

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2014-0155

MANDATORY PENALTY
IN THE MATTER OF

CALIFORNIA SPROUTS, LLC
SACRAMENTO COUNTY

This Order is issued to California Sprouts, LLC (hereafter Discharger) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL). This Order is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2008-0082-027 (NPDES CAG995002).

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

1. On 25 January 2012, the Discharger applied for coverage under the *Waste Discharge Requirements for Limited Threat Discharges of Treated/Untreated Groundwater from Cleanup Sites, Wastewater from Superchlorination Projects, and Other Limited Threat Wastewaters to Surface Water* (Limited Threat General Order) R5-2008-0082, and on 3 May 2012, the Executive Officer issued Notice of Applicability (NOA) R5-2008-0082-027 for coverage under the Limited Threat General Order.
2. On 6 June 2014, the Board issued Order R5-2014-0080 which amended the Limited Threat General Order. The amended Limited Threat General Order was assigned WDRs Order number R5-2013-0073-01. The Discharger automatically retained enrollment under Order R5-2013-0073-01.
3. On 8 September 2014, the Assistant Executive Officer issued an ACL Complaint for late report violations occurring during the period of 7 June 2012 through 31 March 2014. The Discharger requested that the ACL to proceed to an adjudicatory hearing before the Central Valley Water Board.
4. This Order addresses administrative civil liability for late report violations that occurred between 7 June 2012 and 31 March 2014. These violations are specifically identified as subject to mandatory minimum penalties in Attachment A to this Order, which is attached hereto and incorporated herein by reference.
5. The Limited Threat General Order requires that Dischargers submit quarterly monitoring reports which are designed to show whether or not the Discharger complied with the effluent limits in the Order. This Order assesses penalties for the failure to submit monitoring reports from Third Quarter 2012 through First Quarter 2014. The Monitoring and Reporting section of the 3 May 2012 Notice of Applicability states, in part:

Monitoring in accordance with the Limited Threat General Order shall begin on 7 June 2012. Monitoring reports shall be submitted to the Central Valley Water Board on a quarterly basis,

and shall begin with the Third Quarter 2012 self-monitoring report (due by 1 November 2012), which will include monitoring required as of the effective date of this NOA. Quarterly self-monitoring reports must be submitted until your coverage is formally terminated...even if there is no discharge...during the reporting quarter.

The Enforcement section of the Notice of Applicability states:

Failure to comply with the Limited Threat General Order may result in enforcement actions, which could include civil liability. Effluent limitation violations are subject to a Mandatory Minimum Penalty (MMP) of \$3,000 per violation. In addition, late monitoring reports may be subject to MMPs. When discharges do not occur during a quarterly report monitoring period, the Discharger must still submit a quarterly monitoring report indicating that no discharge occurred to avoid being subject to enforcement actions.

6. As described below, the Water Code requires assessment of MMPs for each 30 day period in which a monitoring report has not been received, unless the Discharger submits a statement certifying that there were no discharges to waters of the United States during the monitoring period. On 4 June 2014, Board staff notified the Discharger of the missing reports via email. On 9 June 2014, the Discharger submitted the monitoring reports for the Third Quarter 2012 through First Quarter 2014. The late reports document that there were discharges during each monitoring period.
7. On 25 July 2014, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations, proposing to assess MMPs for the late reports in Attachment A. On 8 August 2014, the Discharger agreed with the violations, but asked that Water Code section 13385.1(b) be applied towards violations that occurred prior to 1 January 2014.
8. Water Code section 13385(h) requires assessment of mandatory penalties and states, in part, the following:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

9. Water Code section 13385.1 states, in part:

Water Code section 13385.1(a)(1) states:

For the purposes of subdivision (h) of Section 13385, a "serious violation" also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitted the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations. This paragraph applies only to violations that occur on or after January 1, 2004.

Water Code section 13385.1(a)(2)(A) states:

Notwithstanding paragraph (1), a failure to file a discharge monitoring report is not a serious violation for purposes of subdivision (h) of Section 13385 at any time prior to the date a discharge monitoring report is required to be filed or within 30 days after receiving written notice from the state board or a regional board of the need to file a discharge monitoring report, if the discharger submits a written statement to the state board or the regional board that includes both of the following:

- (i) A statement that there were no discharges to waters of the United States reportable under the applicable waste discharge requirements during the relevant monitoring period.
- (ii) The reason or reasons the required report was not submitted to the regional board by the deadline for filing that report.

10. WDRs Order R5-2008-0082 Self-Monitoring Reports (SMRs), Attachment E-X.B.3., states, in part:

3. Monitoring periods and reporting for all required monitoring shall be completed according to the following schedule:

Table E-8 Monitoring Periods and Reporting Schedule

Sampling Frequency	Monitoring Period Begins On...	Monitoring Period	SMR Due Date
1/Discharge Event	Notice of Applicability effective date	All	1 May 1 August 1 November 1 February

11. Pursuant to Water Code section 13385.1(b), notwithstanding paragraph (1) of subdivision (a), a mandatory minimum penalty shall continue to apply and shall be assessed pursuant to subdivision (h) of Section 13385, but only for each required report that is not timely filed, and shall not be separately assessed for each 30-day period following the deadline for submitting the report, if both of the following conditions are met: (A) The discharger did not on any occasion previously receive, from the state board or a regional board, a complaint to impose liability pursuant to subdivision (b) or (c) of Section 13385 arising from a failure to timely file a discharge monitoring report, or a notice of the obligation to file a discharge monitoring report required pursuant to Section 13383, in connection with its corresponding waste discharge requirements and (B) The discharges during the period or periods covered by the report do not violate effluent limitations, as defined in subdivision (d), contained in waste discharge requirements. In addition, pursuant to Water Code section 13385.1(b)(2), Water Code section 13385.1(b)(1) shall only apply to a discharger who files a discharge monitoring report that had not previously been timely filed within 30 days after the discharger receives written notice, including notice transmitted by electronic mail, from the state board or regional board concerning the failure to timely file the report.

12. In this case, the Discharger did not receive written notice of the obligation to file any of the seven discharge monitoring reports in connection with its corresponding waste discharge requirements as referenced in Attachment A for the third quarter of 2012 through the first quarter of 2014 until staff's email to Mr. Sholl on June 4, 2014. (See, e.g., Prosecution Team Exhibit 20.) In response, the Discharger filed all seven discharge monitoring reports

within 30 days after the discharger received written notice pursuant to Regional Board staff's email of June 4, 2014. (See Prosecution Team Exhibit 24.) As a result, the Discharger did not receive a complaint for administrative civil liability arising from a failure to file a discharge monitoring report, or a notice of violation, or notice of the obligation to file a discharge monitoring report in connection with its corresponding waste discharge requirements until staff's email of June 4, 2014 to Mr. Sholl. Furthermore, there were no effluent limitation violations reported in the seven discharge monitoring reports. Consequently, Water Code section 13385.1(b)(1) and (b)(2) are satisfied and liability is assessed pursuant to Water Code section 13385.1(b)(1).

13. The provisions of Water Code section 13385.1(b)(1) and (b)(2) apply to violations that occurred prior to January 1, 2014. This interpretation is consistent with the legislative history to make the provisions pertaining to reporting violations more equitable. (See, e.g., California Sprouts' Evidence, Exhibit D) and a plain reading of Water Code section 13385.1 that does not preclude the ability to assess MMP violations as of the time that the violation occurred. In addition, assessing MMPs for violations that occurred prior to January 1, 2014 pursuant to Water Code section 13385.1(b)(1) is consistent with pertinent language in the State Water Board's Enforcement Policy noting that "The Water Boards shall expedite MMP issuance if the total proposed mandatory penalty amount is \$30,000 or more." (Enforcement Policy at p. 23.) The Board further finds in this particular case that not assessing mandatory minimum penalties until an administrative civil liability complaint was issued on 8 September 2014 does not result in expediting the issuance of MMPs as required by the State Water Board's Enforcement Policy and would frustrate the legislative intent of Water Code section 13385.1(b) as demonstrated in the legislative history in Senate Bill 1284. (See, e.g., California Sprouts' Evidence, Exhibit D.)
14. Because (1) these violations occurred when five discharge monitoring reports were not submitted on or before November 1, 2012, February 1, 2013; May 1, 2013; August 1, 2013; and November 1, 2013, and (2) these violations occurred prior to January 1, 2014, the Discharger is assessed a mandatory minimum penalty for these serious violations of \$3,000 each for the quarterly reports that were due on November 1, 2012, February 1, 2013; May 1, 2013; August 1, 2013, and November 1, 2013 for a total of **fifteen thousand dollars (\$15,000)**.
15. The Fourth Quarter 2013 self-monitoring report was required to be submitted by 1 February 2014. The Discharger did not submit it by the deadline; however, in response to the 4 June 2014 email from staff, the Discharger submitted the monitoring report and stated that discharges occurred during the quarter. The monitoring report was submitted on 9 June 2014, which is 127 days after the required deadline in the Monitoring and Reporting Program. Because there was a discharge, in accordance with Water Code section 13385.1(a) and the violations occurred after January 1, 2014, the failure to timely submit the Fourth Quarter 2013 self-monitoring report is subject to a mandatory minimum penalty of \$3,000 for each 30-day period it is late. The Discharger committed four (4) serious violations for failure to timely submit the self-monitoring report required by WDRs Order R5-2008-0082-027. The mandatory minimum penalty for these serious violations is **twelve thousand dollars (\$12,000)**.

16. The First Quarter 2014 self-monitoring report was required to be submitted by 1 May 2014. The Discharger did not submit it by the deadline; however, in response to the 4 June 2014 email from staff, the Discharger submitted the monitoring report and stated that discharges occurred during the quarter. The monitoring report was submitted on 9 June 2014, which is 38 days after the required deadline in the Monitoring and Reporting Program. Because there was a discharge, in accordance with Water Code section 13385.1(a), and the violation occurred after January 1, 2014, the failure to timely submit the First Quarter 2014 self-monitoring report is subject to a mandatory minimum penalty of \$3,000 for each 30-day period it is late. The Discharger committed (1) serious violation for failure to timely submit the self-monitoring report required by WDRs Order R5-2008-0082-027. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
17. The total amount of the mandatory penalties assessed for the effluent violations is **thirty thousand dollars (\$30,000)**. As stated herein, a detailed list of the effluent violations is included in Attachment A. This Order addresses administrative civil liability for violations that are specifically identified as subject to mandatory minimum penalties in Attachment A.
18. Issuance of this Administrative Civil Liability Order to enforce Water Code Division 7, Chapter 5.5 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).
19. On 5 December 2014, in Rancho Cordova, California, after due notice to the Discharger and all other affected persons, the Central Valley Water Board conducted a public hearing at which evidence was received to consider this Administrative Civil Liability Order.

CALIFORNIA SPROUTS, LLC IS HEREBY GIVEN NOTICE THAT:

1. The Discharger shall be assessed an Administrative Civil Liability in the amount of **thirty thousand dollars (\$30,000)**.
2. By **4 January 2015**, the Discharger shall pay thirty thousand dollars (\$30,000) to the State Water Board's Cleanup and Abatement Account. The Discharger shall indicate on the check the number of this Order and send it to the State Water Resources Control Board, Accounting Office, Attn: ACL Payment, PO Box 1888 Sacramento, California, 95812-1888. The check shall be made payable to the *State Water Pollution Cleanup and Abatement Account*. A copy of the check must also be mailed to the Central Valley Water Board at 11020 Sun Center Drive #200, Rancho Cordova, CA 95670 attention to Wendy Wyels by **4 January 2015**.
3. The failure by California Sprouts, LLC to pay the administrative civil liability of \$30,000 pursuant to this Order within 30 days of issuance of this Order constitutes a failure to comply with this Order and a failure to comply with Water Code section 13385.1(b)(2)(B).

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with the 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 that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the internet at:
http://www.waterboards.ca.gov/public_notices/petitions/water_quality
or will be provided upon request.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 5 December 2014.

Original signed by

PAMELA C. CREEDON, Executive Officer

5 December 2014

DATE

Attachment A: Record of Violations

ATTACHMENT A TO ACL ORDER R5-2014-0155

California Sprouts, LLC

MANDATORY PENALTIES FOR FAILURE TO SUBMIT REPORTS

RECORD OF VIOLATIONS (7 June 2012 through 31 March 2014) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs R5-2008-0082-027)

	<u>SMR</u>	<u>Due Date</u>	<u>Received Date</u>	<u>No. of 30-day Periods Late</u>	<u>Discharge</u>	<u>No. of 30-day periods Subject to MMPs</u>	<u>Remarks</u>	<u>CIWQS</u>
1	3Q 2012	1-Nov-12	9-June-14	1	Yes	1	1	972788 to 972806
2	4Q 2012	1-Feb-13	9-June-14	1	Yes	1	1	972807 to 972822
3	1Q 2013	1-May-13	9-June-14	1	Yes	1	1	972823 to 972835
4	2Q 2013	1-Aug-13	9-June-14	1	Yes	1	1	972836 to 972845
5	3Q 2013	1-Nov-13	9-June-14	1	Yes	1	1	972846 to 972852
6	4Q 2013	1-Feb-14	9-June-14	4	Yes	4	1	972853 to 972856
7	1Q 2014	1-May-14	9-June-14	1	Yes	1	1	972857

Remarks:

1. Serious Violation: Five violations are subject to mandatory minimum penalties pursuant to Water Code section 13385.1(b) and five violations are subject to mandatory minimum penalties pursuant to Water Code section 13385.1(a).

VIOLATIONS AS OF:	3/31/14
<u>Serious Violations Subject MMPs:</u>	<u>10</u>
Total Violations Subject to MMPs:	10

Mandatory Minimum Penalty = (10 Serious violations) x \$3,000 = \$30,000