

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2005-0512

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
IN THE MATTER OF  
DOLE FRESH VEGETABLES, INC.  
WILD ROSE VINEYARDS LLC  
FORMER VICTOR FRUIT FACILITY  
SAN JOAQUIN COUNTY

This Administrative Civil Liability Complaint (hereafter Complaint) is issued to Dole Fresh Vegetables Inc. and Wild Rose Vineyards LLC (hereafter jointly referred to as Dischargers), based on findings of violations of Cleanup and Abatement Order (CAO) No. R5-2004-0714 and provisions of California Water Code Section 13350 that authorize the imposition of Administrative Civil Liability.

The Executive Officer of the California Regional Water Quality Control Board, Central Valley Region, (Regional Board) finds, with respect to the Discharger's acts and failure to act, the following:

1. The former Victor Fruit Facility is a former cherry processing facility near the City of Victor. The entire site is approximately 11 acres and includes six evaporation/percolation ponds in an area of approximately 1.4 acres. The facility processed cherries with a sulfur dioxide/calcium chloride brine solution.
2. The facility was previously owned and operated by Dole Fresh Vegetables, Inc. (Dole). In 1999 the entire site, including the ponds, was sold to Wild Rose LLC (Wild Rose). In 2000, California Fruit Processors LLC leased the ponds for one processing season. Since 2000 the ponds have not been in use.
3. When the facility was active as a cherry processor, wash water and used brine solution were discharged to the six unlined evaporation/percolation ponds and this liquid waste was then used intermittently to irrigate the company-owned vineyards.
4. From 1982 to 1992 the facility operated under WDRs Order No. 82-061, as a non-Chapter 15 facility. In 1992, the Regional Board adopted revised WDRs Order No. 92-154. The revised WDRs re-classified the wastes as a designated waste, under the criteria in Title 23, Division 3, Chapter 15, California Code of Regulations (Chapter 15)(now recodified, in part, in Title 27 California Code of Regulations Division 2), required groundwater monitoring, and required submittal of a technical report addressing wastewater treatment proposals. Ultimately, the Discharger treated the wastewater to reduce total dissolved solids concentrations (TDS) and was allowed to continue to discharge to the unlined ponds.
5. In November 1999, Dole requested that the wastewater be re-classified as non-designated waste. In response, staff requested an investigation of the hydrology associated with the evaporation/percolation ponds. The investigation determined that soil under the ponds had

been contaminated with sulfate up to 3,400 mg/kg, and chloride up to 500 mg/kg. Background sulfate and chloride concentrations in soil are approximately 120 mg/kg and 22 mg/kg, respectively. Down-gradient groundwater was impacted with up to 2,400 mg/l TDS, 690 mg/l sulfate and 330 mg/l chloride. Background TDS, sulfate and chloride concentrations in groundwater are approximately 400, 40, and 10 mg/l respectively. In January 2002, Dole submitted a closure plan for the ponds and in June 2002 Dole submitted an Engineering Feasibility Study to cleanup impacted groundwater.

6. On 8 February 2000 the Regional Board adopted WDRs Order No. 5-00-012 due to an ownership change from Dole to Wild Rose and an operator change from Dole to California Fruit Processors LLC, a lessee of Wild Rose. California Fruit Processors discharged fruit processing brine to the ponds for a single season in 2000.
7. Dole Fruit has accepted responsibly for closing the site because of their long-term discharge to these ponds.
8. Staff concurred on 29 August 2002 with Dole's revised Closure Plan for the ponds and on 6 December 2002 with the plan to cleanup groundwater. The Closure Plan demonstrated that it is infeasible to clean close the ponds and proposed to close them as a landfill. The plan proposes leaving some contaminated soil in place, establishing positive drainage, and capping the pond area with a low permeability cover. In compliance with Title 27 closure requirements, a deed restriction prohibiting any modification to the drainage and cover would be placed on the 1.4 acres containing the closed ponds.
9. On 14 January 2003, Dole informed staff that Mr. Robert Lawson, current owner of the Victor Fruit site and owner/operator of the Wild Rose Vineyards, is unwilling to allow access to the property for closure construction or to allow any deed restriction that would limit use of the pond area. On 6 February 2003, staff informed Mr. Lawson by letter that as landowner he is liable for the closure of the ponds and remediation of any degradation caused by the ponds. The letter requested that Mr. Lawson either coordinate with Dole to write an acceptable deed restriction or submit his own work plan for closure of the ponds that complies with Title 27. On 13 February 2003 Mr. Lawson responded by letter stating that he was unable to contact Dole and he was unable to make any other arrangements.
10. On 27 May 2003, the Regional Board was copied on a letter from Dole to Mr. Lawson requesting authorization to come on the property and close the ponds on 6 June 2003. Permission to access the property for the purpose of closing the ponds was not forthcoming and the parties were unable to reach agreement to close the ponds or establish an acceptable deed restriction.
11. On 5 August 2004, the Executive Officer issued CAO No. R5-2004-0714 requiring Dole Fresh Vegetables, Inc. and Wild Rose Vineyards LLC to close the wastewater ponds at the

Former Victor Fruit Facility. CAO No. R5-2004-0714 set compliance dates to: submit a time schedule to implement the Dole's accepted closure plan or submit a revised plan by 31 August 2004; submit proof that a deed restriction had been filed by 17 September 2004; submit a workplan to implement the approved corrective actions by 30 September 2004; and complete closure construction by 1 November 2004.

12. On 31 August 2004 Wild Rose submitted a schedule to clean close the wastewater ponds. The schedule requested a 30-day extension to the 1 November 2004 date to complete closure construction.
13. On 29 October 2004, Wild Rose submitted a closure plan for the ponds. On 9 November 2004, staff commented on the plan requesting several revisions. Subsequent to this letter, staff has had several conversations with both Wild Rose and Dole and understood that the parties were discussing plans to work together and close the ponds. However, despite these apparent efforts to resolve issues, to date the parties have failed to either submit a revised plan or agree to implement Dole's previously approved closure plan.
14. By failing to complete and implement Wild Roses' Closure Plan or alternatively implement Dole's Closure Plan and complete closure of the ponds by 1 November 2004, the Dischargers have violated CAO No. R5-2004-0714, which reads, in part, as follows:

***Task***

***Due Date***

*Submit a workplan to implement the corrective actions. The work plan shall provide for completion of closure construction by **1 November 2004.***

***30 September 2004***

15. California Water Code (CWC) Section 13350 states, in part, that:
  - (a) *Any person who (1) violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board... shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e)...*
  - (e) *The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both. (1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs...*
  - (B) *When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.*

16. As of 15 April 2005, the Dischargers have been in violation of the CAO No. R5-2004-0714 for 165 days for failure to close the ponds by 1 November 2004. The maximum liability for this CAO violation is eight hundred and twenty-five thousand dollars (\$825,000). The minimum liability for this violation is sixteen thousand and five hundred dollars (\$16,500).
17. CWC Section 13327 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.”*
18. 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.

DOLE FRESH VEGETABLES INC. AND WILD ROSE VINEYARDS LLC ARE HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that the Dischargers be assessed Administrative Civil Liability in the amount of \$40,000.00. The amount of the liability proposed is based upon the minimum required and maximum allowed liability under Section 13350(e)(1)(B), a review of the factors set forth in CWC Section 13327 cited in Finding No. 17 above, and upon consideration of the economic benefit or savings resulting from the violations.
2. A hearing shall be held on **23/24 June 2005** unless the Dischargers agree to waive the hearing and pay the imposed 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 refer the matter to the Attorney General for recovery of judicial civil liability.

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4. In lieu of a hearing, the Discharger may waive the right to a hearing. If you wish to waive the hearing, please check and sign the waiver and return it and the amount of civil liability in a check made payable to the *State Water Resources Control Board Waste Discharge Permit Fund*, to the Regional Board's office at 11020 Sun Center Drive, #200, Rancho Cordova, California 95670-6114, by **27 May 2005**.

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THOMAS R. PINKOS, Executive Officer

6 May 2005

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(Date)

RDA: 4/18/05

**WAIVER OF HEARING FOR  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent Dole Fresh Vegetables, Inc/Wild Rose Vineyards LLC (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2005-0512 (hereinafter the "Complaint");
2. I am informed of the right provided by Water Code Section 13323, subdivision (b) to a hearing within ninety (90) days of issuance of the Complaint;
3. I hereby waive the Discharger's right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of issuance of the Complaint; and
4. Without admitting liability for the matters alleged in the Complaint, I otherwise agree to remit payment for the civil liability imposed in the amount of \$40,000.00 by check, which contains a reference to "ACL Complaint No. R5-2005-0512" and is made payable to the "*State Water Resources Control Board Waste Discharge Permit Fund.*"
5. I understand the payment of the above amount constitutes a settlement of the Complaint that will not become final until after a public comment period.
6. 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.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)