

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401**

**Draft ADMINISTRATIVE CIVIL LIABILITY
ORDER NO. R3-2009-0064**

Issued To

**Pacifico Azul, Inc
Watsonville
Monterey County**

The California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board), finds that:

1. Pacifico Azul, Inc., a California corporation (Discharger), owned and/or operated a commercial irrigated farming operation located in Watsonville, in Monterey County, with a mailing address of 24 Paddon Road, Watsonville, CA 95076 during the relevant violation period. This operation is subject to Central Coast Water Board Order No. R3-2004-0117, *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Irrigated Ag Order)*.
2. The Irrigated Ag Order 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.
3. 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;
4. 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.
5. 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.

6. 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 1, 2008, the Discharger signed and submitted to the Central Coast Water Board enforcement staff (Staff) a waiver of the right to a hearing within 90 days, presumably to engage in good-faith settlement negotiations.
7. Pursuant to California Water Code Section 13261, any person who fails to submit a Notice of Intent required by Section 13260 is guilty of a misdemeanor and may be civilly liable for up to one thousand dollars (\$1,000) for each day in which the violation occurs.
8. The Discharger violated California Water Code Section 13260 by failing to submit a Notice of Intent as required by the Irrigated Ag Order, and is subject to the penalties prescribed in California Water Code Section 13261(b).
9. Pursuant to California Water Code Section 13327, in determining the amount of any liability under Section 13261, the Central Coast Water Board shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
10. The Central Coast Water Board determines with respect to the factors in Section 13327 the following:

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

As discussed above, Central Coast Water Board staff gave the Discharger sufficient notice to submit a Notice of Intent to enroll under the Irrigated Ag Order. However, while compliance with enrollment is essential to Water 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 Irrigated Ag Order, 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 Irrigated Ag Order.

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

The Discharger farms approximately 137 acres in Monterey County. The Water Board has no information that would indicate it cannot pay the recommended liability or that such payment would adversely affect its ability to continue in business.

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

The Discharger has no prior history of violations.

e. Degree of culpability and economic benefit or savings:

The Discharger was provided notice 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 Irrigated Ag Order, and failing to develop a farm water quality management plan. The Complaint includes Staff's estimate that the Discharger saved approximately \$2,068 by failing to comply (including monitoring costs, State Water Board waiver fees, education costs, and management plan development costs).

Since the issuance of the Complaint, the Discharger has limited its economic benefit by paying some of the previously unpaid fees and completing some of the requirements of the Irrigated Ag Order. On February 28, 2008, Pacifico Azul paid a total of \$887.95 in Cooperative Monitoring Program and enrollment fees required by the Irrigated Ag Order. That payment addressed the enrollment fee and monitoring fee elements of economic benefit as estimated in the Complaint. With regard to the monitoring fee, the payment reimbursed the mandated monitoring program for fees the Discharger would have paid had it enrolled by the required date of January 1, 2005, thereby reducing the amount of economic benefit realized while in violation of the Irrigated Ag Order. In addition, the Discharger reported that it has completed the education component of the Irrigated Ag Order's requirements. The Discharger is still required to complete the water quality management plan element. If the Discharger were to complete this final requirement, then the only economic benefit remaining would be the relatively minor potential interest earned by delaying the payment of fees and incurring the costs of compliance.

f. Other matters as justice may require:

Staff estimated that it required 20 hours to prepare the Complaint. At \$125 per hour, the total Staff costs up to December 2007 were \$2,500. Since issuing the Complaint, Staff participated in settlement negotiations with Discharger. The Discharger in turn has been avoiding service of documents and has become non-responsive.

On October 22, 2008, the Water Board Assistant Executive Officer proposed settling the alleged violations. Approximately one week later, the Discharger telephoned Water Board Staff and agreed to the proposed settlement. On November 6, 2008, Staff mailed a Stipulated Administrative Civil Liability Order to the Discharger by certified mail for signature. On November 28, 2008, the Order was returned to Staff marked "unclaimed". From November 2008 through June 2009, Water Board Staff attempted to telephone the Discharger six times, but received no answer on each occasion. Since issuing the Complaint in December 2007, Staff members have spent an additional 25 hours trying to obtain written confirmation of the Discharger's verbal agreement to settle the allegations and preparing for the December 10, 2009 public hearing. At the updated rate of \$150 per hour, Staff costs 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 has increased the recommended liability to \$13,000.

These considerations justify assessing liability in an amount less than the maximum possible liability of \$505,000.

11. This Order only resolves liability that the Discharger incurred through December 11, 2007 (date Complaint issued), for the violations specifically alleged in the Complaint, and does not relieve the Discharger of liability for any violations after December 11, 2007, or any violations not alleged in the Complaint.
12. This enforcement action is taken for the protection of the environment and as such is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, *et seq.*) in accordance with sections 15307 and 15308, Title 14, California Code of Regulations.
13. A hearing on this matter was held before the Central Coast Water Board on December 10, 2009, at the Central Coast Water Board, 895 Aerovista Place, in San Luis Obispo. The Discharger, or the Discharger's representative(s), had the opportunity to be heard and to contest the allegations in Complaint No. R3-2007-0101, which recommended the imposition of civil liability by the Central Coast Water Board.

IT IS HEREBY ORDERED, pursuant to Section 13261 of the California Water Code, that the Discharger is assessed a total civil liability of \$13,000, to be paid as follows:

1. The sum of Thirteen Thousand Dollars (\$13,000) to be delivered to the Central Coast Regional Water Quality Control Board, 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401, **no later than January 11, 2010**. The Discharger shall make the check payable to the *State Water Resources Control Board Cleanup and Abatement Account*, with "ACL Order No. R3-2009-0064" shown on the memo line.

I, **Roger W. Briggs, Executive Officer**, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the Central Coast Regional Water Quality Control Board on December 10, 2009.

Roger W. Briggs
Executive Officer

Date