

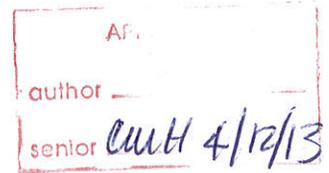


**Central Valley Regional Water Quality Control Board**

15 April 2013

Henry J. Tosta (dba Henry Tosta Dairy) and  
Henry J. Tosta Trust  
20662 San Jose Road  
Tracy, CA 95304

**CERTIFIED MAIL NO.**  
7012 2210 0002 1419 3324



**GROUNDWATER MONITORING DIRECTIVE, ISSUED PURSUANT TO CALIFORNIA WATER CODE SECTION 13267, HENRY TOSTA DAIRY, WDID 5B39NC00154, 20662 SAN JOSE ROAD, TRACY, SAN JOAQUIN COUNTY**

You are legally obligated to respond to this Order. Please read this Order carefully.

Your dairy is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order), which was issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) on 3 May 2007. Monitoring and Reporting Program Order R5-2007-0035 (MRP) accompanies the General Order and contains requirements for implementing groundwater monitoring at your dairy. Under the MRP, the Executive Officer has the authority to order the installation of monitoring wells based on the threat that individual dairies pose to water quality.

The Executive Officer of the Central Valley Water Board hereby finds that:

1. Henry J. Tosta Dairy (hereafter "Henry Tosta Dairy" or "Dairy") is located at 20662 San Jose Road, Tracy, San Joaquin County. The property is owned by the Henry J. Tosta Family Trust and operated by Henry J. Tosta.
2. A dairy facility has been in operation on the property intermittently since 1962. In 1994 Henry J. Tosta purchased the facility, and in 1995, Henry Tosta filed a Form 200 with the Central Valley Water Board to reopen the facility.
3. A monitoring network of three wells was installed at the Henry Tosta Dairy in 1996 as required by the Central Valley Water Board and the San Joaquin County Department of Environmental Health, as part of the reactivation of the existing dairy at that location.
4. Sampling conducted by Western Dairy Design on behalf of Henry Tosta Dairy showed detectable levels of ammonia-nitrogen in all three wells and concentrations in MW-2 of nitrate-nitrogen in excess of the maximum contaminant level.
5. CWC section 13267 states, in relevant part:
  - (a) A regional board...may investigate the quality of any waters of the state within its region.
  - (b)(1) In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of

KARL E. LONGLEY ScD, P.E., CHAIR | PAMELA C. CREEDON P.E., BCEE, EXECUTIVE OFFICER

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having discharged or discharging...waste within its region...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

Records of the Central Valley Water Board show that Henry Tosta owns the Dairy which, as described below, is suspected of having discharged waste that has affected waters of the State. The reports required herein are necessary to ensure the protection of the groundwater resources that underlie the Dairy.

6. The Board adopted *the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, Fourth Edition, revised September 2009 (Basin Plan), which designates beneficial uses of water. All groundwater within the vicinity of the site is designated as having a beneficial use of municipal and domestic water supply (MUN) and agricultural supply (AGR).
7. The California Department of Public Health maximum contaminant level (MCL) for nitrate + nitrate as nitrogen is 10 mg/l. Concentrations of nitrate as nitrogen above the MCL indicate that pollution has occurred and that the MUN beneficial use has been adversely impacted.
8. The detection of ammonia in groundwater in the immediate vicinity of the Dairy's wastewater ponds indicates that the wastewater ponds have leaked and that Dairy-derived wastes have adversely impacted groundwater quality.
9. Cleanup and Abatement Order R5-2012-0708 was issued to the Henry Tosta Dairy on 11 June 2012. The Order required the collection of one-time groundwater samples by hydropunch or similar method in the central portion of the production area. The Order required submittal of a plan for the remediation of the groundwater if the hydropunch samples indicated pollution from dairy waste, and an engineering evaluation of the impacts of the existing lagoons and settling basins on groundwater quality and a proposal for remedial measures. The hydropunch sampling was never conducted, and neither the remediation plan nor the engineering evaluation have been received.
10. CWC section 13268 states, in relevant part, that
  - (a)(1) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267...is guilty of a misdemeanor, and may be liable civilly in accordance with subdivision (b).
  - (b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
11. Failure to submit the required information resulted in the issuance of Administrative Civil Liability Complaint R5-2012-0561 on 19 November 2012.

12. This Order requires preparation of a more comprehensive plan to evaluate groundwater impacts from activities at the dairy than required by the Cleanup and Abatement Order. Failure to submit the required reports to the Central Valley Water Board may result in additional enforcement action being taken against Henry J. Tosta, which may include imposition of additional administrative civil liability pursuant to CWC section 13268, or referral to the Attorney General's Office for injunctive relief or the imposition of civil liability. Pursuant to CWC section 13268, the Central Valley Water Board may impose administrative civil liability of up to \$1,000 per day for each day that the report required herein is not submitted to the Central Valley Water Board.
13. The issuance of this Order is an action taken by a regulatory agency and is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000, et seq.), pursuant to California Code of Regulations, title 14, section 15061 (b)(3) because preparation of a work plan will not result in a significant impact to the environment.

**IT IS HEREBY ORDERED** that, pursuant to California Water Code section 13267, Henry J. Tosta shall, by 13 May 2013, submit a workplan describing the network of groundwater monitoring wells that will be installed to characterize first-encountered groundwater underlying the Dairy production area and first-encountered groundwater upgradient and outside of the influence of production area activities at the Dairy. The workplan must include a proposed groundwater sampling schedule and a list of constituents to be analyzed in each sample.

Within 60 days of Central Valley Water Board staff approval of the workplan, well installation shall commence. Within 45 days after completion of the monitoring wells, a technical report describing the well installations and summarizing the results of the first round of groundwater sampling. The technical report shall meet the requirements for a Monitoring Well Installation Completion Report as describing in Attachment A to the Dairy General Order Monitoring and Reporting Program No. R5-2007-0035.

The cost of the workplan required pursuant to this directive is estimated to be less than \$2,500, and wells installed in conformance with an approved workplan are necessary to determine if there are groundwater quality impacts from dairy operations. The benefit of having such information is to identify steps that need to be taken to prevent harmful constituents in dairy waste from leaching into underlying groundwater, which is a source for municipal and domestic water supply.

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 of this Order, except that if the thirtieth day following the date of this Order 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. 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.

15 April 2013

If you have any questions regarding this matter, please contact Charlene Herbst of this office at (916) 464-4724 or at [cherbst@waterboards.ca.gov](mailto:cherbst@waterboards.ca.gov).

This Order is effective upon signature.

  
for Pamela C. Creedon  
Executive Officer

cc: Thomas H. Terpstra, Esq. , 578 N. Wilma Avenue, Suite A, Ripon, CA 95366