

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER NO. R5-2010-0501

ADMINISTRATIVE CIVIL LIABILITY ORDER
ON STIPULATION AND SETTLEMENT AGREEMENT

IN THE MATTER OF
FRANK ALVIN ROGERS JR AND ROGERS TRUCKING
COLUSA COUNTY

This Order 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, 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 (Central Valley Water Board or Board) finds with respect to the Discharger's acts, or failure to act, 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 Administrative Civil Liability Complaint No. R5-2008-0620 [hereafter 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 regulatory agency to report the spill. Instead, the Discharger contacted Reclamation District 108.
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 the 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 the 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.*”
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 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. On 17 November 2008, Assistant Executive Officer Jack Del Conte issued the Complaint to the Discharger. The Complaint proposed forty-eight thousand dollars (\$48,000) in civil liability pursuant to CWC section 13385. The amount of the liability was established based on a review of the factors cited in CWC section 13385(e).
23. Following issuance of the Complaint, the Discharger and the Board’s Prosecution Team conferred for the purpose of settling the alleged violations. On 12 November 2009, after

arms-length negotiations, the Discharger submitted a proposal to settle the Complaint by paying thirty thousand dollars (\$30,000). This settlement proposal was accepted by the Executive Officer, who is the head of the Board's Prosecution Team, as memorialized in the Settlement Agreement and Mutual Release attached hereto and incorporated herein by this reference. Pursuant to CWC section 13385(e), the Central Valley Water Board has considered the following factors:

Nature and Circumstances. On 25 April 2007, a driver working for Rogers Trucking Company accidentally caused a spill of approximately 4,800 gallons of aqua ammonia. The spill was not reported to the Office of Emergency Services or any other regulatory agency. Instead, the Discharger contacted Reclamation District 108. The ammonia flowed into an irrigation ditch connected to the Reclamation District 108 canal system. Two days later, California Department of Fish and Game (CDFG) wardens were notified that dead fish were present in the canal system. An investigation found dead fish in over 15 miles of canals downstream of the point that the aqua ammonia entered the waterway.

Gravity. The Discharger had a duty to report the spill. Failing to do so resulted in a greater environmental impact; caused the CDFG to expend resources on a full investigation; and caused Reclamation District 108 to expend resources to modify its pumping and delivery system, sample the water, and remove and dispose of the dead fish.

Toxicity. Aqua ammonia is acutely toxic to aquatic life. The spill caused the death of over 3,500 fish and other aquatic organisms. 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.

Susceptibility of the Discharge to Cleanup. If the Discharger had notified any regulatory agency of the spill, then the impact to aquatic life could have been minimized by the following measures: Pumper trucks could have been used to remove contaminated water from the irrigation canal. Impacted soils could have been removed and disposed of properly. However, the Discharger's failure to notify any regulatory agency precluded any appropriate cleanup from taking place.

Ability of the Discharger to Pay. The business address of the Rogers Trucking is 3832 Holloway Road, Colusa, California 95932. Staff conducted an investigation into the address of the business, and determined that there are several businesses at this location, including Nor Cal Ag Rentals, Inc., Moore Aviation, Inc., and Louis Putnam Auctioneers, Inc. Nor Cal Ag Rentals, Inc. is also owned by Mr. Frank Alvin Rogers, Jr. Mr. Rogers also owns B&S Trucking, another trucking company located in Colusa County. In addition, Mr. Rogers also owns several properties in Colusa and Sutter Counties. There is no indication that the Discharger would be financially incapable of paying the assessed liability.

Voluntary Cleanup Efforts. No effort was made by the Discharger to clean up the discharge of aqua ammonia. Reclamation District 108 arranged for the removal of the dead fish from the canals and the disposal of the carcasses at a rendering plant. The Discharger later agreed to pay the bills incurred by Reclamation District 108. Someone attempted to clean the soil at the spill site by flushing the contaminated soil with water; however, this action almost certainly resulted in additional aqua ammonia entering the waterway.

Prior History of Violations. Central Valley Water Board staff is not aware of any prior water quality violations attributed to this Discharger.

Degree of Culpability. As the owner of a trucking company licensed to haul hazardous materials, the Discharger must be aware of the type of materials that it hauls and what to do in the event of a spill. The Discharger must also train its employees about the steps to take in the event of a spill. The Discharger was hauling aqua ammonia, which is a hazardous material commonly used as a fertilizer in the Colusa area. The Material Data Safety Sheet for ammonium hydroxide solution 24.9% (i.e., aqua ammonia) states that the material is "toxic to fish and aquatic life. Reportable quantity for a spill is 1000 pounds. Do not contaminate any body of water by direct application, cleaning of equipment, or disposal." Central Valley Water Board staff calculates that the 4,800 gallons which spilled is equivalent to over 8,000 pounds. It was the Discharger's duty to immediately report the spill to the Office of Emergency Services so that measures could be taken to minimize the environmental impact. Even if less than 1,000 pounds had spilled, the Discharger still had the duty to report the spill pursuant to CWC section 13271.

Economic Benefit. The Discharger received an economic benefit by not appropriately removing the contaminated soil or taking the appropriate actions to prevent the spread of the aqua 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.

Other Matters As Justice May Require. Board staff has spent approximately 200 hours investigating this incident and preparing this Order. The total cost for staff time is approximately \$30,000, based on a rate of \$150 per hour.

24. On 23 April 2009, the Central Valley Water Board delegated the authority to issue Administrative Civil Liability Orders, where the matter is not contested by the Discharger, to the Executive Officer, or to an Assistant Executive Officer when the Executive Officer is serving as head of the Board's Prosecution Team (Resolution R5-2009-0027). Pamela Creedon is serving as the head of the Board's Prosecution Team for this matter, and therefore Assistant Executive Officer Kenneth D. Landau has the authority to issue this Order.
25. This Order constitutes a settlement of the violations herein mentioned. Notice of this settlement was published on the Central Valley Water Board's website, in a newspaper

of general circulation in the community, and was provided to all interested parties. The 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) has expired.

26. Issuance of this Administrative Civil Liability Order to enforce CWC 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).

IT IS HEREBY ORDERED THAT:

1. No later than 30 days from the date on which this Order is issued, Frank Alvin Rogers Jr. and Rogers Trucking shall pay **thirty thousand dollars (\$30,000)** in administrative civil liability. Payment shall be made by check made payable to the *State Water Pollution Cleanup and Abatement Account* and remitted to the Central Valley Regional Board located 11020 Sun Center Drive, Suite 200, Rancho Cordova, California. Payment of the full liability amount shall resolve the violations charged in the Complaint.
2. If the Discharger fails to make the payment in accordance with this Order, the Assistant Executive Officer may refer this matter to the California Attorney General to obtain compliance with the terms of this Order.
3. This Order is final, and shall be effective immediately upon signature.
4. 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 CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday (including mandatory furlough days), then 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.

Original signed by

KENNETH D. LANDAU, Assistant Executive Officer

11 January 2010

Date



California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair



Linda S. Adams
Secretary for
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Arnold
Schwarzenegger
Governor

11 January 2010

Frank Alvin Rogers, Jr.
Rogers Trucking
3832 Holloway Road
Colusa, CA 95932

PAYMENT SCHEDULE FOR ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2010-0501, FRANK A. ROGERS JR. AND ROGERS TRUCKING, COLUSA COUNTY

Pursuant to Administrative Civil Liability Order R5-2010-0501 ("Order"), you are ordered to pay \$30,000 to the State Water Resources Control Board Cleanup and Abatement Account within 30 days of the date the Order was issued. Payment will resolve the violations alleged in Administrative Civil Liability Complaint R5-2008-0620. However, the Central Valley Water Board will defer collection of the \$30,000 civil liability imposed by the Order if you comply with the payment schedule specified in the Settlement Agreement between Mr. Rogers and the Central Valley Water Board Prosecution Team, as summarized below:

The Discharger agrees to pay \$30,000 to the State Water Resources Control Board Cleanup and Abatement Account in three payments of \$10,000 over a three month period beginning in January 2010. The payments shall be made by check made payable to the *State Water Pollution Cleanup and Abatement Account* and remitted to the Central Valley Regional Water Board located at 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670. Each check shall be in the amount of **ten thousand (\$10,000)** and shall have written upon it "ACL Order R5-2010-0501." The first payment is due on **30 January 2010**. Subsequent payments are due by **28 February 2010** and **30 March 2010**.

This letter memorializes and accepts the above payment schedule on the following conditions. If Mr. Rogers fails to make the payments in accordance with the specified deadlines without obtaining explicit approval from the Assistant Executive Officer, the Assistant Executive Officer shall demand that the remaining unpaid balance be paid with 30 days of notification of such failure. Alternatively, the Assistant Executive Officer may refer this matter to the California Attorney General to obtain compliance with the terms of this Order.

Original signed by

KENNETH D. LANDAU
Assistant Executive Officer

cc: Manish Parikh, Law Office of Borton Petrini, Sacramento

California Environmental Protection Agency