

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0546

IN THE MATTER OF  
NICK BEGLINGER, NICK BEGLINGER DAIRY, 7329 COUNTY ROAD 16,  
ORLAND, GLENN COUNTY

This complaint is issued to Nick Beglinger (hereafter Discharger) pursuant to California Water Code (CWC) section 13350, which authorizes the imposition of Administrative Civil Liability for discharge of waste in violation of a waste discharge requirement; CWC section 13268, which authorizes the imposition of Administrative Civil Liability for failure to furnish required reports; CWC section 13323, which authorizes the Executive Officer to issue this complaint; and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This complaint is based on findings that the Discharger violated the CWC, and Waste Discharge Requirements General Order for Existing Milk Cow Dairies Order No. R5-2007-0035 ("General Order").

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

1. The Discharger is the owner and operator of the Nick Beglinger Dairy, located at 7329 County Road 16, Orland, California.
2. Nick Beglinger operates a two hundred and forty five (245) milk cow dairy facility that includes a ten (10) acre production area consisting of corrals, barns, ponds, and a feed storage area. It also includes one hundred (100) acres of cropland used for manure application. A concrete drainage canal bisects the facility thus separating the main production area (including corrals, free stalls, and milking parlor) from the main cropland and wastewater retention ponds (also referred to herein as "lagoons"). County Road S binds the eastern perimeter of the facility. Immediately east of and running parallel to County Road S is an area drain ditch which is and terminates in waters of the state. The southern portion of the facility is bound by a ditch (southern drain ditch) that drains west along the southern end of the cropland and wastewater lagoon and under County Road S, leaving the property and connecting to the area drain ditch.
3. In past inspections of the Nick Beglinger Dairy, staff has noted, and brought to the attention of the Discharger, issues of non-compliance

that had the potential of causing wastewater to leave the property. On 24 May 2000 an inspection was conducted by Regional Water Board staff in response to a complaint alleging a discharge of wastewater into the southern drain ditch which passes along the south side of the dairy. The inspection revealed that the discharge was tail water from the south end of the cropland (west of the lagoon). The water had a dark color, but contained no manure residue. Although there was no noted violation of the applicable regulations (Title 27 of the California Code of Regulations, Division 2, Subdivision 1, Chapter 7, Subchapter 2, Article 1, "Title 27 Confined Animal Facilities Regulations") at that time, discharge showed that tail water from the south end of the cropland had the ability to reach the southern drain ditch. On 18 December 2001 Regional Water Board staff conducted an inspection to determine if the Nick Beglinger Dairy was in compliance with Confined Animal Facility Regulations. During the inspection, staff noted that the Discharger was not utilizing a tail water return system or slide gates to aid in the control of wastewater used to irrigate the south end of the cropland. In a letter dated 6 February 2002, the Discharger was asked to submit a written response by 8 March 2002 outlining steps to be taken to ensure that wastewater would not leave the property. No response was received.

4. On 3 May 2007 the Regional Water Board adopted the General Order. This order serves as general waste discharge requirements for discharges of waste from milk cow dairies (as defined in Finding 7 of the General Order) of all sizes including the Nick Beglinger Dairy. The General Order implements the requirements of State Water Resources Control Board (State Water Board) Resolution 68-16 (Statement of Policy with Respect to Maintaining High Quality of Waters in California), the Title 27 Confined Animal Facilities Regulations, the Regional Water Board's Water Quality Control Plan for the Sacramento and San Joaquin River Basins and the Water Quality Control Plan for the Tulare Lake Basin, and other applicable plans and policies of the State Water Board and the Regional Water Board. The Nick Beglinger Dairy was notified of its coverage under this order on 6 July 2007.
5. On 6 February 2008 wastewater was found in the area drain ditch at the intersection of County Road S and County Road 18. Upon investigation by Regional Water Board and Department of Fish and Game staff, the source of the discharge was determined to be the Nick Beglinger Dairy lagoon. The lagoon was overflowing at its southeast corner entering the southern drain ditch, crossing under County Road S through a pipe (leaving the property), and emptying into the area drain ditch which parallels County Road S which is and terminates in waters of the state.

6. The following day (7 February 2008) while conducting a follow up inspection on the 6 February 2008 discharge from the lagoon, staff noticed wastewater still flowing off-property from the same pipe along County Road S. Upon further investigation the source of the discharge was determined to be wastewater flowing south out of the cropland (just west of the lagoon) into the southern drain ditch. Both off-property discharges were facilitated by lack of controls on the southern drain ditch at the point where the ditch leaves the dairy property.
7. On 7 February 2008 while Regional Water Board staff were investigating the discharge from the cropland, they noticed a concrete canal (Orland Unit Water Users Canal) above the lagoon had wastewater in it also. The concrete canal crosses County Road S and continues off property.
8. On 6 February 2008 three (3) water samples were collected. The samples were tested by Department of Fish and Game, Fish and Wildlife Water Pollution Control Laboratory. In summary, all samples were determined to be considered deleterious to aquatic organisms living in waters of the state.

Sample #	Sample date	Sample location	pH	EC mmhoh	Temp C	Ammonia as N mg/L
1	2/6/2008	SE corner lagoon	7.25	7680	9.9	347
2	2/6/2008	Southern drain ditch	7.59	7573	8.2	336
3	2/6/2008	Off-property area drain (East of County Rd. S)	7.92	7440	11.5	332

9. On 7 February 2008 five (5) water samples were collected. The samples were tested by Department of Fish and Game, Fish and Wildlife Water Pollution Control Laboratory. In summary, all samples were determined to be considered deleterious to aquatic organisms living in the waters of the state.

Sample #	Sample date	Sample location	pH	EC mmhoh	Temp C	Ammonia as N mg/L
1	2/7/2008	Off-property area drain (E of County Rd. S)	8.25	6475	14.1	223
2	2/7/2008	Southern drain ditch	8.08	6405	14.8	226
3	2/7/2008	concrete canal opposite side county road S	8.3	1456	10.5	11.3
4	2/7/2008	concrete canal underneath leaking pipe	8.03	1906	17.8	58.5
5	2/7/2008	concrete canal, 65 feet up gradient of leaking pipe	9.66	807	17.5	.360

10. The Regional Water Board issued the Discharger a written Notice of Violation letter on 27 February 2008, giving notice of the violations that have led to the issuance of this complaint.
11. CWC section 13323 states, in part:

“Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.”

CWC section 7 permits the Assistant Executive Officer to exercise the power to issue such a complaint.
12. CWC section 13350 states, in part:

“Any person who...in violation of any waste discharge requirements, 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 waters of the state...shall be liable civilly . . .”

The relevant penalty provisions of the statute at §13350(e) provide that:

“[A] regional board may impose civil liability administratively . . . either on a daily basis or on a per gallon basis, but not both. (1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs. . . . (2) The civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged.”
13. General Order Prohibition A.4 states:

“The collection, treatment, storage, discharge, or disposal of wastes at an existing milk cow dairy that results in (1) discharge of waste constituents in a manner which could cause degradation of surface water or groundwater except as allowed by this order, (2) contamination or pollution of surface or groundwater, or (3) a condition of nuisance (as defined by the California Water Code section 13050) is prohibited.”

Additionally, Prohibition A.10 states:

“The discharge of wastewater to surface waters from cropland is prohibited.”

These provisions are designed to prevent waste discharges that could affect the quality of the waters of the state and create nuisances.
14. The discharge of wastewater from the wastewater retention pond into the area drain ditch on 6 February 2008 constituted a violation of

Prohibition A.4 of the General Order and therefore is grounds for civil liability under CWC section 13350.

15. The discharge of wastewater from the cropland into the area drain ditch on 7 February 2008 constituted a violation of Prohibitions A.4 and A.10 of the General Order and therefore is grounds for civil liability under CWC section 13350.
16. Monitoring and Reporting Program No. R5-2007-0035 ("MRP") was issued pursuant to CWC Section 13267 and is incorporated into the General Order at Provision E3. CWC section 13268 provides that: "Any person failing or refusing to furnish technical or monitoring program reports as required by . . . Section 13267 . . . may be liable civilly . . . 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."
17. Section C of the MRP, under "Priority Reporting of Significant Events," requires the discharger to report "any noncompliance that endangers human health or the environment or any noncompliance with Prohibitions A.1, A.2, A.3, A.4, A.5, A.8, A.9, A.10, A.11, and A.12 in the [General] Order." In relevant part, the discharger must submit a written report to the Regional Water Board within two weeks of becoming aware of the incident. The report must contain a description of the noncompliance, its causes, duration, and the actual or anticipated time for achieving compliance. The report must include complete details of the steps that the Discharger has taken or intends to take, in order to prevent recurrence. The Discharger became aware of the incident at the latest on 6 and 7 February 2008 when Regional Water Board staff inspected the discharge. The Discharger was required to submit a written report within two weeks on 21 February 2008. The report was not received by the Regional Water Board until 12 March 2008, 20 days late.
18. **Maximum Civil Liability for Discharge from Lagoon to Area Drain Ditch on 6 February 2008:** Per CWC section 13350 maximum civil liability for this discharge is five thousand dollars (\$5,000 x 1 day = \$5,000).
19. **Minimum Civil Liability for Discharge from Lagoon to Area Drain Ditch on 6 February 2008:** There is no minimum civil liability amount in accordance with CWC section 13350.
20. **Maximum Civil Liability for Discharge from Cropland to Area Drain Ditch on 7 February 2008:** Per CWC section 13350 maximum civil liability for this discharge is five thousand dollars (\$5,000 x 1 day = \$5,000).

21. **Minimum Civil Liability for Discharge from Cropland to Area Drain Ditch on 7 February 2008:** There is no minimum civil liability amount in accordance with CWC section 13350
22. **Maximum Civil Liability for Failure to Submit Report:** Per CWC section 13268, the maximum civil liability for the failure to submit the written report is twenty thousand dollars ( $\$1,000 \times 20 \text{ days} = \$20,000$ ).
23. **Minimum Civil Liability.** There is no minimum civil liability amount in accordance with CWC section 13268.
24. **Total Maximum Civil Liability:** The total maximum civil liability is thirty thousand dollars ( $\$5,000 + \$5,000 + \$20,000 = \$30,000$ ).
25. CWC section 13327 states:

“In determining the amount of civil liability, the regional board, and the state board upon review of any order pursuant to Section 13320, 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.”
26. After fully considering all the factors specified in CWC 13327, the Regional Water Board proposes to impose Administrative Civil Liability in the amount of **ten thousand dollars (\$10,000)**.

Issuance of this Administrative Civil Liability Complaint is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321 (a) (2).

**NICK BEGLINGER AND NICK BEGLINGER DAIRY IS HEREBY GIVEN  
NOTICE THAT:**

1. The assistant Executive Officer of the Regional Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **ten thousand dollars (\$10,000)**.
2. A hearing on this matter will be held at the Regional Water Board meeting scheduled on **11/12 September 2008**, unless the Discharger agrees to complete the following by 11 August 2008.
  - a) Waive the hearing by completing the attached form and returning it to the Regional Water Board; and
  - b) Pay the proposed civil liability of **ten thousand dollars (\$10,000)** in full.
3. If a hearing on this matter is held, the Regional Water 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.

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Jack Del Conte  
Assistant Executive Officer

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11 July 2008  
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 represent Nick Beglinger (hereafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0546 (hereinafter the "Complaint");
2. I am informed of the right provided by California Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of service of the Complaint;
3. I hereby waive the Discharger's right to such a hearing before the California Regional Water Quality Control Board, Central Valley Region; and
4. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **ten thousand dollars (\$10,000)** by check, which contains a reference to "ACL Complaint No. R5-2008-0546" and is made payable to the "*State Water Pollution Cleanup and Abatement Account.*"
5. I understand the payment of the above amount constitutes a settlement of the Complaint.
6. I understand that payment of the above amount is not 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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Print Name and Title

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Signature