

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2004-0534

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

MUSCO FAMILY OLIVE COMPANY AND THE STUDLEY COMPANY
SAN JOAQUIN COUNTY

This Administrative Civil Liability Complaint (hereafter Complaint) is issued to Musco Family Olive Company and the Studley Company based on failure to comply with Time Schedule Order (TSO) Nos. R5-2002-0014 and R5-2002-0014-R01 and as issued pursuant to Sections 13308 and 13267 of the California Water Code (CWC). This Complaint is issued pursuant to Article 2.5 of the CWC, which authorizes the imposition of administrative civil liability.

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

1. Musco Family Olive Company owns and operates an olive brining and packaging facility on land (Assessor's Parcel Numbers 209-11-18, 209-11-31, 209-11-32, 251-32-08, 251-32-09) leased from the Studley Company, a California limited partnership. The facility is southwest of the town of Tracy, near Patterson Pass Road in San Joaquin County, in Section 4, T3S, R4E, and Section 34 T2S, R4E, MDB&M. Musco Family Olive Company and the Studley Company are hereafter jointly referred to as "Discharger."
2. Two separate Waste Discharge Requirements (WDRs) Orders regulate the discharge of the facility's processing wastewater to land. WDRs Order No. 96-075, adopted on 22 March 1996, regulates the Title 27 Class II surface impoundments used to store concentrated brines, while WDRs Order No. R5-2002-0148, adopted on 6 September 2002, regulates the uncontained discharge to land of less concentrated wastewater. WDRs Order No. R5-2002-0148 revised and rescinded WDRs Order No. 97-037.

WASTE GENERATION AND DISPOSAL

3. The facility processes olives year-round and generates several wastewater streams. The wastewater system is used to collect and land apply industrial wastewater. Primary treatment (screening) occurs prior to discharge to a one-million gallon (1-MG) pond. The wastewater is then pumped directly to the land application area, (also referred to in Orders as "land application system" or "land treatment unit" (LTU)) or to an 84-million gallon (84-MG) reservoir.
4. The facility is on approximately 280 acres, of which approximately 200 acres are available for land application of process wastewater. Wastewater is currently discharged via spray irrigation to 29 distinct plots or fields, the majority of which occupy sloping terrain. Runoff from applied wastewater and storm water is collected and discharged to the 84-MG reservoir.

ENFORCEMENT ORDERS

5. The facility has an extended history of inadequate storage and disposal capacity. Between 28 February 1997 and 16 November 2000, the Discharger regularly violated various prohibitions and specifications contained in WDRs Order No. 97-037. Nevertheless, in 1999 the Discharger acquired an olive packing business in Visalia and transferred olive production under the Early California black label to the facility. On 17 November 2000 the Executive Officer issued Cleanup and Abatement (C&A) Order No. 5-00-717, which required the Discharger to prepare technical reports and construct wastewater treatment system improvements to comply with WDRs Order No. 97-037 by 1 November 2001.
6. The Discharger did not comply with C&A Order No. 5-00-717 and the Regional Board adopted TSO No. R5-2002-0014 on 25 January 2002. The TSO allowed interim greater flow and increased effluent limits for dissolved inorganic solids (DIS); but required control of nuisance odors; installation of groundwater monitoring wells, an evaluation of the domestic wastewater system, construction of wastewater treatment improvements, expanded cropping of land application areas, submittal of the delinquent reports required by Order No. 97-037 and the C&A Order, submittal of the monthly status reports, and compliance with Revised Monitoring and Reporting Program (MRP) No. 97-037.
7. The Executive Officer issued Administrative Civil Liability (ACL) Complaint No. R5-2002-0502 for \$150,000 on 11 April 2002 for violations of WDRs Order No. 97-037 in the time period between issuance of C&A Order No. 5-00-717 and TSO adoption. The Discharger waived a public hearing and paid the \$150,000.
8. On 6 June 2002, the Regional Board revised the terms of the time schedule by adopting TSO No. R5-2002-0014-R01. It authorized greater flow, application of wastewater as dust control in disturbed areas of the impoundment construction area, and additional time to complete the 84-MG reservoir. The revision required the Discharger to provide an odor control report, evaluate the adequacy of monitoring well MW-9, and perform and submit the results of an additional groundwater monitoring event.
9. The Executive Officer issued C&A Order No. R5-2002-0149 on 6 September 2002, which:
 - a. Required immediate compliance with all aspects of WDRs Order No. R5-2002-0148, except the effluent total dissolved solids and sodium limitations, and established a time schedule for phased reductions in total dissolved solids and sodium concentrations; and
 - b. Required preparation of certain technical reports.
10. In August 2003, the Discharger agreed to pay \$540,000 to settle an environmental complaint filed in 2003 by the San Joaquin County District Attorney's Office. The amount was reduced from \$5 million initially sought for violations committed by the Discharger, including polluting a nearby stream with salty processing wastes, misleading regulatory agents to conceal violations, and not designing its wastewater treatment and disposal facilities adequately to handle excess wastewater resulting from the Discharger's acquisition in 1998 of the Early California black olive label, which doubled the Tracy plant's processing capacity.

TSO VIOLATIONS

11. This Complaint is based on the Discharger's violations of certain tasks required by the TSO, as revised, from the date of issuance (25 January 2002) through 31 May 2004. This Complaint does not consider potential violations of Task 16, which required the Discharger to submit by 15 August 2002 a report showing that the 84-MG reservoir and tailwater system were fully constructed and operational and that a liner, adequate to prevent the stored wastewater from impacting the groundwater, had been installed. Additional technical information is required to evaluate and determine whether the Discharger achieved compliance with the objective, if not the letter, of Task 16. Subsequent violations of the WDRs or TSO, if any, in addition to confirmed violations of Task 16, will be addressed in a future complaint, as appropriate.
12. The case file documents the following violations of the TSO and the established penalty therein for each violation:
 - a. Task 1 requires the Discharger to comply effective 28 January 2002 with all aspects of Revised Monitoring and Reporting Program (MRP) No. 97-037, an order previously issued pursuant to CWC Section 13267. The penalty for this violation is \$2,500 for each day a report is late or incomplete. On 6 September 2002, the Regional Board adopted WDRs No. R5-2002-0148, which replaced Revised MRP No. 97-037 with MRP No. R5-2002-0148. Task 1 does not specifically require compliance with future revisions to Revised MRP No. 97-037. However, the TSO requires measures be implemented to ensure long-term compliance with WDRs Order No. 97-037, or any revisions to those WDRs. As WDRs Order No. R5-2002-0148 requires compliance with MRP No. R5-2002-0148 pursuant to CWC Section 13267, each day a report required by MRP No. R5-2002-0148 is late or incomplete is a violation of Task 1.

Task 1 violations are determined as follows: Monthly self-monitoring reports (SMRs) are due by the first day of the month following the month in which the samples were taken in accordance with MRP No. 97-037, revised 30 November 2001, and MRP No. R5-2002-0148. Each day following the due date of late or incomplete SMRs until the next month's SMR due date is considered a Task 1 violation.

Task 1 was justified due to the Discharger's chronic failure to comply with MRP requirements. The Discharger's noncompliance since TSO adoption is attributable primarily to missing data due to inoperable monitoring devices and the Discharger's failure to conduct daily monitoring on weekends and holidays. Task 1 violations began accruing from 1 March 2002 through 31 May 2004, the end of the evaluation period. Pursuant to the TSO, the maximum penalty for these violations is \$2,057,500.
 - b. Task 3 specifies a time schedule for complying with C&A Order No. 5-00-717, which required immediate compliance with all aspects of WDRs Order No. 97-037, including flow and capacity limitations. Task 3 limits the 7-day average flow discharged to land to 600,000 gpd and the daily maximum flow to 750,000 gpd between 1 February and 6 June 2002. The SMRs reveal three days in which the 7-day average flow limit was exceeded and 17 days in which the daily maximum flow limit was exceeded during this period. Pursuant to the TSO, the maximum penalty for these violations is \$50,000.

- c. Task 4 specifies a time schedule for complying with C&A Order No. 5-00-717, which required immediate compliance with all aspects of WDRs Order No. 97-037, including flow and capacity limitations. Task 4 limits the 7-day average flow discharged to land to 820,000 gpd and the daily maximum flow to 950,000 gpd between 7 June and 6 September 2002. The SMRs reveal two days during this period when the daily maximum flow limit was exceeded. Pursuant to the TSO, the maximum penalty for these violations is \$5,000.
- d. Task 5 specifies a time schedule for complying with C&A Order No. 5-00-717, which required immediate compliance with DIS effluent limitations specified in WDRs Order No. 97-037. Task 5 limits the 7-day average DIS concentration in the discharge to land to 2,500 mg/L between 1 February and 6 September 2002. The MRP required monthly monitoring for DIS, but as the Discharger monitored and reported DIS more frequently (weekly or once per two weeks) the reported values are used to determine compliance with the 7-day average limit. The SMRs reveal 12 occasions during this period when the discharge's DIS concentration exceeded 2,500 mg/L. Pursuant to the TSO, the maximum penalty for these violations is \$30,000.
- e. Task 6 specifies a time schedule for complying with C&A Order No. 5-00-717, which required immediate compliance with all aspects of WDRs Order No. 97-037, including not causing a nuisance condition. Task 6 required the Discharger to modify its wastewater treatment and/or disposal system by 22 February 2002 such that nuisance conditions would no longer be perceivable beyond the boundary of the Discharger's property. The discharge area is adjacent to Interstate Highway 5 and offensive odors emanating from the discharge can adversely affect the considerable number of persons driving on the highway. However, the degree and occurrence of offensive odors has greatest impact on the only homeowner residing near the Discharger's property. Task 13 required a report by 28 June 2002 on additional measures implemented to minimize offensive odors due to the land application of wastewater. Despite these directives, the Discharger was issued a Notice of Violation (NOV) on 18 September 2002 for causing nuisance odor conditions. The NOV indicated that staff visited the discharge area on a weekly basis in August and September 2002 to investigate odor complaints by nearby residents and confirmed the discharge had created nuisance odors on 28 August, 4 September, 11 September, and 18 September. The Discharger was issued another NOV on 15 October 2002 for, among other things, causing nuisance odor conditions confirmed by staff on 9 October 2002. The Discharger was issued another NOV on 10 July 2003 for nuisance odor conditions confirmed by staff on 30 May 2003. Pursuant to the TSO, the maximum penalty for these confirmed violations is \$30,000.
- f. Task 8 required the Discharger to submit by 25 March 2002 a report evaluating the facility's domestic wastewater disposal system. On 20 February 2002, the Discharger submitted the report, but Regional Board letter dated 19 April 2002 deemed the report substantially incomplete and indicated a revised report would be expected by 30 May 2002. The Discharger submitted a revised report on 3 June 2002 that was subsequently accepted as complete. A complete report was delinquent by 70 days, 25 of which were for staff review and response time. Pursuant to the TSO, the maximum penalty for this violation is \$175,000.

13. In total, the Discharger was in violation of TSO Tasks during 795 days from 1 February 2002 through 31 May 2004. Attachment A contains a day-by-day summary of violations that occurred during this time period that are considered a part of this Complaint.

CIVIL LIABILITY

14. The TSO, as revised, is a schedule issued pursuant to CWC Section 13308 (c), which states:

Any person who fails to achieve compliance in accordance with the schedule established in an order issued pursuant to subdivision (a) shall be liable civilly in an amount not to exceed the amount prescribed by the order. The regional board may impose the penalty administratively in accordance with Article 2.5 (commencing with Section 13323). If the regional board imposes the penalty in an amount less than the amount prescribed in the order issued pursuant to subdivision (a), the regional board shall make express findings setting forth the reasons for its action based on the specific factors required to be considered pursuant to Section 13327.

15. Section 13323 (a) of the CWC states:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision of law authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

16. The Executive Officer finds that the Discharger has failed to achieve compliance with the schedules set forth in TSO No. R5-2002-0014 and TSO No. R5-2002-0014-R01.

17. The *maximum* administrative civil liability that can be imposed for every failure of the Discharger to comply with each requirement is the penalty amount specified in TSO No. R5-2002-0014 and TSO No. R5-2002-0014-R01, and for the violations cited in Finding 12 totals \$2,317,500.

18. Section 13327 of the CWC states:

In determining the amount of civil liability, the regional board ... shall 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.

19. The Executive Officer considered the factors of Section 13327 of the CWC and finds that a reduction in financial penalties resulting from the Discharger's violations of Tasks 1, 5, and 8 are appropriate for the following reasons:

- a. The violations of Task 1 concern chronic omissions of data. The missing data generally concern lengthy periods of inoperable monitoring equipment (e.g., for continuously monitoring discharge flow and electrical conductivity) and entire weekends when Musco did not provide staff data to ensure compliance with monitoring requirements. Musco was issued an NOV on 8 May 2002 for submitting incomplete SMRs for January through March 2002. The NOV described SMR deficiencies in detail and directed the Discharger to submit by 15 May 2002 a report describing changes to the monitoring and reporting procedures to

ensure compliance with the MRP. The Discharger's 14 May 2002 response to the NOV disputed several SMR deficiencies identified in the NOV, but indicated it would retain by June 2002 a qualified consultant for sample collection, laboratory analysis, and data presentation. A Regional Board letter dated 6 August 2002 to the Discharger's attorney identified the potential penalty resulting from TSO violations at that point as over \$1.4 million, and stated the majority of the penalty was due to incomplete SMRs. While SMR deficiencies decreased after June 2002, SMRs remained incomplete largely due to recurring and long-lasting monitoring equipment malfunctions (June, July, August, September, October 2002; January, February, March, June, July, August, and October 2003), as well as insufficient staffing to conduct weekend monitoring (October 2002 through May 2004).

Though staff met with the Discharger's representative and went over reporting requirements in detail, after site responsibility was transferred from the Sacramento to the Fresno office over a year elapsed with Musco still submitting incomplete SMRs before omissions were again brought to its attention. The Discharger and staff met again specifically to discuss the incomplete SMRs on 9 February 2004. Fresno staff advised the Discharger that SMR deficiencies perceived by Musco as minor were nevertheless a violation of WDRs Order No. R5-2002-0148 (Provision G.3) and, by extension, TSO R5-2002-0014-R01. Musco received further written notification of its ongoing SMR deficiencies on 1 March 2004.

Task 1 violations after 1 March 2004 were due, in part, to failure to conduct daily monitoring of ponded wastewater (i.e., hydrogen sulfide and dissolved oxygen content and available freeboard) on weekends in March 2004. Musco is required to submit substantial data in its SMRs. Weekend monitoring data is a relatively small part of the overall requirement, but nonetheless serves a purpose. As Musco was consistently in noncompliance during the week with DO below the minimum 2 mg/L required by WDRs, the weekend monitoring did not prove critical in determining whether Musco was consistently in compliance.

It is appropriate and reasonable not to impose a penalty for Task 1 violations that occurred from 1 September 2002 to 1 March 2004, and to reduce the penalty during the remainder of the period, in part, for failure to conduct weekend monitoring to account for the relatively low gravity of the omitted information compared to the information that Musco did submit. For these reasons, the maximum penalty of \$2,057,500 specified under terms of the TSO is reduced to a penalty of \$380,000.

- b. Task 5 requires compliance with an effluent limit for DIS, the inorganic fraction of total dissolved solids (TDS). WDRs R5-2002-0148 replaced the effluent DIS limit for limits on TDS (2,047 mg/L), sodium (597 mg/L), and chloride (601 mg/L). In its adoption of C&A Order No. R5-2002-0149, the Regional Board acknowledged the Discharger's inability to immediately comply with effluent TDS and sodium limits and established higher interim limits for TDS and sodium along with a time schedule for a phased reduction to limits in WDRs R5-2002-0148. It is not reasonable to impose the prescribed TSO penalty for an exceedance of the effluent limitation in Task 5 that did not also exceed the greater limitation in C&A Order No. R5-2002-0149 for TDS or sodium, or the limitation for chloride in WDRs R5-2002-0148. Eight of the 12 exceedances of the effluent limitation in Task 5 also exceeded the revised limitations in C&A Order No. R5-2002-0149 (seven TDS limit

exceedances and one sodium limit exceedance), and one Task 5 exceedance also exceeded the chloride limit in WDRs R5-2002-0148. The maximum penalty of \$30,000 specified under terms of the TSO is reduced to \$22,500.

- c. Task 8 (submittal of a report evaluating the facility's domestic wastewater disposal system) was violated when the Discharger submitted a report that was technically unsound and substantially incomplete. The 19 April 2002 Regional Board letter that notified the Discharger of the deficiencies indicated that a revised report would be expected by 30 May 2002. The letter did not warn that each day the report was late past the TSO due date would be considered a violation of Task 8. The next report was complete and satisfied the objective. Though the violation was completely avoidable, it had no lasting consequences. The low gravity warrants a reduction from the \$175,000 specified by the TSO, but not so great a reduction that Musco is not penalized for the gross inadequacy of the initial report and for the avoidable delay. An appropriate penalty for the Task 8 violations is \$6,000.

20. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), in accordance with Section 15321 (a)(2), Title 14, of the California Code of Regulations.

MUSCO FAMILY OLIVE COMPANY AND THE STUDLEY COMPANY ARE HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed Administrative Civil Liability in the amount of four hundred ninety three thousand five hundred dollars (\$493,500). This amount, which reduces the amount prescribed in the TSO for the violations, is based upon a review of the factors set forth in CWC Section 13327 cited in Finding 18 above, as explained in Finding 19. This amount is sufficient to cover staff costs of \$13,760.
2. A hearing will be scheduled for **14 or 15 October 2004** unless the Discharger agrees to waive the hearing and pay the \$493,500 Administrative Civil Liability in full.
3. If a hearing is held, the Regional Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to impose a different amount after consideration of the terms of the TSO and evidence on factors set forth in CWC Section 13327 or to refer the matter to the Attorney General for recovery of judicial civil liability.
4. In lieu of a hearing, the Discharger may waive the right to a hearing. If you wish to waive your right to a hearing, please have the appropriate representative(s) sign the enclosed waiver and return it with the amount of civil liability (in a check made payable to the *State Water Resources Control Board*) to the Central Valley Regional Water Quality Control Board, Attention Janice Tanaka, 11020 Sun Center Drive, #200, Rancho Cordova, CA 95670-6114, by **3 September 2004**.

THOMAS R. PINKOS, Executive Officer

(Date)

WAIVER

By signing this waiver, the Musco Family Olive Company and the Studley Company agree to waive their rights to a hearing before the Central Valley Regional Water Quality Control Board and to remit payment for civil liability imposed in the amount of four hundred ninety three thousand five hundred dollars (\$493,500) by check made payable to the *State Water Resources Control Board*. The check must also contain a reference to Administrative Civil Liability Complaint No. R5-2004-0534.

Musco Family Olive Company and the Studley Company understand that they are giving up their rights to argue against the allegations made by the Executive Officer in this Complaint, and against imposition of, and the amount, of civil liability imposed.

(Name)

(Title)

(Date)

(Name)

(Title)

(Date)