CALIFORNIA REGIONAL WATER QUALTIY CONTROL BOARD
SANTA ANA REGION

IN THE MATTER OF:	)	
	)	**COMPLAINT NO. R8-2005-036**
Joe Borba	)	**FOR**
Half and Half Dairy	)	**ADMINISTRATIVE CIVIL LIABILITY**
14651 Grove Avenue	)	
Chino, CA 91710	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Joe Borba, operator of Half and Half Dairy, is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), may impose civil liability pursuant to Section 13385 of the California Water Code (Water Code).

2. A hearing concerning this complaint will be held before the Regional Board within 90 days of the date of issuance of this complaint, unless you waive your right to a hearing. Waiver procedures are specified on page 3 of the complaint. If the hearing in this matter is not waived, it will be held during the Regional Board's regular meeting on April 15, 2005 at the City of Loma Linda Council Chambers, 25541 Barton Road, Loma Linda, CA. The meeting begins at 9:00 a.m. You, or your representative, will have an opportunity to appear and be heard and to contest the allegations in this complaint and the imposition of civil liability by the Regional Board. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date.

3. If the April 15, 2005, hearing is held, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

4. You are alleged to have violated Discharge Specifications A.6 and A.7 of the General Waste Discharge Requirements for Concentrated Animal Feeding Operations (Dairies and Related Facilities) in the Santa Ana Region, NPDES No. CAG018001 (Order No. 99-11), that read as follows:

   A.6 "Disposal of manure to land is prohibited, unless allowed by separate waste discharge requirements issued by the Board."

   A.7 "The use of manure as a fertilizer in any area that may affect a groundwater subbasin lacking assimilative capacity, including the Chino Groundwater Basin, is prohibited unless a plan, acceptable to the Executive Officer, is implemented which mitigates the effects of that use on the underlying groundwater subbasin."

   Cease and Desist Order No. 99-65 states that, in determining compliance with the above Discharge Specification regarding the use of manure as a fertilizer, "Dischargers may

continue to apply manure for application to existing cultivated croplands (not pasturelands) within the Chino Basin at agronomic rates..."

5. The complaint is based on the following facts:

   A. From 1972 until 1999, Joe Borba had been operating the dairy at 14651 Grove Avenue, solely or in partnership with Marguerite Hardisty (his daughter), under individual and general waste discharge requirements adopted by the Regional Board. On September 9, 1999, the Regional Board adopted General Waste Discharge Requirements Order No. 99-11. On September 9, 1999, Joe Borba was authorized to discharge wastes at this dairy in accordance with Order No. 99-11.

   B. On December 3, 2004, Regional Board staff observed manure being spread on pastureland in the vicinity of Grove Avenue and Merrill Avenue. Manure that had been scraped from corrals at the Lindsey Borba Dairy (another dairy operated by Joe Borba) was being hauled to and spread on approximately 20 acres of pastureland at the Half and Half Dairy. Information obtained from the hauler indicates that approximately 700 tons of manure were hauled to the pastureland. This resulted in an average of approximately 35 tons per acre of manure that were spread.

   C. Regional Board staff sent a letter to Joe Borba, dated December 9, 2004. The letter stated that use of manure as fertilizer can only occur in accordance with the requirements of Order No. 99-11 and Cease and Desist Order No. 99-65, and that manure is expressly prohibited from being used as fertilizer (or disposed of) on pastureland. This letter further explained that even if the manure was to be used as fertilizer on land that is used for growing crops, the manure is required to be applied at agronomic rates, not to exceed a maximum of 17.5 tons per acre.

   D. On December 15, 2004, Regional Board staff observed that the land was in the late stages of being disked in order to mix the manure into the soil. Regional Board staff does not have any information to indicate that any of the manure had been removed.

   E. Prior to 1980, the land on which the approximately 700 tons of manure were spread was used for both growing corn and for the disposal of dairy wastewater. However, as a result of numerous previous discharges of dairy wastewater in violation of waste discharge requirements, Joe Borba informed Regional Board staff in 1980 that he no longer intended to grow corn on this property and that the property previously used for growing corn would be converted to pastureland and used exclusively for wastewater disposal.

   F. In late1980, Joe Borba constructed lagoon-type containment structures on this property and ceased growing a crop. Regional Board records indicate that this property has been used as pastureland for the disposal and containment of dairy wastewater since 1980 and that crops have not been grown on this pastureland for the last 24 years.

6. Joe Borba is alleged to have disposed of manure to pastureland in violation of the prohibition included in Discharge Specification A.6 of Order No. 99-11 either by applying

manure to land without the intention of growing a crop, or applying manure to land in excess of agronomic rates with the intention of growing a crop.

7. Joe Borba is alleged to have violated the prohibition on the use of manure as a fertilizer included in Discharge Specification A.7 of Order No. 99-11 by applying manure as fertilizer in a groundwater subbasin lacking assimilative capacity (Chino Groundwater Basin) without first submitting a plan that was acceptable to the Executive Officer that mitigates the effects of that use on the underlying groundwater subbasin. The application of manure that occurred does not meet the criteria included in Cease and Desist Order No. 99-65 for determining compliance with this Discharge Specification because the manure was not applied to "existing cultivated croplands" and was, instead, applied to pastureland, which Cease and Desist Order No. 99-65 expressly excludes as an acceptable means of complying with this Discharge Specification.

8. Pursuant to Water Code Section 13385, those who violate any waste discharge requirement are liable civilly. As provided by Water Code Section 13385(c)(1), the Regional Board can administratively assess a civil liability in an amount not to exceed $10,000 for each day in which the violation occurs.

9. The maximum liability that the Regional Board could assess administratively for the disposal of manure to land in violation of Order No. 99-11, in accordance with Water Code Section 13385(c)(1), is $980,000 for 98 days of violation (from December 3, 2004 to March 10, 2005).

10. Water Code Section 13385(e) specifies factors, including economic benefit resulting from the violations, that the Regional Board shall consider in establishing the amount of civil liability. An economic analysis was performed to determine what benefit there might have been for the manure disposal. There is likely an incremental increased cost for hauling the manure to land owned by the Borba family in the San Joaquin Valley region of California, which has been the historical practice for this dairy, instead of to the land on Half & Half Dairy. However, those costs are likely factored into the overall costs of the Borba family hauling their own feed for cows from the San Joaquin Valley to the Chino Basin and returning with manure loads. Therefore, the incremental hauling costs for a one-way haul are difficult for Regional Board staff to assess.

11. Based upon the consideration of the factors specified in Water Code Section 13385, it is proposed that an administrative civil liability be imposed on Joe Borba in the amount of $50,000.

WAIVER OF HEARING

You may waive your right to a hearing. If you waive your right to a hearing, please sign the attached waiver and return it with a check made payable to the State Water Resources Control Board in the amount of the civil liability proposed in paragraph 11 above. Send the check and waiver to:

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339

If you have any questions regarding this complaint, please contact Gerard J. Thibeault at (951) 782-3284, Stephen D. Mayville at (951) 782-4992, or contact the Regional Board's staff counsel, Jorge Leon at (916) 341-5180.

3-10-05
Date

Gerard J. Thibeault
Executive Officer