liability

under the 2017 Enforcement Policy. Additionally, Water Code section 13350, subdivision (e)(1)(B), provides that “When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.” In this instance, the estimated economic benefit plus 10% is \$14,286, which amounts to the estimated cost of compliance plus 10% as determined in Attachment A. As explained in Attachment A, this exceeds the statutory minimum, and therefore the economic benefit plus 10% is used in lieu of the statutory minimum.

#### **Section IV: Settlement**

16. The Parties have engaged in confidential settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Stipulated Order to the Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. To resolve the violations by consent and without further administrative proceedings, the Parties have agreed to the imposition of administrative civil liability in the amount of **\$221,440** against the Discharger.
17. The Prosecution Team has determined that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged in Attachment A and that this Stipulated Order is in the best interest of the public.

#### **Section V: Stipulations**

The Parties stipulate to the following:

18. **Report of Waste Discharge:** The Discharger has indicated it will submit a Report of Waste Discharge (RWD) that describes the wastewater generation, treatment, storage, and disposal practices at the Facility. The RWD must include an engineering report that describes all improvements that have been implemented and that are proposed at the Facility to reasonably ensure that the Discharger’s operations will not result in violations of the WDRs and/or the CDO. The RWD and engineering report must also describe how wastewater will be land applied at reasonable agronomic rates with respect to biochemical oxygen demand, salt, and nutrient loading, and how application of the wastewater complies with the Salt and Nitrate Control Programs. If the RWD is complete and contains the information necessary, including engineering data, calculations, and analyses, to adequately demonstrate that the Discharger will be able to operate in compliance with the requirements of the WDRs and CDO, then Board staff agrees to the following: 1) find that the RWD fulfills the requirements of sections B and C of the CDO; 2) issue a letter to the Discharger that provides the Discharger with assurances from the lead Prosecutor that it is the Prosecutor’s intent to not initiate an enforcement action based on wastewater generation, treatment, storage and disposal of the

facility as long as such activities occur in accordance with the RWD; and, 3) will notify the San Joaquin Valley Air District that Board staff find the RWD to be complete. The RWD shall be submitted to Board staff no later than **31 March 2021**.

19. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of \$221,440 in administrative civil liability (ACL Amount) by the Board to resolve the violations alleged in Attachment A to this Stipulated Order. The Discharger agrees to pay the ACL Amount as follows:
  - a. **\$133,204.73** shall be paid to the Waste Discharge Permit Fund. Payment shall be made no later than thirty (30) days after adoption of an order approving this Stipulated Order by the Board, or its delegee, by check payable to the Waste Discharge Permit Fund. The Discharger shall indicate on the check the number of this Stipulated Order (R5-2021-0516). The Discharger shall send the original signed check to the Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888. A copy of the check shall be sent to Daniel S. Kippen, Esq., State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812 and Clay Rodgers, Central Valley Water Board, 1685 E Street, Fresno, CA 93706.
  - b. **\$88,235.27** (SEP Amount) shall be treated as a suspended liability pending completion of a Supplemental Environmental Project (SEP) and such suspended liability shall be dismissed upon the SEP's completion, as determined pursuant to the terms of Paragraph 26.
20. **SEP Description:** The SEP is to purchase and pay for the installation of air scrubbers for all HVAC units located at Carl Smith Middle School and Terra Bella Elementary School. The Discharger will also purchase and provide the schools with one set of replacement light bulbs for the air scrubber units. Both schools are located within the community of Terra Bella. The complete SEP description, project milestones, budget, and reporting schedule are contained in Attachment B, incorporated herein by reference.
21. **Representations and Agreements Regarding the SEP:**
  - a. As a material condition for the Board's acceptance of this Stipulated Order, the Discharger represents that it will expend the SEP Amount to implement the SEP set forth in Attachment B. The Discharger understands that its promise to implement the SEP, in its entirety and in accordance with the implementation schedule, is a material condition of this settlement of liability between the Discharger and the Board.
  - b. The Discharger agrees to (1) expend the SEP Amount to implement the SEP as described in this Stipulated Order; (2) provide certified, written reports to the Board consistent with the terms of this Stipulated Order detailing SEP implementation; and (3) provide as part of the final report due by the deadline

- set forth in Attachment B (SEP Completion Date), a certification by a responsible official, signed under penalty of perjury, that the Discharger followed all applicable environmental laws and regulations in implementing the SEP, including the California Environmental Quality Act (CEQA), Porter-Cologne Act, and federal Clean Water Act. The Discharger further agrees that the Board has the right to require a third-party audit, to be paid by the Discharger, of the funds expended to implement the SEP, and that the Discharger bears ultimate responsibility for meeting all deadlines and requirements specified in Attachment B.
22. **Publicity Associated with the SEP:** Whenever the Discharger or its agents or subcontractors publicize any aspect of the SEP, they shall state in a **prominent manner** that such work was undertaken as part of a settlement of a Board enforcement action against the Discharger.
23. **Progress Reports and Inspection Authority:** The Discharger shall provide reports describing progress implementing the SEP to the Board as described in Attachment B. The Board understands that since the SEP is located at a public Middle School and Elementary School that the Discharger has no ability to grant or withhold consent if Board staff, or third party oversight staff, request permission to inspect the SEP at any time without notice. The Discharger agrees to not oppose any such requests.
24. **Certification of SEP Completion:** On or before the SEP Completion Date, the Discharger shall submit a final report as described in Attachment B with a certified statement that documents the Discharger's expenditures during the SEP completion period, and documents that the Discharger completed the SEP in accordance with the terms of this Stipulated Order. The expenditures may include external payments to outside vendors, but may not include any normal, routine work undertaken by the Discharger's staff. In making such certification, the signatories may rely on normal organizational project tracking systems that capture employee time expenditures and external payments to outside vendors, such as environmental and information technology contractors or consultants. Documentation of SEP completion may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Board to evaluate SEP completion and the costs incurred. The Discharger shall provide Regional Board staff with any additional information reasonably necessary to verify the Discharger's SEP expenditures and completion.
25. **Time Extension for SEP:** The Executive Officer of the Board may extend the SEP deadlines contained in this Stipulated Order if the Discharger demonstrates delays from unforeseeable circumstances, provided that the Discharger continues to undertake all appropriate measures to meet the deadlines. Any request by a Discharger to extend a SEP-related deadline shall be in writing and made at least 30 days prior to the deadline. Any approval of an extension by the Executive Officer or its delegate must be in writing.

26. **Board Acceptance of Completed SEP:** Upon the Discharger's satisfaction of its obligations under this Stipulated Order, including SEP completion and any audits, the Executive Officer will issue a "Satisfaction of Order." The Satisfaction of Order shall terminate any further obligations of the Discharger under this Stipulated Order and result in the dismissal of the SEP Amount as a suspended liability amount.
27. **Failure to Expend All Suspended Funds on the Approved SEP:** If the Discharger is unable to demonstrate to the reasonable satisfaction of the Executive Officer that the entire SEP Amount was spent on the completed SEP by the SEP Completion Date, the Discharger shall pay the difference between the SEP Amount and the amount the Discharger can demonstrate was actually spent on the SEP (Difference). The Executive Officer shall issue a "Notice of Violation" that will require the Discharger to pay the Difference to the "Waste Discharge Permit Fund" within 30 days of the Notice of Violation's issuance date. The Discharger shall submit payment consistent with the payment method described in paragraph 19. Payment of the Difference shall satisfy the Discharger's obligations to implement the SEP.
28. **Failure to Complete the SEP:** If the SEP is not fully implemented by the SEP Completion Date, or if there has been a material failure to satisfy a SEP milestone, the Executive Officer shall issue a Notice of Violation. The amount of the SEP Amount owed shall be determined via a Motion for Payment of Suspended Liability before the Board or its delegate. The Discharger shall be liable to pay the entire SEP Amount, although, if proven by the Discharger, the Discharger shall be entitled to a reduction equal to the amount spent for completed SEP milestones. Within 30 days of the Board's or its delegate's determination of the suspended liability amount assessed for the Discharger to pay, the Discharger shall submit payment consistent with the payment method described in paragraph 19. Payment of the assessed amount shall satisfy the Discharger's obligations to implement the SEP.
29. **Board Not Liable:** Neither Board members, nor Board staff, attorneys, or representatives, shall be liable for any injury or damage to persons or property resulting from negligent or intentional acts or omissions by the Discharger, its directors, officers, employees, agents, representatives, or contractors, in carrying out activities pursuant to this Stipulated Order, nor shall the Board, its staff, attorneys, or representatives, be held as parties to or guarantors of any contract entered into by the Dischargers, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.
30. **Compliance with Applicable Laws and Regulatory Changes:** The Discharger understands that payment of the ACL Amount in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that additional violations of the

type alleged may subject it to further enforcement, including imposition of additional administrative or civil liability. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

**31. Party Contacts for Communications Related to Stipulated Order:**

For the Central Valley Water Board:

Clay Rodgers  
Central Valley Water Board  
1685 E Street  
Fresno, CA 93706  
Clay.Rodgers@waterboards.ca.gov  
(559) 445-5116

Daniel S. Kippen, Esq.  
Office of Enforcement, State Water Board  
P.O. Box 100  
Sacramento, California 95812  
Dan.Kippen@waterboards.ca.gov  
(916) 341-5272

For the Discharger:

Jeffrey Gibbons, Plant Manager  
Setton Pistachio of Terra Bella, Inc.  
9370 Road 234  
Terra Bella, California 93270  
jgibbons@settonfarms.com  
(559) 535-6050

**32. Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear its respective attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

**33. Matters Addressed by this Stipulated Order:** Upon adoption by the Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged in Attachment A to this Stipulated Order or which could have been asserted based on the specific facts alleged in Attachment A as of the effective date of this Settlement Agreement and Stipulated Order ("Covered Matters"). This stipulation resolves only the identified Covered Matters, and the Prosecution Team reserves the right to pursue enforcement of any violations not part of the Covered Matters. The provisions of this paragraph are expressly conditioned on the Discharger's full payment of the ACL Amount by the deadline specified in Paragraph 19 and completion of the SEP described herein or full payment of the associated suspended liability.



34. **Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Board, or its delegee, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and withdraw it from consideration by the Board or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
35. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the adoption of the Order by the Board or its delegee, and public review of this Order, is lawful and adequate. The Parties understand that the Board, or its delegee, have the authority to require a public hearing on this Order. In the event procedural objections are raised or the Board requires a public hearing prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure and/or this Order as necessary or advisable under the circumstances.
36. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Board reserves all rights to take additional enforcement actions, including without limitation the issuance of ACL complaints or orders for violations other than those addressed by this Stipulated Order.
37. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Prosecution Team or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
38. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
39. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Stipulated Order. All modifications must be made in writing and approved in writing by the Board or its delegee.

40. **If Stipulated Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board (State Water Board) or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Board to determine whether to assess an ACL for the underlying alleged violations, or may continue to pursue settlement. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing subject to the provisions of California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also agree to waive the following objections related to their efforts to settle this matter:
- a. Objections related to prejudice or bias of any Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; provided however, that objections intended to preserve the Board's due process rights are not waived by this section; or
  - b. Laches or delay or other equitable defenses based on the time period that the Stipulated Order or decision by settlement may be subject to administrative or judicial review.
41. **No Admission of Liability:** In settling this matter, the Discharger does not admit to any of the allegations in Attachment A, or that it has been or is in violation of the Water Code, any order adopted by the Board, or any other federal, state, or local law or ordinance.
42. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Board.
43. **Waiver of Right to Petition or Appeal:** The Discharger hereby waives the right to petition the Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives the rights, if any, to appeal the same to any court.
44. **Covenant Not to Sue:** Upon the effective date of this Stipulated Order, the Discharger shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against any State Agency or the State of California, its officers, agents, directors, employees, attorneys, and

representatives, for any and all claims or cause of action, which arise out of or relating to any Covered Matter.

45. **Authority to Enter Stipulated Order:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the Party on whose behalf he or she executes the Stipulated Order.
46. **Necessity for Written Approvals:** All approvals and decisions of the Board under the terms of this Stipulated Order shall be communicated to Discharger in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Stipulated Order.
47. **Access to SEP Documents:** The Discharger agrees to provide any documents associated with implementation of the SEP within one business day of a request for such documents.
48. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
49. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
50. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Board, or its delegee, adopts the Stipulated Order.
51. **Counterpart Signatures; Facsimile, and Electronic Signature:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

**IT IS SO STIPULATED.**

California Regional Water Quality Control Board  
Central Valley Region Prosecution Team

By: Clay Rodgers  
Clay Rodgers  
Assistant Executive Officer

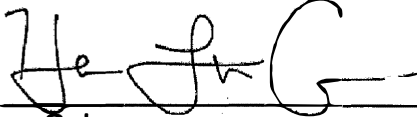


Date: 3/30/21

Settlement & ACL Order R5-2021-0516  
Setton Pistachio of Terra Bella, Inc.

**IT IS SO STIPULATED.**

Setton Pistachio of Terra Bella, Inc.


By:   
\_\_\_\_\_  
Harris Lee Cohen  
General Manager

Date: 3/30/2021

**HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:**

1. This Order incorporates the foregoing Sections I through V by this reference as if set forth fully herein.
2. In adopting this Order, the Central Valley Regional Water Quality Control Board (Board), or its delegee, has considered, where applicable, each of the factors prescribed in Water Code sections 13327, 13351, and 13385(e). The consideration of these factors is based upon information and comments obtained by Board staff in investigating the allegations alleged herein or otherwise provided to the Board or its delegee by the Parties or by members of the public.
3. This is an action to enforce the laws and regulations administered by the Board. The method of compliance with this enforcement action consists entirely of payment of amounts for administrative civil liability and successful completion of the SEP. As such, the Board finds that issuance of this Stipulated Order is not subject to the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project" (Public Resources Code 21065, 21080(a); 15060(c)(2),(3); 150378(a), Title 14, of the California Code of Regulations). In addition, issuance of this Stipulated Order is exempt from the provisions of CEQA, in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.
4. The Executive Officer of the Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under the Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Central Valley Region, that the Order is adopted.

  
\_\_\_\_\_  
Patrick Pulupa  
Executive Officer  
Central Valley Regional Water Quality Control  
Board

Date: 5/25/2021

**Attachment A:** Penalty Methodology for Administrative Civil Liability

**Attachment B:** SEP Project Description

**Attachment C:** Economic Benefit Summary

**Attachment A – ACL Complaint R5-2021-0516  
Penalty Methodology**

**Setton Pistachio of Terra Bella, Inc., Terra Bella Pistachio Facility, Tulare County**

The State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy), effective 5 October 2017 ([available for download](http://www.waterboards.ca.gov/water_issues/programs/enforcement/water_quality_enforcement.html) at [http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/water\\_quality\\_enforcement.html](http://www.waterboards.ca.gov/water_issues/programs/enforcement/water_quality_enforcement.html) by clicking on “2017 Water Quality Enforcement Policy”), establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors required by Water Code sections 13327 and 13385, subdivision (e). Each factor in the Enforcement Policy and its corresponding category, adjustment, and amount for each violation is presented below.

**ALLEGED VIOLATIONS**

On 14 October 2020, Central Valley Regional Water Quality Control Board (Central Valley Water Board) staff issued a Notice of Violation (NOV) to Setton Pistachio of Terra Bella, Inc. (Discharger) for violation of Sections A.1 and B.1 of Cease and Desist Order R5-2020-0038 (CDO) at its Terra Bella Pistachio Facility (Facility).

On 4 December 2020, Central Valley Water Board staff issued another NOV to the Discharger for additional violations of Section A.1 of the CDO. As set forth in Administrative Civil Liability Complaint R5-2021-0516 (Complaint), violations of the CDO subject the Discharger to administrative civil liability as discussed below.

**Violation 1: Failure to comply with Section A.1 of the CDO**

Waste Discharge Requirements Order No. 92-191 (WDRs Order 92-191), which applies to the Facility, states, at Discharge Specification B.2, “Objectionable odors originating at this facility shall not be perceivable beyond the limits of property owned or controlled by the Discharger.” Section A.1 of the CDO states “The Discharger shall immediately cease and desist its generation of objectionable odors as described in the findings, to achieve compliance with Discharge Specification B.2 of WDRs Order 92-191.”

Since the CDO was adopted in August 2020, Central Valley Water Board staff and San Joaquin Valley Air Pollution Control District (Air District) staff have received complaints of objectionable odors from Terra Bella area residents near the Facility, asserting that those odors were originating from the Facility and are perceivable off of the Discharger’s property. Central Valley Water Board staff and Air District staff have investigated complaints, and confirmed objectionable odors originating from the Discharger’s Facility, perceivable off of the Discharger’s property, on the occasions specified below, in violation of Section A.1 of the CDO.

The number of days calculated for this violation is based on the number of days in which either a Central Valley Water Board or Air District inspector documented that it had detected objectionable odors originating from the Discharger’s Facility, perceivable off of the Discharger’s property, since the CDO was adopted. Between 25 September and 17 November 2020, inspectors detected such objectionable odors from the Facility on 20 separate days. The 20 days of Violation 1 are documented in Table 1 below.

Water Code section 13350, subdivision (a), provides, in relevant part, “A person who . . . violates a cease and desist order . . . shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).” Water Code section 13350, subdivision (e), provides, in relevant part, “The state board or a regional board may impose civil liability administratively . . . on a daily basis or on a per gallon basis, but not on both,” and “The civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs.” Pursuant to Water Code section 13350, this violation subjects the Discharger to administrative liabilities of up to \$5,000 per day of violation.

**Table 1: Days of Violation for Violation 1**

	<b>Date Objectionable Odors Were Confirmed</b>	<b>Agency Who Confirmed Objectionable Odors</b>
<b>1</b>	25 September 2020	Central Valley Water Board, Air District
<b>2</b>	28 September 2020	Air District
<b>3</b>	29 September 2020	Air District
<b>4</b>	2 October 2020	Air District
<b>5</b>	6 October 2020	Air District
<b>6</b>	8 October 2020	Central Valley Water Board
<b>7</b>	13 October 2020	Central Valley Water Board
<b>8</b>	15 October 2020	Air District
<b>9</b>	21 October 2020	Central Valley Water Board, Air District
<b>10</b>	22 October 2020	Central Valley Water Board
<b>11</b>	23 October 2020	Central Valley Water Board, Air District
<b>12</b>	24 October 2020	Central Valley Water Board, Air District
<b>13</b>	25 October 2020	Air District
<b>14</b>	27 October 2020	Air District
<b>15</b>	28 October 2020	Central Valley Water Board
<b>16</b>	3 November 2020	Air District
<b>17</b>	4 November 2020	Central Valley Water Board, Air District
<b>18</b>	5 November 2020	Air District
<b>19</b>	6 November 2020	Air District
<b>20</b>	17 November 2020	Air District

Between September and December 2020, Central Valley Water Board staff and Air District staff received objectionable odor complaints from Terra Bella area residents near the Facility on dates other than those shown in Table 1. Inspectors were unable to investigate and/or confirm objectionable odors on those dates, so those dates have not been included as additional days of violation for Violation 1.

## **Violation 2: Failure to comply with Section B.1 of the CDO**

In accordance with Section B.1 of the CDO, the Discharger was required to submit a Pond Compliance Plan (PCP) by 21 August 2020. The Discharger submitted a PCP on 21 August 2020. Central Valley Water Board staff determined that the submitted PCP did not satisfy all of the requirements of the CDO. Central Valley Water Board staff described the issues with the PCP in a letter and technical memorandum transmitted to the Discharger on 17 September 2020. The Discharger submitted a revised PCP on 3 November 2020. The Discharger contends that the PCP complied with all material aspects of the CDO.

The period for this violation is assessed from the date in which Central Valley Water Board staff notified the Discharger that its 21 August 2020 PCP did not satisfy the requirements of the CDO (17 September 2020) to the date in which the Discharger submitted a revised PCP (3 November 2020). This results in a total of 46 days of violation.

Water Code section 13350, subdivision (a), provides, in relevant part, "A person who . . . violates a cease and desist order . . . shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e)." Water Code section 13350, subdivision (e), provides, in relevant part, "The state board or a regional board may impose civil liability administratively . . . on a daily basis or on a per gallon basis, but not on both," and "The civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs." Pursuant to Water Code section 13350, this violation subjects the Discharger to administrative liabilities of up to \$5,000 per day of violation.

### **ADMINISTRATIVE CIVIL LIABILITY CALCULATION STEPS**

#### **STEPS 1 AND 2 – ACTUAL OR POTENTIAL FOR HARM AND ASSESSMENTS FOR DISCHARGE VIOLATIONS**

These steps do not apply because the violations are non-discharge violations.

#### **STEP 3 – PER-DAY ASSESSMENTS FOR NON-DISCHARGE VIOLATIONS**

For non-discharge violations, the Enforcement Policy specifies that an initial liability is to be determined from the maximum per-day liability multiplied by the number of days in violation and a per-day factor using a matrix that ranges from 0.1 to 1 depending on scoring for Potential for Harm and Deviation from Requirement. The Potential for Harm reflects the characteristics and/or the circumstances of the violation and its potential to impair the Water Boards' ability to perform their statutory and regulatory functions, its threat to beneficial uses, and its potential for harm. The Deviation from Requirement reflects the extent to which a violation deviates from the specific requirement violated.



### **Potential for Harm**

The evaluation of Potential for Harm considers whether the characteristics and/or circumstances of the violation present a minor, moderate, or major impairment of the Water Boards' ability to perform their statutory and regulatory functions, threat to beneficial uses, and/or potential for harm.

**Violation 1:** The Potential for Harm is **moderate**.

This is based on consideration of the following facts:

The Enforcement Policy requires that the Potential for Harm for each violation be scored as "minor," "moderate," or "major." The Enforcement Policy specifies that a "moderate" Potential for Harm applies when the characteristics of the violations have substantially impaired the Water Boards' ability to perform their statutory and regulatory functions, the violations present a substantial threat to beneficial uses, and/or the circumstances of the violations indicate a substantial potential for harm. The Enforcement Policy specifies that most non-discharge violations should be considered to present a moderate potential for harm.

Applying those considerations to this case, one important foundation for the Central Valley Water Board to be able to perform its statutory and regulatory functions is to ensure that the regulated community complies with directives, such as the CDO, issued by the Central Valley Water Board. Orders like the CDO are the foundation of the Central Valley Water Board's statutory and regulatory functions, and a regulated entity's lack of full compliance with such orders impairs the Central Valley Water Board's ability to perform its statutory and regulatory functions. The Discharger asserts that it has made repeated efforts and substantial infrastructure expenditures, which it has identified in Exhibit "B." However, the Central Valley Water Board finds that the Discharger did not fully comply with a key provision of the CDO, which required the Discharger to cease generating objectionable odors that are detectable offsite.

Given these issues, and taking into account that the Discharger stipulated to the CDO, the Prosecution Team contends that the Central Valley Water Board's statutory and regulatory functions have been substantially impaired.

**Violation 2:** The Potential for Harm is **moderate**.

This is based on consideration of the following facts:

The Enforcement Policy requires that the Potential for Harm for each violation be scored as "minor," "moderate," or "major." The Enforcement Policy specifies that a "moderate" Potential for Harm applies when the characteristics of the violations have substantially impaired the Water Boards' ability to perform their statutory and regulatory functions, the violations present a substantial threat to beneficial uses, and/or the circumstances of the violations indicate a substantial potential for harm. The Enforcement Policy

specifies that most non-discharge violations should be considered to present a moderate potential for harm.

As indicated previously, one of the important foundations for the Central Valley Water Board to be able to perform its statutory and regulatory functions is to ensure that the regulated community complies with directives, such as the CDO, issued by the Central Valley Water Board. In this case, the Discharger did not produce a PCP that met the requirements specified in the CDO by the 21 August 2020 deadline. The deficiencies of the PCP are documented in the letter and technical memorandum transmitted to the Discharger on 17 September 2020. Given these issues, the Prosecution Team contends that the Central Valley Water Board's ability to perform its statutory or regulatory functions was substantially impaired.

### **Deviation from Requirement**

The evaluation of the Deviation from Requirement considers whether the characteristics of the violation present a minor, moderate, or major impact to the effectiveness of the requirement.

**Violation 1:** The Deviation from Requirement is **major**.

This is based on consideration of the following facts:

The Enforcement Policy specifies that a "major" Deviation from Requirement is one where the requirement has been rendered ineffective (e.g., the requirement is rendered ineffective in its essential functions).

Section A.1 of the CDO required the Discharger to immediately cease and desist its generation of objectionable odors to achieve compliance with WDRs Order 92-191. While the Discharger made efforts to control odors during the 2020 harvest season, including implementing facility upgrades, the Discharger did not consistently comply with this directive. This resulted in Central Valley Water Board staff and Air District staff receiving, investigating, and confirming numerous objectionable odor complaints submitted by people residing near the Facility during the 2020 pistachio harvesting season.

Given the Discharger's lack of full compliance with Section A.1 of the CDO, which is a critical component of the CDO, the requirement has been rendered ineffective.

**Violation 2:** The Deviation from Requirement is **moderate**.

This is based on consideration of the following facts:

The Enforcement Policy specifies that a "moderate" Deviation from Requirement is one where the intended effectiveness of the requirement was partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement was only partially achieved).

The Enforcement Policy also states, “[I]f a facility does not have a required response plan, or has not conducted required monitoring, submitted a required monitoring report, characterization report, or corrective action plan, the deviation would be major. If a facility has prepared a required plan, or submitted the required monitoring report, but significant elements are omitted or materially deficient, the deviation would be moderate. If a facility has a required plan or submitted the required monitoring report with only minor elements missing and/or minor deficiencies, the deviation would be minor.”

The 21 August 2020 PCP submitted by the Discharger was technically deficient and did not adequately satisfy the requirements of the CDO. The issues identified by Central Valley Water Board staff are detailed in the letter and technical memorandum transmitted to the Discharger on 17 September 2020.

Although the PCP was technically deficient, it was prepared and submitted by the Discharger by the deadline specified in the CDO. The Discharger also submitted a revised PCP on 3 November 2020, which represents additional resources expended to address the Central Valley Water Board’s issues detailed in the letter and technical memorandum transmitted to the Discharger on 17 September 2020.

Based on the above facts and the Enforcement Policy, the Discharger’s Deviation from Requirement for Violation 2 is moderate.

**Per-Day Factor**

The per-day factor is a multiplier selected from the matrix in Table 3 of the Enforcement Policy based on the Potential for Harm and Deviation from Requirement score for each violation. Three options are presented in each cell of Table 3.

The per-day factor is 0.7 for Violation 1 and 0.4 for Violation 2. The higher per-day factors are appropriate because of the circumstances of this case, which include impacts to a historically environmentally vulnerable community (CalEnviroscreen 3.0 scores the Facility and the surrounding area as being at least in the 80th-85th percentile, meaning it is disproportionately burdened by, and vulnerable to, multiple sources of pollution) and the repeated nature of the issues.

<b><u>Initial Liability Amount</u></b>
<b>Violation 1:</b> \$5,000/day x (0.7) x (20 days) = \$70,000
<b>Violation 2:</b> \$5,000/day x (0.4) x (46 days) = \$92,000

**STEP 4 – ADJUSTMENTS TO INITIAL LIABILITY**

The Enforcement Policy specifies that three additional factors must be considered for potential modification of the liability amount: the violator’s degree of culpability, the violator’s prior history of violations, and the violator’s voluntary efforts to clean up, or its cooperation with regulatory authorities after the violation.

### **Degree of Culpability**

The Enforcement Policy specifies that higher liabilities should result from intentional or negligent violations as opposed to accidental, non-negligent violations. It specifies use of a multiplier between 0.75 and 1.5, with a higher multiplier for intentional misconduct and gross negligence, and a lower multiplier for more simple negligence. A neutral assessment of 1.0 should be used when a discharger is determined to have acted as a reasonable and prudent person would have.

**Violation 1:** The culpability multiplier is 1.2.

This is based on consideration of the following facts:

The Discharger has been notified of its violations of the odor provisions in WDRs Order 92-191 on several occasions. Prior to adoption of the CDO, the Discharger was issued NOVs by Central Valley Water Board staff in June 2019 and January 2020 for such violations. In October and December 2020, the Discharger was issued additional NOVs for violation of the odor provisions in WDRs Order 92-191 and CDO.

In response to the violations, the Discharger has proposed and implemented corrective actions attempting to prevent/reduce its generation of objectionable odors at the Facility. To date, odors appear to have been reduced since 2019, but the Discharger's attempts at achieving consistent compliance have not been successful, and the Discharger has not yet demonstrated to Central Valley Water Board staff's satisfaction that it is capable of achieving such compliance. The Discharger indicates it will submit a Revised Report of Waste Discharge providing Central Valley Water Board staff with sufficient information to satisfactorily demonstrate that, with additional improvements and Land Application Area expansions, there will be a reasonable probability of no further significant odors associated with wastewater disposal and treatment at the Facility. Such information will be evaluated by staff upon submittal.

Faced with a CDO, which relates to standards that have been in place for a significant number of years, Central Valley Water Board staff believe a reasonable member of the regulated public would have taken further action to prevent the violation from reoccurring. However, actions taken by the Discharger were not sufficient to prevent reoccurrence of odor violations.

Based on the above, a culpability multiplier of 1.2 is appropriate for Violation 1.

**Violation 2:** The culpability multiplier is 1.2.

This is based on consideration of the following facts:

The 21 August 2020 PCP submitted by the Discharger was timely, but was technically deficient and lacked the detail necessary to demonstrate that the proposed corrective actions described within the PCP would enable the Discharger to achieve consistent compliance with WDRs Order 92-191. Central Valley Water Board staff identified

deficiencies of the PCP as detailed in the letter and technical memorandum transmitted to the Discharger on 17 September 2020.

Although the Discharger made efforts to respond to odor complaints and implemented facility changes, and appears to have reduced the extent of objectionable odors compared to the prior year, Central Valley Water Board staff and Air District staff confirmed objectionable odors originating from the Discharger's Facility on several occasions during the 2020 pistachio harvesting season (after the PCP was submitted). This indicates that those corrective actions proposed in the PCP that were implemented were largely ineffective. The Discharger asserts that it has removed the wastewater from the pond (approximately one month post-harvest), and this has caused a decrease in odor complaints.

In response to Central Valley Water Board staff's letter and memorandum issued to the Discharger on 17 September 2020, which directed the Discharger to submit a revised PCP as soon as reasonably possible, the Discharger submitted a revised PCP on 3 November 2020.

Based on the above, a culpability multiplier of 1.2 is appropriate for Violation 2.

### **History of Violations**

The Enforcement Policy provides that "Where the discharger has no prior history of violations, this factor should be neutral, or 1.0. Where the discharger has prior violations within the last five years, the Water Boards should use a multiplier of 1.1. Where the discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1."

**Violation 1:** The history multiplier is 1.2 because the Discharger has similar past violations. Specifically, the CDO was necessary because of a history of complaints from nearby residents of objectionable odors coming from the Facility and impacting the residents at their homes. The CDO documents the history of similar violations that supports a multiplier of 1.2.

**Violation 2:** The history multiplier is 1.1 because the Discharger has prior violations within the last five years. Those prior violations are documented in the CDO.

### **Cleanup and Cooperation**

The Enforcement Policy provides for an adjustment to reflect the extent of voluntary efforts to cleanup and/or to cooperate with regulatory authorities in returning to compliance after the violation. The adjustment is a multiplier between 0.75 and 1.5, using the lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and higher multiplier where there is not.

**Violation 1:** The cleanup and cooperation multiplier is 1.0.

This is based on consideration of the following facts:

The Enforcement Policy states that, “A reasonable and prudent response to a discharge violation or timely response to a Water Board order should receive a neutral adjustment as it is assumed a reasonable amount of consideration is the warranted baseline.”

Although the Discharger has not been successful in correcting Violation 1, the Discharger has made multiple attempts at achieving compliance through a variety of corrective actions. The Discharger has also been cooperative and responsive to requests of Central Valley Water Board staff and has generally submitted required and/or requested documents in a timely manner.

A neutral cleanup and cooperation multiplier of 1.0 is appropriate for Violation 1.

**Violation 2:** The cleanup and cooperation multiplier is 1.0.

This is based on consideration of the following facts:

The Enforcement Policy states that, “A reasonable and prudent response to a discharge violation or timely response to a Water Board order should receive a neutral adjustment as it is assumed a reasonable amount of consideration is the warranted baseline.”

Although the PCP was deficient, the Discharger submitted the PCP by the deadline specified in the CDO. When notified by Central Valley Water Board staff that staff found the submitted PCP was deficient and that a revised PCP would need to be submitted, the Discharger cooperated by submitting a revised PCP on 3 November 2020.

A neutral cleanup and cooperation multiplier of 1.0 is appropriate for Violation 2.

## **STEP 5 – DETERMINATION OF TOTAL BASE LIABILITY**

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

**Violation 1:**

Total Base Liability = \$70,000 (Initial Liability) x 1.2 (Culpability Multiplier) x 1.2

The above calculation results in a Total Base Liability of \$100,800 for Violation 1.

**Total Base Liability = \$100,000**

**Violation 2:**

Total Base Liability = \$92,000 (Initial Liability) x 1.2 (Culpability Multiplier) x 1.1

**Total Base Liability = \$121,440**

**COMBINED TOTAL BASE LIABILITY**

The combined Total Base Liability Amount for Violations 1 and 2 is:  
 $\$100,000 + \$121,440 = \$221,440$ .

**STEP 6 – ABILITY TO PAY AND TO CONTINUE IN BUSINESS**

The Enforcement Policy provides that if there is sufficient financial information necessary to assess the violator’s ability to pay the Total Base Liability or to assess the effect of the Total Base Liability on the violator’s ability to continue in business, then the Total Base Liability may be adjusted to address the ability to pay or to continue in business.

Based on information available in the public record, the Discharger is one of the largest pistachio growers and processors in the United States and operates an ongoing consumer/industrial products business that generates revenues. Information available on Westlaw states that the Discharger had estimated sales of \$52 million (per “annual sales revision date” of 10 September 2020) and “SETTON PISTACIO [sic] CO INC” is the owner of Tulare County Assessor’s Parcel Number 320-130-005, which is part of the Facility. Westlaw states that this particular parcel had an assessed value of \$5,150,918 for the 2019 tax year. It appears that the Discharger has the ability to pay the Total Base Liability, and no adjustment in liability is warranted.

**STEP 7 – ECONOMIC BENEFIT**

Economic benefit is any savings or monetary gain derived from the act or omission that constitutes the violations. The Enforcement Policy states that the adjusted Total Base Liability should be at least 10 percent higher than the economic benefit so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations.

**Violation 1:** The Economic Benefit for Violation 1 is calculated to be \$12,988.

**Violation 2:** The Economic Benefit for Violation 2 is nominal, based on the fact that the Discharger paid for the preparation of two PCPs, which is estimated to have cost approximately the same as one complete PCP.

The total Economic Benefit, plus 10 percent, is \$14,286.

### **STEP 8 – OTHER FACTORS AS JUSTICE MAY REQUIRE**

If the Central Valley Water Board believes that the Total Base Liability amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for “other factors as justice may require,” but only if express findings are made to justify this adjustment.

In this case, no adjustment has been made to the Total Base Liability amount.

### **STEP 9 – MAXIMUM AND MINIMUM LIABILITY AMOUNTS**

#### **a) *Minimum Liability***

The Enforcement Policy states that the Total Base Liability should be at least 10 percent higher than the economic benefit, “so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations”. Using economic benefit plus 10 percent, the minimum administrative civil liability for the violations is **\$14,286**. Additionally, Water Code section 13350, subdivision (e)(1)(B), provides that “When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.” Using this statutory directive, the minimum administrative civil liability for the violations is \$100/day multiplied by 66 days, totaling \$6,600. To avoid undermining the purposes of the Enforcement Policy, the minimum liability is **\$14,286**.

#### **b) *Maximum Liability***

The maximum administrative civil liability is **\$100,000** for Violation 1 and **\$230,000** for Violation 2, resulting in a total maximum liability of **\$330,000**. This is based on the maximum allowed by Water Code section 13350: \$5,000 for each day in which the violation occurred. The total number of days of violation is 20 days for Violation 1 and 46 days for Violation 2. For Violations 1 and 2, the adjusted Total Base Liability is within the maximum liability allowed by statute; thus, it is unchanged.

### **STEP 10 – FINAL LIABILITY**

The final liability proposed is **\$221,440** for Violations 1 and 2, based on consideration of the penalty factors discussed above. It is within the minimum and maximum liabilities.



**ATTACHMENT B  
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2021-0516**

**Setton Pistachio of Terra Bella, Inc.: SEP Project Description**

**Project Title:** Air Filtration Project for Local Schools

Purchase and pay for installment of Air Scrubbers for all HVAC Units located at Carl Smith Middle School and Terra Bella Elementary School, both located in the community of Terra Bella, CA.

Cost of Project:

\$56,210 for Air Scrubbers (77 in total)

\$12,320 for labor/installation

\$14,245 for spare light bulbs for the Air Scrubbers

\$5,460.27 for taxes

Total Value of SEP: \$88,235.27

Time for Implementation

- 1) Order, purchase and install Air Scrubber Units – 3 months from Central Valley Water Board Approval
- 2) File Final Report of Completion – 60 days from completion of project

**Geographical Area of Interest:** Terra Bella, CA

**Name of Responsible Entity:** Setton Pistachio of Terra Bella, Inc. (Discharger)

**Estimated Cost of Project Completion:** \$88,235.27

**Contact Information:**

Fernando Rios, Regulatory & Compliance Coordinator  
Setton Pistachio of Terra Bella, Inc.  
9370 Road 234  
Terra Bella, CA 93270  
(559) 535-6050 ext. 155

**Project Description:**

Setton Pistachio of Terra Bella, Inc. (Setton) will pay for and install a total of 77 Air Scrubber Units for all HVAC Units located at Carl Smith Middle School and Terra Bella Elementary School, which are both located in the community of Terra Bella, California. Setton has communicated with the School Administrators and they are amendable to the project.

Setton estimates that it will take an estimated three months to order, purchase and install the equipment at the two school sites.

**ATTACHMENT B**  
**ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2021-0516**

**Water Body, Beneficial Use and/or Pollutant Addressed by this Project:**

Air quality in the San Joaquin Valley is poor and may disproportionately impact school age children. The SEP will benefit school age children in the community of Terra Bella by ensuring that air is properly treated and filtered to remove harmful particulates before entering classrooms and school buildings. This improved air quality is an important public health goal.

The requirement that a SEP must directly benefit water may be waived where violations of environmental laws affect media in addition to water and those violations are prosecuted primarily by another California EPA agency. The Settlement Agreement addresses violations of the Waste Discharge Requirements and Cease and Desist Order related solely to objectionable odors and there are no water quality impacts at issue. The objectionable odors were observed by both the Water Board and the San Joaquin Valley Air Pollution Control District, which is the primary agency dealing with air quality issues. Therefore a public health SEP addressing air quality is appropriate in this settlement agreement. Since the objectionable odors took place in Terra Bella there is also sufficient nexus to the location of the violations.

**Project Schedule, Budget, Deliverables:**

The Discharger will be responsible for completing and submitting the below deliverables:

1. Quarterly Report #1 / Order, Purchase and Install Air Scrubbers – The first quarterly report shall document the status of ordering, purchasing and installing the air scrubber units at the two schools. *Estimated Costs:* \$88,235.27.  
*Deliverable:* Written report documenting the items above  
*Due Date:* [3 months from ACL and SEP approval]
  
2. Final Report – Setton will submit a final report which includes a summary of project completion under the SEP; a summary of project expenditures; and certification that all applicable environmental laws and regulations were followed during the implementation of the project. The accounting must clearly show whether the final cost of the successfully completed SEP is less than, equal to, or more than the suspended liability of \$88,235.27. This serves as the final report required under the SEP and the following statement must be included above the signature line of the report: “I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.”  
*Deliverable:* Written report documenting the above items.  
*Due Date:* [60 days after Q#1 report]

<b>Economic Benefit Analysis Setton Pistachio of Terra Bella, Inc.</b>												
Compliance Action	Capital Investment				Annual Cost			Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance
	Amount	Basis	Date	Delayed?	Amount	Basis	Date					
Agitator tank mixer 1/2 HP Single phase (flange mount) Dry feeding tank and stand	\$ 2,296	PCI	1/20/2021	Y	\$ -			8/13/2020	2/24/2021	2/24/2021	7.60%	92
Wet well mixer	\$ 8,550	PCI	1/25/2021	Y	\$ -			8/13/2020	2/24/2021	2/24/2021	7.60%	343
Aluminum sulphate (iron free)	\$ 6,482	PCI	2/25/2020	Y	\$ -			8/13/2020	2/24/2021	2/24/2021	7.60%	265
Auger screw conveyor	\$ -			Y	\$ 29,671	PCI	1/25/2021	8/13/2020	2/24/2021	2/24/2021	7.60%	11,648
Power consumption for mixer and agitator (at 8.16¢/kWh)	\$ 7,456	PCI	1/20/2021	Y	\$ -			8/13/2020	2/24/2021	2/24/2021	7.60%	299
	\$ -			Y	\$ 870	GDP	1/20/2021	8/13/2020	2/24/2021	2/24/2021	7.60%	342
<p><b>Income Tax Schedule:</b> Corporation</p> <p><b>USEPA BEN Model Version:</b> Version 2020.0.0 (June 2020)</p> <p><b>Analyst:</b> Erin Mustain</p> <p><b>Date/Time of Analysis:</b> 1/25/21 16:37</p> <p><b>Assumptions:</b></p> <ol style="list-style-type: none"> <li>1 The discharger will implement dry mix feeding of alum (most common coagulant) with rapid mixing and low dosing rate of 100 mg/L.</li> <li>2 Storage space is available onsite to store the coagulant and equipment will be installed by the discharger.</li> <li>3 The existing wet well has baffles.</li> <li>4 All equipment will be purchased new.</li> <li>5 For cost basis, sales tax and shipping are considered part of the cost of an item and the least expensive method of shipping will be chosen.</li> <li>6 For conservative purposes, the non-compliance date is assumed to be the date of the Cease and Desist Order.</li> <li>7 All treatment expenses are considered avoided.</li> <li>8 The penalty payment date is assumed to be February 24, 2021.</li> <li>9 According to the California Secretary of State, Setton Pistachio of Terra Bella, Inc. operates as a California-based corporation.</li> <li>10 Because the discharger resubmitted an updated Pond Compliance Plan (PCP) in addition to the original and presumably paid for the development of two plans, there is no economic benefit for failure to submit a complete PCP.</li> </ol>											<b>Total Benefit: \$</b>	<b>12,988</b>