

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2009-0531

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

A & M DAIRY
MERCED COUNTY

This Administrative Civil Liability Complaint (hereafter Complaint) is issued to the A & M Dairy based on a finding of failure to submit technical reports pursuant to California Water Code (CWC) section 13267, for which administrative civil liability may be imposed pursuant to CWC section 13268.

The Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds, with respect to the A & M Dairy's acts, or failure to act, the following:

1. The Discharger is the A & M Dairy, owned by Ed Fonte and operated by David Medina, and is located at 659 W Lincoln Rd, El Nido.
2. The A & M Dairy consists of a 130 milk cow dairy facility with a 4-acre production area and 74 acres of cropland currently used for manure application (wastewater and solids).
3. On 3 May 2007 the Central Valley Water Board issued the Waste Discharge Requirements General Order for Existing Milk Cow Dairies Order R5-2007-0035 ("General Order"). This order serves as general waste discharge requirements for discharges of waste from existing milk cow dairies of all sizes (as defined in Finding 7 of the General Order), including A & M Dairy. On 2 July 2007, Joe Augusto, on behalf of A & M Dairy, signed the certified mail receipt notifying the Discharger of coverage under the General Order. Joe Augusto received the certified mail at the mailing address of David Medina.
4. CWC section 13267 authorizes Regional Water Boards to require the submittal of technical or monitoring reports from any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste to waters of the state.
5. Section J. 1 of the General Order, under "Schedule of Tasks" requires the dischargers to develop and implement a Waste Management Plan and Nutrient Management Plan and submit an Existing Conditions Report, Proposed Interim Facility Modifications, Salinity Report, Preliminary Infrastructure Needs checklist, and Annual Reports according to the schedule in Table 1. According to Table 1, by 31 December 2008, a Statement of Completion of Item V (Field Risk Assessment) of Attachment C (Nutrient Management Plan) and a Preliminary Infrastructure Needs Checklist were due to the Central Valley

Water Board. In the General Order, the Board required the submittal of these reports under the authority of CWC section 13267.

6. The Preliminary Infrastructure Needs Checklist consists of identification and documentation of infrastructure changes that will be needed to properly manage wastes at the facility. The Field Risk Assessment evaluates the effectiveness of management practices to control waste discharges from land application areas. The Statement of Completion certifies that the Field Risk Assessment was done and is available for review at the dairy.
7. On 9 March 2009, the Central Valley Water Board issued, via certified mail, a letter reminding the A & M Dairy of the requirement to submit the Preliminary Infrastructure Needs Checklist and the Statement of Completion. The certified mail receipt was signed as received by Marian Wright on 12 March 2009.
8. Board staff checked the compliance tracking system and case files. On 12 March 2009, staff told Marian Wright, on behalf of Ed Fonte, that the Preliminary Infrastructure Needs Checklist was not required for the A & M Dairy because the dairy had reported adequate storage capacity and a satisfactory nitrogen ratio in the 2007 Annual Report. Marian Wright was told that the remaining documents due 31 December 2008 were still required. Board staff verified that the Central Valley Water Board had not received the remaining technical report from A & M Dairy.

VIOLATIONS

9. The requirement to submit the technical reports in accordance with CWC section 13267 was issued to the A & M Dairy on 3 May 2007 as part of the General Order. The required technical reports were due by 31 December 2008. As of 15 May 2009, A & M Dairy's technical reports are 135 days past due.

REGULATORY CONSIDERATIONS

10. CWC section 13267 (b) states, in relevant part:

In conducting an investigation specified in subdivision (a), 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..., shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.
11. CWC section 13268 (a) states:

Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of section 13267, or failing or refusing to furnish a statement

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of compliance as required by subdivision (b) of section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

12. CWC section 13268(b)(1) states:

Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with section 13323) or Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1000) for each day in which the violation occurs.

13. The required technical reports are 135 days past due. The maximum liability under CWC section 13268(b)(1) for the nonsubmittal of the technical reports is \$1000 per day late, for a total of one hundred thirty five thousand dollars (\$135,000).

14. The Executive Officer has considered the nature, circumstances, extent, and gravity of the A & M Dairy's failure to submit a technical report as required, the A & M Dairy's ability to pay the proposed civil liability, the effect of the proposed civil liability on the A & M Dairy's ability to continue in business, any history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the failure to submit the technical report required, and other matters as justice may require, including the staff time required to prepare this Complaint.

15. Central Valley Water Board staff spent a total of 5 hours preparing this Complaint. The total cost for staff time is \$675 based on a rate of \$135 per hour.

DAVID MEDINA AND ED FONTE ARE HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board proposes that the A & M Dairy be assessed an administrative civil liability in the amount of **one thousand dollars (\$1,000)**. The amount of the proposed liability is based upon a review of the factors cited in CWC sections 13268 and 13327, as well as the State Water Resources Control Board's Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **13/14 August 2009**, unless the A & M Dairy does either of the following by **15 June 2009**:
 - a) Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **one thousand dollars (\$1,000)**; or
 - b) Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board along with a letter describing the issues to be discussed.

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3. If a hearing on this matter is conducted, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, which may include raising the monetary value of the civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

_____ original signed by _____
PAMELA C. CREEDON, Executive Officer

(15 May 2009)