

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2004-0515  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
IN THE MATTER OF

PINHEIRO DAIRY, AND  
EDWIN N. PINHERIO  
GLENN COUNTY

This Administrative Civil Liability Complaint (hereafter Complaint) is issued to the Pinheiro Dairy, and Edwin H. Pinheiro (hereafter known jointly as “Discharger”) based on a finding of failure to submit reports pursuant to California Water Code (CWC) Section 13267, and based on Provisions CWC Section 13267(b)(1) and Sections 13268(a) and (b), which authorize the Executive Officer to issue this Complaint.

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

1. Edwin N. Pinherio owns and operates the Pinheiro Dairy at 6368 County Road 7 in Orland, Glenn County. The dairy is approximately one mile north of Stony Creek in the southwestern quarter of Section 4, T22N, R3W, MDB&M<sup>1</sup>.
2. Wastewater from the dairy is collected in a storage pond, where it is periodically discharged to cropland for reuse due to the nutrient value contained in the wastewater.
3. On 25 January 1991, the Regional Board adopted Waste Discharge Requirements (WDRs) Order No. 91-008, which regulates discharges from the dairy operations.
4. WDRs Order No. 91-008 requires that covered dischargers comply with the associated Monitoring and Reporting Program, which states the following:
  - C. Provisions:
    5. “Pursuant to Section 13267 of the California Water Code, the Discharger shall comply with the attached Monitoring and Reporting Program No. 91-008.”
5. Monitoring and Reporting Program No. 91-008, requires submittal of an annual report, which states in part:
  2. “A written annual report covering the calendar year shall be submitted to the Regional Board by **15 January** of the following year.”
6. Regional Board staff has conducted enforcement against dairies for non-submittal of the annual report required under individual WDRs for the past four years (i.e., 1999, 2000, 2001, and 2002). The Pinheiro Dairy did not submit the 1999 Annual Report. The Pinheiro Dairy submitted the 2000 Annual Report approximately three weeks after issuance of a Notice of Violation (NOV)

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<sup>1</sup> MDB&M = Mount Diablo Baseline and Meridian

and five weeks past the required due date of 15 January 2001. The 2001 Annual Report was submitted over nine months late, and only after a NOV and 13267-letter had been issued by staff. A NOV and 13267-letter were also issued for the 2002 Annual Report, which was finally received over six months late.

7. On December 26, 2003, Regional Board staff issued a letter to the owners and operators of the Pinheiro Dairy reminding them of the requirement to submit the 2003 Annual Report, which was due by 15 January 2004. The letter also transmitted an annual report form to facilitate compliance with WDRs Order No. 91-008.
8. The Discharger did not submit the required annual report for the 2003 reporting period as required by WDRs Order No. 91-008 and as referred to in the staff reminder letter of 26 December 2003.
9. Failure to submit the 2003 Annual Report by the Discharger is a violation of the provisions of Section 13267 of the CWC, which reads in part, as follows:
  - (b)(1) “The 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, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires . . . .”
10. Prior to 1 January 2004, Water Code Section 13268 stated:
  - (a) “Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, . . . or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).”
  - (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.”
11. Water Code Section 13327 states:

“In determining the amount of civil liability, the regional board . . . shall take into consideration the nature, circumstance, 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 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.”
12. The maximum administrative civil liability that can be imposed by the Regional Board under Water Code Section 13268(b)(1) is one thousand dollars (\$1,000) for each day of failure to submit technical reports as required by subdivision (b) of Section 13267. As of 8 April 2004, the Discharger failed to submit the 2003 Annual Report. Therefore, as of this date, the maximum

liability for non-submittal of this monitoring program report is eighty four thousand dollars (\$84,000). No minimum liability is required to be imposed under Section 13268(b)(1).

13. Issuance of this Complaint for Administrative Civil Liability does not have the potential to result in a physical change in the environment and is therefore, not a "project" subject to the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000, et. seq.). It is also exempt from CEQA in accordance with Title 14, California Code of Regulations, Section 15321(a)(2).

PINHEIRO DAIRY, AND EDWIN N. PINHEIRO ARE HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that an Administrative Civil Liability be imposed on the Discharger in an amount of three thousand dollars (\$3,000). The amount of the liability proposed is based upon a review of the factors set forth in Water Code Section 13327 as cited above, and the State Water Resources Control Board's water quality enforcement policy.
2. A hearing shall be held on **3 or 4 June or 8 or 9 July 2004** unless the Discharger agrees to waive the hearing and pay the imposed civil liability in full.
3. If a 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. In lieu of a hearing, the Discharger may waive the right to a hearing. If the Discharger wishes to waive the hearing, please sign the enclosed waiver and return it with the amount of Civil Liability (in a check made payable to the *State Water Resources Control Board Cleanup and Abatement Account*) to the Regional Board's office at 11020 Sun Center Drive, Suite 200, Rancho Cordova, California 95670, within 30 days of the date of this Complaint.
5. Any waiver will not be effective until 30 days from the date of this Complaint to allow interested parties to comment on this action.
6. Payment of the Civil Liability does not absolve the Discharger of the need to comply with WDRs Order No. 91-008, or other applicable laws.

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THOMAS R. PINKOS, Executive Officer

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(Date)

**WAIVER OF HEARING FOR  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to jointly represent Pinheiro Dairy, and Edwin N. Pinheiro (collectively the "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2004-0515 (hereinafter the "Complaint");
2. I am informed of the right provided by Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint;
3. I hereby waive the Discharger's right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of issuance of the Complaint; and
4. Without admitting liability for the matters alleged in the Complaint, I otherwise agree to remit payment for the civil liability imposed in the amount of three thousand dollars (\$3,000) by check, which contains a reference to "ACL Complaint No. R5-2004-0515" and is made payable to the "State Water Resources Control Board Cleanup and Abatement Account."
5. I understand the payment of the above amount constitutes a settlement of the Complaint that will not become final until after a public comment period.
6. I understand that the Executive Officer has complete discretion to modify or terminate this settlement during the 30-day public comment period, which began on the date of the Complaint.
7. I understand that payment of the above amount 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.

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Date

Name and Title (Print)

Signature