



Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board



Dear Chair Marcus and Board Members,

I am writing on behalf of the California Association of Pest Control Advisers (CAPCA) which is comprised of over 3,000 licensed professionals by the State of California. These pest control advisers (PCAs) are the boots on the ground with a fiduciary responsibility to growers, crop protection, and the production of food, fiber, and ornamental crops. Recommendations provided by PCAs to growers are strictly regulated by both the Federal Insecticide, Fungicide, and Rodenticide Act and the California Department of Pesticide Regulation (CDPR).

CAPCA, though primarily representing PCAs, has a vested interest in the Certified Crop Advisers (CCA) of the state. Many of our PCAs are also the CCAs that will provide Irrigation and Nitrogen Management Plans certification to growers. At present, we have approximately 925 members of CAPCA who are CCAs.

To the attention of the Board, we would like to highlight changes which were made between the first and second Draft Order that protect the CCA from potential liability from any failure in the execution of an Irrigation and Nitrogen Management Plan:

- The first is from the Draft order itself on page 32, footnote 95:

In expanding the certification requirement, we are also sensitive to the concerns expressed by professionals certifying the INMP regarding potential liability for groundwater nitrate impacts, as well as the scope of their professional insurance coverage. With regard to liability under the Water Code, we note that consultants to dischargers are generally not considered to be dischargers of waste and therefore not liable for violations of the dischargers' waste discharge requirements. With regard to third-party liability, we direct the Central Valley Water Board and the Third Party to include specific language in the certification aimed to limit such liability. (See App. A, Modified Eastern San Joaquin Agricultural General WDRs, Attach. B, MRP, § VI.B, INMP Component (26), page 3536, Attach. E, Def., 7 & fn. 2, p.2.) The certification language additionally states that the certification does not create liability for environmental violations.

- The second is located in Appendix A. It is the Attachment B and is on pages 35 and 36 of the REDLINE version:

The person signing this Irrigation and Nitrogen Management Plan (INMP) certifies, under penalty of law, that the INMP was prepared under his/her direction and supervision, that the information and data reported is to the best of his/her knowledge and belief, true, accurate, and complete, and that he/she is aware that there are penalties for knowingly submitting false information. Where the person signing the INMP is not the Member, * he/she may rely on the information and data provided by the Member and is not required to independently verify the information and data.

The person signing the INMP below further certifies that he/she used sound irrigation and nitrogen management planning practices to develop irrigation and nitrogen application recommendations and that the recommendations are informed by applicable training for meeting the crop's agronomic needs while minimizing nitrogen loss to surface water and groundwater. Where the person signing the INMP is not the Member, he/she is not responsible for any damages, loss, or liability arising from subsequent implementation of the INMP by the Member in a manner that is inconsistent with the INMP's recommendations for nitrogen application. This certification does not create any liability for claims for environmental violations.

Certification:

I, _____, certify this INMP in accordance with the statement above.

_____ (Signature)

If the certifier is not the Member, the Member additionally agrees as follows:

I, _____, Member, have provided information and data to the certifier above that is, to the best of my knowledge and belief, true, accurate, and complete, that I understand that the certifier may rely on the information and data provided by me and is not required to independently verify the information and data, and that I further understand that the certifier is not responsible for any damages, loss, or liability arising from subsequent implementation of the INMP by me in a manner that is inconsistent with the INMP's recommendations for nitrogen application. I further understand that the certification does not create any liability for claims for environmental violations.

_____ (Signature)

We recognize that this language is protective of CCAs and their livelihoods and we appreciate its inclusion. However, the language may be overcomplicated. An example of simplified language comes from the California Food and Agriculture Code:

FOOD AND AGRICULTURAL CODE - FAC
DIVISION 7. AGRICULTURAL CHEMICALS, LIVESTOCK REMEDIES, AND
COMMERCIAL FEEDS [12500 - 15340]

(Division 7 enacted by Stats. 1967, Ch. 15.)

CHAPTER 2. Pesticides [12751 - 13192]

(Heading of Chapter 2 amended by Stats. 1996, Ch. 361, Sec. 26)

ARTICLE 10. Recommendations and Usage [12971 - 12979]

12975. A person making a written recommendation does not incur an obligation to ensure that the actual use follows his or her recommendation.

CAPCA is aware that other stakeholders have expressed concern that that there will be too few qualified CCAs available to certify the INMPs. We assert that with nearly 900 CCAs having obtained Nitrogen Management Certification, and with their liability addressed, there are enough qualified CCAs to certify programs.

As technical specialist, CCAs are concerned that the credibility, reliability and the minimization of detrimental economic impact associated with the Irrigated Lands Regulatory Program (IRLP) hinges upon the development of scientifically accurate crop nitrogen removal coefficients. We

are concerned that there will not be funding to support the timely and reliable development of these critical parameters.

We support the additions that were made reducing Certified Crop Advisers' liability and wish to thank you for protecting the People of California and its diverse agricultural industry.

Regards,
Ruthann Anderson, CEO