

TENTATIVE ORDER R5-2025-XXXX
RESCINDING CEASE AND DESIST ORDER R5-2020-0038
FOR
SETTON PISTACHIO OF TERRA BELLA, INC.
TERRA BELLA PISTACHIO FACILITY
TULARE COUNTY

RESPONSES TO PUBLIC AND DISCHARGER COMMENTS ON TENTATIVE ORDER

On 19 February 2025, the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board) provided Setton Pistachio of Terra Bella, Inc. (Setton) with Tentative Order R5-2025-XXXX, Rescinding Cease and Desist Order R5-2020-0038 (Tentative Rescission Order) for Setton's Terra Bella Pistachio Facility (Facility). The Tentative Rescission Order is scheduled for consideration at the Central Valley Water Board's 25 April 2025 public meeting. The public comment period for the Tentative Rescission Order began on 19 February 2025 and ended on 21 March 2025.

DISCHARGER COMMENTS

On 19 March 2025, the Board received a comment letter from Theresa A. Dunham with Kahn, Soares & Conway, LLP on behalf of Setton. The contents of Setton's comment letter, as well as Board staff's responses to the comment letter, are set forth below.

ITEM 1

Setton's comment letter stated the following:

Rescission of the CDO is appropriate for a variety of reasons. Most importantly, there have been no credible odor complaints for several years. Over the last six years, beginning even prior to issuance of the CDO, Setton Pistachio has made significant investments in upgrades to wastewater treatment facilities, irrigation systems, and changes in operations to its Terra Bella Pistachio Facility. These changes include, in part, expanding the land application areas to a total of 961 acres, installing and using multiple solids removal systems, additional treatment through multiple filter systems, use of aerators in ponds, installation of sub-surface irrigation systems for all 961 acres, and minimizing time of storage in ponds prior to reuse of treated wastewater for irrigation.

With these improvements along with other operational changes such as ceasing use of the 350 acre-feet treatment and storage pond, Setton Pistachio has long resolved previous odor issues associated with the storage of pistachio hulling waste. As correctly stated in the draft rescission order, there were no confirmed odor complaints during the 2024 harvest season because there were no odors. Moreover, very recent odor complaints to the Central Valley Water Board and San Joaquin Air District, which occurred after Central Valley Water Board public notice of the rescission order, were also found to be unsupported and non-detect.

Considering that Setton Pistachio is not currently generating pistachio wastewater because we are outside of the pistachio harvest season, the most recent complaints significantly question the veracity and validity of these and potential future complaints.

Response

The Central Valley Water Board acknowledge that Setton has implemented various corrective actions and operational changes to correct the past odor violations that gave rise to the CDO. Board staff agree that they did not confirm any odor complaints received during the 2024 pistachio processing season. It is also Board staff's understanding that the San Joaquin Valley Air Pollution Control District did not confirm any odor complaints received during the 2024 processing season. The Central Valley Water Board has determined that Setton has complied with all requirements of the CDO.

PUBLIC COMMENTS

On 20 March 2025, the Central Valley Water Board received a comment letter from Leticia C. Luquin, of California Rural Legal Assistance (CRLA), as attorney for Terra Bella Voice for Change (TBVC), a community group made up of Terra Bella residents. The contents of TBVC's comment letter, as well as the Board responses to the comment letter, are set forth below.

ITEM 2

TBVC's comment letter stated the following:

We urge the Central Valley Regional Water Quality Control Board to deny the proposal to rescind the Cease and Desist Order R5-2020-0038 as Setton is in violation of the Order. First, Setton has violated and currently violates the Order, as residents of Terra Bella continue to endure odors originating from the Facility and Treatment/Storage Pond (Pond).

Response

The Central Valley Water Board appreciate TBVC's comments and are cognizant of the challenges that citizens who live in Terra Bella have faced due to Setton's past odor issues. Board staff have not been able to confirm recent odor complaints alleged against Setton and have not found that Setton has continued to create objectionable odors from its Facility or wastewater ponds. During the 2024 pistachio processing season, which typically runs from August to October of each year, Board staff received three odor complaints. Two complaints were received on 30 September 2024, and the

third was on 16 October 2024. Board staff conducted an inspection on 30 September 2024 in response to the 30 September 2024 complaints and did not confirm the complaints. The Board's understanding is that San Joaquin Valley Air Pollution Control District (Air District) investigated the 16 October 2024 complaint and did not confirm the complaint. Board staff's understanding is also that Air District staff conducted a total of seven complaint-driven inspections during the 2024 pistachio processing season, but did not confirm any of the complaints.

Board staff received additional odor complaints against Setton on 2, 10, and 26 March 2025. Board staff conducted an inspection on 10 March 2025 in response to the 10 March 2025 complaint and did not confirm the complaint. Board staff's understanding is that Air District staff investigated the 2 and 26 March 2025 complaints and did not confirm the complaints. Board staff's understanding is that the Air District received additional odor complaints on 27, 30, and 31 March and on 1 April 2025, and were either unable to verify the complaints or unable to confirm that wastewater generated at the Facility was the source of the odor.

ITEM 3

TBVC's comment letter stated the following:

Second, although the CDO prohibits Setton from using the Pond, Setton has recently used or is currently using the Pond. The Board must investigate the Facility's use of the Pond and take appropriate actions to reduce the odors.

Response

To clarify, the CDO does not prohibit Setton from using any of its wastewater ponds. The Board's understanding is that Setton has abandoned use of its largest pond for treating and storing wastewater, a 350 acre-foot lined pond which was the primary source of objectionable odors before its use for wastewater was discontinued. The 350 acre-foot pond is now used to contain stormwater from the Facility and from a portion of the community of Terra Bella and no longer receives pistachio process wastewater. Setton has continued to use two smaller ponds (mixing ponds) adjacent to the 350 acre-foot pond for its process wastewater during the processing season, which is not prohibited by the WDRs or CDO.

On 10 March 2025, Board staff conducted an inspection of Setton's ponds in response to an odor complaint that was received by the Board the same day. At the time of the inspection, Board staff observed that Setton's 350 acre-foot pond and two mixing ponds contained water. Setton staff explained that the water in the ponds was stormwater from recent storm events, and Board staff did not detect objectionable odors originating from

the ponds. Board staff also observed that Setton was not processing pistachios at the time of inspection.

ITEM 4

TBVC's comment letter stated the following:

Finally, we urge the Board collaborate with Tulare County, and Setton to ensure that the odor reduction mitigation measures outlined in Setton's Odor Mitigation Plan are implemented and are effective. Until Setton demonstrates compliance with the Order and its own Odor Mitigation Plan to minimize objectionable and foul odors, the Board must not lift the Order.

Response

Board staff believe that Setton has complied with the requirements of the CDO, as Setton has submitted the technical reports required by the CDO, implemented multiple corrective actions and operational changes to minimize objectionable odors, and as summarized above, has not had an odor complaint confirmed by Board staff or Air District staff during the 2024 pistachio processing season.. Setton will continue to be regulated by Waste Discharge Requirements Order 92-191 (WDRs Order), which requires that objectionable odors from Setton's Facility not be perceivable beyond the limits of property owned or controlled by Setton. Board staff will continue to investigate odor complaints submitted by Terra Bella residents as they are received and should Setton violate the odor provisions of its WDRs Order, take action as appropriate.

ITEM 5

TBVC's comment letter stated the following:

The Board must not rescind the Cease and Desist Order R5-2020-0038 because Setton violates Sections A.1 and A.2 of the Order. Residents continue to detect objectionable odors originating from Setton's Treatment/Storage Pond. Setton continues to violate Section A.1 of the Cease and Desist Order.

On or around March 1 and 2, 2025, a number of residents filed complaints about a sewage-like odor emanating from discharges in the Setton Pond, which constitutes a violation of section A.1 of the CDO. Based on these complaints alone, Setton is in violation of Section A.1 of the Order and the WDR because it is creating or has recently created objectionable odors.

Setton has also failed to comply with the CDO and the WDR due to the high volume of complaints made regarding the Facility's odors. The San Joaquin Valley Air Pollution Control District (Air District)'s Guidance for Assessing and Mitigating Air Quality Impacts (GAMAQI) provides technical assistance in evaluating the significance of odor emissions. An odor is significant when there are more than one confirmed complaint per year averaged over a three-year period, or three unconfirmed complaints per year averaged over a three-year period. The Board has used GAMAQI to demonstrate the presence of objectionable odors. In 2024, the Air District received four "unconfirmed complaints" regarding odor issues.⁷ Setton has exceeded the threshold of significance for odor levels outlined in the GAMAQI, which further highlights Setton's ongoing failure to comply with the CDO and WDR.

Response

As summarized above, the Board does not agree that Setton continues to violate the CDO and continues to create objectionable odors. As discussed above, Board staff and Air District staff did not confirm any odor complaints filed by Terra Bella residents during the 2024 pistachio processing season and have also not been able to confirm odor complaints filed against Setton between 2 and 26 March 2025. Board staff's understanding is that the Air District received additional odor complaints on 27, 30, and 31 March and on 1 April 2025, and were either unable to verify the complaints or unable to confirm that wastewater generated at the Facility was the source of the odor.

Board staff do not use the Air District's Guidance for Assessing and Mitigating Air Quality Impacts (GAMAQI) for evaluating the significance of odors, investigating odor complaints, or for determining compliance with Board adopted orders.

ITEM 6

TBVC's comment letter stated the following:

Setton continues to violate Section A.2 of the Cease and Desist Order.

As stated above, in 2024 and 2025, residents stated that sewer-like odors emanated from the Setton's discharges into the Pond. Because the objectionable odors were emanating from the Pond, Setton clearly has not ceased and desisted all nuisance conditions. This persistent odor has prevented the residents of Terra Bella from comfortably and freely enjoying their property. For example, the odors have prevented residents from using outdoor spaces, such

as gardening or enjoying time outside with their children. This is especially concerning because the ongoing odors impact the environmental health of community members, particularly those who are already socially and economically underprivileged. Therefore, Setton is not in compliance with Section A.2. of the CDO. Because Setton's discharges is causing or has caused nuisance conditions, the Board should not rescind the Order.

The Board must investigate Setton's discharge into the Treatment/Storage Pond and take appropriate enforcement action. As discussed above, residents stated that recent odors emanated from the Pond. Given the sewer-like odor of this discharge in the Pond, Setton likely violated section A.2 of the CDO. We urge the Board to investigate and stop this discharge immediately.

Relatedly, we are concerned about the lack of transparency and the absence of a plan by Setton to inform the nearby Terra Bella community about its use of the Pond. Our concern stems from Setton's historic and ongoing emission of strong, foul odors despite the CDO's odor prohibition and prohibition to use the Pond for waste discharge. We are also concerned given Setton's blatant history of disregard for agency enforcement efforts related to the odor and its impacts of the odor on the community. Setton has previously denied enforcement agents access to the Facility to investigate odor complaints made by residents.¹¹ Setton's emission of odors and disregard for enforcement led the San Joquin Valley Air Pollution Control District to file a lawsuit to enjoin the Facility from emitting odor nuisances, among other claims, and to collect penalty fees, and the case is ongoing since 2023.

Due to Setton's recent and likely ongoing odorous discharges into its Pond and its record of noncompliance with the CDO, the WDR, and nuisance abatement requirements, the Board must thoroughly investigate Setton's use of the Pond now. Additionally, the Board must stop any illegal discharges immediately and take any other appropriate enforcement action."

Response

Board staff do not agree that Setton continues to violate section A.2 of the CDO, which required Setton to cease and desist (and otherwise abate) all nuisance conditions existing in, or arising from discharges to its Treatment/Storage Pond. The Treatment/Storage Pond is defined in the CDO as Setton's 350 acre-foot lined pond. Board staff's understanding is that the 350 acre-foot lined pond is no longer used by Setton for wastewater. Board staff has conducted multiple inspections of the Facility since Setton stopped using the 350 acre-foot pond for wastewater and have not

observed wastewater discharges into the pond. Board staff has not found that nuisance conditions currently exist in Terra Bella due to discharges from Setton's Facility.

Regarding Setton's transparency on its use of its ponds, detailed descriptions of Setton's operations, uses of its ponds, and waste discharge practices are documented in Setton's most recent Report of Waste Discharge (RWD), which was submitted to Board staff in May 2023. The RWD is publicly available to any Terra Bella resident or other interested parties for review. Those interested in reviewing the RWD may contact Board staff to receive a copy.

ITEM 7

TBVC's comment letter stated the following:

Because the Facility regularly emits objectionable odors, the Board must work with Setton and Tulare County to ensure that odor reduction mitigation measures approved under the Wastewater Land Application Expansion Project are implemented and are effective.

Given the Facility's ongoing emission of foul odors, Setton has failed to demonstrate that their mitigation measures, such as the Odor Control Plan, designed to address nuisance odors prevent nuisance odors. We are concerned about these ongoing and possible future odors especially given Setton's increase in annual wastewater discharge and pistachio processing. We request that the Board work with the Tulare County to ensure that Setton is effectively implementing its Odor Control Plan to minimize foul odors.

In 2022, Setton expanded its production capacity to process up to 122 million pounds of pistachios per year. The increase of production capacity led to a higher discharge of process wastewater from the Facility. In 2024, Tulare County approved Setton's Wastewater Land Application Expansion Project (LAAP). The project added 89 acres of land application areas to expand Setton's wastewater treatment disposal. In the Environmental Impact Report (EIR) for the LAAP, Setton updated its 2022 Odor Control Plan, which included additional measures requiring Setton to track complaints, identify objectional odors during the harvest season, and the installation of a subsurface drip irrigation system to mitigate odors from the increased wastewater discharge. Despite improvements to the Odor Control Plan, residents continue to identify objectionable odors.

CRLA has previously identified potential reasons why these and other odor mitigations measures have failed to be effective. First, the mitigation measure for Setton to track complaints is uncertain and unenforceable. Under Setton's EIR

for the LAAP, a qualified technician is required to take daily measurements during the harvest season (August to October) using a field olfactometer, specifically between 12 pm to 4 pm, when temperatures are the highest. If the olfactometer identifies objectionable odors when the reading exceeds seven or higher, it would indicate the Facility is generating adverse odors. Setton would determine if the source of the nuisance odors is from the wastewater holding ponds and provide treatment during the harvest season. However, if the reading of the olfactometer is below seven, no further action is required. Setton's approach to tracking odor complaints does not provide clear guidance on response timeframes, specific timelines for resolutions, or remedies for addressing the complaints. Setton's mitigation measures also do not provide solutions for addressing complaints outside the hours of 12 pm to 4 pm or during the off-season. Nor do they specify how Tulare County will be notified of nuisance odors. Given Setton's history of disregarding the law and enforcement efforts and the ongoing foul odors emitted from the Facility, we are also concerned about Setton's commitment to taking actions to mitigate odors after the olfactometer detects them at levels above the threshold set in the Odor Control Plan.

We urge the Board to work with the Tulare County and Setton to ensure that it is effectively implementing its mitigation measures under the Odor Control Plan and provide guidance, timeframes, specific timelines for resolutions, or remedies for addressing the complaints during the off-season.

Response

Board staff do not agree that Setton continues to emit objectionable odors from its Facility. Please refer to the response to Item 2 above for details on Board staff's and Air District staff's investigations of recent odor complaints.

Board staff will continue working with Tulare County, the Air District, and other relevant agencies as necessary in investigating future odor complaints and evaluating compliance with applicable regulations and requirements. As indicated above, Setton will continue to be regulated by Waste Discharge Requirements Order 92-191 (WDRs Order), which requires that objectionable odors from Setton's Facility not be perceivable beyond the limits of property owned or controlled by Setton. Board staff will also continue to investigate odor complaints submitted by Terra Bella residents as they are received, and should Setton violate the odor provisions of its WDRs Order, take action as appropriate.

Board staff encourage TBVC to communicate its concerns regarding odor mitigation measures outlined in Setton's EIR to Tulare County, the lead agency on the EIR, and

concerns regarding the Odor Control Plan, a document required by the Air District, to the Air District.

ITEM 8

TBVC's comment letter stated the following:

Additionally, the Board must investigate whether the subsurface drip irrigation system, also required under Setton's Odor Control Plan, has been installed and is working properly to minimize odors. The subsurface drip irrigation system is designed to apply wastewater to additional land application areas to address potential odor issues associated with increased wastewater from Setton's expanded production. Specifically, Setton must install subsurface pipelines connecting the existing subsurface drip irrigation system to the additional land areas.

Based on available information, we believe the subsurface drip irrigation system has not yet been installed. CRLA has a reason to believe the installation has not occurred because residents have reported seeing standing water in the groves and observing Setton using the Pond. Additionally, residents have witnessed Setton using truck-mounted spray irrigations systems. This means that Setton has increased its annual wastewater discharge without upgrading its system to mitigate the odors as required under the LAAP. The Board must work with Setton to ensure that the existing subsurface drip irrigation system is updated to cover the new land application areas. Furthermore, the fact that the San Joaquin Valley Air Pollution Control District received four odor complaints during the 2024 harvest indicates that the Odor Control Plan has been largely ineffective, and it is too early to determine whether the additional updates to the Odor Control Plan will be effective this upcoming harvest season.

Given the persistent and unresolved odor issues from the Facility, Setton's mitigation measures have proven inadequate. The Board must refrain from rescinding the order. Instead, the Board must ensure that Setton complies with the CDO and immediately addresses the ongoing odor nuisance. The Board must also work with Tulare County ensure that Setton is held responsible for implementing an effective Odor Control Plan to mitigate odor nuisances in the community.

Response

Board staff's understanding is that Setton has completed installation of its subsurface drip irrigation system and associated pipelines for discharges of process wastewater to

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its land application areas. It is also Board staff's understanding that Setton has surface irrigation lines in addition to its subsurface lines, and that the surface irrigation system uses irrigation water to irrigate crops, while the subsurface system uses process wastewater for irrigation. Further details regarding Setton's discharge practices and irrigation systems are detailed in its May 2023 RWD, which is available for public review.

Board staff have previously received and investigated complaints from Terra Bella residents regarding Setton's alleged application of wastewater to land using truck-mounted spray irrigation systems. Board staff's investigations into these complaints determined that Setton was applying fertilizers to its land application areas and not process wastewater. Discharges of fertilizers to land application areas are not violations of the CDO or WDRs Order.