



# California Regional Water Quality Control Board Lahontan Region



Linda S. Adams  
Acting Secretary for  
Environmental Protection

Victorville Office  
14440 Civic Drive, Suite 200, Victorville, California 92392  
(760) 241-6583 • Fax (760) 241-7308  
www.waterboards.ca.gov/lahontan

Edmund G. Brown Jr.  
Governor

January 26, 2011

Paul Ryken  
Desert View Dairy  
37501 Mountain View Road  
Hinkley, CA 92347

**CERTIFIED MAIL: 7002 2030 0005 9257 8491**

Estate of Nick Van Vliet  
c/o Gary B. Genske  
1835 Newport Boulevard, Suite D-263  
Costa Mesa, CA 92627

**CERTIFIED MAIL: 7002 2030 0005 9257 8507**

Flameling Dairy, Inc.  
c/o Bert & Kathleen A. Flameling  
2088 Candlewood Avenue  
Twin Falls, ID 83301-8338

**CERTIFIED MAIL: 7002 2030 0005 9257 8514**

K&H Van Vliet Children LLC  
c/o Nellie Ruisch  
23925 Waalew Road  
Apple Valley, CA 92307-6932

**CERTIFIED MAIL: 7002 2030 0005 9257 8521**

Robert Doss  
Mail Code B16A  
Pacific Gas and Electric Company  
77 Beale Street  
San Francisco, CA 94105-1814

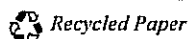
**CERTIFIED MAIL: 7002 2030 0005 9257 8538**

**NOTICE OF VIOLATION OF CLEANUP AND ABATEMENT ORDER NO. R6V-2008-0034A2 AND INVESTIGATIVE ORDER NO. R6V-2010-0028**

**INVESTIGATIVE ORDER NO. R6V-2011-0009, DESERT VIEW DAIRY, 37501 MOUNTAIN VIEW ROAD, HINKLEY, SAN BERNARDINO COUNTY**

This is to inform you that the parties identified as being primarily and secondarily responsible for discharges of waste affecting groundwater quality at the Desert View Dairy (DVD) in Hinkley are in violation of Water Board orders. Specifically, all the above-listed responsible parties are in violation of directives in Cleanup and Abatement Order (CAO) No. R6V-2008-0034A2 and Investigative Order No. R6V-2010-0028 to provide alternate water supply to the affected residents on Thompson Road for all indoor and outdoor domestic uses.

**California Environmental Protection Agency**



## **Violation**

Order No. 2 of CAO R6V-2008-0034A2 required the responsible parties to provide alternate water supply for all domestic indoor and outdoor uses to the residents adversely affected by nitrate pollution, by July 30, 2010. Indoor and outdoor domestic uses include drinking, cooking, bathing, washing, appliances, domestic animals, landscaping, and similar uses. Starting in August 2010, the primary responsible parties began delivery of water from a well at another dairy that did not meet state drinking water standards, in a truck that was not licensed for hauling potable water.

Because the primary responsible parties failed to comply with the July 30, 2010 deadline for alternate water supply and the August 20, 2010 reporting deadline, the Water Board issued a Notice of Violation (NOV) on September 22, 2010. The NOV then directed the secondary responsible parties to provide alternate water supply to the affected residents by October 11, 2010 and comply with the reporting requirement (Order No. 3) in the CAO and Investigative Order R6V-2010-0028.

Since then, Water Board staff has received many electronic messages from Mr. Ryken's consultant, Conestoga-Rovers, and PG&E that arrangements were being made to provide the affected residents with water from the supply well at the PG&E Compressor Station. The supply well, however, had no recent data showing it met state drinking water standards nor certification by San Bernardino County Department of Public Health. PG&E completed the process to certify the supply well as a small community supply with the County. And Mr. Ryken went through the process to license a new tanker truck to haul potable water with the state Department of Public Health.

The Water Board, however, has recently been informed by the affected residents that water from the certified Compressor Station supply well is still not being provided. Rather, we are told that current alternate water supply is believed to still be from the other dairy and forms algae if it sits for a period. In addition, the alternate water supply being stored in tanks on property of the affected residents is too cold to provide hot water in an on-demand system at one residence. In fact, we understand that this residence has had no hot water since mid-November 2010. Hot water is considered by Water Board staff to be a necessary indoor use and lack of hot water makes the residence unlivable.

As of January 19, 2011, the Water Board has not received information from the responsible parties that water being provided to the affected residents is coming from a certified supply well that meets state drinking water standards and can be applied for all indoor uses (i.e., an appliance for making hot water).

Thus, lack of proof for alternate supply water constitutes a violation of CAO R6V-2008-0034A2 and Investigative Order R6V-2010-0028. On January 19, 2010, the primary responsible parties have been out of compliance with the July 30, 2010 deadline for 184 days and the secondary responsible parties have been out of compliance with the October 11, 2010 deadline for 111 days.



## **Responsible Parties**

As stated in CAO R6V-2008-0034A2 and Investigative Order R6V-2010-0028, current and past operators of the DVD are primarily responsible for complying with requirements of both enforcement orders. The Order lists Mr. Paul Ryken, Flameling Dairy, Inc., and the Estate of Nick Van Vliet as primary responsible parties. CAO R6V-2008-0034A2 and Investigative Order R6V-2010-0028 names the past and current owners of the DVD, the K&H Van Vliet Children LLC and the Pacific Gas and Electric Company (PG&E), as being secondarily responsible for complying with the requirements of these enforcement actions. This Notice of Violation identifies all primary and secondary responsible parties of being in violation of Water Board orders.

## **Enforcement**

The responsible parties for the DVD are urged to immediately come into compliance with requirements in CAO R6V-2008-0034A2 and Investigative Order R6V-2010-0028. Specifically, you must provide proof to the Water Board that water being provided to the affected residents (1) comes from a certified well that meets state drinking standards for primary and secondary constituents, (2) meets all indoor and outdoor uses, and (3) is being delivered by a truck licensed to transport potable water.

Water Board staff is considering preparing an administrative civil liability complaint against all the responsible parties for violation of CAO R6V-2008-0034A2 and Investigative Order R6V-2010-0028. According to California Water Code (CWC), section 13350, the Water Board may impose a civil liability up to \$5,000 per day of non-compliance of a CAO and up to \$1,000 per day of non-compliance of section 13268 for failure to submit a technical report. For the 184 days that the primary responsible parties have been out of compliance with Water Board orders since July 30, 2010, the maximum potential fine is **\$920,000**. For the 111 days that the secondary responsible parties have been out of compliance with Water Board orders since October 11, 2010, the maximum potential fine is **\$555,000**.

**Your exposure to potential civil liability continues to increase until we receive all necessary documentation confirming the required potable water has been supplied.** The cleanup and abatement actions and technical report submittal required in this letter can be submitted by one or all of the responsible parties so long as the Water Board directives are met.

## **New Directive**

Pursuant to section 13267, CWC, a technical report must be submitted to the Water Board **by February 20, 2011**, containing documentation verifying that alternate water supply is being provided to the affected residents and that it meets state drinking water standards. In addition to the required information listed in Order No. 3 of CAO R6V-2008-0034A2, the technical report must describe how water is obtained, stored, transported, and being supplied to all affected residents. It must describe how previous, un-potable water was removed from storage tanks prior to delivery of potable water. It must state the volume of

Paul Ryken, Estate of Nick Van Vliet  
Flameling Dairy, Inc.,  
K&H Van Vliet Children LLC  
Robert Doss

- 4 -

January 26, 2011

water being supplied and the frequency of deliveries. You must provide a timeline of all activities undertaken since July 2010 to provide alternate water supply for all indoor and outdoor domestic uses for drinking, cooking, bathing, washing, appliances, domestic animals, landscaping, and similar uses. You must also provide a copy of the license for the truck used for delivering potable water. Alternate water supply shall be provided continuously until a long-term water supply alternative is implemented and operational. All technical documents that include engineering calculations and/or geologic or hydrogeologic evaluations submitted to the Water Board must be signed by a California licensed geologist or civil engineer.

If you have any questions, please contact Lisa Dernbach at (530) 542-5424 (ldernbach@waterboards.ca.gov) or me at (530) 542-5436 (lkemper@waterboards.ca.gov).



LAURI KEMPER  
ASSISTANT EXECUTIVE OFFICER

---

Enclosure: Section 13267 Fact Sheet

cc: Desert View Dairy Mailing list

S:\LSD\rc\NOV DVD WDID 6B340900



**Fact Sheet – Requirements for Submitting Technical Reports  
Under Section 13267 of the California Water Code**

October 8, 2008

**What does it mean when the regional water board requires a technical report?**

Section 13267<sup>1</sup> of the California Water Code provides that "...the regional board may require that any person who has discharged, discharges, or who is suspected of having discharged...waste that could affect the quality of waters...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires".

**This requirement for a technical report seems to mean that I am guilty of something, or at least responsible for cleaning something up. What if that is not so?**

Providing the required information in a technical report is not an admission of guilt or responsibility. However, the information provided can be used by the regional water board to clarify whether a given party has responsibility.

**Are there limits to what the regional water board can ask for?**

Yes. The information required must relate to an actual or suspected discharge of waste, and the burden of compliance must bear a reasonable relationship to the need for the report and the benefits obtained. The regional water board is required to explain the reasons for its request.

**What if I can provide the information, but not by the date specified?**

A time extension can be given for good cause. Your request should be submitted in writing, giving reasons. A request for a time extension should be made as soon as it is apparent that additional time will be needed and preferably before the due date for the information.

**Are there penalties if I don't comply?**

Depending on the situation, the regional water board can impose a fine of up to \$1,000 per day, and a court can impose fines of up to \$25,000 per day as well as criminal penalties. A person who submits false information is guilty of a misdemeanor and may be fined as well.

**What if I disagree with the 13267 requirement and the regional water board staff will not change the requirement and/or date to comply?**

Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code 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 the Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, 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](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

**Claim of Copyright or other Protection**

Any and all reports and other documents submitted to the Regional Board pursuant to this request will need to be copied for some or all of the following reasons: 1) normal internal use of the document, including staff copies, record copies, copies for Board members and agenda packets, 2) any further proceedings of the Regional Board and the State Water Resources Control Board, 3) any court proceeding that may involve the document, and 4) any copies requested by members of the public pursuant to the Public Records Act or other legal proceeding.

If the discharger or its contractor claims any copyright or other protection, the submittal must include a notice, and the notice will accompany all documents copied for the reasons stated above. If copyright protection for a submitted document is claimed, failure to expressly grant permission for the copying stated above will render the document unusable for the Regional Board's purposes, and will result in the document being returned to the discharger as if the task had not been completed.

**If I have more questions, who do I ask?**

Requirements for technical reports normally indicate the name, telephone number, and email address of the regional water board staff person involved at the end of the letter.

<sup>1</sup> All code sections referenced herein can be found by going to [www.leginfo.ca.gov](http://www.leginfo.ca.gov). Copies of the regulations cited are available from the Regional Board upon request.