

ITEM: 20

SUBJECT: Henry J. Tosta et. al, Henry Tosta Dairy, San Joaquin County

BOARD ACTION: *Consideration of an Administrative Civil Liability Order (ACLO)*

FACILITY BACKGROUND: Henry J. Tosta (dba Henry Tosta Dairy), Henry J. Tosta Jr. Family Limited Partnership, and Henry J. Tosta Trust (Discharger) own and operate the Henry Tosta Dairy (Dairy) in San Joaquin County. The Dairy is regulated by Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order No. R5-2007-0035 (Dairy General Order), which was adopted in May 2007. The Dairy General Order contains requirements to ensure that dairies are being operated so as to not unreasonably affect groundwater and/or surface water quality. Central Valley Water Board staff inspected the Dairy on 1 May 2012 and determined that serious violations of the Dairy General Order were present at the site due to a failure to adequately manage manure and dairy wastewater. Cleanup and Abatement Order R5-2012-0708 was issued to the Discharger on 11 June 2012. Despite repeated site visits by staff and extensive communications with the Discharger and his representatives, conditions at the dairy remain unremediated.

Cleanup and Abatement Order No. R5-2012-0708
The Cleanup and Abatement Order (CAO) identified four onsite violations of the Dairy General Order related to manure management and well maintenance, and two record-keeping violations of the Dairy General Order related to inaccuracies in the Waste Management Plan and Nutrient Management Plan. Manure management issues included the storage of slurry manure to a depth of three feet in a three to four acre area within the Production Area of the Dairy that was not designed for the storage of waste. The two settling basins had no freeboard, and solid manure was being used to reinforce some embankments. Of the three existing monitoring wells at the site, one was partially buried in manure slurry.

From ACLC:

Groundwater quality data indicate an alteration in the quality of groundwater by waste to a degree which unreasonably affects the beneficial uses of groundwater. Samples collected by Board staff and the Discharger, contained concentrations of nitrate as nitrogen of 13.5 mg/L and 26 mg/L, respectively, which exceed the primary Maximum Contaminant Level (MCL) of 10 mg/L. Additionally, samples collected by Board staff and the Discharger contained TDS concentrations of 14,700 and 15,302 mg/L, respectively, exceeding the secondary MCL which ranges from 500 to 1,500 mg/L. Given the close proximity of manure solids and slurry to Monitoring Wells MW-2 and the shallow depth to groundwater (less than seven feet), the exceedances of primary and secondary MCLs indicates that the waste has unreasonably affected groundwater quality by exceeding water quality objectives.

The Dairy General Order requires the preparation of a Waste Management Plan that accurately describes how waste is handled within the Production Area such that groundwater and surface water are protected. The Waste Management Plan does not accurately describe waste management practices at the Dairy. The Nutrient Management Plan prepared for the dairy indicates that solid manure is agronomically applied to cropland; however, neither solid manure nor wastewater were being applied to cropland as of the time of the inspections. In addition, there is no requisite documentation of any manure or wastewater application to cropland. Because there was no land application of manure and wastewater, large quantities of solid manure and wastewater had accumulated within the Production Area.

The CAO contained eight directives, including:

1. By **25 June 2012**, develop a plan for the Production Area which addresses removal of all slurry manure in the three to four acre area by 27 August 2012, addresses removal of all manure within the two settling basins by 27 September 2012, and addresses removal of excess vegetation, excess manure, and manure used for construction on the six lagoons and installation of staff gages by 27 September 2012.

Removal of manure was to commence by 2 July 2012.

2. By **23 July 2012**, locate and sample the three existing monitoring wells.
3. By **27 August 2012**, using a hydropunch or other similar method, collect one-time groundwater samples in the three to four acre area.
4. By **27 August 2012**, submit a revised Waste Management Plan that accurately describes how the settling basins and the lagoons in the Production Area will be operated in conformance with the Dairy General Order, including a description of modifications needed to manage slurry manure within the existing constructed settling basin/lagoon system.
5. If groundwater samples in the vicinity of the Dairy indicate that waste disposal has caused pollution of groundwater, by **27 September 2012** submit a plan for the remediation of the groundwater, including an engineering evaluation of the impacts of the existing lagoons and settling basins on groundwater quality and a proposal for remedial measures.

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Staff conducted four inspections of the Dairy between the issuance of the CAO on 11 June 2012 and 10 August 2012 and identified an ongoing failure to comply with the deadlines and directives in the CAO and ongoing threats to water quality due to the failure to remove the excessive manure in the Production Area.

On 11 November 2012, the Executive Officer issued Administrative Civil Liability (ACL) Complaint R5-2012-0561 pursuant to California Water Code (CWC) sections 13268 and 13350, proposing that the Discharger be assessed monetary penalties in the amount of \$1,140,713 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.

Subsequent to the issuance of the ACL Complaint, the Discharger submitted a signed waiver of the 90-day hearing requirement and staff began settlement discussions with the Discharger. However, the settlement discussions have produced no tangible improvement in site conditions. Staff conducted four inspections of the Dairy subsequent to the issuance of the ACL Complaint and identified only minor progress in removal of manure from the Production Area as well as additional threats to water quality including the ponding of wastewater over one of the monitoring wells. The continuing lack of progress in meeting the majority of the directives in the CAO and the continuing threat to water quality posed by the ongoing discharge of additional manure from the operating 1000-cow dairy at the site has led to the Prosecution Team's proposal of this Administrative Civil Liability Order.

ACLO ISSUES: The Discharger submitted an Evidence List and Witness List on 14 June 2013 and copies of the Evidence documents on 18 June 2013. Letters regarding the ACL Complaint were received from the Discharger's legal representatives on 14 December 2012, 14 June 2013, and 21 June 2013. The Prosecution Team has prepared a response to these comments as part of this agenda package.

RECOMMENDATION: The prosecution Team recommends that the Central Valley Water Board adopt the Administrative Civil Liability Order as proposed.

Mgmt. Review _____

Legal Review _____

25/26 July 2013
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