



California Regional Water Quality Control Board

Central Valley Region



Terry Tamminen
Secretary for
Environmental
Protection

Robert Schneider, Chair

Arnold Schwarzenegger
Governor

Sacramento Main Office

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25 June 2004

CERTIFIED MAIL
No. 7004 1160 0000 0143 0021

Mr. Luis Oliveira
Luis Oliveira Dairy No. 2
28399 West Husman Road
Gustine, CA 95322

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2004-0516, LUIS OLIVEIRA DAIRY NO. 2, (25469 HEARST RD.), MERCED COUNTY

We have received your letter dated 17 June 2004 regarding Administrative Civil Liability (ACL) Complaint No. R5-2004-0516 (Complaint), that also transmitted the 2003 Annual Report. Luis Oliveira Dairy No. 2 has proposed to settle the Complaint for one thousand five hundred dollars (\$1,500) and has requested authorization to make three equal payments of \$500 over a three-month period, which in turn waives your right to a hearing on the matter.

Your request to settle the ACL Complaint in three payments is acceptable to the Regional Board. Because you are proposing a payment schedule, a revised waiver form is necessary (enclosed). Please sign the revised waiver form and return it to this office (address above) no later than **6 July 2004** with your first payment of \$500. Due dates for the second and third payments are included on the revised waiver form. All payments should be made out to the *State Water Resources Control Board* and should contain a reference to ACL Complaint No. R5-2004-0516.

Please note that failure to pay the amounts by the dates specified in the revised waiver will result in the Board proceeding with a public hearing on this issue on 9 July 2004. Details regarding the hearing will be provided in a separate letter.

If you have any questions, please contact Mr. Rudy Schnagl at (916) 464-4701 or Ms. Camilla Williams at (916) 464-4724.

THOMAS R. PINKOS
Executive Officer

Enclosure

California Environmental Protection Agency

cc: (with enclosure)

Board Members

Mr. Erik Spiess, State Water Resources Control Board, OCC, Sacramento

Mr. John Norton, State Water Resources Control Board, OSI, Sacramento

Mr. Jeff Palsgaard, Merced County Department of Public Health, Merced

Mr. Joe Ramos, Western United Dairymen, Modesto

WAIVER

By signing this waiver, the Discharger (Luis Oliveira Dairy No. 2) agrees to waive its right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, and to remit payment for civil liability imposed in the amount of one thousand, five hundred dollars (\$1,500). The first payment of \$500 is due **6 July 2004**, to be followed by two equal payments of \$500 at one month and two months from the initial payment (i.e., **6 August 2004** and **6 September 2004**, respectively). The Discharger understands that it is giving up its rights to argue against the allegations made by the Executive Officer in Administrative Civil Liability Complaint No. R5-2004-0516 and against imposition of, and the amount of civil liability imposed.

(Signature)

(Printed Name)

(Title)

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2004-0516
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

LUIS OLIVEIRA DAIRY NO. 2, AND
LUIS OLIVEIRA
MERCED COUNTY

This Administrative Civil Liability Complaint (hereafter Complaint) is issued to Luis Oliveira Dairy No. 2, and Luis Oliveira (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. Luis Oliveira owns and operates the Luis Oliveira Dairy No. 2 at 25469 Hearst Road in Gustine, Merced County. The dairy is southeastern quarter of Section 14, T9S, 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 June 1993, the Regional Board adopted Waste Discharge Requirements (WDRs) Order No. 93-102, which regulates discharges from the dairy operations.
4. WDRs Order No. 93-102 requires that covered dischargers comply with the associated Monitoring and Reporting Program, which states the following:
 - C. Provisions:
 9. “Pursuant to Section 13267 of the California Water Code, the Discharger shall comply with the attached Monitoring and Reporting Program No. 93-102, and any subsequent amendments thereto made by the Executive Officer.”
5. Monitoring and Reporting Program No. 93-102, requires submittal of an annual report, which states in part:
 - B. “A written annual report shall be submitted to the Regional Board by **15 January** of each 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 Luis Oliveira Dairy No. 2 submitted the 1999 Annual Report over five weeks past the 15 January 2000 due date, but only after staff issued a Notice of Violation (NOV) for failure to submit their 1998 Annual Report, and reminding the discharger of the pending 1999 due date. In

¹ MDB&M = Mount Diablo Baseline and Meridian

2000, staff issued a NOV, but an annual report was not submitted. The Luis Oliveira Dairy No. 2 submitted the 2001 Annual Report two weeks after issuance of an NOV, which was almost six months past the 15 January 2002 due date. The 2002 Annual Report was submitted over one month after issuance of an NOV and over four months past the required due date.

7. On December 26, 2003, Regional Board staff issued a letter to the owners and operators of the Luis Oliveira Dairy No. 2 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. 93-102.
8. The Discharger did not submit the required annual report for the 2003 reporting period as required by WDRs Order No. 93-102 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).

LUIS OLIVEIRA DAIRY NO. 2, AND LUIS OLIVEIRA 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. 93-102, or other applicable laws.

THOMAS R. PINKOS, Executive Officer

(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 Luis Oliveira Dairy No. 2, and Luis Oliveira (collectively the "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2004-0516 (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. R5-2004-0516" 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.

Date

Name and Title (Print)

Signature