



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board

Central Coast Region

Enforcement Unit



Arnold Schwarzenegger
Governor

Internet Address: <http://www.waterboards.ca.gov/centralcoast>
895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906
Phone (805) 549-3147 • FAX (805) 543-0397

To: Roger W. Briggs, Executive Officer
Central Coast Water Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

From: Central Coast Water Board Enforcement Staff
Harvey Packard
Todd Stanley
Elaine Sahl
Alison Jones
Jill Wilson
Yvonne West
Michael Thomas

Date: November 10, 2009

Subject: Enforcement Staff's Legal and Technical Analysis In Support of Proposed
ACL Order No. R3-2009-0064, Pacifico Azul, Inc., Watsonville, Monterey
County

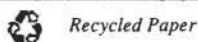
SUMMARY

On December 11, 2007, the Assistant Executive Officer, on behalf of the Central Coast Water Board's Enforcement Staff, issued Administrative Civil Liability Complaint No. R3-2007-0101 (Complaint) to a farming operation named Pacifico Azul (Discharger) c/o Rebecca Bozarth. The Complaint alleged that the Discharger violated Central Coast Water Board Order No. R3-2004-0117, *Conditional Waiver of Waste Discharge Requirements for Discharges From Irrigated Lands* (Irrigated Ag Order) by failing to submit a report of waste discharge or notice of intent to comply with the Irrigated Ag Order. The Complaint proposed that the Discharger be assessed civil liability in the amount of \$9,136, and is hereby incorporated into this evidentiary submittal.

DISCUSSION

Discharger. The Discharger owned and/or operated approximately 137 acres of commercial irrigated farming located near Watsonville, in Monterey County, with a mailing address of 24 Paddon Road, Watsonville, CA 95076.

California Environmental Protection Agency



Item No. 7 Attachment No. 2
December 10, 2009 Meeting
Pacifico Azul, Inc., Watsonville

The Discharger is subject to the Irrigated Ag Order, which requires all commercial irrigated farming operations in the Central Coast Region to submit a Notice of Intent to comply with the Irrigated Ag Order by January 1, 2005, pursuant to California Water Code Section 13260.

The Discharger violated the Irrigated Ag Order by failing to:

- a. submit a Notice of Intent to comply with the Irrigated Ag Order by January 1, 2005;
- b. perform required water quality monitoring or participate in the Cooperative Monitoring Program established under the Irrigated Ag Order;
- c. pay State Water Resources Control Board enrollment fees;
- d. develop a Water Quality Management Plan for the farming operation.

Requirements. Order No. R3-2004-0117 includes the following requirements:

Notice of intent to comply with the Irrigated Ag Order by January 1, 2005

Dischargers seeking authorization to discharge under the Irrigated Ag Order shall submit a complete *Notice of Intent (NOI) to Comply with the Terms of the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Land*. Information that must be submitted as part of the NOI includes the location of the operation, identification of responsible parties (owners and/or operators), a map of the operation, a management practice checklist/self-assessment, a signed statement of farm water quality plan completion and which monitoring option is elected.

Perform required water quality monitoring or participate in the Cooperative Monitoring Program

All dischargers are required to elect a monitoring option. Discharger may elect to perform individual monitoring or participate in cooperative monitoring. A Discharger may change the monitoring option election at any time by submitting a revised NOI. The revised NOI must include a proposed monitoring and reporting plan (to elect individual monitoring) or a demonstration that the Discharger is participating in a cooperative monitoring program (for cooperative monitoring).

Pay State Water Resources Control Board enrollment fees

Dischargers are required to pay \$0.15¹ per irrigated acre per year. Central Coast Water Quality Preservation, Inc. collects State Board fees and submits them to State Board on behalf of all Cooperative Monitoring Program members. This fee is included in the annual monitoring fee charged by Central Coast Water Quality Preservation, Inc.

Develop a Farm Water Quality Management Plan for the farming operation

Dischargers are required to develop and maintain a plan that contains, at a minimum, identification of practices that are currently being or will be

¹ State Board fees are \$0.12 an acre. Preservation, Inc. adds \$0.03 for collecting the fees and passing them onto State Board.



implemented to address irrigation management, pesticide management, nutrient management, and erosion control to protect water quality.

Violations. The Discharger has no prior history of violations.

Correspondence History. On June 15, 2006, the Central Coast Water Board Executive Officer required the Discharger, pursuant to California Water Code Sections 13260 and 13267, to submit information stating whether the operation was a commercial farming operation required to submit a Notice of Intent to comply with the terms of the Irrigated Ag Order. The Discharger failed to respond either by enrolling or by providing information showing that the operation is not a commercial irrigated farming operation required by the Irrigated Ag Order to submit a Notice of Intent.

On May 15, 2007, the Central Coast Water Board Executive Officer issued a Notice of Violation to the Discharger for failing to respond to the June 15, 2006 letter requiring information. The Water Board mailed the May 15, 2007 Notice of Violation by certified mail, and received a return receipt confirming delivery to the Discharger at the same mailing address as the June 15, 2006 letter.

On June 9, 2007, Water Board staff called the Discharger and left a message for Ms. Bozarth. Water Board staff did not receive a return phone call from Ms. Bozarth.

On June 27, 2007, Water Board staff called the Discharger a second time and left a message for Ms. Bozarth. Water Board staff did not receive a return phone call from Ms. Bozarth.

On December 11, 2007, the Central Coast Water Board Assistant Executive Officer issued Administrative Civil Liability Complaint No. R3-2007-0101 (Complaint), alleging that the Discharger was in violation of the Irrigated Ag Order and the Water Code, and recommending liability of \$9,136.

On January 10, 2008, the Discharger submitted a waiver of its right to a hearing within 90 days of the Complaint's issuance, and indicated its desire to discuss resolving the alleged violations via settlement.

On October 22, 2008, the Water Board Assistant Executive Officer proposed settlement terms. The Discharger telephoned Water Board staff approximately one week later, and indicated its agreement to the terms.

On November 6, 2008, the Water Board Assistant Executive Officer mailed Stipulated Administrative Civil Liability Order No. R3-2008-0084 to the Discharger by certified mail. On November 28, 2008, the mailing was returned to Water Board staff marked "Unclaimed."

On November 20, 2008, December 3, 2008, December 23, 2008, January 8, 2009, April 9, 2009, and June 25, 2009, Water Board staff telephoned the Discharger but received no answer to any of the attempts.

On May 18, 2009, Water Board staff successfully delivered the Stipulated Order to the Discharger via a courier service. The Discharger did not reply to the mailing.

The Discharger was not responsive to attempts by Water Board staff to contact her. The Discharger's failure to respond has extended the duration of the violations².

Discharger's Corrective Actions. On January 10, 2008, staff received the Discharger's Notice of Intent to comply with the Irrigated Ag Order.

On February 1, 2008, the Discharger submitted written certification that Ms. Rebecca Bozarth completed a 15-hour course in farm water quality planning in February 2003.

On February 28, 2008, the Discharger paid Central Coast Water Quality Preservation, Inc. the enrollment and Cooperative Monitoring Program fees (\$887.95) owed since January 1, 2005.

Maximum Civil Liability. In accordance with Section 13261 of the California Water Code, the Discharger is civilly liable for a maximum of \$1,000 per day for each day in which the violations occur. Pursuant to Water Code Section 13260, staff required the Discharger to submit its information no later than July 24, 2006. The Central Coast Water Board Assistant Executive Officer issued the Complaint on December 11, 2007. Enforcement Staff therefore conservatively alleges that the Discharger violated Water Code Section 13260 from July 24, 2006, through December 11, 2007, for 505 days. The maximum civil liability the Central Coast Water Board may impose on the Discharger is **five hundred and five thousand dollars (\$505,000)**.

Factors to Consider when Assessing Civil Liability. The factors required for consideration are presented in the Complaint paragraph 10, and are hereby incorporated.

Comparable Enforcement Cases. In establishing the amount of its recommended liability, staff considered other Central Coast Region Irrigated Ag Order enforcement cases for failure to submit a Notice of Intent to comply with the Irrigated Ag Order by January 1, 2005, perform required water quality monitoring or participate in the Cooperative Monitoring Program, pay State Water Resources Control Board enrollment fees, and develop a Water Quality Management Plan for the farming operation.

Table 1

<i>Discharger</i>	<i>Irrigated Acres</i>	<i>Complaint Number</i>	<i>Complaint Recommended Liability</i>
Agro-Jal Farms, Inc.	1,655	R3-2007-0099	\$24,100
Franscioni Brothers, Inc.	2,353	R3-2007-0098	\$30,387
F.Y.P. Vineyards	208	R3-2007-0100	\$9,199
Strawberry Services/Ruby Farms	195	R3-2007-0102	\$9,867
Pacifico Azul	137	R3-2007-0101	\$9,136

The Water Board, through its Executive Officer, and each of the other four operations listed above have formally agreed to settlements, as shown in the following table.

² Note that the \$2,500 staff costs cited in the Complaint account only for staff time up to its issuance.



Table 2

<i>Discharger</i>	<i>Stipulated ACL Date</i>	<i>Stipulated ACL Number</i>	<i>Settlement Liability</i>
Agro-Jal Farms, Inc.	12/9/08	R3-2008-0086	\$14,000
Franscioni Brothers, Inc.	1/29/09	R3-2008-0082	\$4,500
F.Y.P. Vineyards	1/29/09	R3-2008-0083	\$3,000
Strawberry Services/Ruby Farms	1/29/09	R3-2008-0085	\$3,000

The liability recommended in the Complaint is calculated based on two years of annual administrative fees, monitoring fees, State Water Board fees, one-time costs of mandatory education for farm personnel, and Water Board staff costs for enforcement. Based on these criteria, and the Discharger's 137 irrigated acres, the Complaint recommends \$9,136 in liability. Staff calculated the respective liability for all five farming operations in the same manner.

On October 22, 2008, the Water Board Assistant Executive Officer proposed settling the alleged violations in a letter to the Discharger. Approximately one week later, the Discharger telephoned Water Board staff and agreed to the proposed settlement amount. Since issuing the Complaint in December 2007, staff members spent an estimated 25 hours attempting to memorialize in writing the Discharger's verbal agreement to settle the allegations, and when those attempts were unsuccessful, staff spent time preparing for the December 10, 2009 public hearing. At the updated rate of \$150 per hour, staff costs have increased by \$3,750 (25 hours multiplied by \$150 per hour). Adding this amount to the original staff costs for the Complaint, the total staff costs are now \$6,250. Accordingly, staff's recommended liability has increased to \$13,000.

RECOMMENDATION

Adopt Administrative Civil Liability Order No. R3-2009-0064, imposing liability for \$13,000 against the Discharger.

ATTACHMENTS

Exhibits Attached for Presentation:

1. Central Coast Water Board Information Requirement Letter to Pacifico Azul c/o Rebecca Bozarth, dated June 15, 2006
2. Central Coast Water Board Notice of Violation Letter to Pacifico Azul c/o Rebecca Bozarth, dated May 15, 2007
3. Notice of Hearing and Issuance of Administrative Civil Liability Complaint No. R3-2007-0101, dated December 11, 2007, and proof of service
4. Signed Waiver of Time for Hearing
5. Notice of Hearing for Administrative Civil Liability, dated November 10, 2009, and proof of service

Exhibits Incorporated by Reference:

6. Order No. R3-2004-0117, Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Irrigated Ag Order)
7. Method of Calculating the Recommended Civil Liability for Irrigated Ag Order ACLs





California Regional Water Resources Control Board

Central Coast Region



Linda S. Adams
Acting Secretary

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Phone (805) 549-3147 • FAX (805) 543-0397

Arnold Schwarzenegger
Governor

June 15, 2006

Rebecca Bozart, Pacifico Azul
24 Paddon Road
Watsonville, CA 95076

Pesticide Use Permit # : 440138A

REQUEST FOR INFORMATION RELATED TO ENROLLMENT UNDER "AG WAIVER" ORDER #R3-2004-0117, CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS

Our records indicate that the above business/operation may be a commercial, irrigated farming operation, and subject to the above order (Ag Waiver). If you irrigate and sell crops within the Central Coast Region, you must enroll by **July 24, 2006** or face possible penalties. If you are already enrolled with the Ag Waiver, and received this letter in error, fill out box "A" below and return it to us by **July 24, 2006**. Copies of the Ag Waiver and associated Monitoring and Reporting Program are available on the Water Board website at www.waterboards.ca.gov/centralcoast or will be provided upon request.

The Water Board requires you to submit the information requested below pursuant to Water Code sections 13260 and 13267. You are required to submit this information because Pesticide Use information indicates that your operation may be commercial, irrigated agriculture. The Water Board needs this information to ensure compliance with water quality requirements for irrigated agriculture. You must select and fill out one of the following boxes and return this letter along with any required forms to our office by **July 24, 2006**, or be subject to potential fines.

<p>A) <input type="checkbox"/> I am already enrolled in the Conditional Waiver.</p> <p>Provide Name and Farm Operation: _____</p> <p>AWID Number (from Ag Waiver information): _____</p> <p>PUR Number (if different from above): _____</p>
<p>B) <input type="checkbox"/> I am not subject to the Ag Waiver because I am not a commercial, irrigated farming operation.</p> <p>Provide information on what type of operation you are:</p>
<p>C) <input type="checkbox"/> I am the owner or operator of a commercial, irrigated farming operation.</p> <p><input type="checkbox"/> My Ag Waiver enrollment forms are attached. (Fill out and submit the Notice of Intent, Ranch Information and Management Practices Checklist)</p> <p><input type="checkbox"/> I choose to apply for an individual permit (waste discharge requirements) and have spoken with Central Coast Water Board staff _____ regarding this. My Report of Waste Discharge is attached.</p>

-----continued on back -----



Under Sections 13261 and 13268 of the Water Code, a violation of the above requirements may subject you to civil liability of up to \$1,000 per day for each day in which the violation occurs and/or criminal prosecution and other civil enforcement. Penalties may be assessed for each day after January 1, 2005, if you were subject to enrollment at that time.

Any person affected by this action may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Section 13320 of the California Water Code and Title 23, California Code of Regulations, Section 2050. The petition must be received by the State Water Board, Office of Chief Counsel, P. O. Box 100 Sacramento, 95812 within 30 days of the date of this letter. Copies of the law and regulations applicable to filing petitions are available at http://www.waterboards.ca.gov/wqpetitions/wqpetition_instr.html or will be provided upon request.

For additional information or if you have any questions regarding this letter please call or e-mail Jill Wilson at (805) 542-4762, jwilson@waterboards.ca.gov; Alison Jones at (805) 542-4646 or Hector Hernandez at (805) 542-4641, *comunicarse con el si usted habla en español*.

Sincerely,



Roger W. Briggs
Executive Officer

The following outreach coordinators are available if you need additional assistance:

Monica Barricarte

Cachuma Resource Conservation District
920 East Stowell Rd.
Santa Maria, CA 93454
Phone (805) 928 9269 x 120
Fax (805) 928 9644
Email monica.barricarte@ca.nacdnet.net
comunicarse con ella si usted habla en español

Christopher C. Goodson

Central Coast Agricultural Water Quality Coalition
105A Fairview Ave
Capitola, CA 95010
Phone (831) 227-5404
Email goodsonwq@yahoo.com
hablo español

Nicole De La Rosa

Ag Water Quality Program
Santa Clara/San Benito Farm Bureaus
Phone 408-776-1684

Craig Ficenc

Watershed Outreach Coordinator
Agriculture and Land-Based Training Association
Phone (831) 682-6813
Email Craig@albafarmers.org
hablo español

Kay Mercer

Southern SLO and SB Counties
Ag Watershed Coalition
Phone (805) 208-8039
Email sbaqcoalition@verizon.net
Email klmercer@charter.net

Jill Whitacre

Central Coast Vineyard Team
835 12th Street, Suite 204
Paso Robles, CA 93446
Phone (805) 369-2288
Fax (805) 369-2292
Email jill@vineyardteam.org

Tim Frahm

San Mateo County Farm Bureau
Phone (650) 560-0232
Email timfrahm@hotmail.co

Darlene Din

Central Coast Ag Task Force
921 Brewington Avenue
Watsonville, CA 95076
Phone (831) 682-0734
Email darlenedin@earthlink.net





California Regional Water Resource Control Board

Central Coast Region



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Arnold Schwarzenegger
Governor

May 15, 2007

Rebecca Bozart, Pacifico Azul
24 Paddon Road
Watsonville, CA 95076

Certified Mail #: 7004 1350 0003 9897 8541
PUR #: 440138A

NOTICE OF VIOLATION – FAILURE TO ENROLL UNDER “AG WAIVER” ORDER #R3-2004-0117, CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS

Dear Rebecca Bozart:

On June 15, 2006, the Central Coast Regional Water Quality Control Board sent your operation a Request for Information letter, pursuant to Water Code sections 13260 and 13267. You were sent the Request for Information letter and are now receiving this Notice of Violation letter because you failed to respond or have failed to submit a Notice of Intent (NOI) application for the Conditional Waiver for Irrigated Lands. The Conditional Waiver for Irrigated Lands required that you submit a NOI application on or before January 1, 2005, pursuant to Resolution No. R3-2004-0117, issued on July 9, 2004. To date we have not received your NOI application. **Failure to comply within 30 days of this letter date may subject you to assessment of civil monetary penalties.**

You are required to do one of the following immediately:

1. *If your operation is a commercially irrigated farming operation and subject to enrollment and has not been enrolled in the Waiver* - Submit a complete enrollment application to the Central Coast Water Board, including a signed NOI, ranch information pages, and farm water quality management practices checklist. Copies of the Ag Waiver Order and associated Monitoring and Reporting Program are available on the Water Board website at www.waterboards.ca.gov/centralcoast or will be provided upon request.
2. *If your operation is NOT a commercially irrigated farming operation* - Submit a letter describing why your operation is exempt from regulation under the Ag Waiver program. Include as much information as possible to substantiate the claim. Submit the letter to the attention of "Elaine Sahl" at the letterhead address above.
3. *If a complete application to Central Coast Water Board was submitted and our records are in error* - Submit a copy of your Notice of Intent and Agricultural Waiver Identification Number (AW#) or contact us immediately.

The Central Coast Water Board has the authority under Sections 13261 and 13268 of the California Water Code to assess administrative civil liability in an amount of up to \$1,000 for each day of violation of the July 24, 2006 due date, established in our June 15, 2006 letter. The Central Coast Water Board reserves the right to take any enforcement actions necessary as allowed by law.

If you have any questions regarding this letter please contact Peter Meertens at (805) 549-3869 or by email at pmeertens@waterboards.ca.gov. Para información en español, llame a Hector Hernandez at (805) 542-4641.

Sincerely,

Roger W. Briggs
Executive Officer

Enclosures

California Environmental Protection Agency



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Total	Rebecca Bozart, Pacifico Azul	
Sent To	24 Paddon Road	
Street, or PO B	Watsonville, CA 95076	
City, Sta.		

PS Form 3800, June 2002 See Reverse for Instructions


SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Rebecca Bozart, Pacifico Azul
24 Paddon Road
Watsonville, CA 95076

COMPLETE THIS SECTION ON DELIVERY

A. Signature  Agent
 Addressee

B. Received by (Printed Name) _____ C. Date of Delivery 10/27/07

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) 7004 1350 0003 9897 8541

7006 0100 0000 1777 5986

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Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent To PACIFIC AZUL

Street, Apt. No.,
or PO Box No.

City, State, ZIP+4

PS Form 3800, June 2002

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

PACIFIC AZUL
 c/o Rebecca BOZART
 24 PADDON RD.
 WATSONVILLE, CA
 95076

2. Article Number

(Transfer from service label)

7006 0100 0000 1777 5986

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X [Signature] Agent Addressee

B. Received by (Printed Name)

REBECCA BOZART Date of Delivery DEC 1 2002

D. Is delivery address different from Item 1? Yes

If YES, enter delivery address below: No

3. Service Type

- Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540



California Regional Water Quality Control Board

Central Coast Region



Linda S. Adams
Secretary for
Environmental
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Internet Address <http://www.waterboards.ca.gov/centralcoast>
895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906
Phone (805) 549-3147 • FAX (805) 543-0397

Arnold Schwarzenegger
Governor

December 11, 2007

CERTIFIED MAIL 7006 0100 0000 1777 5986
RETURN RECEIPT REQUESTED

Pacifico Azul
c/o Rebecca Bozart
24 Paddon Road
Watsonville, CA 95076

NOTICE OF HEARING AND ISSUANCE OF ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE NOTICE OF INTENT TO COMPLY WITH THE CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS

Dear Ms. Bozart:

In response to your failure to submit a Notice of Intent as required by the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-2004-0117 or supply information as to why the above order does not apply to your operation, the Assistant Executive Officer of the Central Coast Regional Water Quality Control Board (Central Coast Water Board) hereby issues the enclosed Administrative Civil Liability Complaint No. R3-2007-0101.

You may waive your right to a public hearing and pay the penalty amount specified in the complaint, or request a hearing date extension to negotiate settlement terms. If you choose to waive your right to a hearing or request a hearing date extension, then an authorized agent must sign the attached waiver form, and return it to the Central Coast Water Board **no later than January 15, 2008.** Alternatively, a hearing will occur on February 8, 2008 at the Central Coast Water Board's offices in San Luis Obispo. At that time, the Central Coast Water Board will hear public testimony and decide whether to affirm the action of the Assistant Executive Officer as described in the complaint, or refer the matter for judicial civil action.

You are still required to submit a Notice of Intent to Comply with the Conditional Waiver, if you have not already done so. Failure to submit a notice of intent could result in further penalties. If you have already submitted the Notice of Intent, it was not received by the due date and you are therefore subject to the penalty described in the Complaint.

Comments and other written submissions that you want to provide to the Water Board for consideration at a hearing are also **due no later than 5 pm on Tuesday, January 15, 2008.** Written material received after the due date will not be provided to the Water Board or become part of the record, unless the Board Chair rules that exclusion would create a severe hardship and that no party (including Central Coast Water Board staff) will be prejudiced by the late submission. The Board Chair will make such a ruling at or before the hearing. Late submissions that consist of evidence (as opposed to policy statements or comments) will

California Environmental Protection Agency



generally be deemed prejudicial unless all designated parties (see below) have time to consider the evidence before the meeting.

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

Sincerely,



Michael J. Thomas
Assistant Executive Officer

- Enclosures:
1. Complaint No. R3-2007-0101
 2. Waiver of Hearing Form
 3. Procedural Information for ACL Complaint Hearing and Payment
 4. Conditional Waiver Enrollment Forms

S:\NPS\Agriculture Waiver\Inspections and Enforcement\Enforcement\Non-filers\ACLs\Pacifico Azul\Cover and Hearing Notice 12_07





Linda S. Adams
Secretary for
Environmental
Protection

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

CENTRAL COAST REGION



Arnold Schwarzenegger
Governor

In the matter of:

Pacifico Azul

c/o Rebecca Bozart

24 Paddon Road

Watsonville, CA 95076

Complaint No. R3-2007-0101

Administrative Civil Liability

For

Violations of California Water Code

Section 13261

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

PACIFICO AZUL IS HEREBY GIVEN NOTICE THAT:

1. Pacifico Azul, a commercial irrigated farming operation located in Watsonville in Monterey County, with a mailing address of 24 Paddon Road, Watsonville, CA 95076, (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 May 15, 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 May 15, 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 July 24, 2006, due date 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 May 15, 2007, Notice of Violation letter, staff attempted to contact the Discharger by telephone and was given an alternative number by field personnel. Staff attempted to contact Discharger at the alternative number on June 9, 2007 and June 27, 2007, but received no answer either time.

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 137 acres in Santa Cruz County. Staff estimates the cost savings for non-compliance to be approximately \$2,068 (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 \$9,136.

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 \$9,136 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. R3-2007-0101" 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

State of California, California Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

NOTICE OF INTENT INSTRUCTIONS
CONDITIONAL WAIVER FOR IRRIGATED AGRICULTURE

The Notice Of Intent (NOI) is a one-page application form required for coverage under the Waiver. It must be submitted along with: 1) Ranch Information Forms, 2) Farm Water Quality Management Practices Form, 3) Ranch Map(s), and 4) Certificates of Education.

1. Farm Operation Information:

Farm Operation/Business Name: The name used for your irrigated farming operation/business.

Pesticide Use Permit #: The number assigned to a grower by the County Agricultural Commissioner that allows a grower to purchase, store, or use restricted use materials/pesticides.

Physical Address: The actual location of the farm/business operation.

Mailing Address: The address where billing statements and general correspondence associated with the Ag Waiver will be mailed. If you require more than one bill, fill out an individual NOI for each separate farm operation to be billed.

2. Monitoring Program Selection: There are two options that satisfy the legal requirement for monitoring. You must select either cooperative or individual monitoring. Failure to monitor is a violation of the Waiver.

Cooperative monitoring: This option provides a lower cost, industry-led alternative to individual monitoring. Grant funds have been awarded for 2006-2008. These funds require matching funds in the form of participant payments made to Central Coast Water Quality Preservation, Inc. (CCWQP), the non-profit agricultural based entity responsible for oversight of the cooperative monitoring program.

You must maintain your standing as a fully paid cooperative monitoring participant, as well as comply with all other requirements of the Waiver, in order to be in compliance and avoid incurring possible penalties, such as fines.

For more information on the Cooperative Monitoring Program, contact CCWQP at (831) 761-8644.

Individual monitoring: If you choose this option, you are responsible for all costs associated with individual monitoring requirements as described in the Monitoring and Reporting Program for the Ag Waiver (Resolution # R3-2004-0117). The costs are estimated at \$15,000 per year or more.

You must comply with all requirements and time schedules of the individual monitoring program, as well as comply with all other requirements of the Waiver, in order to be in compliance and avoid incurring possible penalties, such as fines.

- 3. Hours of Certified Water Quality Education:** Courses such as the UC Cooperative Extension's Farm Water Quality Planning short course (UCCE short course), and other workshops and seminars certified by the Regional Board as qualifying toward the educational requirements of the conditional waiver. You must attach copies of certificates supplied by these courses. For a complete list of certified courses, visit our website (www.waterboards.ca.gov/centralcoast). UCCE short courses are scheduled through the end of 2006 only.
- 4. Farm Plan:** An on-site water quality management plan that includes business goals, site assessment and practices planning. This is normally part of the UCCE short course.
- 5. Additional Documents:** You must submit all requested documents in order for your application to be complete.
- 6. Certification:** Must be signed by a responsible party. Please send the original signed copy of the certification.

Mail completed forms and all attachments to:

Central Coast Regional Water Quality Control Board
Attn: Ag Waiver
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

If you have questions about the forms or waiver requirements, please contact any of the following Central Coast Regional Board staff:

Peter Meertens at (805) 549-3869 or pmeertens@waterboards.ca.gov

Elaine Sahl at (805) 542-4645 or esahl@waterboards.ca.gov

Hector Hernandez (805) 542-4641, para información en español

For RWQCB use only	
AW	_____
Staff	_____

I) NOTICE OF INTENT TO COMPLY WITH TERMS OF THE CONDITIONAL WAIVER FOR IRRIGATED AGRICULTURE (RESOLUTION NO. R3-2004-0117)

1. FARM OPERATION INFORMATION

Farm Operation/Business Name:	
Contact Name:	Contact Title:
Pesticide Use Permit #:	
Physical Address:	Mailing Address, if different:
City:	City:
State: Zip:	State: Zip:
Contact Phone No.:	
Contact Fax No.:	
Email Address:	
Language Preference: <input type="checkbox"/> English <input type="checkbox"/> Spanish <input type="checkbox"/> Chinese <input type="checkbox"/> Other:	

2. MONITORING PROGRAM SELECTION (Please select one of the monitoring options)

Cooperative Monitoring Program <input type="checkbox"/>	Individual Monitoring Program <input type="checkbox"/>
---	--

Note: Individual Monitoring requires that the applicant submit a Quality Assurance Program Plan and electronic data in formats specified by the adopted RWQCB Monitoring and Reporting Program. The Cooperative Monitoring Program option relieves individual applicants of these requirements. See additional comments regarding monitoring program selection on the NOI instruction form.

3. HOURS OF CERTIFIED WATER QUALITY EDUCATION

Hours of Certified Water Quality Education Completed _____ Hours
--

4. FARM PLAN

Has a Farm Plan Been Completed? <input type="checkbox"/> YES <input type="checkbox"/> NO
--

5. ADDITIONAL DOCUMENTS THAT MUST BE SUBMITTED WITH THIS NOTICE OF INTENT

- a. Ranch Information Forms
- b. Farm Water Quality Management Practices Form
- c. Ranch map(s) as submitted to County Agricultural Commissioner for Pesticide Use Reports, or equivalent
- d. Certificate(s) of Water Quality Education

6. CERTIFICATION

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Print Name: _____ Title: _____

Signature: _____ Date: _____
 (Responsible Party)

State of California, California Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

RANCH INFORMATION INSTRUCTIONS
CONDITIONAL WAIVER FOR IRRIGATED AGRICULTURE

Please record information for each individual Ranch/Site that is farmed on pages 1 and 2 of the Ranch Information Form.

A) **Ranch/Site Name:** The individual ranch name(s). There may be one or more ranches within a farming operation. Please list information separately on pages 1 and 2 for each ranch that may be part of your operation.

B) **APN Number:** County Tax Assessor's Parcel Number for each individual ranch site.

The information requested for item C is located on the "Production Agriculture Monthly Pesticide Use Report" submitted to the Agricultural Commissioner following pesticide application.

C) **Site Identification Number:** The code assigned by the County Agricultural Commissioner that indicates a location where a pesticide application may occur. As reported on the Pesticide Use Report.

D) **Physical Address or Nearest Cross Road/Street, City:** The address or description of the physical location of each ranch.

E) **Pond Acres:** Acres where irrigation water drains to ponds and does not leave the property.

F) **Tailwater Acres:**

Discharged to Tile Drains: Tile drain acreages that discharge off-site (this number is included in total tailwater acres, but is being tracked separately).

Discharged to Ditches and Solid Drain Lines: Acres with water that leaves the property during the irrigation season through tile lines, ditches and drains. Do not include acreage where water drains to on-site ponds.

Total Tailwater Acres: All tailwater acres that include the acres from the above two columns.

G) **Total:** Total Irrigated Acres that are irrigated to produce a crop (does not include roads, ponds, non-agricultural or dry-farmed areas).

H) **Crop Type Acres:** Total acres planted in each *type of crop*. Actual acres, not crop acres.

I) **Irrigation Type Acreage:** Acres where *each type of irrigation* is used. If a combination of irrigation is used, list the acreage amounts for each irrigation type in the appropriate column.

Mail completed forms and all attachments to:

Central Coast Regional Water Quality Control Board
Attn: Ag Waiver
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

If you have questions about the forms or waiver requirements, please contact any of the following Central Coast Regional Board staff:

Peter Meertens at (805) 549-3869 or pmeertens@waterboards.ca.gov
Elaine Sahl at (805) 542-4645 or esahl@waterboards.ca.gov
Hector Hernandez (805) 542-4641, para información en español

State of California, California Regional Water Quality Control Board, Central Coast Region
195 Peninsula Place, Suite 101
San Luis Obispo, CA 93401

II) RANCH INFORMATION FORM
(See Ranch Information Instructions)

Farm Operation/Business Name: _____

AW #: _____

#	A) Ranch/Site Name	B) APN #	C) Pesticide Use Permit #:	D) Site#	E) County	F) Physical Address or Nearest Cross Road/Street
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J) Farm Water Quality Management Practices Form

Farm Operation/Business Name _____ AW # _____

Pesticide Use Permit #: _____

<u>Key</u>	
3	– YES
2	– NO, but planned within 3 years
1	– NO and not planned
N/A	– Not applicable

- Use the Key to determine your level of implementation and planning for the individual management practices.
- Circle the corresponding number next to the management practice.

PESTICIDE MANAGEMENT

- | | | | | |
|---|---|---|-----|--|
| 3 | 2 | 1 | N/A | P.1) Is an Integrated Pest Management program established? |
| 3 | 2 | 1 | N/A | P.2) Are pest populations assessed and pesticides applied based on scouting data, thresholds and/or risk assessment models? |
| 3 | 2 | 1 | N/A | P.3) Are introduced or managed biological control agents utilized? |
| 3 | 2 | 1 | N/A | P.4) Does pesticide selection consider runoff or leaching potential? |
| 3 | 2 | 1 | N/A | P.5) Does pesticide selection consider toxicity to non-target organisms? |
| 3 | 2 | 1 | N/A | P.6) Is pesticide application equipment regularly inspected, maintained and calibrated to ensure appropriate application rates and distribution? |
| 3 | 2 | 1 | N/A | P.7) Is yearly pesticide training provided for all pesticide handlers who apply, load, mix, transport, clean and repair pesticide application equipment? |
| 3 | 2 | 1 | N/A | P.8) Do pesticide storage facilities have concrete pads and curbs for containment of spills? |
| 3 | 2 | 1 | N/A | P.9) Are pesticide mixing and loading areas located in such a manner to reduce the likelihood of a spill or overflow contaminating a water source? |
| 3 | 2 | 1 | N/A | P.10) Are production wells on elevated concrete bases upslope of pesticide storage and handling facilities? |
| 3 | 2 | 1 | N/A | P.11) Does wellhead protection consist of an elevated concrete seal, sump, or buffer area of 100' around the wellhead and a backflow prevention device? |

IRRIGATION WATER MANAGEMENT

- | | | | | |
|---|---|---|-----|---|
| 3 | 2 | 1 | N/A | I.1) Is drip irrigation distribution uniformity maximized and maintained through regular system equipment and system pressure maintenance? |
| 3 | 2 | 1 | N/A | I.2) Is sprinkler and micro-sprinkler irrigation distribution uniformity maximized and maintained through regular system pressure maintenance and water application during low wind conditions? |
| 3 | 2 | 1 | N/A | I.3) Is furrow and flood irrigation distribution uniformity maximized and maintained by either managing furrow lengths, installing surge irrigation valves, installing irrigation field ditches, or using alternate row irrigation? |
| 3 | 2 | 1 | N/A | I.4) Is your irrigation system design optimized by matching sprinkler nozzle/drip applicator flow rates to the infiltration rate of the soil? |
| 3 | 2 | 1 | N/A | I.5) Are measured or published evapo-transpiration data (CIMIS) used to determine crop water use? |
| 3 | 2 | 1 | N/A | I.6) Is the soil water-holding capacity known? |
| 3 | 2 | 1 | N/A | I.7) Are records kept for each crop irrigated? (Records include the date, amount of each irrigation water applied and the source of water used). |
| 3 | 2 | 1 | N/A | I.8) Have all irrigators who apply irrigation water and maintain irrigation systems received training? |
| 3 | 2 | 1 | N/A | I.9) Has an irrigation mobile lab system evaluation been completed and the system been adjusted accordingly? |

Key

- 3 - YES
- 2 - NO, but planned within 3 years
- 1 - NO and not planned
- N/A - Not applicable

- Use the Key to determine your level of implementation and planning for the individual management practices.
- Circle the corresponding number next to the management practice.

EROSION AND SEDIMENT CONTROL MANAGEMENT

- 3 2 1 N/A E.1) Are cover crops used to protect bare soil from erosion during fallow cycles and to build up soil organic matter as a crop rotation?
- 3 2 1 N/A E.2) Are hedgerows, trees, and shrubs established along field margins or between field blocks to reduce wind effects and protect slopes from erosion?
- 3 2 1 N/A E.3) Are farm access roads located and graded to minimize erosion potential?
- 3 2 1 N/A E.4) Are farm access roads protected from concentrated runoff through the use of vegetative material, gravel, and/or mulch?
- 3 2 1 N/A E.5) Are ditches and channel banks protected from concentrated flow through the use of grassed waterways, lined channels, and/or diversions?
- 3 2 1 N/A E.6) Are field layout and row length designed to minimize erosion potential?
- 3 2 1 N/A E.7) Are sediment basins constructed to intercept sediment-laden runoff in locations where erosion is expected and sediment is known to leave the farm?
- 3 2 1 N/A E.8) Are water and sediment control basins used in locations where sediment and excess runoff may cause gullies or flooding problems downstream?
- 3 2 1 N/A E.9) Are vegetative buffers implemented between cropped areas, along the lower edge of the farm, and along roadways? (*This practice is also effective in removing nutrients and pesticides from runoff*)
- 3 2 1 N/A E.10) Where streams cross or border property are riparian buffers established and maintained?
- 3 2 1 N/A E.11) Are culverts properly sized and maintained?
- 3 2 1 N/A E.12) Are implemented management practices evaluated for effectiveness (i.e photo-point monitoring, water quality testing)?

NUTRIENT MANAGEMENT

- 3 2 1 N/A N.1) Are the crop's nutrient requirements known and are nutrient budgets established and recorded?
- 3 2 1 N/A N.2) Do you test irrigation water for nitrogen content and incorporate that information into your fertilization program?
- 3 2 1 N/A N.3) Is plant tissue analysis used to aid in fertilizer decisions?
- 3 2 1 N/A N.4) Do you test your soil for residual nitrogen and incorporate that information into your fertilization program?
- 3 2 1 N/A N.5) If fertigation is used are measures in place to ensure that there is no backflow into wells or other water sources?
- 3 2 1 N/A N.6) Do you regularly maintain and calibrate your fertilizer equipment?
- 3 2 1 N/A N.7) Do field personnel receive nutrient management training?
- 3 2 1 N/A N.8) Do fertilizer storage facilities include concrete pads and curbs for containment of spills and are they protected from weather?
- 3 2 1 N/A N.9) Is mixing and loading performed on sites with low runoff hazard, over 100' downslope of wells?

ADDITIONAL MANAGEMENT PRACTICES

Are any management practices implemented and/or planned for this farm operation that are not listed above? YES NO

If YES, please list below.

PROCEDURAL INFORMATION
FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
PUBLIC HEARING AND PAYMENT
[COMPLAINTS UNDER \$100,000]

WAIVER OF PUBLIC HEARING

You may waive your right to a public hearing. If you wish to waive your right to a public hearing, a duly authorized person¹ must check the *first* box, sign, and submit the following ***Waiver of the Right to a Public Hearing*** form and pay the penalty amount specified in the Complaint no later than **January 15, 2008, 5:00 P.M.** Please follow the payment instructions below.

If you choose to waive your right to a public hearing, and if full payment and a signed *Waiver of the Right to a Public Hearing* form are received before the hearing, the hearing will not be held, and the violation will be settled. If full payment and a signed *Waiver of the Right to a Public Hearing* form are not received, the matter will be placed on the Central Coast Water Board's agenda for a hearing as stated below.

If you do not waive your right to a public hearing, the Executive Officer will present an Order to the Central Coast Water Board for the amount proposed in this Complaint at the Central Coast Water Board meeting on February 8, 2008, at the Central Coast Water Board Conference Room, 895 Aerovista Place, Suite 101, San Luis Obispo, California. The Central Coast Water Board will proceed with the scheduled hearing, consider testimony received from interested persons during the hearing, and decide whether to accept the amount of the penalty proposed by the Assistant Executive Officer. If the Central Coast Water Board adopts an Order, payment of the penalty to the State Water Resources Control Board will be due and payable no later than March 10, 2008, in accordance with the Order. The Central Coast Water Board may also decide to continue the matter to a future hearing or refer it to the State Attorney General. The meeting is scheduled to begin at 8:30 A.M.; however, no specific time has been set for consideration of the Order.

PAYMENT OF PENALTY

No later than January 15, 2008, please make your check payable to State Water Resources Control Board, Waste Discharge Permit Fund, and write "ACL Complaint No. R3-2007-0101" on the check's memo line. Please mail the check and signed waiver form to Regional Water Quality Control Board, Attn: Alison Jones, 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401.

¹ A duly authorized person is defined as a principal executive officer of at least the level of vice president in a corporation, a general partner or the proprietor in a partnership or sole proprietorship, a principal executive officer or ranking elected official in a public agency, or a duly authorized representative.

REQUEST FOR HEARING DATE EXTENSION FOR CONSIDERATION OF A SETTLEMENT

If you would like a hearing date extension to negotiate settlement terms, please contact Water Board staff as soon as possible. If staff agrees to consider settlement, you can elect to resolve this matter without a hearing, using a form settlement agreement that Water Board staff will provide.

Unless waived, California Water Code Section 13323(b) requires the Water Board to hold a hearing on Complaint No. R3-2007-0101 within 90 days after the date of service of the complaint. Before any hearing date extension is granted, you must waive the 90-day requirement. In order to request an extension, a duly authorized person² must check the *second* box, sign, and submit the following ***Waiver of the Right to a Public Hearing*** form no later than **January 15, 2008, 5:00 P.M.**

A waiver and request for extension does not guarantee that the Water Board will grant the extension request or that you will be able to reach a settlement of the matter. In many cases, a settlement can easily be completed within 90 days and no extension is necessary. The Water Board will set a new hearing date if a settlement is not finalized in a timeframe acceptable to Water Board staff.

The due date for written comments is not automatically extended when the hearing date is changed.

² A duly authorized person is defined as a principal executive officer of at least the level of vice president in a corporation, a general partner or the proprietor in a partnership or sole proprietorship, a principal executive officer or ranking elected official in a public agency, or a duly authorized representative.

WAIVER OF THE RIGHT TO A HEARING AND/OR WAIVER OF TIME FOR HEARING

By signing below, I acknowledge that I have read and understand the PROCEDURAL INFORMATION FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT, PUBLIC HEARING AND PAYMENT, [COMPLAINTS UNDER \$100,000] that was attached to this waiver form.

Check one of the following boxes:

- [] By checking this box, I agree to waive Pacifico Azul's right to a hearing before the Central Coast Water Board with regard to the violations alleged in Complaint No. R3-2007-0101. Also, I agree to remit payment for the civil liability proposed. I understand that I am giving up Pacifico Azul's right to argue against the allegations made by the Assistant Executive Officer in this Complaint, and against the imposition or amount of proposed civil liability. [Check this box if Pacifico Azul will pay the full amount of proposed liability without a hearing, and initial here: _____]
- [] By checking this box, I agree to waive the 90-day requirement of California Water Code Section 13323(b). I understand this means the Water Board may hold a hearing more than 90 days after the date of service as long as I receive at least ten calendar days' notice of the new hearing date. I understand that Pacifico Azul's waiver of the 90-day requirement does not extend the original due date for written comments, unless the Water Board also extends that due date. I understand that the Water Board may deny the request for extension. [Check this box if Pacifico Azul requests an extension of the hearing date for any reason, including an extension to discuss settlement with Water Board staff. After checking the box, initial here: _____]

Signature

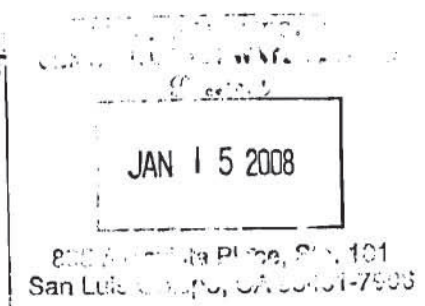
Printed Name

Title/Position³

Date

³ A duly authorized person must sign the waiver. A duly authorized person is defined as a principal executive officer of at least the level of vice president in a corporation, a general partner or the proprietor in a partnership, a principal executive officer or ranking elected official in a public agency, or a representative authorized in writing by a vice president or higher ranking corporate officer, general partner, principal executive officer or ranking elected official.

**PROCEDURAL INFORMATION
FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
PUBLIC HEARING AND PAYMENT
[COMPLAINTS UNDER \$100,000]**



WAIVER OF PUBLIC HEARING

You may waive your right to a public hearing. If you wish to waive your right to a public hearing, a duly authorized person¹ must check the *first* box, sign, and submit the following ***Waiver of the Right to a Public Hearing*** form and pay the penalty amount specified in the Complaint **no later than January 15, 2008, 5:00 P.M.** Please follow the payment instructions below.

If you choose to waive your right to a public hearing, and if full payment and a signed *Waiver of the Right to a Public Hearing* form are received before the hearing, the hearing will not be held, and the violation will be settled. If full payment and a signed *Waiver of the Right to a Public Hearing* form are not received, the matter will be placed on the Central Coast Water Board's agenda for a hearing as stated below.

If you do not waive your right to a public hearing, the Executive Officer will present an Order to the Central Coast Water Board for the amount proposed in this Complaint at the Central Coast Water Board meeting on February 8, 2008, at the Central Coast Water Board Conference Room, 895 Aerovista Place, Suite 101, San Luis Obispo, California. The Central Coast Water Board will proceed with the scheduled hearing, consider testimony received from interested persons during the hearing, and decide whether to accept the amount of the penalty proposed by the Assistant Executive Officer. If the Central Coast Water Board adopts an Order, payment of the penalty to the State Water Resources Control Board will be due and payable no later than March 10, 2008, in accordance with the Order. The Central Coast Water Board may also decide to continue the matter to a future hearing or refer it to the State Attorney General. The meeting is scheduled to begin at 8:30 A.M.; however, no specific time has been set for consideration of the Order.

PAYMENT OF PENALTY

No later than January 15, 2008, please make your check payable to State Water Resources Control Board, Waste Discharge Permit Fund, and write "ACL Complaint No. R3-2007-0101" on the check's memo line. Please mail the check and signed waiver form to Regional Water Quality Control Board, Attn: Alison Jones, 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401.

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REQUEST FOR HEARING DATE EXTENSION FOR CONSIDERATION OF A SETTLEMENT

If you would like a hearing date extension to negotiate settlement terms, please contact Water Board staff as soon as possible. If staff agrees to consider settlement, you can elect to resolve this matter without a hearing, using a form settlement agreement that Water Board staff will provide.

Unless waived, California Water Code Section 13323(b) requires the Water Board to hold a hearing on Complaint No. R3-2007-0101 within 90 days after the date of service of the complaint. Before any hearing date extension is granted, you must waive the 90-day requirement. In order to request an extension, a duly authorized person² must check the *second* box, sign, and submit the following ***Waiver of the Right to a Public Hearing*** form **no later than January 15, 2008, 5:00 P.M.**

A waiver and request for extension does not guarantee that the Water Board will grant the extension request or that you will be able to reach a settlement of the matter. In many cases, a settlement can easily be completed within 90 days and no extension is necessary. The Water Board will set a new hearing date if a settlement is not finalized in a timeframe acceptable to Water Board staff.

The due date for written comments is not automatically extended when the hearing date is changed.

² A duly authorized person is defined as a principal executive officer of at least the level of vice president in a corporation, a general partner or the proprietor in a partnership or sole proprietorship, a principal executive officer or ranking elected official in a public agency, or a duly authorized representative.

WAIVER OF THE RIGHT TO A HEARING AND/OR WAIVER OF TIME FOR HEARING

By signing below, I acknowledge that I have read and understand the PROCEDURAL INFORMATION FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT, PUBLIC HEARING AND PAYMENT, [COMPLAINTS UNDER \$100,000] that was attached to this waiver form.

Check one of the following boxes:

[] By checking this box, I agree to waive Pacifico Azul's right to a hearing before the Central Coast Water Board with regard to the violations alleged in Complaint No. R3-2007-0101. Also, I agree to remit payment for the civil liability proposed. I understand that I am giving up Pacifico Azul's right to argue against the allegations made by the Assistant Executive Officer in this Complaint, and against the imposition or amount of proposed civil liability. [Check this box if Pacifico Azul will pay the full amount of proposed liability without a hearing, and initial here: _____]

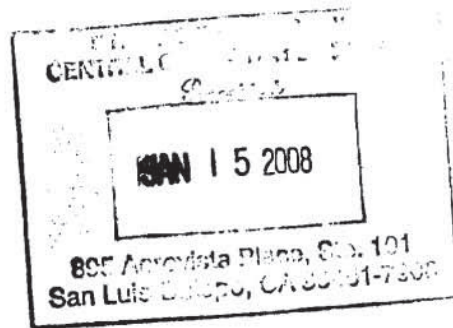
[X] By checking this box, I agree to waive the 90-day requirement of California Water Code Section 13323(b). I understand this means the Water Board may hold a hearing more than 90 days after the date of service as long as I receive at least ten calendar days' notice of the new hearing date. I understand that Pacifico Azul's waiver of the 90-day requirement does not extend the original due date for written comments, unless the Water Board also extends that due date. I understand that the Water Board may deny the request for extension. [Check this box if Pacifico Azul requests an extension of the hearing date for any reason, including an extension to discuss settlement with Water Board staff. After checking the box, initial here: RB]

Rebecca Bozarica
Signature

REBECCA BOZARICA
Printed Name

owner
Title/Position³

1/10/2008
Date



³ A duly authorized person must sign the waiver. A duly authorized person is defined as a principal executive officer of at least the level of vice president in a corporation, a general partner or the proprietor in a partnership, a principal executive officer or ranking elected official in a public agency, or a representative authorized in writing by a vice president or higher ranking corporate officer, general partner, principal executive officer or ranking elected official.



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board

Central Coast Region

Enforcement Unit



Arnold Schwarzenegger
Governor

Internet Address: <http://www.waterboards.ca.gov/centralcoast>
895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906
Phone (805) 549-3147 • FAX (805) 543-0397

November 10, 2009

BY COURIER SERVICE

Ms. Rebecca Bozarth
Pacífico Azul
24 Paddon Road
Watsonville, CA 95076

HEARING NOTICE FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO FILE A NOTICE OF INTENT TO COMPLY WITH THE CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS

Dear Ms. Bozarth:

On December 11, 2007, the Central Coast Water Board Assistant Executive Officer issued Administrative Civil Liability Complaint No. R3-2007-0101 (Complaint, copy attached), alleging that Pacífico Azul was in violation of the Irrigated Ag Order and the Water Code, and recommending liability of \$9,136. On January 1, 2008, you signed and submitted to the Central Coast Water Board enforcement staff (Staff) a waiver of the right to a hearing in 90 days under the pretext of negotiating settlement terms.

On October 22, 2008, Staff mailed you a letter proposing settlement terms for the violations alleged in the Complaint. Approximately one week later, you telephoned Staff person Elaine Sahl and told her that you agreed to the settlement terms. On November 6, 2008, Ms. Sahl mailed the written agreement to you by certified mail for your signature. However, the letter was returned to us as unclaimed. From November 2008 through June 2009, Ms. Sahl telephoned you six times but received no answers or returned calls. Finally, on May 18, 2009, Staff delivered the written agreement to you by courier.

You have failed to respond to the proposed settlement, so we have now scheduled a public hearing on December 10, 2009. Staff is recommending that the Water Board impose civil liability of \$13,000, which is the liability amount recommended in the Complaint plus the additional costs incurred since the Complaint was issued.

A hearing will be held before the Central Coast Water Board on December 10, 2009, at our offices in San Luis Obispo, unless otherwise scheduled by the Water Board. At that time, the Water Board will hear public testimony and decide whether to adopt the proposed penalty, modify the penalty, or take any other action appropriate as a result of the hearing. A copy of the Staff's Brief that will be provided to the Central Coast Water Board is attached. You will be sent an agenda and any additional accompanying documents via U.S. mail to the above address, at least 10 days prior to December 10, 2009. Those documents will also be available on the Central Coast Water Board's web page at:

http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2009/2009_agendas.shtml.

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Please note that all written comments, other written submissions, legal objections to the hearing process as set forth in the original Hearing Notice dated December 11, 2007, and all other written argument that you want to provide to Water Board members for consideration at the hearing were due no later than 5 pm on January 15, 2008. The Waiver form that you signed on January 1, 2008, provides that "waiver of the 90-day requirement does not extend the original due date for written comments, unless the Water Board also extends that due date". The due date for written comments is not automatically extended when the hearing date is changed. Any request for an extension of the document submission due date should be directed Frances McChesney, Central Coast Water Board advisory staff attorney, at (916) 341-5174 or fmchesney@waterboards.ca.gov.

Written material received after the due date will not be provided to Water Board members or become part of the record, unless the Board Chair rules that exclusion would create a severe hardship and that no party (including Central Coast Water Board enforcement staff) will be prejudiced by the late submission. The Board Chair will make such a ruling at or before the hearing. Late submissions that consist of evidence (as opposed to policy statements or comments) will generally be deemed prejudicial unless all designated parties have time to consider the evidence before the meeting.

If you have questions about this enforcement action, please contact Todd Stanley at (805) 542-4769, Harvey Packard at (805) 542-4639, or State Water Resources Control Board Office of Enforcement attorney Yvonne West at (916) 341-5445.

Sincerely,



Michael J. Thomas
Assistant Executive Officer

Attachments:

1. Notice of Hearing and Issuance of Administrative Civil Liability Complaint No. R3-2007-0101, dated December 11, 2007, and proof of service
2. Enforcement Staff Brief (w/o attachments)

cc (via email): Yvonne West, Staff Counsel, State Water Resources Control Board Office of Enforcement

Roger Briggs, Executive Officer

Frances McChesney, Advisory Staff Attorney (all attachments)

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