

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

TIME SCHEDULE ORDER NO. R5-2005-0035

REQUIRING THE PACIFIC COAST SPROUT FARMS, INC.
SACRAMENTO FACILITY
SACRAMENTO COUNTY
TO COMPLY WITH REQUIREMENTS PRESCRIBED IN ORDER NO. R5-2005-0034
(NPDES PERMIT NO. CA0082961)

The California Regional Water Quality Control Board, Central Valley Region, (hereafter Regional Board) finds that:

1. On 17 March 2005, the Regional Board adopted Waste Discharge Requirements (WDRs) Order No. R5-2005-0034, prescribing waste discharge requirements for the Pacific Coast Sprout Farms, Inc., Sacramento Facility, Sacramento County (hereafter Discharger).
2. Waste Discharge Requirements (WDRs), Order No. R5-2005-0034, contains Effluent Limitation No. B.1. which reads, in part, as follows:

“B. Effluent Limitations: Outfall 001

1. Effluent discharged from Outfall 001 shall not exceed the following limits:

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>
<i>Arsenic</i>	<i>µg/L</i>	<i>10</i>	<i>--</i>
	<i>lbs/day²</i>	<i>0.01</i>	<i>--</i>
<i>Fluoride</i>	<i>µg/L</i>	<i>1,000</i>	<i>--</i>
	<i>lbs/day²</i>	<i>1.0</i>	<i>--</i>
<i>Nitrate(as N)</i>	<i>mg/L</i>	<i>10</i>	<i>--</i>
	<i>lbs/day²</i>	<i>10</i>	<i>--</i>

² *Based upon a maximum flow of 0.124 mgd.”*

3. The effluent limitations specified in Order No. R5-2005-0034 for arsenic, fluoride and nitrate are based on the Basin Plan narrative chemical constituents objective. These limitations are based on an existing Basin Plan water quality objective that was adopted prior to 25 September 1995. Effluent limitations for these pollutants are new limitations which were not prescribed in previous Order No. R5-1998-0120-R01, adopted by the Regional Board on 25 January 2002.

NEED FOR TIME SCHEDULE ORDER (TSO) AND LEGAL BASIS

4. California Water Code (CWC) Section 13300 states: *“Whenever a regional board finds that a discharge of waste is taking place or threatening to take place that violates or will violate requirements prescribed by the regional board, or the state board, or that the waste collection,*

treatment, or disposal facilities of a discharger are approaching capacity, the board may require the discharger to submit for approval of the board, with such modifications as it may deem necessary, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements.”

5. Federal regulations, 40 CFR Part 122.44 (d)(1)(i), require that NPDES permit effluent limitations must control all pollutants which are or may be discharged at a level which will cause or have the reasonable potential to cause or contribute to an in-stream excursion above any State water quality standard, including any narrative criteria for water quality. Beneficial uses, together with their corresponding water quality objectives or promulgated water quality criteria, can be defined per federal regulations as water quality standards.
6. In accordance with CWC Section 13385(j)(3), the Regional Board finds that, based upon results of limited effluent monitoring and statistically projected effluent concentrations, the Discharger is not able to consistently comply with the new effluent limitations for arsenic, fluoride, and nitrate (as N). These limitations are new requirements that become applicable to the Order after the effective date of adoption of the waste discharge requirements, and after July 1, 2000, for which new or modified control measures are necessary in order to comply with the limitation, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.
7. The determination of reasonable potential for arsenic, fluoride and nitrate was made utilizing the statistical analysis methodologies recommended in the *Technical Support Document for Water Quality Based Toxics Control* ((EPA/505/2-90-001), TSD), and was made by the Regional Board utilizing all available data for the discharge. The data available was a very limited data set provided by the Discharger. The maximum observed effluent concentrations (MEC) in the effluent taken from analytical laboratory reports submitted by the Discharger and the projected MEC using the TSD methodologies are summarized below:

<u>Constituent</u>	<u>Units</u>	<u>MEC</u>	<u>No. of Samples</u>	<u>TSD Multiplier</u>	<u>Projected MEC</u>
Arsenic	µg/L	3.7	2	7.4	27.38
Fluoride	µg/L	190	1	13.2	2,508
Nitrate	µg/L	1.6	1	13.2	21.12

Due to the limited data set, a high TSD multiplier was used in the reasonable potential analysis resulting in the Regional Board finding reasonable potential for arsenic, fluoride and nitrate. Order R5-2005-0034 requires the discharger to conduct a special monitoring program to provide more data for these and other constituents to the Regional Board. As more data is collected and reported the TSD multiplier will reduce and it is anticipated that the results of the data analysis utilized by the Regional Board may find the discharge in compliance with applicable water quality standards for arsenic, fluoride and nitrate.

8. Immediate compliance with these new effluent limitations for arsenic, fluoride, and nitrate is not possible or practicable. The Clean Water Act and the California Water Code authorize time schedules for achieving compliance as soon as possible, up to a maximum duration of 5 years,

which is the maximum term of any NPDES permit. In situations where the discharge will continue beyond the duration of a renewed permit, the Regional Board has issued Cease and Desist Orders in accordance with CWC Section 13301 requiring dischargers to construct additional facilities necessary to treat the effluent to a level that meets the limitations of the permit. In this case, construction of new facilities to treat the discharge to the level necessary to meet the new effluent limitations is not economical or necessary considering the quantity and quality of the discharge.

9. This Order provides a time schedule for the Discharger to submit additional water quality monitoring data and to implement management practices and source control measures necessary to minimize or eliminate sources of arsenic, fluoride and nitrates in its discharge within the life of the permit term.
10. CWC Section 13385(h) and (i) require the Regional Board to impose mandatory minimum penalties upon dischargers that violate certain effluent limitations. CWC Section 13385(j) exempts certain violations from the mandatory minimum penalties. CWC Section 13385(j)(3) exempts the discharge from mandatory minimum penalties *“where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all the [specified] requirements are met.”*
11. Compliance with this TSO exempts the Discharger from mandatory penalties for violations of effluent limitations for arsenic, fluoride, and nitrate only, in accordance with CWC Section 13385(j)(3).
12. Since the time schedule for completion of action necessary to achieve full compliance through elimination of the discharge exceeds one year, this Order includes interim requirements and dates for their achievement. This time schedule does not exceed five years.
13. If compliance is not achieved within five years the Discharger shall be required to immediately comply with the effluent limitations or cease discharge to Morrison Creek.
14. On 17 March 2005, in Sacramento, California, after due notice to the Discharger and all other affected persons, the Board conducted a public hearing at which evidence was received to consider a Time Schedule Order under California Water Code Section 13300 to establish a time schedule to achieve compliance with waste discharge requirements.
15. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.), in accordance with California Water Code Section 15321 (a)(2), Title 14, of the California Code of Regulations.
16. Any person adversely affected by this action of the Board may petition the State Water Resources Control Board to review this action. The petition must be received by the State Water Resources Control Board, Office of the Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100, within 30 days of the date on which this action was taken. Copies of the law and regulations applicable to filing petitions will be provided on request.

IT IS HEREBY ORDERED THAT:

1. Pursuant to California Water Code Section 13300, Pacific Coast Sprout Farm, Inc. shall comply with the following time schedule to ensure compliance with the arsenic, fluoride, and nitrate effluent limitations contained in WDRs Order No. R5-2005-0034 as described in the above Findings:

<u>Task</u>	<u>Compliance Date</u>
Monitoring Workplan / Implementation Schedule	1 June 2005
Prepare and Submit Pollution Prevention Plan ¹	1 September 2005
Compliance Progress Reports ²	1 January 2006 and 1 July 2006
Compliance Feasibility Report ³	1 March 2007
Full Compliance	1 March 2010

¹ Plan shall be prepared for all constituents listed above and shall meet the requirements specified in CWC Section 13263.

² Reports shall detail steps implemented toward achieving compliance with WDRs limitations, including studies, evaluation of measures proposed and implemented, and recommendations for additional measures as necessary to achieve full compliance through elimination of the discharge by the final date.

³ This study shall provide justification that full compliance can be achieved. If not, the Discharger shall immediately initiate action, including construction of treatment facilities as necessary, to achieve compliance with effluent limitations by the Full Compliance date.

2. If, in the opinion of the Executive Officer, the Pacific Coast Sprout Farm, Inc. fails to comply with the provisions of this Order, the Executive Officer may apply to the Attorney General for judicial enforcement. If compliance with these effluent limitations is not achieved by the Full Compliance date of 1 March 2010, the discharge would not be exempt from the mandatory minimum penalties for violation of certain effluent limitations, and would be subject to issuance of a Cease and Desist Order in accordance with CWC Section 13301.

I, THOMAS R. PINKOS, Executive Officer, do hereby certify 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 17 March 2005.

THOMAS R. PINKOS, Executive Officer