

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2015-0504

IN THE MATTER OF

CARLOS AND BERNADETTE ESTACIO  
SAN ISIDRO JERSEY DAIRY  
STANISLAUS COUNTY

This Complaint is issued to Carlos and Bernadette Estacio (Discharger) pursuant to California Water Code (Water Code) section 13323, which authorizes the imposition of Administrative Civil Liability (ACL). This Complaint is based on allegations that the Discharger violated Water Code section 13267 for failing to submit technical reports.

The Assistant Executive Officer of the 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 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), 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 Monitoring and Reporting Program (MRP). (Exhibit A).
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). The Dairy was enrolled under the 2007 General Order. The Discharger submitted a Report of Waste Discharge on 21 October 2005 (Exhibit B) and has not expanded operations since that date. During the time period from 2007 to present, the Discharger has had an operating dairy that is permitted for a maximum of 667 mature cows and has reported between 580 and 600 mature cows in pre-2012 Annual Reports. As an enrolled facility, the Dairy is subject to the requirements of the 2007 General Order and the 2013 Reissued General Order.
4. The Discharger has failed to timely comply with nearly every requirement of the 2007 General Order and 2013 Reissued General Order. The Discharger owes six (6) annual fees for the years 2008 through 2013, and has not yet paid his 2014 annual fees. The total amount of unpaid annual fees for seven years is \$8,126. The Central Valley Water Board adopted Stipulated Orders R5-2014-0578 and R5-2014-0579 to resolve the Discharger's failure to timely file two past Annual Reports, but the Discharger's required payment is past-

due. The Discharger failed to timely submit Annual Reports since 2008. The Discharger has received Notices of Violation for failure to timely file Annual Reports in 2008, 2009, 2010, 2011, and 2012, and a Notice of Violation for failure to file an acceptable 2013 Annual Report. On 2 September 2010, the Discharger was sent a Notice of Violation for failure to timely file a Waste Management Plan. As of the issuance of this complaint, the Discharger is delinquent in submission of membership fees to the Central Valley Dairy Regional Monitoring Program. The Discharger's failure to comply with the requirements of the 2007 General Order and the 2013 Reissued General Order render the regulatory program ineffective with respect to the Discharger's dairy.

#### **STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED**

5. 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.
6. Pursuant to Water Code section 13267, subdivision (b), a regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge 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.
7. Pursuant to Water Code section 13268, subdivision (a), any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).
8. Pursuant to Water Code section 13268, subdivision (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.
9. On 22 August 2013, the Central Valley Water Board staff issued a Notice of Violation, notifying the Discharger that the 2012 Annual Report with appurtenant components had not been received. (Exhibit C). The Notice of Violation also requested that the delinquent report be submitted as soon as possible to minimize potential liability.
10. 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. (Exhibit D). The Discharger was provided an opportunity to meet with the Central Valley Water Board staff to discuss the alleged violation. As of the date of issuance of this Complaint, Central Valley Water Board staff has not received a request for a meeting to discuss the 19 June 2014 pre-filing settlement letter.

11. Between 2 July 2014 and 7 August 2014, the Discharger submitted four reports labeled "2012 Annual Report" that contained only the Discharger's name, address, and signature. Central Valley Water Board staff deemed all four reports as materially deficient.
12. 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 (19 September 2014 NOV), 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. The 19 September 2014 NOV also notified the Discharger that the 2013 Annual Report was materially deficient and therefore did not constitute a 2013 Annual Report. (Exhibit E). The 19 September 2014 NOV also requested that the delinquent report be submitted as soon as possible to limit the ongoing accrual of liability. Between 1 July 2014 and 15 December 2014, the Discharger submitted four reports labeled "2013 Annual Report". The submitted reports are missing nitrogen and other nutrient applications to the crops, lab analyses for wastewater, groundwater, winter forage and soil samples. Central Valley Water Board staff deemed the reports materially deficient because the reports did not contain the information necessary for Regional Water Board staff to attempt to assess the potential impacts to water quality from Dairy operations.
13. The Discharger is alleged to have violated the following sections of the 2007 General Order and of the MRP:
  - A) Provision E.3 of the 2007 General Order, which states:

"The Discharger shall comply with the attached Monitoring and Reporting Program No. R5-2007-0035 which is part of this Order, and future revisions thereto or with an individual monitoring and reporting program, as specified by the Central Valley Water Board or the Executive Officer."
  - B) Provision E.13 of the 2007 General Order, which states in part:

"The Discharger must comply with all conditions of this Order, including timely submittal of technical and monitoring reports as directed by the Executive Officer."
  - C) Revised MRP Provision C, which states in part:

"An annual monitoring report is due by 1 July of each year. It will consist of a General Section, Groundwater Reporting Section, and a Storm Water Reporting Section as described below."

14. The Discharger is alleged to have violated the following sections of the 2013 Reissued General Order and the of the MRP:

A) Provision G.3 of the 2013 Reissued General Order, which states:

“The Discharger shall comply with the attached Monitoring and Reporting Program R5-2013-0122 which is part of this Order, and future revisions thereto or with an individual monitoring and reporting program, as specified by the Central Valley Water Board or the Executive Officer.”

B) Provision G.13 of the 2013 Reissued General Order, which states in part:

“The Discharger must comply with all conditions of this Order, including timely submittal of technical and monitoring reports as directed by the Executive Officer.”

C) MRP Provision (C), which states in part:

“An annual monitoring report is due by 1 July of each year. It will consist of a General Section, Groundwater Reporting Section, and a Storm Water Reporting Section as described below.”

## **SUMMARY OF ALLEGED VIOLATIONS**

15. Violation #1: The Discharger failed to submit an Annual Report for 2012 by 1 July 2013 as required by the 2007 General Order and the MRP. As of the date of this Complaint this report is 568 days late. This Complaint establishes a total of 568 days in which the Discharger has been out of compliance for failing to submit the 2012 Annual Report, and is the basis for determining the recommended civil liability amount.

16. Violation #2: The Discharger failed to submit an Annual Report for 2013 by 1 July 2014 as required by the 2013 Reissued General Order and the MRP. As of the date of this Complaint this report is 203 days late. This Complaint establishes a total of 203 days in which the Discharger has been out of compliance for failing to submit the 2013 Annual Report, and is the basis for determining the recommended civil liability amount.

## **PROPOSED ADMINISTRATIVE CIVIL LIABILITY**

17. On 17 November 2009, the State Water Resources Control Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability. This policy can be found at:

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final\\_111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final_111709.pdf).

18. Pursuant to Water Code section 13327, in determining the amount of civil liability, the Regional Board shall take into consideration the nature, circumstances, 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 the 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. The maximum penalty for the violations described above is \$771,000 based on a calculation of the total number of per day violations times the statutory maximum penalty (771 total days of violation X \$1,000).

Based on consideration of the above facts and after applying the penalty methodology, the Assistant Executive Officer of the Central Valley Water Board, the lead prosecutor for the Prosecution Team, proposes that civil liability be imposed administratively on the Discharger in the amount of **seventy-three thousand seven hundred and ten dollars (\$73,710)** for the violations cited above. The administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachments A and B.

**THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:**

19. The Assistant Executive Officer proposes that the Discharger be assessed an administrative civil liability in the amount of seventy-three thousand seven hundred and ten dollars (\$73,710) for failing to submit the 2012 Annual Report by the 1 July 2013 deadline as required by the 2007 General Order and the MRP, and for failing to submit the 2013 Annual Report by 1 July 2014 as required by the 2013 Reissued General Order and the MRP.
20. A hearing on this matter is scheduled for the Central Valley Water Board meeting on 16/17 April 2015.
21. If the Central Valley Water Board holds a hearing, it may choose to impose an administrative civil liability in the amount proposed or for a different amount, decline to seek civil liability, or refer the matter to the Attorney General to have a Superior Court consider enforcement.
22. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.
23. Notwithstanding the issuance of this Complaint, the Prosecution Team retains the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.

24. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).
25. Payment of the assessed liability amount does not absolve the Discharger from complying with the 2013 Reissued General Order or the MRP, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Discharger fails to comply with the 2013 Reissued General Order, the MRP, and/or future orders issued by the Central Valley Water Board.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Andrew Altevogt  
Assistant Executive Officer  
Central Valley Water Board Prosecution Team

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Carlos and Bernadette Estacio (Discharger) in connection with Administrative Civil Liability Complaint R5-2015-0504 (Complaint);
2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3.  **(Check here if the Discharger will waive its right to a hearing and accept the proposed liability amount of seventy-three thousand seven hundred and ten dollars (\$73,710)).** I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint; and

I certify that the Discharger will be liable for **seventy-three thousand seven hundred and ten dollars (\$73,710) in full.**

In addition to submitting a 2012 Annual Report and 2013 Annual Report that Regional Board staff deem adequate, the Discharger shall also remit payment of the adjusted liability amount, by check, which will contain a reference to "ACL Complaint R5-2015-0504" and will be made payable to the "State Water Resources Control Board Cleanup and Abatement Account". Payment must be received by the Central Valley Water Board by **19 February 2015** or this matter will be placed on the Central Valley Water Board's agenda for consideration of adoption at the **16/17 April 2015** Central Valley Water Board meeting. Payment must be received at the following address: State Water Resources Control Board, Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888. A copy of the check must also be received by the Central Valley Water Board.

I understand that payment of the **\$73,710** in full is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

4.  **(Check here if the Discharger will waive the 90-day hearing requirement, but wishes to engage in settlement negotiations. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the Complaint but reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Central Valley Water Board Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.

-or-

5.  **(Check here if the Discharger will waive the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the Complaint but reserve the ability to request a hearing in the future. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

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(Print Name and Title)

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(Signature)

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(Date)

**EXHIBIT A**

Waste Discharge Requirements General Order for Existing Milk Cow Dairies  
Order R5-2007-0035

can be viewed at:

[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/general\\_orders/r5-2007-0035.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2007-0035.pdf)

and

Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies  
Order R5-2013-0122

can be viewed at:

[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/general\\_orders/r5-2013-0122.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0122.pdf)

**EXHIBIT B**

Report of Waste Discharge

For 4413 S Prairie Flower Road, Turlock, Stanislaus County

Received 21 October 2005

**EXHIBIT C**

Notice of Violation Issued 22 August 2013  
For Failure to Submit 2012 Annual Report

**EXHIBIT D**

Letter Issued 19 June 2014

Forthcoming Assessment of Civil Liability for Failure to Submit 2012 Annual Report

**EXHIBIT E**

Letter Issued 19 September 2014

Notice of Intent to Issue Complaint for Failure to File 2012 Annual Report and  
Notice of Violation for Failure to File an Adequate 2013 Annual Report