



Linda S. Adams  
Secretary for  
Environmental  
Protection

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD



Arnold Schwarzenegger  
Governor

CENTRAL COAST REGION

In the matter of:

Franscioni Brothers, Inc.

c/o Dan Franscioni

P. O. Box 7537

Spreckles, CA 93962

Complaint No. R3-2007-0098

Administrative Civil Liability

For

Violations of California Water Code

Section 13261

Conditional Waiver of Waste Discharge  
Requirements for Discharges from Irrigated  
Lands Violation

**FRANSCIONI BROTHERS, INC. IS HEREBY GIVEN NOTICE THAT:**

1. Franscioni Brothers, Inc., a commercial irrigated farming operation located in Spreckles, in Monterey County, with a mailing address of P. O. Box 7537, Spreckles, CA 93962 (hereinafter Discharger), is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Central Coast Region (hereinafter, Central Coast Water Board), may impose civil liability pursuant to Section 13261 of the California Water Code.
2. Unless the Discharger waives the right to a hearing and pays the civil liability as described in this complaint, a hearing on this matter will be held before the Central Coast Water Board during a public meeting on February 8, 2008, in San Luis Obispo, California. The Discharger and/or its representative(s) will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Central Coast Water Board. The Central Coast Water Board will mail the Discharger an agenda for the hearing not less than ten days before the hearing date.
3. At the hearing, the Central Coast Water Board will consider whether to affirm, decrease, or increase the proposed civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability, or to take any other action appropriate as a result of the hearing.
4. The Central Coast Water Board adopted the *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands*, Order No. R3-2004-0117 (Conditional Waiver), on July 9, 2004. The Conditional Waiver required all commercial irrigated farming operations in the Central Coast Region to submit a Notice of Intent to comply with the Conditional Waiver by January 1, 2005, pursuant to California Water Code Section 13260.
5. In a June 15, 2006, letter, the Central Coast Water Board required the Discharger, pursuant to California Water Code Sections 13260 and 13267, to submit information

stating whether the above operation was a commercial farming operation required to submit a Notice of Intent to comply with the terms of the Conditional Waiver. The Discharger failed to respond either by enrolling or by providing information showing that the above operation is not a commercial irrigated farming operation required by the Conditional Waiver to submit a Notice of Intent.

6. On March 16, 2007, the Central Coast Water Board issued a Notice of Violation to the Discharger for failing to respond to the request for information. The Central Coast Water Board mailed the March 16, 2007, Notice of Violation by certified mail, and received a return receipt confirming delivery to the Discharger at the same mailing address as the previous letter. More than 60 days have passed since the Central Coast Water Board sent the Notice of Violation.
7. The Discharger is in violation of California Water Code Section 13260 by failing to submit a Notice of Intent to enroll under the Conditional Waiver by January 1, 2005, and is subject to penalties set forth in California Water Code Section 13261.
8. In accordance with Section 13261 of the California Water Code, the Discharger is civilly liable for a maximum of \$1000 per day for each day in which the violation occurs. The maximum civil liability, calculated from the due date of July 24, 2006, established in the June 15, 2006, letter requiring information pursuant to California Water Code Section 13260 through December 11, 2007, is \$505,000.
9. The intent of this enforcement action is to encourage compliance with the Conditional Waiver and to ensure that commercial irrigated farming operations are meeting their legal responsibility to comply with the Conditional Waiver and to protect water quality.
10. In determining any liability to be imposed, CWC Section 13327 requires the Central Coast Water Board to consider the following factors:

- a. Nature, circumstances, extent, and gravity of the violations:

The Discharger has been given sufficient notice to submit a Notice of Intent to enroll under the Conditional Waiver. However, while compliance with enrollment is essential to Regional Board regulation, this consideration does warrant liability that is less than the maximum because it is a single reporting violation and the discharge subject to the report is not as serious as the full range of discharges covered by the liability statute.

- b. Whether the discharge is susceptible to cleanup or abatement and the degree of toxicity of the discharge:

The violation involves non-submittal of a Notice of Intent to enroll under the Conditional Waiver and therefore the susceptibility to cleanup or abatement carries relatively minor consideration. The Notice of Intent is necessary to ensure compliance with the conditions of the Conditional Waiver.

- c. The ability to pay and the affect on ability to continue in business:

The Regional Board has no specific information on the Discharger's financial health.

d. Any prior history of violations and any voluntary cleanup efforts:

Staff is not aware of any prior history of violations. Subsequent to the March 16, 2007 letter, Regional Board staff contacted Mr. Dan Franscioni on March 30, 2007 and was informed that enrollment forms would be filed. On April 26, 2007, Regional Board staff left a message notifying the Discharger that forms were past due. Discharger did not respond to the phone message and has not submitted a Notice of Intent.

e. Degree of culpability and economic benefit or savings:

The Discharger is culpable because reminders for the need to enroll were ignored. The Discharger knew about the requirement to submit the Notice of Intent and still did not comply. The Discharger realized cost savings by failing to pay fees and failing to perform required water quality monitoring or participate in the Cooperative Monitoring Program established under the Conditional Waiver. The Discharger realized additional cost savings by failing to attend required education courses and develop a farm water quality management plan. According to records, the Discharger farms approximately 2,353 acres in Monterey County. Staff estimates the cost savings for non-compliance to be approximately \$12,694 (including monitoring costs, State Water Board waiver fees, and education costs).

f. Other matters as justice may require:

Staff time to prepare this Complaint is estimated to be 20 hours at \$125 per hour for a total of \$2,500.

11. Nothing in this complaint relieves the Discharger of any reporting obligation under the Conditional Waiver, including the obligation to submit the Notice of Intent described above if the Discharger has not already done so and to conduct water quality monitoring or participate in the Cooperative Monitoring Program by paying all past and current monitoring costs. Failure to submit the Notice of Intent may subject the Discharger to additional enforcement action, including penalties accrued after the date of this complaint.
12. If the Discharger waives its right to a hearing and pays the civil liability recommended herein, this complaint only resolves liability that the Discharger incurred through the date of this complaint, for the violations specified herein, and does not relieve the Discharger from liability for any violations after the date of this complaint or any violations not alleged in the complaint.


**RECOMMENDED CIVIL LIABILITY:** Based on the allowable liability requirement of California Water Code Section 13261, and other considerations, the Executive Officer recommends imposing civil liability in the amount of \$30,387.

**WAIVER OF A HEARING:** The Discharger may waive the right to a hearing. If the Discharger wishes to waive the right to a hearing, please sign the attached waiver and return it, along with a check in the amount of \$30,387, to the Central Coast Water Board at the mailing address shown in the above letterhead. Make the check payable to the State Water Resources Control Board.

Waste Discharge Permit Fund, and write "Complaint No. R3-2007-0098" on the check's memo line.

Please note that the civil liability recommended in this complaint is the **less than the maximum allowable by law.**

If you have any questions, please contact Alison Jones at (805) 542-4646 or Harvey Packard at (805) 542-4639.



Michael J. Thomas  
Assistant Executive Officer

12-11-07

Date