

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2014-XXXX

IN THE MATTER OF

HENRY J. TOSTA
REEVE ROAD HEIFER RANCH
SAN JOAQUIN COUNTY

This Administrative Civil Liability Order (hereafter Order) is issued to Henry J. Tosta (hereafter referred to as Discharger) based on findings that the Discharger violated Cleanup and Abatement Order (CAO) No. R5-2012-0709 and provisions of the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (Dairy General Order). Water Code Sections 13268 and 13350 authorize the imposition of Administrative Civil Liability.

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

BACKGROUND

1. Henry J. Tosta operates the Reeve Road Heifer Ranch (Heifer Ranch) located at 21070 Reeve Road, Tracy, San Joaquin County. The Heifer Ranch is enrolled under the Dairy General Order, which was adopted by the Central Valley Water Board on 3 May 2007 and updated on 3 October 2013. The Heifer Ranch has operated since 2006 as a heifer ranch and currently houses approximately 800 heifers. The Heifer Ranch's production area occupies approximately 18 acres, with support stock housed in corrals. Solid manure is stockpiled in an area south of the unused wastewater storage lagoon. As an enrolled facility, the Heifer Ranch is subject to the requirements of the Dairy General Order for regulatory purposes.

CHRONOLOGY OF EVENTS

2. On 1 May 2012 the Central Valley Water Board performed a closure inspection of the Heifer Ranch. During the 1 May 2012 inspection, Board staff identified violations of the Dairy General Order, including the burial of two dead cows in cropland immediately adjacent to the Main Drain canal of the Naglee-Burke Irrigation District, the burial of animal remains within the area south of the wastewater lagoon (within the production area), and the improper maintenance of well pads.
3. On 11 June 2012 the Executive Officer for the Central Valley Water Board issued Cleanup and Abatement Order R5-2012-0709 (CAO) to the Discharger to address the violations identified during the 1 May 2012 inspection. The CAO required that the Discharger cease any further on-site burials of dead animals, cleanup the dead cows buried in groundwater, collect groundwater samples in the vicinity where the dead cows were buried in groundwater, and submit a plan for remediation of the groundwater if samples indicated that waste disposal had caused pollution.

4. Staff conducted four inspections of the Heifer Ranch between the date of issuance of the CAO and 14 September 2012, the date the Assistant Executive Officer issued a letter notifying the Discharger of his failure to comply with deadlines and directives in the CAO. The four inspections identified late and incomplete responses to the CAO and an ongoing failure to comply with certain deadlines in the CAO, including the failure to remove manure mixed with animal remains from the area south of the wastewater lagoon by 29 June 2012.
5. Staff conducted an inspection of the Heifer Ranch on 10 October 2012, and identified an ongoing failure to comply with the CAO requirement to remove the pile of manure and animal remains from the area south of the wastewater lagoon.
6. Staff conducted an additional seven inspections between 19 November 2012 and 15 November 2013 to monitor the Discharger's progress with the directives of the CAO and compliance with the Dairy General Order.
7. On 21 November 2013, the Assistant Executive Officer issued Complaint No. R5-2013-0592 to the Discharger, recommending that the Central Valley Water Board assess the Discharger an administrative civil liability in the amount of \$310,775.
8. On 19 December 2013, Regional Board staff received a report from the Reeve Road Heifer Ranch property owner, the Echeverria Brothers Dairy General Partnership, confirming that the manure mixed with animal remains from the area south of the wastewater lagoon was removed.

REGULATORY CONSIDERATIONS

9. On 3 May 2007, the Central Valley Water Board adopted the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order No. R5-2007-0035 (hereinafter Dairy General Order) and a Monitoring and Reporting Program (hereinafter MRP) that accompanies the Dairy General Order. The Dairy General Order and the MRP contain reporting requirements for dairies regulated by the General Order. The General Order became effective on 9 May 2007. The Dairy General Order is a set of general waste discharge requirements that apply to owners and operators of existing milk cow dairies that (1) submitted a Report of Waste Discharge in response to the Central Valley Water Board's 5 August 8, 2005 request and (2) have not expanded operations since 17 October 2005.
10. Water Code Section 13268 states, in part: (a)(1) [a]ny 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).
11. Water Code section 13268(b)(1) provides that "civil liability may be administratively imposed by a regional board in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs."
12. Water Code section 13350 states, in part: (a) [a] person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of a waste discharge requirement,

waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, or (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

13. Water Code section 13350(e)(1) provides that “civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs.”
14. Water Code section 13350(e)(1)(B) provides that “when there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.

VIOLATIONS

15. Violation A: The Discharger violated Prohibition A.6 of the Dairy General Order and Water Code section 13350(a)(2) by burying dead cows causing waste to be deposited where it discharged to groundwater, a water of the state from at least 1 May 2012, the date of the initial discovery inspection, through 25 June 2012, the date the carcasses were removed and hauled to a landfill for disposal, for a total of 56 days.
16. Violation B: The Discharger violated directive 2 of CAO R5-2012-0709 and Water Code section 13267 by failing to timely submit proof of legal disposal of animal carcasses from 2 July 2012, the deadline for submittal in the CAO, through 20 July 2012, the date that proof of legal disposal was received, for a total of 18 days.
17. Violation C: The Discharger violated directive 4A of CAO R5-2012-0709 and Water Code section 13267 by failing to timely submit a Groundwater Remediation Plan from 28 August 2012, the day after the deadline for submittal in the CAO, through 12 April 2013, the date that a groundwater remediation plan was received, for a total of 228 days.
18. Violation D: The Discharger violated directive 4B of CAO R5-2012-0709 and Water Code section 13350(a)(1) by failing to timely remove manure containing animal remains from the area south of the wastewater lagoon from 30 June 2012, the day after the deadline for removal in the CAO through 15 November 2013, the date of the last inspection by staff prior to issuance of the Complaint, for a total of 504 days.
19. In determining the amount of any civil liability imposed, Water Code section 13327 provides that the Regional Board must consider 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.

20. 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 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 civil liability penalty calculation spreadsheet in Attachment B of this Order. Attachments A and B are attached hereto and incorporated herein by reference.
21. Maximum Civil Liability: The maximum administrative civil liability that may be assessed pursuant to Water Code sections 13350 and 13268 for the violations described above is \$3,047,000.
22. Minimum Civil Liability: The minimum administrative civil liability for the violations described above according to the Enforcement Policy is equal to the economic benefit plus 10%, which is estimated to be \$5,274. The minimum administrative civil liability for the liability assessment for Violation D pursuant to Water Code section 13350(e)(1)(B) is \$50,400.
23. Issuance of this Administrative Civil Liability Order to enforce Water Code Division 7 is exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) in accordance with title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).
24. 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.
25. In the event that the Discharger fails to comply with the requirements of this Order, the Executive Officer or her delegatee is authorized to refer this matter to the Attorney General's Office for Enforcement.
26. 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/petitins/water_quality or will be provided upon request.

IT IS HEREBY ORDERED THAT:

1. Henry J. Tosta shall be assessed an Administrative Civil Liability in the amount of **three hundred ten thousand and seven hundred seventy-five dollars** (\$310,775).

2. Payment shall be made no later than thirty days from the date of issuance of this Order. Payment shall be made in the form of a check made payable to the State Water Resources Control Board Waste Discharge Permit Fund, and shall have the number of this Order written upon it.

I, Kenneth D. Landau, Assistant Executive Officer, do hereby certify that the foregoing is a full, true, correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 6 February 2014.

KENNETH D. LANDAU, Assistant Executive Officer

Attachment A: Administrative Civil Liability Penalty Methodology

Attachment B: Administrative Civil Liability Penalty Methodology Matrix