

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R5-2004-0069
IN THE MATTER OF

TONY BORBA DAIRY, INC.,
DELORES BORBA, AND TONY BORBA, JR.
SAN JOAQUIN COUNTY

This Order is issued by the California Regional Water Quality Control Board, Central Valley Region (Regional Board) to Tony Borba Dairy, Inc., Delores Borba, and Tony Borba, Jr. (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 imposition of an Administrative Civil Liability (ACL).

The Regional Board finds, with respect to the Discharger’s acts, or failure to act, the following:

1. Delores Borba owns and Tony Borba, Jr. operates the Tony Borba Dairy, Inc. at 23844 East Dodds Road, approximately 3.5 miles north of Escalon in San Joaquin County. The dairy is in the northeastern quarter of Section 18, and a portion of the northwestern quarter of Section 17, T1S, R9E, MDB&M¹.
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 October 1996, the Regional Board adopted General Waste Discharge Requirements (WDRs) Order No. 96-270, which regulates discharges from the dairy operations, and WDRs Order No. 96-274, which requires Tony Borba Dairy, Inc. to comply with Order No. 96-270.
4. General WDRs Order No. 96-270 requires that covered dischargers comply with the associated Monitoring and Reporting Program, which states the following:
 - C. Provisions:
 3. “Pursuant to Section 13267 of the California Water Code, the Discharger shall comply with the Monitoring and Reporting Program specified by the Executive Officer and any subsequent amendments made thereto by the Executive Officer.”
5. Monitoring and Reporting Program No. 96-270-01, requires submittal of an annual report, which states in part:
 2. “An annual written report covering the 12 month period beginning 1 November and ending 31 October of the following year shall be submitted to the Regional Board by **30 November**.”
6. Regional Board staff has conducted enforcement for non-submittal of the annual report required under General WDRs Order No. 96-270 for the past four years (i.e., 1999, 2000, 2001, and 2002). The Tony Borba Dairy, Inc. submitted their 1999 Annual Report prior to the

¹ MDB&M = Mount Diablo Baseline and Meridian

30 November due date but only after staff issued a Notice of Violation (NOV) for failure to submit their 1998 Annual Report, and reminding the discharger that the 1999 Annual Report was due on 30 November 1999. In 2000 and 2001, Regional Board staff had to again issue NOV's prior to receipt of the required annual reports. Tony Borba Dairy, Inc. submitted the 2000 Annual Report almost three months late. The 2001 Annual Report was submitted two days after issuance of the NOV, but almost seven months overdue. The 2002 Annual Report was submitted 47 days after the due date of 30 November 2002, but prior to any staff enforcement action.

7. On December 26, 2003, staff of the Regional Board issued a letter to the owners and operators of the Tony Borba Dairy, Inc. notifying them that they had not submitted their 2003 Annual Report. This letter was to be a reminder of the requirement to submit the 2003 Annual Report, which was almost 30 days overdue. The letter also transmitted an annual report form to facilitate compliance with General Order No. 96-270.
8. The Discharger did not submit the required annual report for the 2003 reporting period as required by WDRs Order No. 96-270 and as referred to in the staff reminder letter of 26 December 2003.
9. On 23 March 2004, the Executive Officer issued Administrative Civil Liability Complaint (ACLC) No. R5-2004-0506 to the Discharger for failure to submit the 2003 Annual Report. The ACLC proposed a \$3,000 liability for violations of CWC Section 13267.
10. After issuance of the ACLC, the Discharger submitted the 2003 Annual Report on 20 April 2004. The Discharger also submitted a letter that discussed the Discharger's confusion between the annual reporting requirements and the recent changes to annual fees. The Discharger did not submit payment of the \$3,000 liability.
11. 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"
12. 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."

13. 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.”

14. 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 15 March 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 one hundred and six thousand dollars (\$106,000). No minimum liability is required to be imposed under Section 13268(b)(1).
15. On 4 June 2004, the Regional Board, after hearing all testimony, determined the Discharger is civilly liable. In determining the amount of civil liability, the factors identified in CWC Section 13327 (as cited in Finding No. 13) and the Staff Report were taken into consideration by the Regional Board. This Order incorporates the Staff Report as its findings with respect to Section 13327.
16. 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).
17. Any person affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review this action. The State Board must receive the petition within 30 days of the date on which this Order is adopted by the Regional Board. Copies of the law and regulations applicable to filing petitions will be provided upon request.

IT IS HEREBY ORDERED that Tony Borba Dairy, Inc., Delores Borba, and Tony Borba, Jr. pay \$1,500 in accordance with California Water Code Section 13268 and Section 13323.

I, THOMAS R. PINKOS, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 4 June 2004.

THOMAS R. PINKOS, Executive Officer