

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2007-0522

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

ARLAN B. THOMAS AND JULIE A. THOMAS
MERCED COUNTY

This Administrative Civil Liability Complaint (hereafter Complaint) is issued to Arlan B. Thomas and Julie A. Thomas based on a finding of failure to submit a technical report pursuant to California Water Code (CWC) section 13267, for which administrative civil liability may be imposed pursuant to CWC section 13268.

The Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) finds, with respect to Arlan B. Thomas' and Julie A. Thomas' acts, or failure to act, the following:

1. Growers within the Central Valley Region who have irrigation water and/or stormwater leaving their irrigated lands may contribute, or have the potential to contribute waste to surface waters. The term "waste" is very broadly defined in CWC section 13050(d) and includes runoff of sediment or agricultural chemicals. The term "waters of the state" includes all surface water and groundwater within the state. (CWC section 13050(e).) The Regional Water Board is required to regulate the amount of waste that may be discharged to waters of the state. (CWC section 13263.)
2. CWC section 13267 authorizes Regional Water Boards to conduct investigations and to require technical or monitoring reports from any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste to waters of the state.
3. Regional Water Board staff developed a list of landowners in Merced County, including Arlan B. Thomas and Julie A. Thomas, that, based upon available data, were likely to be discharging wastewater from irrigated lands to surface waters and did not have regulatory coverage under waste discharge requirements (i.e., permits) or waivers of waste discharge requirements.
4. In developing this list, Regional Water Board staff used county assessor data and geographical land use data (i.e., the California Department of Conservation Farmland Mapping and Monitoring Program (FMMP) land use data) to assist in identifying potential discharges of agricultural wastewater to surface waters and to identify owners and operators of agricultural lands who may not have complied with the California Water Code. Both data sets were used to develop lists of parcels for which CWC section 13267 Orders were issued that require parcel owners to provide a technical report that includes information on whether an irrigated agricultural operation is taking place on the

parcel, the nature of the operation, if regulatory coverage has been obtained, and if not, why it has not been obtained.

5. Evaluation of county assessor and FMMP data indicated four parcels of agricultural land were owned by Arlan B. Thomas and Julie A. Thomas in Merced County (APN 067-060-026, 37 acres; APN 067-060-037, 19 acres; APN 068-230-027, 36 acres; and APN 053-280-015, 18 acres).
6. On 7 September 2006, the Regional Water Board issued a CWC section 13267 Order (hereafter Order) to Arlan B. Thomas and Julie A. Thomas, sent via certified mail, requiring the submission of a written technical report by 10 October 2006.
7. The Order provides, *“Water Board staff has determined that you discharge, or have high potential to discharge, waste from your property to a surface water of the State and that any discharges from your irrigated land could affect the quality of waters of the State. This determination has been based on the (1) geographic location and topographic features of all or part of your irrigated lands, (2) use of public county records and (3) proximity to surface water bodies.”*
8. As detailed in the Order, Arlan B. Thomas and Julie A. Thomas could comply by completing a one-page report form enclosed with the Order that calls for information on parcel location; assessor parcel number; parcel size; nature of the agricultural operations that have or are taking place on the property; if regulatory coverage had been obtained; and if not, the reason coverage was not obtained.
9. In requiring the technical report, the Order explains, *“The requested information is needed to determine if you are a “discharger” under the Water Code, and if so, whether you have obtained appropriate waiver coverage or a permit for your discharge.”*
10. The certified mail receipt for the Order issued to Arlan B. Thomas and Julie A. Thomas was signed as received by Arlan Thomas on 9 September 2006. Arlan B. Thomas and Julie A. Thomas did not respond or submit a technical report to the Regional Water Board.
11. Thereafter, a Notice of Violation (NOV) was issued and sent via certified mail on 14 December 2006 to Arlan B. Thomas and Julie A. Thomas, for failure to submit a technical report as required by the Order. The certified mail receipt was signed as received by Arlan B. Thomas. No date was noted with the signature. A response to the NOV was required by 15 January 2007.
12. Regional Water Board staff checked the compliance tracking system and case files and it was verified that the Regional Water Board had not received a response or technical report from Arlan B. Thomas and Julie A. Thomas.

VIOLATIONS

13. Failure to submit a technical report required by CWC section 13267(b). The CWC section 13267 Order was issued to Arlan B. Thomas and Julie A. Thomas on September 2006 and required the submission of a technical report by October 2006. As of 10 September 2007, Arlan B. Thomas and Julie A. Thomas's technical report is 335 days past due. The 14 December 2006 Notice of Violation requested a response by 15 January 2007. As of 10 September 2007, Arlan B. Thomas and Julie A. Thomas's technical report is 238 days past the response date for the Notice of Violation.

REGULATORY CONSIDERATIONS

14. CWC section 13267 (a) states: *"A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of any waters of the state within its region."*
15. CWC section 13267 (b) states: *"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..., 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."*
16. CWC section 13268 (a) states: *"Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b)."*
17. CWC section 13268(b)(1) states: *"Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) or Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1000) for each day in which the violation occurs."*
18. The required technical report is 335 days past due. The maximum liability under CWC section 13268(b)(1) for the nonsubmittal of the technical report is \$1000 per day late, for a total of three hundred thirty-five thousand dollars (\$335,000).

19. The Assistant Executive Officer has considered the nature, circumstances, extent, and gravity of Arlan B. Thomas' and Julie A. Thomas' failure to submit a technical report as required, Arlan B. Thomas' and Julie A. Thomas' ability to pay the proposed civil liability, the effect of the proposed civil liability on Arlan B. Thomas' and Julie A. Thomas' ability to continue in business, any history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the failure to submit the technical report required, and other matters as justice may require, including the staff time required to prepare this Complaint.
20. Regional Water Board staff spent a total of 25.1 hours preparing this Complaint. The total cost for staff time is \$2008 based on a rate of \$80 per hour.

ARLAN B. THOMAS AND JULIE A. THOMAS ARE HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that Arlan B. Thomas and Julie A. Thomas be assessed **an administrative civil liability in the amount of \$3000**. The amount of the proposed liability is based upon a review of the factors cited in CWC sections 13268 and 13327, as well as the State Water Resources Control Board's Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing shall be held on **6 or 7 December 2007** unless Arlan B. Thomas and Julie A. Thomas agree to waive the hearing and pay the imposed civil liability in full.
3. If a hearing is held, the Regional Water 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.
4. In lieu of a hearing, Arlan B. Thomas and Julie A. Thomas may waive the right to a hearing. If you wish to waive the right to a hearing, sign the enclosed waiver and return it with the full amount of civil liability (in a check made payable to the *State Water Resources Control Board, Waste Discharge Permit Fund*), to the Regional Water Board's office at 11020 Sun Center Drive, Suite #200, Rancho Cordova, CA 95670, by **10 October 2007**.

KENNETH D. LANDAU, Assistant Executive Officer

**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 Arlan B. Thomas and Julie A. Thomas in connection with Administrative Civil Liability Complaint No. R5-2007-0522 (hereafter the "Complaint");
2. I am informed of the right provided by California Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of service of the Complaint;
3. I hereby waive Arlan B. Thomas' and Julie A. Thomas' right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of service of the Complaint; and
4. I certify that Arlan B. Thomas and Julie A. Thomas will remit payment for the civil liability imposed in the amount of three thousand (\$3000) by check, which contains a reference to "ACL Complaint No. R5-2007-0522" 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 Arlan B. Thomas and Julie A. Thomas to further enforcement, including additional civil liability.

(Name)

(Title)

(Date)