

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2010-0503

IN THE MATTER OF

EDWARD FORTE
FORMER A & M DAIRY
659 W LINCOLN ROAD
EL NIDO, MERCED COUNTY

This Order is issued to Edward Forte (hereafter referred to as the Discharger), as owner of the former A & M Dairy (the Dairy) pursuant to California Water Code (CWC) section 13268, which authorizes the imposition of Administrative Civil Liability, 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 Order is based on findings that the Discharger violated the CWC and the Waste Discharge Requirements General Order for Existing Milk Cow Dairies Order R5-2007-0035 (General Order).

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

1. The Discharger owns the Dairy, which is located at 659 W Lincoln Rd, El Nido, California.
2. The Dairy is a 155 milk cow dairy facility, and has 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 General Order. The General Order regulates wastewater practices at milk cow dairies of all sizes, including the Dairy. On 29 June 2007, the Board sent certified mail notifications to the Discharger, notifying the Discharger that the Dairy was subject to the General Order.
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" required the Discharger 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 of the General Order. 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 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 Forte, that the Preliminary Infrastructure Needs Checklist was not required for the 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 required technical reports were due by 31 December 2008. As of 15 May 2009, the Discharger's technical reports were 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 of compliance as required by subdivision (b) of section 13399.2, or falsifying any

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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. Administrative Civil Liability Complaint R5-2009-0531 was issued to the Discharger on 15 May 2009 in the amount of one thousand dollars (\$1,000). At that date, the required technical reports were 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 maximum liability of one hundred thirty five thousand dollars (\$135,000). Recently, the Dairy decided to wind down operations. Because the Dairy is decommissioning, Board staff has determined that the technical reports are no longer needed. This Order is meant to resolve all liability for the outstanding violations.

14. On 23 April 2009, the Central Valley Water Board delegated the authority to issue Administrative Civil Liability Orders, where the matter is not contested by the Discharger, to the Executive Officer, or to an Assistant Executive Officer when the Executive Officer is serving as head of the Board's Prosecution Team (Resolution R5-2009-0027). Pamela Creedon is serving as the head of the Board's Prosecution Team for this matter, and therefore Assistant Executive Officer Kenneth Landau has the authority to issue this Order.

15. The Assistant Executive Officer has considered the nature, circumstances, extent, and gravity of the Dairy's failure to submit a technical report as required, the Dairy's ability to pay the civil liability, the effect of the civil liability on the 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 Order.

The following factors were considered by the Central Valley Water Board in arriving at the final penalty amount:

Nature, circumstances, and gravity: The discharger failed to provide the technical report required in the General Order.

The Discharger's ability to pay and ability to continue in business: The Central Valley Water Board understands that the dairy industry in California has been significantly impacted by depressed commodity prices and increased feed costs. In this business climate, imposition of this relatively small administrative civil liability (such as the amount imposed here) will serve the same deterrent effect that a significantly higher penalty would have in a more favorable business climate.

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Prior History of Violations: The Discharger does not have a prior history of violations.

Degree of Culpability: The Discharger as the owner of the dairy is responsible for complying with the terms of the General Order.

Economic Benefit or Savings: Economic benefit is equal to the deferred costs of delaying the completion on the technical reports.

Other Matters the Justice May Require: The dairy has started the closure process.

16. Central Valley Water Board staff spent a total of 5 hours preparing this Order. The total cost for staff time is \$675 based on a rate of \$135 per hour.
17. Issuance of this Administrative Civil Liability Order 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).
18. This tentative Order constitutes a settlement of the violations herein mentioned. Notice of this settlement was published on the Central Valley Water Board's website and was provided to all interested parties on 14 December 2009. Following the expiration of a 30-day public notice and comment period, this Order will become final on 13 January 2010, provided that significant comments raising issues that would cause the Central Valley Water Board to reconsider this action are not received in the public comment period. The Order will be effective immediately upon issuance.

IT IS HEREBY ORDERED THAT:

1. Edward Forte is hereby assessed administrative civil liability in the amount of **one thousand dollars (\$1,000)**. The amount of the liability is based upon a review of the factors cited in CWC section 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. Upon full payment, the Central Valley Water Board will consider the violations charged in Administrative Civil Liability Complaint R5-2009-0531 resolved.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday (including mandatory furlough days), the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.

KENNETH D. LANDAU, Assistant Executive Officer

14 January 2010

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Payment Agreement

Pursuant to Administrative Civil Liability Order R5-2010-0503 ("Order"), Edward Forte (hereafter referred to as the Discharger) is ordered to pay \$1,000 to the State Water Resources Control Board Cleanup and Abatement Account within 30 days of the date the Order issued. However, the Central Valley Water Board shall defer immediate collection of the \$1,000 civil liability if the Discharger complies with the following payment schedule:

The Discharger has agreed to pay \$1,000 to the State Water Resources Control Board Cleanup and Abatement Account in four quarterly payments of \$250 beginning on **15 January 2010**. The payments shall be made by check, payable to the *State Water Pollution Cleanup and Abatement Account*, and remitted to the Central Valley Regional Board located at 11020 Sun Center Drive, Suite 200, Rancho Cordova, California. Each check shall have written upon it "ACL Order R5-2010-0503". Subsequent payments are due by **15 April 2010**, **15 July 2010**, and **15 October 2010**.

This memorializes and accepts the above payment schedule on the following conditions. If the Discharger fails to make the payments in accordance with the specified deadlines without obtaining explicit approval from the Assistant Executive Officer, the Assistant Executive Officer shall demand that the remaining unpaid balance be paid within 30 days of notification of such failure. Alternatively, the Assistant Executive Officer may refer this matter to the California Attorney General to obtain compliance with the terms of the Order.

KENNETH D. LANDAU, Assistant Executive Officer

14 January 2010