



California Regional Water Quality Control Board

Central Coast Region



Terry Tamminen
Secretary for
Environmental
Protection

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Arnold Schwarzenegger
Governor

January 12, 2004

CERTIFIED MAIL

7003 0500 0003 6425 2474

William Furtado
William Furtado Dairy
7955 Ferguson Road
Gilroy, CA 95020

COMPLAINT FOR ADMINISTRATIVE CIVIL LIABILITY – WILLIAM FURTADO DAIRY, GILROY, SANTA CLARA COUNTY

Mr. Furtado:

Enclosed is Complaint for Administrative Civil Liability No. R3-2004-0019 (Complaint). The Complaint is based on your failure to submit a complete Report of Waste Discharge.

Regional Board staff will present an Order to the Regional Water Quality Control Board (Regional Board) for the amount proposed in the Complaint (\$5,000) at the Regional Board meeting on March 19, 2004, in Salinas, California. The meeting is scheduled to begin at 8:30 A.M.; however, no specific time has been set for consideration of this item. The Regional Board will not hold a hearing if you elect to pay the proposed amount and waive the hearing.

Please review the enclosed Complaint carefully and submit your comments and/or your "Waiver of Hearing" form at the earliest possible date. Regional Board staff will review and transmit to the Regional Board written material received by February 17, 2004, 5:00 P.M. Material submitted after February 17, 2004 will be provided to the Regional Board no later than the date of the hearing and will be placed into the official record (unless excluded by ruling of the Regional Board Chair), but will not be mailed to Regional Board members before the meeting.

If you have questions regarding the Complaint, please call Regional Board staff, Matt Keeling, at (805) 549-3685, or Regional Board Counsel, Lori Okun, at (916) 341-5165.

Sincerely,

Roger W. Briggs
Executive Officer

Enclosure: Complaint No. R3-2003-0175, Hearing Waiver Form
cc w/encl: Manuel Furtado, William Furtado Dairy, 7955 Ferguson Road, Gilroy, CA 95020
Ellen Foster-Smith, Santa Clara Valley Water District, 5750 Almaden Expressway, San Jose, CA 95118

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California Environmental Protection Agency



Item No. 10 Attachment No.1
March 19, 2004 Meeting
Furtado Dairy ACL

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

Complaint No. R3-2004-0019

In the Matter of:

**Administrative Civil Liability
Complaint**

**Mr. William Furtado
William Furtado Dairy
7955 Ferguson Road
Gilroy, CA 95020**

For

**Violations of California Water
Code**

Section 13260

YOU ARE HEREBY GIVEN NOTICE:

1. William Furtado, owner of William Furtado Dairy, is alleged to have violated provisions of the law for which the Regional Water Quality Control Board, Central Coast Region (Regional Board) may impose civil liability pursuant to California Water Code Section 13261(b)(1). William Furtado and his representatives will hereafter be referred to as 'Discharger.'
2. Unless waived, a hearing on this matter will be held before the Regional Board during a public meeting on March 19, 2004, that begins at 8:30 A.M., at the City Council Chamber Rotunda, 200 Lincoln Avenue in Salinas, California. The Discharger and his representatives will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. An agenda for the hearing will be mailed to the Discharger not less than ten days before the hearing date.
3. At the hearing, the Regional Board will consider whether to affirm, reject or modify the proposed administrative liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability, or any other action appropriate as a result of the hearing.
4. On March 14, 1986, the Regional Board issued Waste Discharge Requirements Order No. 86-01 to regulate discharges from a dairy located at 7955 Ferguson Road in Gilroy, Santa Clara County.
5. Regional Board staff needs a complete Report of Waste Discharge (ROWD) to revise the facility's waste discharge requirements, which are approximately seventeen years old.

6. On July 19, 2000, Regional Board staff requested a complete ROWD due by September 11, 2000. An incomplete ROWD of insufficient technical quality was received on October 12, 2000. On November 6, 2000, Regional Board staff notified the Discharger that the ROWD was incomplete and asked for a complete ROWD. The Discharger did not submit anything. Regional Board staff subsequently requested a complete ROWD on February 5, 2001, April 16, 2002, and February 20, 2003.
7. On February 6, 2003, Regional Board staff inspected William Furtado Dairy and discussed the Discharger's failure to submit a complete ROWD as required in previous correspondence. The Discharger said he had problems finding a consultant to prepare a complete ROWD. Regional Board staff suggested using an electronic phone book, however, the Discharger said he did not have internet access. Regional Board staff offered to mail him a list of consultants.
8. On February 20, 2003, the Regional Board Executive Officer sent a Notice of Violation addressed to the Discharger via certified mail. Enclosed was a list of consultants in or near Gilroy, obtained from an electronic phone book. The Notice of Violation required the Discharger to submit a complete ROWD pursuant to California Water Code sections 13260 and 13267. The Notice of Violation specified that if a complete ROWD was not received by April 19, 2003, the Discharger could be subject to formal enforcement action pursuant to California Water Code sections 13261 and 13268.
9. On multiple occasions in April 2003, a consultant contacted Regional Board staff to ask questions regarding the February 20, 2003 Notice of Violation. The consultant indicated he had been hired by the Discharger to comply with our requirements, including submittal of a complete ROWD.
10. To date, the Discharger has not submitted a complete ROWD or other ROWD information (other than the October 12, 2000 incomplete ROWD of insufficient technical quality).
11. On September 23, 2003, Regional Board staff left a telephone message for the Discharger's contact person regarding the ROWD, however the Discharger's contact person did not return staff's phone call.
12. On October 7, 2003, Regional Board staff spoke with the Discharger's consultant. The consultant said he had not been able to contact the Discharger to obtain information needed to submit a complete ROWD and other required reports. The consultant returned the Discharger's deposit.
13. California Water Code Section 13261(b)(1) provides that civil liability may be administratively imposed by a Regional Board for a violation of California Water Code Section 13260(a)(1) in an amount that may not exceed one thousand dollars (\$1,000) for each day the violation occurs. California Water Code Section 13260(a)(1) states that every person discharging waste shall file a report of waste discharge containing information required by the Regional Board. The total

maximum liability the Regional Board may assess for this violation (from April 19, 2003, to December 22, 2003) is two hundred forty-eight thousand dollars (\$248,000).

14. In determining any liability to be imposed, California Water Code Section 13327 requires the Regional Board to consider the following factors:

- a. **Nature, circumstances, extent, and gravity of the violation:** The Discharger was given sufficient notice and assistance to submit the required information. However, while compliance with reporting requirements is essential to Regional Board regulation, this consideration warrants liability that is less than the maximum because it is a reporting violation, less serious than other violations covered by the liability statute.
- b. **Discharge susceptibility to cleanup or abatement and discharge toxicity:** Violations addressed in this complaint are for failure to submit technical information, therefore discharge susceptibility to cleanup or abatement and discharge toxicity are not considered.
- c. **Ability to pay and effect on ability to continue business:** The Regional Board has no specific information regarding the Discharger's financial status. There is no evidence to suggest the Discharger would have difficulty paying the proposed liability, nor is there evidence to suggest the Discharger would go out of business by paying the liability.
- d. **Violation history:**

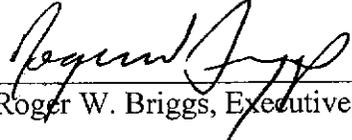
[The violations that are the subject of the ACLC shouldn't be included in the violation history.]

- i. Operating in violation of Order No. 86-01 – On several facility inspections, cows were roaming in the adjacent creek. Order Discharge Specification B.7 states: "Animals in the 'confined animal area' shall be prevented from entering surface waters." Additionally, the Monitoring and Reporting Program requires the Discharger to install two groundwater monitoring wells by June 1, 1986. The wells have not been installed, so the Discharger has been in violation of this requirement for approximately seventeen years. Regional Board staff brought both of these violations to the Discharger's attention. While the Discharger has made efforts to keep cows out of surface waters by installing and repairing fences, there has been no documented progress toward monitoring well installation.
- ii. Failure to submit self-monitoring reports - The Discharger has submitted only one self-monitoring report since the facility began operating. Order No. 86-01 requires the Discharger to monitor its water supply, process wastewater, holding ponds, disposal area, boiler blowdown water, storm water, and groundwater, and report quarterly. Only one report out of a required sixty-

eight (in the seventeen years Order 86-01 has been active) has been received, and it was incomplete.

Civil liability reduction based on violation history is not warranted.

- e. **Voluntary cleanup efforts:** The violation addressed in this complaint is for failure to submit a complete ROWD; therefore, voluntary cleanup efforts are not relevant and are not considered.
 - f. **Degree of culpability:** The Discharger has a high degree of culpability because Regional Board staff repeatedly notified the Discharger about reporting requirements, and provided forms, documents, and assistance to achieve compliance. Although the Discharger did hire consultants, neither the Discharger nor the consultants ever submitted a complete ROWD or other required technical reports (such as a groundwater monitoring well installation proposal). The Discharger did attempt to submit an ROWD on October 10, 2000 (in response to the first ROWD request), but the ROWD was late and incomplete.
 - g. **Economic benefit or savings:** The Discharger realized economic benefit or savings by not submitting a complete ROWD. Preparation of a complete ROWD may require assistance from a professional engineer or geologist. Therefore, reduction in the civil liability is not warranted.
 - h. **Other matters as justice may require:** Total time spent by Regional Board staff (including legal counsel, management, and staff) on enforcement action for this case is approximately forty hours. The cost of Regional Board staff time is seventy-five dollars per hour (\$75/hour), resulting in a total cost of three thousand dollars (\$3,000).
15. **Recommended Civil Liability:** Upon consideration of the foregoing factors as required by California Water Code Section 13327, the Executive Officer recommends civil liability in the amount of five thousand dollars (\$5,000) for failure to submit a complete ROWD by April 19, 2003.



Roger W. Briggs, Executive Officer

1-12-04
Date

COMPLAINT NO. R3-2004-0019
WILLIAM FURTADO DAIRY
SANTA CLARACOUNTY

January 12, 2004

WAIVER OF HEARING

[] By checking the box and signing below, I agree to waive my right for a hearing before the Regional Board with regard to the violations alleged in Administrative Civil Liability Complaint No. R3-2003-0175. Also, I agree to remit payment for the assessed administrative civil liability (\$5,000). I understand that I am giving up my right to be heard and to argue against the allegations made by the Executive Officer in the Complaint and the imposition of the assessed liability.

Printed Name

Title/Position

Signature

Date

Please mail your check (payable to State Water Resources Control Board) and signed waiver to:

RWQCB
Attn: Matthew Keeling
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906