

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R5-2004-0087
IN THE MATTER OF

PINHEIRO DAIRY, AND
EDWIN N. PINHERIO
GLENN COUNTY

This Order is issued by the California Regional Water Quality Control Board, Central Valley Region (Regional Board) 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 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. 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&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 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) 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.

¹ MDB&M = Mount Diablo Baseline and Meridian

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. On 12 April 2004, the Executive Officer issued Administrative Civil Liability Complaint (ACLC) No. R5-2004-0514 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 25 May 2004. 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. Because the Discharger submitted the 2003 Annual Report, the maximum liability for non-submittal of this monitoring program report is one hundred and thirty-one thousand dollars (\$131,000). No minimum liability is required to be imposed under Section 13268(b)(1).
15. On 9 July 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), 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 the Regional Board adopts this Order. Copies of the law and regulations applicable to filing petition will be provided upon request.

IT IS HEREBY ORDERED that Pinheiro Dairy, and Edwin N. Pinheiro pay \$3,000 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 9 July 2004.

THOMAS R. PINKOS, Executive Officer