

26 March 2016

To: Industry Associates, Colleagues and Interested Public

From: Chris Rufer, Founder, Owner and Operator of The Morning Star Company

Re: RWQCB ("Board") enforcement action and fine, their news release and Board statements regarding Morning Star's Williams tomato processing facility operations.

The Board's actions and news release make it appear that we expanded our Williams facility in 2015 without notifying them and obtaining proper permits and that we have been polluting the groundwater over the years. This is flat wrong. My position, and that of four independent engineering firms, is that we are not polluting groundwater. Nor did we "mislead" them regarding our major 2015 factory expansion. The evidence is quite clear. You can also access our legal Petition for Review filed with the Board on 18 March.

What really seems to have happened in this whole case is that the Board staff did not do their homework, did not understand some of their own regulations. Then made faulty assumptions for their requirements for the Williams operations, which lead them to an attitude that we were lying to them. So they "through the book at us," and picked out technicalities which mislead the public to think we are polluting. Now we are dealing with the ramifications of those faulty conclusions. It is the Board who made factual and analytical errors and is misleading the public.

I apologize for the lateness and length of this response; however, to really understand the situation, you will have to read at least the Technical Issues portion of this document. When the government makes a case it gets attention and ones reputation is, rightly or wrongly, helped or hurt. I take quick, general response from such claims as pretty worthless--not positive or negative, but not substantial enough to mean much. Therefore, I gave this document careful thought and desire to spell out the issues with enough detail that I feel good about being able to support my facts and analysis anywhere and anytime--which we will be doing as we protest their claims and especially their fine.

The vast majority of people, especially acting as businesspersons, never say anything when they are wrongly picked out by a government agency for fear that the agency personnel will come down especially hard on them. I fully expect that, but I am confident that independent folks will see that we carry out our operations in a respectable manner and I am very open about exhibiting that.

Introduction. My clear position is that nine of the Board's some ten recent claims, the fine-based claims are baseless, others are misrepresentations or, at best, misunderstandings. In addition, highly competent legal and technical consultants agreed with us in testimony, as did additional experts in a prior hearing.

We acted ethically, cooperatively and openly at all times, caused zero damage to anything and look forward to a complete review of these issues with disinterested parties. My goal herein is to dispel any negative impression of Morning Star the Board's statements may have made on folks.

The public should care about this issue because it is an exhibition of how poor regulation is, as it is known today, that it does not affect "business," but it negatively affects all citizens and consumers and especially the more disadvantaged among us.

We understand the source of odor complaints on ten (10) days during our 2015 season which were one-off issues due to 1) start-up problems from our major expansion (65% additional capacity and the largest expansion ever done in our industry), and 2) our major effort and success in achieving a well water savings of 38%. We know how to correct the situation, we immediately took action to do so, and those corrections are evidently acceptable given the mutually-agreed upon resolution with the Board.

Morning Star. Please allow me to divert from this main topic to mention a few things about Morning Star, and then I will deal with the Board actions directly in the Technical Issues section to follow.

Morning Star has always acted with the highest integrity in its operations, including its government regulated activities. We operate on a solid reputation for honesty, integrity, innovation and being a progressive business. To this point, knock on wood, in over forty years we have never missed a payroll, we have paid every vendor and made every interest and debt payment due--all told over twelve billion dollars. We have had and have very few civil or employment lawsuits for our size--on the order of miniscule.

We have been in the forefront of industry innovation in food processing, agriculture, trucking and crop harvesting technology and processes, plus meaningful environmental advancements in air quality and water conservation. Morning Star has lead the way in decreasing our industry's real cost of producing ingredient tomato paste (a product utilizing 75% to 80% of California's processing tomatoes), by 75% to 85%. Specifically, and speaking to our main business activity, the industry's manufacturing cost to convert tomatoes to tomato paste has decreased approximately 86%.

Specifically, Morning Star's 2015 Williams expansion decreased well water consumption by 38% per ton, washwater disposal volume by 57% per ton and electrical consumption by 26% per ton (let alone that we produce the vast majority of our electricity in-house). Given that 2015 was a major expansion start-up year, we expect significant improvements again in 2016 and beyond.

While most people seem to believe that "jobs" are the main issue for the economy--they are not. Through Morning Star's activities, and most business folks, we have decreased "jobs"--decreased the human work required to produce tomato products. So this is bad? Wouldn't all of us love to spend our whole day sweating to hoe weeds to grow our own food and forego i-phones, cars and the movies? I don't think so! The key objective of commercial enterprise and "the economy" is to produce goods and services to meet real human desires (which drives revenues), and at the same time, conserve materials and human resources (being professional environmentalists, which decrease expenses). The decreased human work requirement to produce tomato products, in our case, allows people to work on producing other goods and services--providing a higher standard of living for everyone and greater potential for human well-being.

In addition to advancing production technology, Morning Star Colleagues are advancing a progressive work environment through our “Mission-Focused, Self-Management” organizational system. This concept seeks to achieve organizational structure spontaneously through empowering each Colleague with their unique Personal Commercial Mission, which they are expected to personally drive without supervision from others. Morning Star and Self-Management were featured on the cover of Harvard Business Review three years ago, and has been cited in many books and articles around the world.

Perhaps this first ever public description of Morning Star will provide some feel for why I am providing such a detailed response to the Board’s actions vis-a-vis our tomato processing facility in Williams. Typically, I just deal with this kind of stuff by slogging through it and moving on. But the Board seems to be making a big deal of it with their big Enforcement News release and the publicity, so I can not let it just pass, since it clearly impinges on our integrity.

Specifically, their claim that I lied to them (“misled” them) is patently false and defamatory. The Board supported their fine by stating “. . . the egregious nature of Morning Star’s actions. . .” and “. . . discharger chooses to mislead our staff. . .” I take great exception to this, because we simply do not and did not act this way. While it is unfortunate that the media influences people to believe otherwise, and surely there are some bad actors in business (just like in sports), you simply do not build a meaningful business over forty years from scratch by being dishonest, lacking in integrity and treating people poorly--quite the opposite! So, please judge for yourself from the following factual and documented information as to how we operate and what really occurred relative to our Williams operations.

Technical Issues

The Board news release claims “. . . that approximately 266 million gallons of wastewater was discharged from the unpermitted expansions of the ponds to groundwater. . .” Right off the bat, the Board statement grossly inflates the actual allegations by a factor of ten (10), as their complaint identifies an (unproven) claim for a discharge of 27 million gallons. The Board’s statement is clearly misleading to the public. Furthermore, presumptions may indicate leakage from the pond, but the only recorded evidence indicates that no discharge occurred. Please note that even the claimed water discharge was not off our site into any navigable stream or river, but remained on our site.

The Board’s claim and the basis of the fine is threefold:

- 1) that we were unauthorized and tried to “hide” the expansion of our Cooling and Settling Ponds by not notifying the Board of such;
- 2) that those ponds leaked “wastewater” into the groundwater, and;
- 3) that the leaked “wastewater” has the potential to degrade the groundwater.

First as background, what is meant by “wastewater” from a tomato processing facility? It is water with tomato juice leaked from broken tomatoes, soil from mechanically harvesting the crop from the fields and very minor salts and chemicals. Notably, this is not “toxic” waste!

- 1) Regarding the Board’s **first claim**, the fact is, we did inform the Board! This is clearly documented by us and them. We did this in the process of revising our Waste Discharge Requirements (“WDR’s”)--which is a discharge permit spelling out the conditions of discharging the wastewater and solids to farm fields. Our notice to them,

and the recognition of it is documented in our WDR's which state, "**discharger plans to increase production by up to 65% in the future.**" As a note, our documented notice to the Board was ". . . facility has plans to **expand the processing operations by 65% in the future.**" Clearly, they changed our terminology, evidencing that they gave it some thought before including it in the final version. We did not "sneak" it in!

In addition, the Board personally visited our facility on 8/30/12 with three of our responsible Colleagues, plus our civil engineer performing our Board reports. The Board representative wrote in their six page detailed report, stating specifically in point number 4, "Morning Star staff mentioned that there are **plans to expand the existing facility** to include a bulk diced operation. **Expansion would include increasing the Cooling Pond capacity and reducing the available land application areas.**" Even further, during the same process of updating our WDRs in 2012, our civil engineers, on 11/19/12, wrote to the Board and **specifically identified our expanded Settling Pond** in two separate paragraphs.

How much clearer can one be?

Our Cooling and Settling Ponds are clearly part of our processing operations. The Cooling Pond takes the place of cooling towers or increased condenser water pumping, and is our natural, environmentally sound process for cooling warm condenser feedwater, saving considerable energy (and CO₂) and chemicals. Without expanding this cooling capability the factory could not operate, and cooling ponds are, quite famously, Morning Star's method of accomplishing this--no surprise here. The Settling Pond simply settles out heavy soil particles, enabling us to conserve water and energy by recycling more water than standard processes and occurs prior to our discharging the wastewater from the facility. Neither one of these ponds is intended to take any meaningful role in wastewater treatment or disposal--they are part of our processing operations.

We expanded our Cooling Pond by 65% (approximately 60 acres to 100 acres)--exactly by what we told the Board we expected to do! This is no coincidence. We doubled our Settling Pond from approximately one acre to two acres for the 2012 season. In 1995 our submitted and dimensioned map of the facility identifies the permitted size to be 3.2 acres. However, we only built out one acre in our first year, reserving the balance for later expansion. Amazingly, in the hearing on the adoption of our 2013 WDR's relating to the amount of holding capacity we had for our wastewater, a Board staff officer stated for the record and under oath, ". . . **it's probably not a big deal to do some earth work and you know, make the pond a little bit bigger to accommodate a little more holding time.**" By a little, we were talking a day or two, meaning tripling the size of the Settling Pond. They obviously had no issue with a larger Settling Pond in 1995 or 2013. And they shouldn't because there has never been an issue with them. Why the issue now?

The Board ignores these facts and statements and chooses to claim to not understand our verbiage ("**expand the processing operations by 65%**"), as including the ponds. If the job of a "regulatory agency" does not consist of understanding the operations they are charged with "regulating," how can they do their job? More on this later under "Philosophical Issues."

They obviously read our notice to them and they should have asked if they had further questions. Even a layman would question this, since a 65% expansion of operations would normally have major ramifications for wastewater disposal. Rather now, they expect us to have known that they do not understand our operations. How does one

regulate something one does not understand? For a discussion of this, please see the "Philosophical Issues," below, as per your interest in how third party (government), regulation affects citizens and society, versus alternatives.

In the same document, we informed the Board that even given such an expansion, we would still be able to live within our current permit discharge requirements for wastewater flow volume, BOD and all other guidelines for protecting groundwater-- which we accomplished, other than some paper/calculation technicalities described below.

Was a notification to the Board of our expansion plans even necessary? The answer would appear to be, "No." The WDR's state that new WDR's are required if there is a "material" change. The only indication of what a "material change" means is in an attachment within our official WDR's entitled, "Standard Provisions and Reporting Requirements for" the WDR's, and it states the following:

"4. Before making a material change in the character, location or volume of discharge, the discharger shall file a new Report of Waste Discharge with the Regional Board. A material change includes, but is not limited to, the following (emphasis added):

- a. An increase in area or depth to be used for solid waste disposal beyond that specified in waste discharge requirements,
- b. A significant change in disposal method, location or volume, e.g. change from land disposal to land treatment.
- c. The addition of a major industrial, municipal or domestic waste discharge facility.
- d. The addition of a major industrial waste discharge to a discharge of essentially domestic sewage, or the addition of a new process or product by an industrial facility resulting in a change in the character of the waste."

Please note how many times the words, "major," "significant," and "material," are used. The Board has not evidenced any other definition but seems to interpret this section as either "not applicable" or meaning "any change." This is an egregious interpretation.

The fact is, we are processing today the same raw product (fresh tomatoes), into the same finished product (tomato paste), with the same processing techniques as before. Given this, we would not have a "change in wastewater characteristics," or a "material change."

Further, since we were already permitted for a discharge quantity of 4.3 million gallons per day ("MGD"), and were only discharging approximately 2.5 MGD, even while expanding operations by 65%, we would be well within the parameters of our WDR's. Actually, we decreased our water outflow to 1.6 MGD in face of a 65% expanded increase in production, achieving a water disposal savings of 57% per ton of production. The same analysis goes for the 100 pounds per acre per day of accepted organic loading ("BOD" or biological oxygen demand), when we were only applying 25 to 40 pounds in prior years. However, this extensive water conservation, plus the start-up issues, lead to the odor issues. Given the above, there would be no requirement to even notify the Board of the expanded production--but I did anyway. We believe we went above and beyond our duty to keep the Board informed of our activities.

I fail to understand the Board reasoning that we could or would have to hide our expanded ponds. First, I have personally written, applied for and worked with the water boards on five facility WDR's and have obtained approval for cooling and settling ponds in three facilities--all of which have operated successfully over a combined sixty (60) years. The Williams Cooling Pond has operated for twenty (20) years with a groundwater sampling well immediately downgradient from it with documented evidence of healthy groundwater quality. In other words, we have never been declined any acreage request for cooling ponds.

Based on prior work with regulatory staff and boards, and prior disclosures for the Williams expansion, I never gave it an ounce of thought that I wouldn't be able to obtain WDR's which included additional pond capacity or that there was any issue at all with them. The Board had already approved of this extremely environmentally sound cooling technology in our original permit. With this track record, how could a reasonable person believe I had something to hide? In addition, who would believe that I could hide a 100 acre water pond from view of the Board--maybe from a Martian--but from Board representatives?

It is unbelievable that anyone would credibly contend that I was "choosing to mislead" (i.e. I lied). There were at least three (3) notices to the Board specifically identifying expansions of the Cooling Pond, Settling Pond and less acreage for land application, and nothing to hide plus nothing hidable!

2) The second portion of the Board's claim is that approximately 27 million gallons was "discharged," from the additional 40 acres of Cooling Pond and one (1) acre of Settling Pond (which their news release grossly misstated to be "266 million gallons").

There is no way to accurately gauge this flow--no meters or a survey of spacial soil types and their compaction levels to even do a responsible estimate. The Board made several assumptions about the soil characteristics and complicated analysis (i.e. guesses), about the quantity of "leakage." Typically, the bottom of these ponds is quite compacted and forms a decent seal from meaningful water penetration.

Regardless, please consider a simple analysis. The 27 million gallons over 41 acres equates to a column of water two (2) feet thick--meaning that water would had to have leaked down two feet below the ground surface level. However, the water table within this area of the ponds is four to seven feet below the ground surface. Having sunk to the water table means that any leakage would have to travel sideways downgradient from the ponds and increased the level of water in the sampling wells which are immediately downgradient of the ponds. Those wells show no increased water level! Evidence and calculations relative to other sampling wells on the site show no differential gradients either. Again, there is no way to measure it directly, therefore the Board's only argument here is theoretical, includes gross assumptions and that argument is contrary to what evidence there is. The only evidenced conclusion is that there must have been virtually no leakage.

3) The third portion of the Board's claim is that the water, which they claim leaked from the ponds, has additional potential to degrade the groundwater. The ponds have been in place for 21 years and there have been groundwater sampling wells immediately downgradient from these ponds for 12 to 21 years. There is no indication of groundwater degradation in those wells over these years, including during and after this past season's expanded operation. This should be proof enough that these ponds do not have any known or reasonably suspected potential to degrade groundwater.

Additionally, over 97% of the claimed leakage was to have come from the Cooling Pond, which has very clean water in it--water which is condensed from the water evaporated from the tomatoes. It carries over a negligible amount of tomato solids. We measured a BOD level of approximately 30 ppm in the Cooling Pond. This compares to an annual average of 600 to 1,600 ppm in our regular wastewater stream going to the fields for land application. However, the **U.S. EPA's Standard** for BOD concentration in unlined municipal wastewater ponds (which is the type of ponds Williams has), ranges from 69 to 138 ppm of BOD, with other professional studies evidencing up to 209. While the **U.S. EPA's Standard** BOD loading rate range is 40 to 80 pounds/acre/day, even if we assume the Board's leakage rate was correct, our BOD loading rate would have been 2 pounds/acre/day. In other words, in the U.S. EPA's judgement, this level of potential groundwater degradation from a Cooling Pond such as ours, is of no concern. Our BOD concentrations and loading rates are far below these. Therefore, given the groundwater quality results and the federal government's standards, there can be no credible case for potential groundwater degradation from these ponds!

In a separate charge, but related to this issue of the Cooling Pond, the Board also claims we violated the WDR's because they were unaware of any tomato organics entering the Cooling Pond (which also apparently "mislead them"). However, this information is clearly contained in the WDR documentation of our process, as follows (emphasis added):

"Wastewater will be generated by equipment cleaning, washing and conveying tomatoes and condensed vapors from the evaporation process," plus in the same paragraph, "Wastewater from the evaporation process . . . will be discharged to a 60 acre cooling pond."

In a workplan submitted to the Board dated April 29, 2005, under a section entitled "Cooling Pond Washwater," the report stated, "Cooling Pond water is of high quality containing low concentrations of BOD and TDS. It is discharged to a 60 acre cooling pond. Water from the cooling pond is recycled to the processing plant; any surpluses that occur are discharged to the irrigation water distribution system for crop irrigation."

How can anyone believe we did not inform the Board of some organics entering the cooling pond? They make the argument that wastewater does not necessarily mean organics, but that is the principle constituent of concern in tomato processing "waste!" This is elementary to a basic understanding of the tomato processing and its potential negative impact on groundwater. This is an example of the Board not reading their own file documents, which appears to be a key source of their attitude toward me.

In summary, the Board's rationale for the fine is composed of three factors, being (1) unauthorized expansion of the ponds, (2) leakage and (3) potential for groundwater degradation from any leakage--all of which are unsupported. Each of these can only be made to look possible through extreme assumptions, reinterpretations and misinterpretations all falling in the Board's favor.

To repeat, what really seems to have happened in this whole case is that the Board staff did not do their homework, did not understand some of their own regulations, then made faulty assumptions their requirements for the Williams operations, which lead them to an attitude that we were lying to them.

Level of a fine. Regarding the level of the fine, it is beyond exorbitant. To derive a fine, all three of the above factors have to be true to some degree and expressed as a

percentage of impact which are then multiplied together. If any of the factors are zero, then the fine calculation is zero. Our calculation is zero times zero times zero equals zero. Even, ignoring that, some comparisons are in order, as follows:

- 1) Trucking company - ammonia spill that killed fish over 15 miles in 2010 - \$30,000.
- 2) Grower - no permits for 900 acres of discharge in 2015 - \$56,628.
- 3) Government district - 3.8 million gallons of raw sewage spilled into a lake in 2008 - \$375,000, plus an additional incident two years later of 10.5 million gallons of treated sewage - \$330,000.
- 4) City by main river - raw sewage spilled to surface water in 2010 - \$15,000 cash, net of \$375,000 being satisfied with projects.
- 5) Dairy - manure discharged to groundwater, countless cows buried on their property and violation of clean-up order in 2013 - \$685,000.

Even if all three of the factors for a violation were correct, a fine of \$1.5 million is exorbitant.

Other Board claims. The Board has made a few other claims of violations, which we also believe range from being flat wrong to those technically correct, but in substance highly misleading, in addition to the single accurate claim regarding excessive odors. It is notable that these additional claims are not the basis for the penalty imposed on Morning Star. The penalty is only based on the allegations of the pond expansions, discussed above.

An overriding source of the Board's attitude seems to stem from a certain logic, which begins with a false assumption. That is, since the expansion decreased the available land area for washwater disposal, this would increase the potential for BOD overloading. The Board's initial stance was that the WDR's require us to utilize all of the available land identified in our permit and that any decrease would be a violation. That is flat wrong. Dischargers are not required to utilize all of their permitted land area, but are governed by their requirements to keep BOD, and other constituents, loading rates within specified ranges.

To build the facility and begin production in 1995, I requested and was permitted for 695 acres to be available for wastewater disposal. I have always calculated a safety factor in the land required for disposal of the water and this was no exception. I provided what I calculated to be a two times safety factor. In addition, 100 acres of this 695 acres is contiguous to our property, but not owned by us, so I could only count on 595 acres. The required land area for wastewater disposal is calculated based on a safe level of 100 pounds of BOD applied per acre per day, consistent with the requirements in our WDR's. Currently, given our prior experience and our 2015 expansion, we only require approximately 280 acres and with 485 acres available, we still have an excess of 205 acres of land, equating to a safety factor of 73% over our required acreage to meet our BOD application guideline. Thus, my statement that we could operate under the then current 2013 conditions is supported.

To comprehend and put into perspective the "overloading" issues, you have to decide on what an "impact" is. Is it one square foot, a cubic centimeter of water, or is it the entire acreage or stream of flowing 4' to 7' deep groundwater below the entire ranch? The Board has no objective criteria for this, of which I am aware, giving them the opportunity to make an arbitrary call. The Board statements imply that all the land was affected, when only a very small portion was "overloaded," and even if this negatively

affects that portion, this is well mixed and averages out. As identified below, the ranch averages are significantly below the guidelines.

BOD. The Board claims that we overloaded the land with organics, salts and nitrogen. They are technically correct, with some assumptions, but misleading and wrong in substance on all accounts, because it pertains to a small portion of our farmland. To understand this, we are in violation for organics application because, in over 100 irrigation cycles, we exceeded the allowance of 100 pounds of BOD applied per acre per day in a given field, 10% to 15% of the time. But offsetting these, in many cases we applied less than 25 pounds. Therefore, over the season we averaged 54 to 58 pounds--or only half the approved application rate.

However, to understand how the rate of application is periodically exceeded, it must be understood that the application rate is calculated retroactively. When applying water to the land, we can reasonably gauge the quantity of water being applied, however, the concentration of the BOD is only tested once per week (as was dictated by the Board), and the results of the tests only become available after two to three weeks, given the logistics involved, paperwork and that the lab test itself takes five days to complete. Therefore, we can only assume an average rate of BOD concentration when we are irrigating a field and the concentration varies widely (from 212 to 2,400), based on tomato quality and factory operations. To imply improper intent or incompetence at misapplying BOD to the land is a negligent representation!

Salts. The Board claims that we overloaded the land with salts, read as Fixed Dissolved Solids (FDS). They are technically correct only by their faulty calculation method, and in substance wrong, because the Board insists on counting a statistically significant single "outlier" reading of 4,150 mg/L used in the calculations. According to Dixon's Outlier test that was performed on the data, a 4,150 mg/L reading was found to be an outlier at all significance levels tested. Our flow-weighted annual average FDS concentration guideline is to not exceed 900 mg/L and our calculated result for 2015, including the outlier, was 1,004 mg/L. The remaining 11 readings ranged from 360 to 860 mg/L. Removing the "outlier" from the data set, our annual average FDS was 640 mg/L, well under the limitation and in compliance. For reference, our 2013 result was 653 and 2014 was 484 mg/L. One can clearly see here, the Board arbitrarily utilizing an unscientific and unprofessional method to make us look bad.

Nitrogen. The Board claims that we overloaded the cropland with nitrogen, implying that our entire 485 acres was overloaded. Actually, we can validate that we exceeded the crop allowance on only one (1) field (which was an experiment!), and which accounted for 21.4 acres or only 4.4% of our total acreage. For this field the nitrogen loading was 319 pounds, but the crop uptake is calculated to be only 225 pounds per acre.

However, for another field the Board states that we violated the nitrogen loading limit on, they did not take into account that this field is double cropped, which uptakes additional nitrogen. This farmland of approximately 20 acres was planted in Sudan, and with the second crop of Oats, remains questionable for compliance.

To see the whole story, our crop demand for nitrogen was approximately 428 pounds per acre, but our weighted average nitrogen loading was approximately 247 pounds per acre, or under-loaded by 42%!

Philosophical Issues

(1) Is “regulation” a requirement for improving human, social well-being?

(2) If so, why do most people believe that third persons organized as a political/governmental body would be the best method of “regulating” the action(s) of the rest of the people?

I propose that people regulating the actions of other people does advance human well-being and that more “regulation” is required than we have now--however, with a big caveat.

The dictionary (in this case my edition of Webster’s), defines “regulate,” as “to control or direct according to a rule, principle, etc.” Regulation is, “being regulated.” Regular is defined as, “conforming in form or arrangement to a rule, principle, type, etc.”

In my instant case of the Williams expansion, the only “rule” I can find is that of the Board’s “Standard Provisions. . .” cited above. Under those rules, I judged that notifying the Board of our expansion was not required, however, as I have painstakingly described, we notified them anyway. So what we have here is not regulation in the proper sense of going by the rules laid out or any stated principles, but by a significant reinterpretation on the part of one or more persons (“regulators”), such that any change requires notification to the Board. And, they can not point to any other “rule” by which they are guided. One official Board member asked the Board staff attorney what the rule or policy was for visiting or investigating a dischargers application statements and the answer was mumbo-jumbo, but, but, but and “No,” they rely on the discharger’s statements. What kind of “regulation” is that? Is that what the legislature, governor and the public think is happening? Not to mislead on my part, the Board does periodically visit and make inspections.

Therefore, we have rule by people, not by principle. In philosophical terms, we have a breach of what is known as the “rule of law.” A few centuries ago, the thinking of people evolved through a period of time that is termed the “Enlightenment.” The thinking went from the “rule of kings,” to the “rule of law,” codified in English Common Law and the American Constitutional experience. Most people, including myself, believe this concept is responsible to a very significant portion of our improvements in standard of living and culture, resulting in a huge improvement in human well-being.

Therefore, I chose to stand up for what I believe is right in the administration of our social fabric--and I strongly believe that the RWQCB is wrong in its claims against us and the “penalty” requested (more on this impact below).

Back to the direct issue of “regulation.” Yes, I believe in more regulation, but effective and efficient regulation, not “regulation” by the following:

- (1) people who are physically removed, lacking timely knowledge of the actions of those they are supposed to be regulating;
- (2) people with no direct, personal interest in the actions of those other people;
- (3) people without any financial incentive relative to the actions of those other people;
- (4) and, critically, people without specific knowledge of the actions, values or circumstances surrounding the actions of those people;
- (5) and, most critically, people who do not have personal responsibility for their mistakes.

The above structural realities render political “regulation” ineffective and inefficient relative to a better alternative. Disinterested people do not have meaningful incentives to get things done timely and get them done right.

Please consider the following examples from our Williams experience. As I best recall, in the late 1990’s, I learned that our facility was listed in a state list of “polluters,” or some such terminology and there was no answer why. On my own initiative, I had several groundwater sampling wells installed to better understand the impact of our washwater application on our cropland--and when the Board found out, they made us take them out--crazy bureaucratic reaction. Does a desire for “control,” best a desire for the truth? In 2005, we submitted a request for new WDR’s, and it took the Board seven years to respond--do they care? We did not agree with the requirements and appealed to the State Board (you can see why they do not like me!). The State Board never responded for two years and we were left with the choice of filing a lawsuit or dropping the issue. We did not file a lawsuit because of the current issues. When we asked the Board just last spring to approve more land (as a safety measure to increase our safety factor even more ahead of our expansion), the Board responded that it would take six months to respond--no help there in our drive to protect groundwater.

So what would be more effective and efficient “regulation?”

The best, and what I mean by “more regulation” of a given person or persons, would be the watchful eyes of their direct stakeholders, who would be as follows:

- (1) their customers, for the quality of the products and services they produce;
- (2) their suppliers, for the integrity of the products and services provided to them plus their contractual and financial integrity;
- (3) the people they associate with, particularly employees and consultants, for personnel and relationship practices, and;
- (4) their neighbors for how their physical actions impact them and their property (like groundwater quality).

All of these stakeholders have a personal interest in and direct knowledge of the actions of the people they associate with, and by holding them accountable with personal communication and, if required, a solid legal and judicial system, would be “regulating” each other’s actions effectively and efficiently.

Timeliness is very important to achieving accountability and corrective action. In our case, I am not aware of one person in our local community who called us to notify us of excess odors--they are all trained to call “the government.” It would have helped us address our odor issue by knowing the impacts on our neighbors sooner rather than later. But, no, they call “the government” and they won’t tell us much about the issue, presumably to “protect” the public, and we only learn about the issue when it is too late for effective and efficient solutions. So the issue drags on. This process is stupid, ineffective and inefficient.

Citizens appear to be becoming less personally responsible for their actions and their lives, expecting that government “regulators” will take care of them and their issues--education, retirement, insurances of all kinds, earnings, employment or lack thereof, contractual performance, neighbors, etc. The fact is, the bureaucrats and regulators cannot handle all of these issues for everyone.

When we do screw up with a customer’s product or any contractual issue, I am personally responsible and I pay if I am wrong (or anyone in our company even without my consent or knowledge)! Can you identify one real person in government--a

legislator, governor, bureaucrat or regulator--who takes personal responsibility for you, or what the abstraction we call government promises you (like your social security check)? There is no one! There is only yourself. But when citizens lose their expectations and ability to take responsibility for themselves, then there is nothing left to sustain us. It all collapses like Rome, the Berlin Wall, Greece and every other failed, parasitic society where people come to believe in living off their fellow citizens.

Socioeconomic Issues

It is obvious from their statements that at least one Board member believes that my paying money to them will punish me. The fact is, they are not hurting me--they are hurting the most relatively disadvantaged people in our society in order to benefit themselves (Board members and staff). Let me explain.

First, let us assume that I lose our case in the courts and I end up paying the State of California's RWQCB 10 cents or \$1.5 million--I write a check and it goes to support the Board activities, sustaining their wages, hiring additional regulators and paying operating expenses. Clearly, they personally benefit from the fines they collect. You can see their incentive structure.

Second, this payment clearly decreases my personal income (what they consider to be a punishment). But this is simply paper--what is really happening?

The first payment each of us has to make is for taxes, which goes to the government under the presumption that it supports infrastructure and welfare transfers to relatively disadvantaged citizens. Personally, almost half of my income goes to current taxes and half of what may be left at death will go to taxes, making my full tax rate approximately 70% to 75%.

If there is anything left after taxes, the second category of expenditure is to support our lifestyle--food, clothing, housing, health maintenance, communications, transportation and entertainment. Personally, I earn enough such that my lifestyle expenditures are meaningfully less than 5% of my income. While it may not be obvious to most people, it is a reality for me, that I have no use for additional lifestyle expenditures. That is, I desire not one more material item or service performed for me.

Annually, people such as myself, usually have about 45% to 50% of their total income left over (after 45% to 50% for income taxes and 5% for lifestyle). What happens with that? Most people never deal with this question because they do not have any, or very few, funds left over after paying taxes and expenses for their lifestyle.

That said, the third category of expenditure, for those who do have something left over after paying for taxes and lifestyle, is savings, which turns into investment. People invest in bank deposits, lending to others, and businesses, which invest in land, buildings, equipment, inventories and research & development for new products and services. All of what I have left over goes to the latter--business investments which produce more goods and services.

Who gets the benefit of that? The people who consume those extra goods and services get all the material benefits. Will I consume any of the extra products or services actually produced? No, as I described above, I have no desire to consume anything more. Will any family with an income over, say, \$100,000 per year consume any more tomato sauce? Most likely, not.

Then, just who is most likely to consume the additional tomato sauce (or any additional material goods and services)? Easily obtainable sources evidence that approximately 46 million Americans are “food insecure” and/or on food stamps, with an equal number in poverty (probably much double counting). It should be clear that monetarily poorer citizens will consume the additional goods and services. Additional production causes decreased prices to producers and this stretches family budgets for additional consumption.

Most people will say that I will benefit because, assuming I make good investment and operating decisions resulting in a profit, I get the profit. But, as described above, all of that goes either to taxes (supporting the welfare of monetarily poorer citizens), and investment, which produces even more goods and services--which again benefit other people's lifestyle. None of it goes to me or my family.

Therefore, the truth appears to be that if I pay the RWQCB 10 cents or \$1.5 million, it all benefits the Board folks and comes right out of the mouths of the more disadvantaged in our society.

The real impact on me is less enjoyment from “working” (because of the increasing hassle versus enjoyable work I spend time doing), and less “tools” (being resources), to work with to produce additional and/or higher quality goods and services in a more effective, efficient and environmentally responsible manner.

Therefore, to advance human well-being and nature, would society's resources be better off under the direction of government bureaucrats or Morning Star and many other like entities?