

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

19 June 2014

CERTIFIED MAIL

7012 2210 0002 1419 2747

Carlos and Bernadette Estacio
San Isidro Jersey Dairy
4413 S Prairie Flower Road
Turlock, CA 95380

FORTHCOMING ASSESSMENT OF CIVIL LIABILITY FOR FAILURE TO SUBMIT THE ANNUAL REPORT FOR 2012, SAN ISIDRO JERSEY DAIRY, WDID 5B50NC00270, 25469 W HEARST ROAD, GUSTINE, MERCED COUNTY

The Central Valley Regional Water Board (Central Valley Water Board) has requested that the State Water Resources Control Board, Office of Enforcement, assist it in bringing formal enforcement in administrative civil liability for failing to submit the annual report for 2012 required pursuant to Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (2007 General Order) and later replaced by Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order). The Central Valley Water Board intends to proceed with formal enforcement by issuing an Administrative Civil Liability Complaint (Complaint); however, prior to prosecuting this case, we offer the opportunity to discuss the alleged violation, including the option of settlement.

The Reissued General Order and the accompanying Monitoring and Reporting Program (MRP) required pursuant to section 13267 of the California Water Code that an Annual Report for the calendar year 2012 (2012 Annual Report) be submitted for regulated facilities by 1 July 2013. On 22 August 2013, Central Valley Water Board staff issued a Notice of Violation notifying you that the 2012 Annual Report had not been received for your dairy facility. The Notice of Violation also requested that the delinquent report be submitted as soon as possible to avoid incurring any additional liability. To date, the Central Valley Water Board has not received the 2012 Annual Report.

Failing to submit the annual report subjects you to civil penalties pursuant to section 13268 of the Water Code of up to one thousand dollars (\$1,000) for each day the violation occurs.

Further delay in submitting the annual report subjects you to ongoing penalties. The maximum penalty as of 19 June 2014 for this violation is three hundred fifty-three thousand dollars (\$353,000), based on a calculation of the cumulative total number of per-day violations times the statutory maximum penalty (353 total days of violation X \$1,000). Consistent with the State Water Resources Control Board's Water Quality Enforcement Policy, the Assistant Executive Officer of the Central Valley Water Board intends to issue you a Complaint in the amount of thirteen thousand

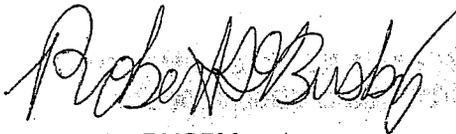
KARL E. LONGLEY ScD, P.E., CHAIR | PAMELA C. CREEDON P.E., BCCE, EXECUTIVE OFFICER

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nine hundred twenty-three dollars (\$13,923) for this violation. This recommended penalty amount is further explained in Attachment A. Please note, as long as you remain out of compliance, the Assistant Executive Officer reserves its authority to issue a Complaint in an amount that exceeds the penalty calculated in Attachment A.

By way of this letter, you are being notified of the opportunity to meet with Central Valley Water Board staff prior to the issuance of the Complaint to discuss the alleged violation and proposed penalty amount. If you wish to schedule an appointment to discuss this matter, contact Charlene Herbst at (916) 464-4724 no later than **3 July 2014**. If the Central Valley Water Board does not receive a response by this date, the Assistant Executive Officer will issue a complaint and this matter will proceed to a formal enforcement hearing before the Central Valley Water Board.

If you have any questions regarding this notice, please contact Charlene Herbst by phone at (916) 464-4724 or by email at Charlene.Herbst@waterboards.ca.gov.



ROBERT D. BUSBY
Supervising Engineering Geologist

- cc: Mr. Andrew Altevogt, Central Valley Water Board, Rancho Cordova
- Mr. Clay Rodgers, Central Valley Water Board, Fresno
- Ms. Naomi Kaplowitz, Office of Enforcement, SWRCB, Sacramento
- Mr. David Boyers, Office of Enforcement, SWRCB, Sacramento

Attachment A – Pre-Complaint Letter
Specific Factors Considered – Civil Liability
Carlos and Bernadette Estacio
San Isidro Jersey Dairy

The Central Valley Water Board alleges that the Discharger failed to submit the 2012 Annual Report required to be submitted by 1 July 2013. For the purpose of applying the Enforcement Policy's administrative civil liability methodology, the alleged violation is a non-discharge violation. Each factor of the Enforcement Policy and its corresponding score for each violation are presented below:

- 1. Violation No. 1 (Failure to submit 2012 Annual Report):** In accordance with the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order) and the accompanying Monitoring and Reporting Program (MRP), a 2012 Annual Report must be submitted for regulated facilities by 1 July 2013. To date, the Owner and/or Operator (hereinafter the Discharger) has not submitted this report for the San Isidro Jersey Dairy.

Calculation of Penalty for Failure to Submit 2012 Annual Report

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

The per day factor is 0.35.

This factor is determined by a matrix analysis using the potential for harm and the deviation from requirements. The potential for harm was determined to be minor due to the following: The failure to submit the 2012 Annual Report did not increase the amount of pollution discharged or threatened to discharge into waters of the State. The submission of an Annual Report is a means through which the Central Valley Water Board can evaluate a Discharger's compliance with the Reissued General Order. Failing to timely submit the Annual Report to the Central Valley Water Board hinders the Board's ability to follow-up with noncompliance and such circumstances present at least a minor potential for harm. The deviation from requirements was determined to be major, as the requirement to submit the Annual Report has been rendered ineffective. The failure to submit the required technical report undermines the Central Valley Water Board's efforts to prevent water quality degradation and implement the regulatory protection measures detailed in the Reissued General Order.

**Attachment A – Pre-Complaint Letter
San Isidro Jersey Dairy**

Initial Liability

A failure to submit annual reports is punishable under Water Code section 13268(b)(1) by civil liability in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. The Discharger failed to submit a 2012 Annual Report by 1 July 2013 as required by the Reissued General Order and the MRP, which is now 353 days late.

However, the alternative approach for calculating liability for multiday violations in the Enforcement Policy is applicable. The failure to submit required technical reports does not cause a daily detrimental impact to the environment or the regulatory program and it does not result in an economic benefit that can be measured on a daily basis. It is the extended time period of non-compliance that causes the detrimental impact to both the environment and the regulatory program. Furthermore, the Discharger only receives an economic benefit by not submitting the required technical report, and not a per-day benefit during the entire period of violation.

Applying the per-day factor to the adjusted number of days of violation rounded to the nearest full day equals 17 days of violation. A calculation of initial liability totals \$5,950 (0.35 per day factor X 17 adjusted days of violation X \$1,000 per day penalty).

Step 4. Adjustment Factors

a) *Culpability: 1.2*

Discussion: The Discharger was assessed a score of 1.2, which increases the fine. The Discharger is responsible for failing to submit the annual report alleged herein. The requirement to submit a 2012 Annual Report was detailed in the Reissued General Order. The Discharger was issued a Notice of Violation on 22 August 2013, which requested that the report be submitted as soon as possible to minimize liability. Thus, the Discharger had knowledge of the requirement to submit the Annual Report and failed to meet the reasonable standard of care in that regard.

b) *Cleanup and Cooperation: 1.3*

Discussion: The Discharger was assessed a score of 1.3, which increases the fine. Despite the fact that the Discharger received multiple notices regarding the requirements set forth in the Reissued General Order, the Discharger has failed to submit the Annual Report. The violation of Water Code section 13268(a), alleged herein, is a non-discharge violation, and thus cleanup is not applicable.

**Attachment A – Pre-Complaint Letter
San Isidro Jersey Dairy**

c) *History of Violations:* 1.5

Discussion: The Discharger was assessed the score of 1.5. This is the third filing violation for the Discharger, who failed to file a 2008 Annual Report for another dairy, Supercross Jerseys, which he owned, and a 2009 Annual Report for the San Isidro Jersey Dairy.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

- a) *Total Base Liability Amount:* **\$13,923** [Initial Liability (\$5,950) x Adjustments (1.2)(1.3)(1.5)].

Step 6. Ability to Pay and Continue in Business

The Enforcement Policy provides that if the Central Valley Water Board has sufficient financial information to assess the violator's ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted downward.

- a) *Adjusted Total Base Liability Amount:* **\$13,923**

Discussion: The Discharger has the ability to pay the total base liability amount based on 1) the Discharger owns the Dairy, a significant asset, and 2) the Discharger operates a dairy, an ongoing business that generates profits.

Without additional information provided by the Discharger, based on this initial assessment of information available in the public record, it appears the Discharger has the assets to pay the Total Base Liability. Based on the reasons discussed above, no reduction in liability is warranted.

Step 7. Other Factors as Justice May Require

- a) *Adjusted Combined Total Base Liability Amount:* $\$13,923 + \0 (Staff Costs) = **\$13,923.**
- b) *Discussion:* No staff costs have been assessed as part of this enforcement action.

Step 8. Economic Benefit

- a) *Estimated Economic Benefit:* **\$1,500**

**Attachment A – Pre-Complaint Letter
San Isidro Jersey Dairy**

Discussion: The Discharger has received an economic benefit from the costs saved in not drafting and preparing the 2012 Annual Report. This is based on the current consulting costs of producing an Annual Report (\$1,500). The adjusted combined total base liability amount of \$13,923 is more than at least 10% higher than the economic benefit amount (\$1,500) as required by the Enforcement Policy.

Step 9. Maximum and Minimum Liability Amounts

a) *Minimum Liability Amount: \$1,650*

Discussion: The Enforcement Policy requires that the minimum liability amount imposed not fall below the economic benefit plus ten percent. As discussed above, the Central Valley Water Board Prosecution Team's estimate of the Discharger's economic benefit obtained from the alleged violation is \$1,500.

b) *Maximum Liability Amount: \$353,000*

Discussion: The maximum administrative liability amount is the maximum amount allowed by Water Code section 13367(b)(1): one thousand dollars (\$1,000) for each day in which the violation occurs. Without the benefit of the alternative approach for calculating liability for multiday violations under the Enforcement Policy, the Discharger could face penalties for the total number of days in violation (353 total days X \$1,000 per day).

The proposed liability falls within these maximum and minimum liability amounts.

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the failure to submit the 2012 Annual Report is **\$13,923**.

Pre-Complaint Letter
 Failure to file 2012 AR
 San Isidro Jersey Dairy
 19 June 2014

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 Carlos and Bernadette Estacio
 San Isidro Jersey Dairy
 4413 S. Prairie Flower Road
 Turlock, CA 95380

PS Form 3800, August 2006 See Reverse for Instructions

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1. Article Addressed to: Carlos and Bernadette Estacio San Isidro Jersey Dairy 4413 S. Prairie Flower Road Turlock, CA 95380	B. Received by (Printed Name) <i>Carlos Estacio</i>	C. Date of Delivery <i>10-21-14</i>
	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
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