

**Attachment A**  
**Specific Factors Considered for Administrative 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 as required by the 2007 General Order, R5-2007-0035 and failed to submit the 2013 Annual Report by 1 July 2014 as required by the 2013 Reissued General Order, R5-2013-0122. 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:

**I. Violation No. 1: Failure to submit 2012 Annual Report:** In accordance with the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (2007 General Order) and the accompanying Monitoring and Reporting Program (MRP), a 2012 Annual Report must be submitted for regulated facilities by 1 July 2013. Between 2 July 2014 and 7 August 2014, Carlos and Bernadette Estacio (hereinafter the Discharger) submitted four documents labeled "2012 Annual Report" for the San Isidro Jersey Dairy that contained no information other than the Discharger's name, address, and signature, and therefore was deemed materially deficient by Regional Board staff.

**Penalty Calculation**

**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 initial liability factor must take into consideration the Potential for Harm and the extent of deviation from applicable requirements.

The per day factor is 0.35.

This factor is determined using the potential for harm of the violation and the extent of the Discharger's 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 be discharged into waters of the State. However, failing to timely submit the Annual Report to the Central Valley Water Board hinders the Board's ability to follow-up with noncompliance. The Annual Report is a key means through which

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the Central Valley Water Board evaluates a Discharger's compliance with the Dairy General Order, including the assessment of proper manure application to fields and waste management in a dairy's production area. By failing to provide the information in the Annual Report, the Discharger frustrates the Regional Board's efforts to assess the potential impacts and risks to water quality posed by the Dairy, and circumvents the Regional Board's ability to take necessary enforcement action to correct any problems. The requirement and program are compromised when staff resources are directed to bringing the Discharger into compliance and those resources are not available for other program activities. Since the violation thwarts the Regional Board's ability to identify water quality risks, the violation has the potential to exacerbate the presence and accumulation of, and the related risks associated with, pollutants of concern. This in turn, presents a threat to beneficial uses. Therefore, the violation presents 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. While the Discharger submitted a report with its name, address, and signature, the report contained none of the required reporting information. Central Valley Water Board staff deemed the report as materially deficient. The submitted report lacked the required information such as, the total amount of manure and process wastewater generated, the total amount of manure and wastewater applied to land, the ratio of nitrogen applied to land, and lab analyses for wastewater, groundwater, winter forage and soil samples, information that is necessary for the Central Valley Water Board's efforts to prevent water quality degradation and implement the regulatory protective measures detailed in the Dairy General Order. Therefore, because the Discharger failed to submit an adequate report, the Discharger was assessed a major deviation from the requirement.

### **Initial Liability**

A failure to submit an annual report is subject to civil liability under Water Code section 13268(b)(1) 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 an adequate 2012 Annual Report by 1 July 2013 and is 568 days late as of issuance of this Complaint on 20 January 2015. Therefore, the Per Day Assessment is calculated as (0.35 factor from Table 3) X (568 days) X (\$1,000 per day). The Initial Liability Value is \$198,800.

### **Step 4. Adjustment Factors**

The Enforcement Policy allows for multi-day violations to be consolidated provided specific criteria are satisfied. The Enforcement Policy also describes three factors related to the Discharger's conduct that should be considered for modification of the initial liability amount: the Discharger's culpability, the

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Discharger's efforts to clean up or cooperate with regulatory authorities after the violation, and the Discharger's history of violations. After each of these factors is considered for the violation alleged, the applicable factor should be multiplied by the proposed liability amount for the violation.

a) *Multiple Day Violations*

The Enforcement Policy provides that for violations lasting more than 30 days, the Central Valley Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation.

The failure to submit the Annual Report does not result in an economic benefit that can be measured on a daily basis. The continuance of this violation does not result in an economic benefit that can be measured on a daily basis. The economic benefit is the one-time cost of submitting the Annual Report to the Central Valley Water Board, and not a per-day benefit during the entire period of violation.

The Prosecution Team recommends reducing the number of days of violation. The Enforcement Policy provides a floor in that the liability shall not be less than an amount that is calculated based on an assessment of the initial Total Base Liability Amount for the first day of the violation, plus an assessment for each five day period of violation until the 30<sup>th</sup> day, plus an assessment for each thirty (30) days of violation (Minimum Approach). However, because this approach generates a Total Base Liability Amount that is not a sufficient deterrent given the Discharger's unwillingness to comply with the Dairy General Order which undermines the Central Valley Water Board's ability to protect water quality through its regulatory program, the Prosecution Team has increased the number of days of violation above the Minimum Approach to a total number of 48 days of violation. The calculation of initial liability is revised to \$16,800 (0.35 per day factor X 48 adjusted days of violation X \$1,000 per day penalty).

b) *Culpability: 1.5*

*Discussion:* The Discharger was assessed a score of 1.5, which increases the fine. As an enrolled dairy, the Discharger is required to comply with the requirements of the 2007 General Order, including the requirement to submit annual reports. In addition, the Discharger was issued a Notice of Violation on 22 August 2013 and a pre-filing settlement letter on 19 June 2014, which requested that the Discharger submit the 2012 Annual Report as soon as possible to minimize liability. The Central Valley Water Board also issued a notice of intent to issue a complaint for the failure to file the 2012 Annual Report on 19 September 2014. Despite these efforts, the Discharger has failed to submit a 2012 Annual Report that the Central Valley Water Board staff deems adequate. The Discharger was well aware of the requirement to

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submit the 2012 Annual Report but instead waited nearly one year after the due date to submit a report which left blank all fields except the Discharger's name, address, and signature. A factor of 1.5 is appropriate where the Discharger's conduct amounted to intentional or negligent behavior, falling well below what a reasonable and prudent person would have done in similar circumstances.

c) *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 2007 General Order, the Discharger failed to comply. While the Discharger submitted multiple documents entitled the "2012 Annual Report", each document was substantially deficient and did not contain the information necessary for Regional Water Board staff to attempt to assess the potential impacts to water quality from Dairy operations. Therefore, a factor of at least a 1.3 should be assessed. The violation of Water Code section 13267(b), alleged herein, is a non-discharge violation, and thus cleanup is not applicable.

d) *History of Violations: 1.5*

*Discussion:* The Discharger was assessed the score of 1.5. The Central Valley Water Board adopted two prior stipulated orders and settlement agreements against this Discharger for nearly identical violations. The Discharger failed to file a 2008 Annual Report for another dairy, Supercross Jerseys, which they owned (Order No. R5-2014-0578), and a 2009 Annual Report for the San Isidro Jersey Dairy (Order No. R5-2014-0579).

**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: \$49,140* [Initial Liability (\$16,800) x Adjustments (1.5)(1.3)(1.5)].

**II. Violation No. 2: Failure to submit the 2013 Annual Report:** In accordance with the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (2013 Reissued General Order) and the accompanying Monitoring and Reporting Program (MRP), a 2013 Annual Report must be submitted for regulated facilities by 1 July 2014. Between 1 July 2014 and 15 December 2014, the Discharger has submitted four documents labeled "2013 Annual Report" for the San Isidro Jersey Dairy. On 19 September 2014, Central Valley Regional Water Board staff notified the discharger the submitted reports were materially deficient and unacceptable.

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**Calculation of Penalty for Failure to Submit an Acceptable 2013 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**

As discussed in Step 3 for Violation 1, above, a per day factor of 0.35 is appropriate.

**Initial Liability**

A failure to submit annual reports is subject to civil liability under Water Code section 13268(b)(1) 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 an acceptable 2013 Annual Report by 1 July 2014 as required by the 2013 Reissued General Order and the MRP, which is now 203 days late. Therefore, the Per Day Assessment is calculated as (0.35 factor from Table 3) X (203 days) X \$1,000 per day). The Initial Liability Value is \$71,050.

**Step 4. Adjustment Factors**

The Enforcement Policy allows for multi-day violations to be consolidated provided specific criteria are satisfied. The Enforcement Policy also describes three factors related to the Discharger's conduct that should be considered for modification of the initial liability amount: the Discharger's culpability, the Discharger's efforts to clean up or cooperate with regulatory authorities after the violation, and the Discharger's history of violations. After each of these factors is considered for the violation alleged, the applicable factor should be multiplied by the proposed liability amount for the violation.

a) *Multiple Day Violations*

The Enforcement Policy provides that for violations lasting more than 30 days, the Central Valley Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation.

The failure to submit the Annual Report does not result in an economic benefit that can be measured on a daily basis. The continuance of this violation does not result in an economic benefit that can be measured on a daily basis. The

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economic benefit is the one-time cost of submitting the Annual Report to the Central Valley Water Board, and not a per-day benefit during the entire period of violation.

The Prosecution Team recommends reducing the number of days of violation. The Enforcement Policy provides a floor in that the liability shall not be less than an amount that is calculated based on an assessment of the initial Total Base Liability Amount for the first day of the violation, plus an assessment for each five day period of violation until the 30<sup>th</sup> day, plus an assessment for each thirty (30) days of violation (Minimum Approach). However, because this approach generates a Total Base Liability Amount that is not a sufficient deterrent given the Discharger's unwillingness to comply with the Dairy General Order which undermines the Central Valley Water Board's ability to protect water quality through its regulatory program, the Prosecution Team has increased the number of days of violation above the Minimum Approach to a total number of 24 days of violation. The calculation of initial liability is revised to \$8,400 (0.35 per day factor X 24 adjusted days of violation X \$1,000 per day penalty).

b) Culpability: 1.5

*Discussion:* The Discharger was assessed a score of 1.5, which increases the fine. As an enrolled dairy, the Discharger is required to comply with the requirements of the 2013 Reissued General Order, including the requirement to submit annual reports. In addition, the Discharger was issued a Notice of Violation on 19 September 2014, which requested the Discharger submit the Annual Report as soon as possible to minimize liability. The Discharger had knowledge of the requirement to submit an acceptable Annual Report but failed to act as a reasonable and prudent person where the Discharger failed to include information such as the applied to removed ratios for nitrogen and the laboratory analysis for wastewater, groundwater, winter forage, and soil samples. Essentially, the submitted reports were of no value or utility for Central Valley Regional Water Board staff's assessment of potential impacts to water quality.

c) 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 2013 Reissued General Order, the Discharger has failed to submit an acceptable Annual Report. While the Discharger submitted multiple documents entitled the "2013 Annual Report", each document was substantially deficient and did not contain the information necessary for Regional Water Board staff to attempt to assess the potential impacts to water quality from dairy operations. Therefore, a factor of at least a 1.3 should be assessed. The violation of Water Code section 13267(b),

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alleged herein, is a non-discharge violation, and thus cleanup is not applicable.

d) History of Violations: 1.5

*Discussion:* The Discharger was assessed the score of 1.5. For an explanation of this factor, reference the History of Violations section for Violation 1.

**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: **\$24,570** [Initial Liability (\$8,400) x Adjustments (1.5)(1.3)(1.5)].

The follow penalty methodology steps apply to all prior violations.

**Step 6. Ability to Pay and Continue in Business**

The Enforcement Policy requires the consideration of the Discharger's ability to pay and continue in business.

- a) Adjusted Combined Total Base Liability Amount: **\$73,710** [Violation No. 1 Total Base Liability (\$49,140) + Violation No. 2 Total Base Liability (\$24,570)]

*Discussion:* The Prosecution Team conducted a preliminary asset search based on information available in the public record. The Discharger owns the property at 4413 S. Prairie Flower Road on which the dairy is located. This parcel has a total assessed value of \$695,311. Additionally, the Discharger operates a dairy, an ongoing business that potentially generates profit. Based on this initial assessment of information, 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:* \$73,710 + \$0 (Staff Costs) = **\$73,710.**
- b) *Discussion:* No adjustment to the Combined Total Base Liability Amount has been made based on "other factors as justice may require."

**Step 8. Economic Benefit**

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a) *Estimated Economic Benefit: \$1,917*

*Discussion:* The Discharger has received an economic benefit from the costs saved by not collecting the required samples and analytical data for manure, process wastewater, irrigation water, groundwater, soil, and plant tissue and from not timely preparing the 2012 Annual Report. This benefit is based on the estimated cost of \$1,500 for sampling and producing an Annual Report. The Discharger has received an economic benefit from the costs saved by not collecting the required samples and analytical data for process wastewater, groundwater, soil, and winter forage plant tissue analysis and not timely preparing an acceptable 2013 Annual Report. This benefit is based on the estimated cost of \$1,500 for sampling and procuring an Annual Report. The adjusted combined total base liability amount of \$73,710 is more than at least 10% higher than the economic benefit (\$1,917) as required by the Enforcement Policy.

**Step 9. Maximum and Minimum Liability Amounts**

a) *Minimum Liability Amount: \$2,108*

*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 \$1,917.

b) *Maximum Liability Amount: \$771,000*

*Discussion:* The maximum administrative liability amount is the maximum amount allowed by Water Code section 13368(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 (771 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 and 2013 Annual Reports is **\$73,710**.