

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R5-2009-0507

IN THE MATTER OF  
NICK BEGLINGER, NICK BEGLINGER DAIRY, 7329 COUNTY ROAD 16,  
ORLAND, GLENN COUNTY

This Order is issued to Nick Beglinger (hereafter “Discharger”), pursuant to California Water Code (CWC) section 13350, which authorizes the imposition of Administrative Civil Liability for discharge of waste in violation of a waste discharge requirement and CWC section 13268, which authorizes the imposition of Administrative Civil Liability for failure to furnish required reports. This Order is based on findings that the Discharger violated the CWC and Waste Discharge Requirements General Order for Existing Milk Cow Dairies Order No. R5-2007-0035 (“General Order”).

The Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (“Central Valley Water Board”) finds, with respect to the Discharger’s acts, or failure to act, the following:

1. The Discharger is the owner and operator of the Nick Beglinger Dairy, located at 7329 County Road 16, Orland, California.
2. Nick Beglinger operates a two hundred and forty five (245) milk cow dairy facility that includes a ten (10) acre production area consisting of corrals, barns, ponds, and a feed storage area. It also includes one hundred (100) acres of cropland used for manure application. A concrete drainage canal bisects the facility thus separating the main production area (including corrals, free stalls, and milking parlor) from the main cropland and wastewater retention ponds (also referred to herein as “lagoons”). County Road S bounds the eastern perimeter of the facility. Immediately east of and running parallel to County Road S is an area drain ditch that is and terminates in waters of the state. The southern portion of the facility is bound by a ditch (southern drain ditch) that drains west along the southern end of the cropland and wastewater lagoon and under County Road S, leaving the property and connecting to the area drain ditch.
3. In past inspections of the Nick Beglinger Dairy, Central Valley Water Board staff has noted and brought to the attention of the Discharger issues of non-compliance that have the potential of causing wastewater to discharge off-property. On 24 May 2000, an inspection was conducted by staff in response to a complaint alleging a discharge

of wastewater into the southern drain ditch which passes along the south side of the dairy. The inspection revealed that the discharge was tail water from the south end of the cropland (west of the lagoon). The water had a dark color, but contained no manure residue. Although there was no noted violation of the applicable regulations (title 27 of the California Code of Regulations, division 2, subdivision 1, chapter 7, subchapter 2, article 1, "Confined Animal Facilities Regulations") at that time, the discharge showed that tail water from the south end of the cropland had the ability to reach the southern drain ditch. On 18 December 2001, Central Valley Water Board staff conducted an inspection to determine if the Nick Beglinger Dairy was in compliance with Confined Animal Facility Regulations. During the inspection, staff noted that the Discharger was not using a tail water return system or slide gates to aid in the control of wastewater used to irrigate the south end of the cropland. In a letter dated 6 February 2002, the Discharger was asked to submit a written response by 8 March 2002 outlining steps to be taken to ensure that wastewater would not leave the property. No response was received.

4. On 3 May 2007, the Central Valley Water Board adopted the General Order. This order serves as general waste discharge requirements for discharges of waste from milk cow dairies (as defined in Finding 7 of the General Order) of all sizes including the Nick Beglinger Dairy. The General Order implements the requirements of State Water Resources Control Board (State Water Board) Resolution 68-16 (Statement of Policy with Respect to Maintaining High Quality of Waters in California); the Confined Animal Facilities Regulations in title 27; the Central Valley Water Board's Water Quality Control Plan for the Sacramento and San Joaquin River Basins and the Water Quality Control Plan for the Tulare Lake Basin; and other applicable plans and policies of the State Water Board and the Central Valley Water Board. The Nick Beglinger Dairy was notified of its coverage under this order on 6 July 2007.
5. On 6 February 2008, wastewater was found in the area drain ditch at the intersection of County Road S and County Road 18. Upon an investigation by Central Valley Water Board and Department of Fish and Game staff, the source of the discharge was determined to be the Nick Beglinger Dairy lagoon. The lagoon was overflowing at its southeast corner, entering the southern drain ditch, crossing under County Road S through a pipe (leaving the property), and emptying into the area drain ditch which parallels County Road S, which is waters of the state and terminates in the Sacramento River.
6. The following day (7 February 2008) while conducting a follow up inspection on the 6 February 2008 discharge from the lagoon, staff

noticed wastewater still flowing off-property from the same pipe along County Road S. Upon further investigation the source of the discharge was determined to be wastewater flowing south out of the cropland (just west of the lagoon) into the southern drain ditch. Both off-property discharges were facilitated by lack of controls on the southern drain ditch at the point where the ditch leaves the dairy property.

7. On 7 February 2008, while Central Valley Water Board staff was investigating the discharge from the cropland, they noticed that a concrete canal (Orland Unit Water Users Canal) above the lagoon had wastewater in it. The concrete canal crosses County Road S and continues off property.
8. On 6 February 2008, three (3) water samples were collected. The samples were tested by the Department of Fish and Game, Fish and Wildlife Water Pollution Control Laboratory. In summary, all samples were determined to be considered deleterious to aquatic organisms living in waters of the state.

Sample #	Sample date	Sample location	pH	EC $\mu\text{s}/\text{cm}$	Temp $^{\circ}\text{C}$	Ammonia as N mg/L
1	2/6/2008	SE corner lagoon	7.25	7680	9.9	347
2	2/6/2008	Southern drain ditch	7.59	7573	8.2	336
3	2/6/2008	Off-property area drain (East of County Rd. S)	7.92	7440	11.5	332

9. On 7 February 2008, five (5) water samples were collected. The samples were tested by Department of Fish and Game, Fish and Wildlife Water Pollution Control Laboratory. In summary, all samples were determined to be considered deleterious to aquatic organisms living in the waters of the state.

Sample #	Sample date	Sample location	pH	EC μs/cm	Temp °C	Ammonia as N mg/L
1	2/7/2008	Off-property area drain (E of County Rd. S)	8.25	6475	14.1	223
2	2/7/2008	Southern drain ditch	8.08	6405	14.8	226
3	2/7/2008	concrete canal opposite side county road S	8.3	1456	10.5	11.3
4	2/7/2008	concrete canal underneath leaking pipe	8.03	1906	17.8	58.5
5	2/7/2008	concrete canal, 65 feet up gradient of leaking pipe	9.66	807	17.5	.360

10. The Central Valley Water Board issued the Discharger a written Notice of Violation letter on 27 February 2008, giving notice of the violations that have led to the issuance of this Order.

11. CWC section 13323 states, in part:

“Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.”

12. CWC section 13350 states, in part:

“Any person who...in violation of any waste discharge requirements, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged into waters of the state...shall be liable civilly . . .”

The relevant penalty provisions of the statute at §13350(e) provide that:

“[A] regional board may impose civil liability administratively . . . either on a daily basis or on a per gallon basis, but not both. (1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs. . . . (2) The civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged.”

13. General Order Prohibition A.4 states:

“The collection, treatment, storage, discharge, or disposal of wastes at an existing milk cow dairy that results in (1) discharge of waste constituents in a manner which could cause degradation of surface water or groundwater except as allowed by this order, (2) contamination or pollution of surface or groundwater, or (3) a

condition of nuisance (as defined by the California Water Code section 13050) is prohibited.”

Additionally, Prohibition A.10 states:

“The discharge of wastewater to surface waters from cropland is prohibited.”

These provisions are designed to prevent waste discharges that could affect the quality of the waters of the state and create nuisances.

14. The discharge of wastewater from the wastewater retention pond into the area drain ditch on 6 February 2008 constituted a violation of Prohibition A.4 of the General Order and therefore is grounds for civil liability under CWC section 13350.
15. The discharge of wastewater from the cropland into the area drain ditch on 7 February 2008 constituted a violation of Prohibitions A.4 and A.10 of the General Order and therefore is grounds for civil liability under CWC section 13350.
16. Monitoring and Reporting Program No. R5-2007-0035 (“MRP”) was issued pursuant to CWC Section 13267 and is incorporated into the General Order at Provision E3. CWC section 13268 provides that:  
“Any person failing or refusing to furnish technical or monitoring program reports as required by . . . Section 13267 . . . may be liable civilly . . . Civil liability may be administratively imposed by a regional board . . . in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.”
17. Section C of the MRP, under “Priority Reporting of Significant Events,” requires the discharger to report :  
“any noncompliance that endangers human health or the environment or any noncompliance with Prohibitions A.1, A.2, A.3, A.4, A.5, A.8, A.9, A.10, A.11, and A.12 in the [General] Order.”  
In relevant part, the discharger must submit a written report to the Central Valley Water Board within two weeks of becoming aware of the incident. The report must contain a description of the noncompliance, its causes, duration, and the actual or anticipated time for achieving compliance. The report must include complete details of the steps that the Discharger has taken or intends to take, in order to prevent recurrence. The Discharger became aware of the incident at the latest on 6 and 7 February 2008 when Central Valley Water Board staff inspected the discharge. The Discharger was required to submit a written report within two weeks on 21 February 2008. The report was not received by the Central Valley Water Board until 12 March 2008, 20 days late.
18. **Maximum Civil Liability for Discharge from Lagoon to Area Drain Ditch on 6 February 2008:** Per CWC section 13350 maximum civil

liability for this discharge is five thousand dollars ( $\$5,000 \times 1 \text{ day} = \$5,000$ ).

19. **Minimum Civil Liability for Discharge from Lagoon to Area Drain Ditch on 6 February 2008:** There is no minimum civil liability amount in accordance with CWC section 13350.
20. **Maximum Civil Liability for Discharge from Cropland to Area Drain Ditch on 7 February 2008:** Per CWC section 13350 maximum civil liability for this discharge is five thousand dollars ( $\$5,000 \times 1 \text{ day} = \$5,000$ ).
21. **Minimum Civil Liability for Discharge from Cropland to Area Drain Ditch on 7 February 2008:** There is no minimum civil liability amount in accordance with CWC section 13350.
22. **Maximum Civil Liability for Failure to Submit Report:** Per CWC section 13268, the maximum civil liability for the failure to submit the written report is twenty thousand dollars ( $\$1,000 \times 20 \text{ days} = \$20,000$ ).
23. **Minimum Civil Liability.** There is no minimum civil liability amount in accordance with CWC section 13268.
24. **Total Maximum Civil Liability:** The total maximum civil liability is thirty thousand dollars ( $\$5,000 + \$5,000 + \$20,000 = \$30,000$ ).
25. CWC section 13327 states:

“In determining the amount of civil liability, the regional board, and the state board upon review of any order pursuant to Section 13320, 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.”
26. An Administrative Civil Liability complaint in the amount of ten thousand dollars ( $\$10,000$ ) was issued to the Discharger on 11 July 2008.
27. Nick Beglinger spoke with Central Valley Water Board staff on 22 July 2008 requesting the Central Valley Water Board to consider a reduction in the Administrative Civil Liability because of his financial situation. Subsequent to that meeting, the Discharger provided two

years of income tax records to substantiate his claim of inability to pay. Staff has reviewed the records and has determined that the records substantiate the claim of inability to pay.

28. The Discharger has taken steps to prevent a recurrence of the off property discharge by installing a slide gate valve in the ditch at the southeast corner of the property where wastewater left the property on 6 and 7 February 2008. In addition, the pipe that leaked wastewater into the concrete canal as described in Finding 7 above has been repaired.
29. Issuance of this Administrative Civil Liability Order is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321 (a) (2).
30. On 15 March 2007, the Central Valley Water Board explicitly delegated to the Executive Officer the authority to issue orders to assess administrative civil liability where the matter is not contested by the discharger. (Resolution R5-2007-0009). Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this tentative Order becomes final, except that if the thirtieth day following the date that this tentative Order becomes final falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. This tentative Order is set to become final on 12 March 2009. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality/](http://www.waterboards.ca.gov/public_notices/petitions/water_quality/) or will be provided upon request.
31. This tentative Order constitutes a settlement of the violations herein mentioned. Notice of this settlement is being published on the Central Valley Water Board's website and is being provided to all interested parties on 24 February 2009. Following the expiration of a 14 day public notice and comment period, this Order is set to become final on 12 March 2009, provided that significant comments raising issues that would cause the Central Valley Water Board to reconsider this action are not received in the public comment period. The Order will be effective immediately upon issuance.

**IT IS HEREBY ORDERED THAT:**

1. Nick Beglinger and the Nick Beglinger Dairy shall be assessed an Administrative Civil Liability in the amount of **one thousand five hundred**

**dollars (\$1,500)**, to be paid in 4 quarterly installments beginning **1 April 2009**. The amount of the liability is based upon a review of the factors set forth in Water Code section 13327 cited in Finding No. 25 above, and the State Water Resources Control Board's water quality enforcement policy.

2. The Executive Officer may extend the above mentioned deadlines if the Discharger demonstrates that additional time for payment is necessary. The discharger shall make a deadline extension request in writing.
3. The Discharger must obtain explicit approval from the Executive Officer in the event of any significant delay from the above mentioned deadlines. Failure to obtain approval for any significant delay will result in the assessment of the full amount of the original penalty.
4. If, in the judgment of the Executive Officer, the Discharger fails to pay the Administrative Civil Liability in the mandated time without obtaining Central Valley Water Board approval for a delay, the original penalty of **ten thousand dollars (\$10,000)** must be paid within 30 days of notification by the Executive Officer of such failure.

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PAMELA C. CREEDON,  
Executive Officer

12 March 2009

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Date