

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2004-0718

FOR

FRANTZ WHOLESALE NURSERY INC.  
STANISLAUS COUNTY

This Order is issued to Frantz Wholesale Nursery Inc. based on provisions of California Water Code Section 13304, which authorizes the Regional Water Quality Control Board, Central Valley Region (Regional Board) to issue a Cleanup and Abatement Order (Order).

The Executive Officer of the Regional Board finds that:

1. The Frantz Wholesale Nursery Inc. (hereafter Discharger) is the owner of assessors parcel number 15-29-01 within the City of Hickman along the south side of the Tuolumne River.
2. On 18 August 2004 a water retention pond at the nursery failed causing about 2,000 cubic yards of sediment and rock to enter the Tuolumne River.
3. On 1 September 2004, the Regional Board was notified by the Department of Fish and Game that the Discharger discharged sediment into the Tuolumne River. On 8 September 2004, staff inspected the site and observed the water retention pond failure and that an area of approximately 0.25-acres of the Tuolumne River was filled with rock and sediment resulting in the destruction of aquatic habitat. There were also several riffles and deep pools downstream that had been filled with sand and sediment from the discharge.
4. The sediment and rock deposited into the Tuolumne River by the failure of the water retention pond constitute "waste" as defined in California Water Code section 13050. The Discharger, as owner, has discharged waste, i.e., earthen material, soil, and sediment, directly into surface waters. The Discharger, through this activity, has caused waste to be discharged where it has caused a condition of pollution or nuisance by increasing levels of sediment, settleable and suspended material, and turbidity.
5. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition*, (hereafter Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving water quality objectives, and incorporates by reference, plans and policies adopted by the State Water Resources Control Board. The Basin Plan identifies the beneficial uses applicable to the Tuolumne River and its tributaries. The listed existing or potential beneficial uses are: municipal and domestic supply; agriculture; recreation; freshwater habitat; warm and cold water migration; warm and cold water spawning; and wildlife habitat.
6. The Basin Plan lists specific water quality objectives for inland surface waters. These objectives include limitations on sediment, settleable and suspended material, and turbidity. Based on staff observations, the Discharger discharged earthen material, soil, sediment and

rock into surface waters and placed earthen materials, soil, sediment and rock in areas where they will continue to discharge into surface waters during subsequent storm events. This discharge has caused a condition of pollution in downstream receiving waters by increasing levels of sediment, settleable and suspended material, and turbidity.

7. Section 13304(a) of the California Water Code provides that:

“Any person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste or, in the case of threatened pollution or nuisance, take other necessary remedial action, including but not limited to overseeing cleanup and abatement efforts. Upon failure of any person to comply with such cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring such person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.”

8. Section 13304(c)(1) of the California Water Code provides that:

“If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of waste within the meaning of subdivision (a), are liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising the cleanup or abatement activities, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and state board to the extent of the latter’s contribution to the cleanup costs from the State Water Pollution and Abatement Account or other available funds.”

9. Section 13267(b) of the California Water Code provides that:

”In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports”

10. The technical reports required by this Order are necessary to demonstrate that appropriate methods will be used to clean up waste discharged to the Tuolumne River and to ensure that cleanup complies with Basin Plan requirements.
11. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act, pursuant to Section 15321(a)(2), Title 14, California Code of Regulations.
12. Any person adversely affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action. The petition must be received by the State Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions may be found on the Internet at [www.swrcb.ca.gov/rwqcb5](http://www.swrcb.ca.gov/rwqcb5) or will be provided upon request.

IT IS HEREBY ORDERED that, pursuant to Sections 13304, and Section 13267 of the California Water Code, Frantz Wholesale Nursery, Inc. shall clean up the waste and abate the effects of the sediment and rock discharged to the Tuolumne River as follows:

1. Clean up and abate, forthwith, the soil materials, sediment and rock discharged into the Tuolumne River.
2. Compliance with No. 1 above shall include, but not necessarily be limited to, the following measures:
  - (a) Clean up all silt, sediment, earthen materials and rock discharged to The Tuolumne River from the construction activities.
  - (b) Stabilize and restore the banks of the Tuolumne River disturbed by the water retention pond failure.
  - (c) **By 8 October 2004**, submit the Cleanup Activities Plan including a time schedule for submittal of a final report that addresses the impacts of the discharge and evaluates the effectiveness of the cleanup.
  - (d) **By 31 October 2004** complete the implementation of the Cleanup Activities Plan. Submit a report detailing all cleanup activities to comply with this Order. The Discharger shall provide staff access to areas of the property, as needed.
3. If requested, reimburse the Regional Board for reasonable costs associated with oversight of actions taken in response to this Order. **By 31 October 2004** submit the name and address to be used for billing purposes for oversight charges.

4. If in the opinion of the Executive Officer the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement or issue a complaint for Administrative Civil Liability.
5. Failure to comply with a cleanup and abatement order or the dates specified may result in further enforcement actions, including actions under section 13350, 13385, and 13387 of the California Water Code, which allows for administrative civil liability up to a maximum of twenty five thousand dollars (\$25,000) for each day of violation.

THOMAS R. PINKOS, Executive Officer

---

---

(Date)