



November 4, 2014

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California Water Quality Control Board
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SUBJECT: Comment Letter on Administrative Civil Liability Complaint R5-2014-0561 in the Matter of California Sprouts, LLC

Dear Mr. Altevogt:

Western Growers Association has learned of the Administrative Civil Liability Complaint (ACLC) that has been issued to California Sprouts, LLC, and the circumstances associated with the ACLC. Therefore, we are submitting comments as an interested party to express our concern with the application of mandatory minimum penalties (MMPs) as assessed in the ACLC for California Sprouts, LLC. We are concerned for California Sprouts, LLC specifically as well as the potential impact that this may have on other entities subject to the Central Valley Regional Water Quality Control Board's (Regional Board) *Waste Discharge Requirements for Limited Threat Discharges of Treated/Untreated Groundwater from Cleanup Sites, Wastewater from Superchlorination Projects, and Other Limited Threat Wastewaters to Surface Waters* (Limited Threat General Order).

It is our understanding that California Sprouts LLC is facing an assessed fine of \$210,000 because they failed to file quarterly monitoring reports, starting with reports due on November 1, 2012. We also understand that California Sprouts LLC was not warned or notified of their failure to file such reports until they received an email from Regional Board staff on June 4, 2014. Immediately after receiving communication from the Regional Board, California Sprouts filed the missing quarterly monitoring reports. Soon thereafter, California Sprouts received another communication from the Regional Board indicating that they would be assessed MMPs for the late reports under Water Code section 13385.1(a)(1), and that they would be assessed \$3,000 for each 30-day period.

Our association is concerned with several issues that arise from the circumstances surrounding the ACLC for California Sprouts LLC. First, we are concerned that the Regional Board failed to notify this company of the fact that reports had not been received for two years. While we recognize that the discharger is ultimately responsible for submitting discharge monitoring reports, the Regional Board has some responsibility to warn and/or notify companies that they have not received a discharge monitoring report in a timely manner. Waiting two years to provide such notification means that MMPs continue to accrue for every 30-day period even though, as in this case, the failure to report was purely a mistake and there was no intent to hide anything from the Regional Board.

Second, and specific to the facts here, we are concerned that the Regional Board's prosecution team is proposing to assess the MMPs for every 30-day period even though most of the late reporting violations took place prior to January 1, 2014. It is our understanding that the Regional Board's prosecution team is claiming that Water Code section 13385.1(b) is not available to this discharger because this enforcement action is being brought after January 1, 2014.

Water Code section 13385.1(b) allows MMPs to be assessed for late discharge monitoring reports in a manner so that there is one \$3,000 MMP for each required report and not \$3,000 for each 30-day period. Assessing penalties in this way would significantly reduce the amount being assessed on California Sprouts, LLC, or any other discharger under similar circumstances. To qualify under this provision, the discharger could not have previously received notice from the Regional Board, must file its discharge monitoring report within 30 days after receiving notice, and during the period covered not violate any effluent limitations. Thus, the primary purpose is to not unfairly penalize those that had not filed quarterly reports but clearly were not hiding discharge violations. This section of the Water Code became inoperative on January 1, 2014.

While we understand that the Water Code provision did sunset, we are disturbed by the Regional Board prosecution team's position that reporting violations that occurred prior to the January 1, 2014 sunset date would not be eligible for assessment under Water Code section 13385.1(b). As a preliminary matter, we disagree with this position. MMPs assessed for reporting violations that occurred prior to January 1, 2014 should be calculated pursuant to Water Code section 13385.1(b), assuming that all other factors are met.

Next, by waiting two years, and after January 1, 2014, to notify California Sprouts, LLC of the fact that they had not properly filed quarterly monitoring reports, the prosecution team by its own actions has significantly increased the liability exposure to California Sprouts, LLC. This is extraordinarily unfair, and undermines the intent and purpose behind Water Code section 13385.1(b), which was to provide on a one-time basis fines assessed for the missing report, and not for each 30-day period. Further, the sunset provision was added because the State Water Resources Control Board assured the Legislature that it would address any backlogs prior to this date, and would establish a system for timely notifying dischargers of when quarterly reports were not received. Clearly, this did not happen for California Sprouts, LLC. Further, we are concerned that other dischargers that are subject to the Limited Threat General Order, and other General Orders, may be in similar circumstances.

Therefore, we encourage the Regional Board to reject the ACLC as proposed by the Prosecution Team. Rather, the Regional Board should assess MMPs for the reporting violations that occurred prior to January 1, 2014 under the provisions of Water Code section 13385.1(b) as we believe it is appropriate under the circumstances of this case.

Respectfully,

Gail Delihant
Director, CA Government Affairs