
Central Valley Regional Water Quality Control Board

19 November 2012

Henry J. Tosta dba Henry Tosta Dairy
Henry J. Tosta Jr. Family Limited Partnership
Henry J. Tosta Trust
20662 San Jose Road
Tracy, CA 95304

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2012-0561 FOR HENRY J. TOSTA (DBA HENRY TOSTA DAIRY), HENRY J. TOSTA JR. FAMILY LIMITED PARTNERSHIP, AND HENRY J. TOSTA TRUST, SAN JOAQUIN COUNTY

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code (Water Code) section 13323. The Complaint proposes that civil liability in the amount of **\$1,140,713** be imposed pursuant to Water Code sections 13268 and 13350 on Henry J. Tosta (dba Henry Tosta Dairy), Henry J. Tosta Jr. Family, Limited Partnership, and Henry J. Tosta Trust (hereafter collectively referred to as Discharger) for discharging manure waste to groundwater, failing to furnish an adequate Waste Management Plan, and failing to comply with directives of Cleanup and Abatement Order No. R5-2012-0708.

In response to the Complaint, the Discharger may:

- Pay the assessed civil liability and waive its right to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) by signing the enclosed waiver (checking off the box next to item #3) and submitting it to this office by 14 December 2012, along with payment for the full amount;
- Waive its right to a 90-day hearing and agree to enter into settlement discussions with the Central Valley Water Board by signing the enclosed waiver (checking off the box next to item #4) and submitting it to this office by 14 December 2012;
- Waive its right to a 90-day hearing in order to extend the hearing deadlines by signing the enclosed waiver (checking off box next to item #5) and submitting it to this office by 14 December 2012; or
- Contest the Complaint and/or enter into settlement discussions with the Central Valley Water Board without signing the enclosed waiver.

If the Discharger would like to rebut the presumption in the Complaint regarding **an ability to pay the proposed liability**, it must submit detailed financial information to the Central Valley Water Board by **10 January 2013**. Information must include a balance sheet of outstanding debts and liabilities, as well as the information detailed on the attached Administrative Civil Liability Fact Sheet.

If the Central Valley Water Board does not receive a signed waiver by 14 December 2012, then a hearing on this matter will be scheduled for the **31 January/1 February 2013** regular meeting of the Central Valley Water Board to be held at 11020 Sun Center Drive, Suite 200, in the City of Rancho Cordova, California, 95670. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify an Administrative Civil Liability Order based on the enclosed Complaint, 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. Specific notice about this hearing and its procedures will be provided under separate cover.

Any comments or evidence concerning the enclosed Complaint must be submitted to this office, attention Charlene Herbst, **no later than 5 p.m. on 10 January 2013**. This includes material submitted by the Discharger to be considered at a hearing and material submitted by interested parties, including members of the public, who wish to comment on the Complaint. Written materials received after **5 p.m. on 10 January 2013** will not be accepted and will not be incorporated into the administrative record if doing so would prejudice any party.

Payment of this assessed civil liability amount (**\$1,140,713**) does not absolve the Discharger from complying with the Dairy General Order, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Discharger fails to comply with the Dairy General Order in a timely manner.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Charlene Herbst at (916) 464-4724 or cherbst@waterboards.ca.gov.

ORIGINAL SIGNED BY ROBERT D. BUSBY

For CLAY L. RODGERS
Assistant Executive Officer

Enclosure: Administrative Civil Liability Complaint R5-2012-0561

cc w/encl: Ms. Pamela Creedon, Central Valley Water Board, Rancho Cordova
Mr. Cris Carrigan, Esq., Office of Enforcement, SWRCB, Sacramento
Ms. Vanessa Young, Esq., Office of Enforcement, SWRCB, Sacramento
Mr. Alex Mayer Esq., Office of Chief Counsel, SWRCB, Sacramento
Mr. Ken Landau, Central Valley Water Board, Rancho Cordova
Mr. Robert Mehlhaff, Esq., Naglee Burk Irrigation District
Mr. David Avila, Western Dairy Design
Mr. Richard Estes, Esq., California Department of Food and Agriculture