

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0620
IN THE MATTER OF
FRANK ALVIN ROGERS JR AND ROGERS TRUCKING
COLUSA COUNTY

This Complaint is issued to Frank Alvin Rogers Jr. and Rogers Trucking (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer.

The Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) finds the following:

1. The Discharger owns and operates a trucking company based in Colusa, California.
2. On 25 April 2007, Frank Rogers Trucking transported a load of aqua ammonia from the Calamco ammonia plant in Grimes to a farmer's field about one mile south of Tule Road in Colusa County. The driver unloaded 6,800 gallons of aqua ammonia into a holding tank on the edge of the field. The field is known as "Reclamation District Field No. 99BC" and the actual location of the tank was north 38 degrees 59.906' / west 121 degrees 57.034'.
3. As the driver was leaving, the truck struck a two-inch valve on the holding tank, causing the tank to start spilling. Aqua ammonia flowed across the dirt and into an irrigation ditch connected to the Reclamation District 108 canal system.
4. Approximately 4,800 gallons of aqua ammonia flowed into the ditch before the holding tank's valve was replaced. Aqua ammonia is a strong base (pH of 12+) and is toxic to fish and wildlife. The Calamco Material Safety Data Sheet for aqua ammonia (Attachment A to this Complaint) contains the warning "*Toxic to fish and aquatic life. Reportable quantity for spill is 1000 lbs. Do not contaminate any body of water by direct application, cleaning of equipment or disposal.*" It is estimated that over 8,000 pounds of aqua ammonia spilled. However, neither the driver nor the Discharger contacted the State Office of Emergency Services or any other agency to report the spill.
5. Two days after the spill, the California Department of Fish and Game (CDFG) was notified that there were dead fish in the Reclamation District 108 waterways. CDFG wardens investigated the spill, and found dead fish in over 15 miles of canals downstream of the point that the aqua ammonia entered the canal system (see Attachment B to this Complaint). While the wardens observed an estimated 3,500 dead fish on the surface of the water, it is likely that far more fish and other aquatic organisms had perished and were simply beyond view or already eaten by predators.

6. The CDFG wardens collected water samples from the irrigation canal as soon as they had knowledge of the spill, which was two days after occurrence. The table below shows the concentrations of ammonia and pH at locations upstream and downstream of the spill. It is expected that concentrations were higher immediately following the spill.

Location	Ammonia as N	Undissociated ammonia (NH ₃)	pH
Upstream of spill	0.205 mg/L	0.001 mg/L	7.0
At spill	1050.0 mg/l	427.0 mg/L	10.0
200 yards downstream	0.097 mg/L	0.0007 mg/L	7.0
1 mile downstream	0.879 mg/L	0.006 mg/L	7.0

7. According to an analysis of the data by a CDFG Environmental Scientist (found as Attachment C to this Complaint), the discharge was “acutely toxic to aquatic life and caused the death of the fish observed by [the warden]”. To maintain a healthy population of aquatic life, the CDFG has determined that undissociated ammonia concentrations should not exceed 0.02 mg/L. Two days after the spill, the concentration was 427 mg/L, over 21,000 times higher than the limit. In addition, the spill also caused the pH of the water to increase by 1,000 times over background. Elevated pH causes a number of adverse effects to aquatic life, including respiratory dysfunction, chemical burns, loss of equilibrium, and untimely death. To protect aquatic life, the Central Valley Water Board’s Basin Plan states that the pH of surface waters shall be maintained between 6.5 and 8.5 pH units
8. Two days after the spill, Reclamation District 108 employees noticed dead fish and turned off the pumps at the District’s Rough and Ready pumping plant. This structure pumps water from the canal system into the Sacramento River. To prevent flooding in the low-lying lands, the District began recycling drainage water into the irrigation delivery canals “through all means possible.” District staff collected water samples on 28 April 2007, and after approval, began slowly pumping water into the Sacramento River.
9. A proper response for this spill would have included removing contaminated soil and appropriately disposing of it, to ensure that no residual ammonia entered the waterway at a later time. On 30 April 2007, the CDFG wardens visited the spill location and noted that “it appeared as though someone had soaked the spill area with water in order to flush any residual product from the area.” This is not an appropriate remedial measure, and may have caused additional ammonia to enter the irrigation canal, adversely affecting aquatic life.

Regulatory Considerations

10. As described above, the Discharger discharged aqua ammonia to irrigation canals tributary to the Sacramento River, which is a water of the United States.

11. The *Water Quality Control Plan Central Valley Region—Sacramento River and San Joaquin River Basins, Fourth Edition* (hereafter Basin Plan), designates beneficial uses, establishes water quality objectives, and contains implementation plans and policies for all waters of the Basin.
12. The designated beneficial uses of the Sacramento River, as specified in the Basin Plan, are municipal and domestic supply; agricultural supply; water contact recreation; non-contact water recreation; warm and cold freshwater habitat; migration of aquatic organisms; spawning reproduction and/or early development; wildlife habitat, and navigation.
13. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and CWC section 13376 prohibits discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.
14. CWC section 13376 states, in part: *“Any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States ... shall file a report of the discharge in compliance with the procedures set forth in Section 13260...”* and *“The discharge of pollutants...except as authorized by waste discharge requirements [NPDES permit]...is prohibited.”*
15. By failing to file a report of waste discharge as set forth in CWC section 13260 and failing to obtain an NPDES permit prior to the discharges described in the above Findings, the Discharger violated CWC section 13376 and Section 301 of the Clean Water Act.
16. CWC section 13385(a) states, in part:
“(a) Any person who violates any of the following shall be liable civilly in accordance with subdivisions (b), (c), (d), (e), and (f):
 - (1) Section 13375 or 13376....*
 - (5) Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended.”*
17. CWC section 13385(c) states, in part:
“(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both the following:
 - (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.*
 - (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.”*
18. CWC section 13271(a) states, in part: *“... any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be,*

discharged in or on any waters of the state, shall, as soon as (A) that person has knowledge of the discharge, (B) notification is possible, and (C) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the Office of Emergency Services..." The Discharger violated CWC 13271(a) by failing to report the spill.

19. Pursuant to CWC section 13385(c), the maximum administrative civil liability which can be imposed by the Central Valley Water Board is \$48,000. This amount was calculated as follows:
 - CWC 13385 allows a liability of \$10,000 per day of discharge. Aqua ammonia spilled into the irrigation canal for one known day, on 25 April 2007.
 - CWC 13385 allows a liability of \$10 per gallon discharged, minus the first 1,000 gallons. It is estimated that 4,800 gallons were discharged, so the maximum liability is \$10 x 3,800, equaling \$38,000.
20. CWC section 13385(e) states: *"In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, 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 its ability to continue its 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 that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation."*
21. Pursuant to CWC section 13385(e), administrative civil liability at minimum must be equivalent to the economic benefit accrued by the Discharger for its actions resulting in this spill and fish kill. The Discharger received an economic benefit by not training its truck drivers about the steps to take in the event of a spill, and by not furnishing its trucks with spill containment kits (shovel, absorbent material, etc.). The Discharger also received an economic benefit by not appropriately removing the contaminated soil or taking actions to prevent the spread of the ammonia once it entered the irrigation canal. Central Valley Water Board staff is unable to precisely calculate the economic benefit, but it is estimated to be below the assessed penalty.
22. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

FRANK ALVIN ROGERS JR. AND ROGERS TRUCKING IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board charges the Discharger with an administrative civil liability in the amount of **forty eight thousand dollars**

(\$48,000). The amount of the proposed liability is based upon a review of the factors cited in California Water Code section 13385 and the State Water Resources Control Board's Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.

2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **5/6 February 2009**, unless the Discharger does either of the following by **17 December 2008**:
 - a) Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **forty eight thousand dollars (\$48,000)**; or
 - b) Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board along with a letter describing the issues to be discussed.
3. If a hearing is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

JACK E. DEL CONTE, Assistant Executive Officer

17 November 2008

Attachments:

A: Calamco MSDS for Ammonium Hydroxide (aqua ammonia)

B: Department of Fish and Game Arrest/Investigation Report

C: Department of Fish and Game Memorandum: Supplemental Report for the Tule Road Fish Kill, Colusa County, CA

WSW: 14Nov08

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Frank Alvin Rogers Jr and Frank Rogers Trucking (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0620 (hereinafter the "Complaint");
2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint; and
4. **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
 - a. I certify that the Discharger will remit payment for the proposed civil liability in the amount of **forty eight thousand dollars (\$48,000)** by check, which will contain a reference to "ACL Complaint R5 2008-0620" and will be made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **17 December 2008** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **5/6 February 2009** Central Valley Water Board meeting.
 - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Central Valley Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

5. **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)