

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2015-XXXX

IN THE MATTER OF

CARLOS AND BERNADETTE ESTACIO
SAN ISIDRO JERSEY DAIRY
STANISLAUS COUNTY

This Administrative Civil Liability Order (Order) is issued to Carlos and Bernadette Estacio (Discharger) based on findings that the Discharger violated provisions of Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (2007 General Order) and Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (2013 Reissued General Order). Provisions of California Water Code (Water Code) section 13268 authorize the imposition of administrative civil liability.

The Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger owns and operates the San Isidro Jersey Dairy (Dairy), located at 4413 South Prairie Flower Road, Turlock, California, County of Stanislaus.
2. The Dairy is currently regulated by the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (2013 Reissued General Order) and accompanying Monitoring and Reporting Program (MRP), which was adopted by the Central Valley Water Board on 3 October 2013. The 2013 Reissued General Order replaces the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (2007 General Order) and accompanying MRP.
3. The 2013 Reissued General Order and the 2007 General Order and accompanying MRPs contain reporting requirements for regulated dairies, including the submission of an annual report for the 2012 calendar year for regulated facilities by 1 July 2013 (2012 Annual Report) and the submission of an annual report for the 2013 calendar year for regulated facilities by 1 July 2014 (2013 Annual Report).

CHRONOLOGY OF EVENTS

4. On 22 August 2013, the Central Valley Water Board staff issued a Notice of

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Violation, notifying the Discharger that the 2012 Annual Report with appurtenant components had not been received. The Notice of Violation also requested that the delinquent report be submitted as soon as possible to minimize potential liability.

5. On 19 June 2014, the Central Valley Water Board staff issued a pre-filing settlement letter notifying the Discharger that Central Valley Water Board staff was in the process of assessing civil liability for the failure to submit the 2012 Annual Report.
6. On 19 September 2014, the Central Valley Water Board staff issued a Notice of Intent to Issue a Complaint for Failure to File a 2012 Annual Report and Notice of Violation for Failure to File an Acceptable 2013 Annual Report, notifying the Discharger that the 2012 Annual Report had not been submitted where submittal of a document with the name, address, and signature does not constitute an Annual Report; and that the 2013 Annual Report was materially deficient because it was missing data regarding nitrogen and other nutrient applications to the crops, lab analyses for wastewater, groundwater, winter forage and soil samples.
7. While the Discharger has made attempts to submit the 2012 and 2013 annual reports, Central Valley Water Board staff deemed the reports as materially deficient because the reports did not contain the information necessary for Central Valley Water Board staff to attempt to assess the potential impacts to water quality from the Dairy's operations.

LEGAL AUTHORITY

8. An administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
9. Water Code section 13267(b) authorizes the Regional Water Boards to require the submittal of technical and monitoring reports from any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge to waters of the state.
10. Pursuant to Water Code section 13268(b)(1), any person failing or refusing to furnish technical or monitoring program reports as required by Section 13267(b) may be subject to administrative civil liability in an amount which shall not exceed \$1,000 for each day in which the violation occurs.

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11. Pursuant to Water Code section 13327, in determining the amount of any civil liability imposed, the Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on the violator's ability to continue business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require.
12. On 17 November 2008 the State Water Resources Control Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy establishes a methodology for assessing discretionary administrative civil liability. Use of the methodology addresses the factors used to assess a penalty under Water Code section 13327. The required factors under Water Code section 13327 have been considered using the methodology in the Enforcement Policy as explained in detail in Attachment A to this Order and shown in the Penalty Calculation for Civil Liability spreadsheet in Attachment B of this Order. Attachments A and B are attached hereto and incorporated herein by reference.

VIOLATION

13. The Discharger violated Water Code section 13267(b) by failing to submit the annual reports for 2012 and 2013 as required by the 2007 General Order and the 2013 Reissued General Order, respectively.
14. On 20 January 2015, the Assistant Executive Officer, lead prosecutor for the Prosecution Team, issued Administrative Civil Liability Complaint (Complaint) No. R5-2015-0504 recommending that the Central Valley Water Board assess the Discharger an administrative civil liability in the amount of \$73,710 pursuant to Water Code section 13268 for the failure to submit the annual reports for 2012 and 2013.
15. **Maximum Civil Liability:** The maximum administrative civil liability that may be assessed pursuant to Water Code section 13268 is \$771,000.
16. **Minimum Civil Liability:** The minimum administrative civil liability according to the Enforcement Policy is equal to the economic benefit plus 10%, which is estimated to be \$2,108.
17. Issuance of this Order to enforce Water Code Division 7, Chapter 5.5 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).

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18. This Order is effective and final upon issuance by the Central Valley Water Board. Payment must be received by the Central Valley Water Board no later than thirty (30) days from the date on which this Order is issued.
19. In the event that the Discharger fails to comply with the requirements of this Order, the Executive Officer or her delegee is authorized to refer this matter to the Attorney General's Office for enforcement.
20. 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 Water Code 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 Order becomes final, except that if the thirtieth day following the date that this 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. 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 or will be provided upon request.

IT IS HEREBY ORDERED THAT:

21. Pursuant to Water Code section 13323, Carlos and Bernadette Estacio shall be assessed administrative civil liability in the amount of seventy-three thousand seven hundred and ten dollars (\$73,710).
22. Payment shall be made in the form of a check made payable to the State Water Pollution Cleanup and Abatement Account no later than thirty days from the date of issuance of this Order.

I, Pamela C. Creedon, Executive Officer, do hereby certify that the foregoing is a full, true, correct copy of an Order issued by the California Regional Water Quality Control Board, Central Valley Region, and that such action occurred at the 16/17 April 2015 Board meeting.

PAMELA C. CREEDON, Executive Officer

Attachment A: Specific Factors Considered for Administrative Civil Liability
Attachment B: Penalty Calculation for Civil Liability