



California Regional Water Quality Control Board

Lahontan Region



Linda S. Adams
Acting Secretary for
Environmental Protection

South Lake Tahoe Office
2501 Lake Tahoe Blvd., So Lake Tahoe, California 96150
(530) 542-5400 • Fax (530) 542-2271
www.waterboards.ca.gov/lahontan

Edmund G. Brown Jr.
Governor

February 24, 2011

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

Certified Mail 7099 3220 0007 3471 2923

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

Certified Mail 7099 3220 0007 3471 2930

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

Certified Mail 7099 3220 0007 3471 2947

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

Certified Mail 7099 3220 0007 3471 2954

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

Certified Mail 7099 3220 0007 3471 2961

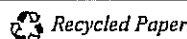
Mildred Nelson Diaz
21250 Frontier Road
Hinkley, CA 92347

Certified Mail 7099 3220 0007 3471 2978

AMENDED CLEANUP AND ABATEMENT ORDER NO. R6V-2008-0034A3, DESERT VIEW DAIRY CONTAMINATION IN GROUNDWATER, HINKLEY, SAN BERNARDINO COUNTY, WDID NO. 6B360409002

Enclosed for your immediate attention is the Amended Cleanup and Abatement Order No. R6V-2008-0034A3 (Order) to the operators, past operator, and owners of the Desert View Dairy. The Order modifies directives requiring permanent water supply replacement in Cleanup or Abatement Order No. R6V-2008-0034A2 to address dairy pollution in the downgradient groundwater flow direction of the Dairy. The Amended Order also requires the responsible parties to submit a revised work plan and implement a groundwater investigation.

California Environmental Protection Agency



Background

Cleanup and Abatement Order No. R6V-2008-0034A2, issued on March 9, 2010, directs the operators, past operator, and owners of the Dairy to, among other things, provide an uninterrupted, interim water supply to well owners with elevated nitrate concentrations in private drinking water supply wells. The responsible parties were also required to submit an evaluation for permanent water supply replacement to the affected residents.

Investigative Order No. R6V-2010-0005, issued on September 13, 2010, directs the operators, past operator, and owners of the Dairy, the former Nelson Dairy, and former adjacent field crop parcel to submit a work plan and implement a groundwater investigation to determine the extent of contamination of current and past dairy activities.

Modifications to CAO R6V-2008-0034A2

The enclosed Amended Order requires that the responsible parties for the Dairy implement the November 2010 *Supplemental Evaluation* document for permanent water supply for long-term, uninterrupted, permanent water supply that allows for all domestic uses (drinking, cooking, bathing, washing, appliances, pets, outdoor needs, etc.) for all private wells with nitrate as NO₃ concentrations exceeding 45 mg/L. You must follow up this action by submitting a technical report detailing the corrective action and providing water sample results verifying that clean water is being provided to owners of impacted water wells. Clean water must meet all state primary and secondary drinking water standards. The Amended Order names the current and past operators of the Dairy (Mr. Paul Ryken, Flameling Dairy, Inc, and the Estate of Nick Van Vliet) as being primarily responsible for complying with directives and deadlines. The Van Vliet Children LLC and PG&E are named as secondarily responsible for complying with this portion of the Amended Order if informed by the Water Board that the primary responsible parties fail to comply with directives or deadlines.

In addition, the Amended Order requires all the responsible parties to submit a revised work plan for groundwater investigation to determine the extent of contamination from the Dairy, former Nelson Dairy, and the former adjacent field crop parcel. Since the December 15, 2010 work plan only addressed contamination from the Dairy and not the other two properties, this letter informs the secondary responsible parties of the non-compliance status of the primary responsible parties. The K&H Van Vliet Children LLC and PG&E are now required to comply with directives in Investigative Order No. R6V-2010-0005 and this Amended Order for work plan and report submittals and undertaking groundwater investigations.

Responsible Parties

I consider the above parties and entities listed in this letter to be responsible parties for discharges of waste at the subject properties that have impacted and threaten water quality. The cleanup and abatement actions and technical report submittals listed in this letter can be completed by one or both of the responsible parties, so long as Water Board directives are complied with. If neither of the responsible parties complies with these directives, all parties will be subject to enforcement action by the Water Board. Such an action may include issuance of an assessment of an administrative civil liability for up to five thousand dollars (\$5,000) for each day of violation of a directive, or referral to the California Attorney General for appropriate action.

I appreciate your cooperation in this matter. 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

Enclosures: CAO R6V-2008-0034A3
Water Code Section 13267 Fact Sheet

cc: Desert View Dairy Mailing list

LAW OFFICES OF J. DREW PAGE	Albert & Lori Jackson	Eric P. Johnson Pacific Gas and Electric Company
Jessie Orr	CARMELA GONZALEZ	Calif. Environmental Protection Agency Office of the Secretary Water Programs Office
Ed Riddel	ROSEMARY MUNOZ	Robert Conaway
Anne Estabrook, PE CH2MHill	Gregory S. Mason McCormick, Barstow, Sheppard	Chris Maxwell Secor
D. Norman Diaz Helphinkley.Org	INGRID BROSTROM CENTER FOR RACE, POVERTY, AND ENVIRONMENT	Bill Orr
Reed Sato Office of Enforcement SWRCB	KENNETH J BORTNER	WILLIAM LARRENCE
RAY & BARBARA GROVEAU	Sierra Club San Gorgonio Chapter	GORMAN TRUST
GREG & ELAINE KEARNEY	Kim Niemeyer Office of Chief Counsel SWRCB	PAUL RYKEN DESERT VIEW DAIRY
SAN BERNARDINO COUNTY ENVIRONMENTAL HEALTH SERVICES	JOSEPH GISLER	DAVE GILBERT PACIFIC GAS AND ELECTRIC
BOB AND CARLA WARNER	J. AGUAYO & J. RUNKLE	KEN BERRY

EUGENE FRITZ

J. VALENZUELA & D. FLORES

PRINCIPAL
HINKLEY ELEMENTARY
SCHOOL

MIKE PLAZIAK
CA RWQCB, LAHONTAN

SHIRES THOMAS

TOM CARY

Desert Dispatch Newspaper

MCHENRY COOK

ERROL NIEBERT

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

AMENDED CLEANUP AND ABATEMENT ORDER NO. R6V-2008-0034A3

**REQUIRING PAUL RYKEN, THE ESTATE OF NICK VAN VLIET, FLAMELING DAIRY, INC.,
K&H VAN VLIET CHILDREN LLC, AND
THE PACIFIC GAS AND ELECTRIC COMPANY
TO CLEAN UP OR ABATE THE EFFECTS OF
CONTAMINANTS TO GROUNDWATERS OF
THE MOJAVE RIVER HYDROLOGIC UNIT,
DESERT VIEW DAIRY, HINKLEY,
WDID NO. 6B360409002**

San Bernardino County

The California Regional Water Quality Control Board, Lahontan Region (Water Board), finds:

LEGAL AND REGULATORY AUTHORITY

1. This Order conforms to and implements policies and requirements of the Porter-Cologne Water Quality Control Act (Division 7, commencing with Water Code (WC) Section 13000) including (1) WC Sections 13267 and 13304; (2) applicable State and federal regulations; (3) all applicable provisions of Statewide Water Quality Control Plans adopted by the State Water Resources Control Board (State Board) and the *Water Quality Control Plan, Lahontan Basin* (Basin Plan) adopted by the Water Board including beneficial uses, water quality objectives, and implementation plans; (4) State Board policies and regulations, including State Board Resolution No. 68-16 (*Statement of Policy with Respect to Maintaining High Quality of Waters in California*), Resolution No. 88-63 (*Sources of Drinking Water*), and Resolution No. 92-49 (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under California Water Code Section 13304*); California Code of Regulations (CCR) Title 23, Chapter 16, Article 11; CCR Title 23, Section 3890 et. seq., and (5) relevant standards, criteria, and advisories adopted by other State and federal agencies.

RESPONSIBLE PARTIES

2. For the purposes of this amended Cleanup and Abatement Order (*Amended Order 3*), the designation of primarily and secondarily responsible parties are the same as in CAO R6V-2008-0034A2. The operators of the Desert View Dairy, Mr. Paul Ryken and the Estate of Nick Van Vliet, and the past operator, Flameling Dairy Inc., are primarily responsible for complying with the requirements of this order because they caused or contributed to the pollution and degradation of groundwater from discharges at the Dairy. The owners of the Desert View Dairy, the K&H Van Vliet Children LLC and Pacific Gas and Electric Company, are secondarily responsible for complying with the requirements of this order because they are ultimately responsible for activities at the Dairy.

FINDINGS

3. On November 10, 2008, the Water Board issued Cleanup and Abatement Order (*Order*) No. R6V-2008-0034 to Paul Ryken, the Estate of Nick Van Vliet, Flameling Dairy, Inc., K&H Van Vliet Children LLC, and the Pacific Gas and Electric Company (hereinafter referred to as the Dischargers). Amended Order No. R6V-2008-0034A1 (*Amended Order 1*) was issued on June 16, 2009 modifying the well sampling requirements of the original *Order*. Second Amended Order No. R6V-2008-0034A2 (*Amended Order 2*) was issued on March 9, 2010, modifying the replacement water requirements in the original *Order*. Amended Order 2 identified problems with the Alternative Water Supply Implementation Plan as designed and constructed, and required the Dischargers to submit an *Alternative Water Supply Evaluation* to identify a new, long-term uninterrupted replacement water plan (*Long Term Plan*), while continuing to implement an interim replacement water plan while.

A new, *Long Term Plan* based on the findings of the *Alternative Water Supply Evaluation* is necessary because affected residents have indicated that the interim replacement water provided by the Discharger does not meet all of their domestic water needs. Residents indicated that continuing to receive water from the current storage tanks was not desirable based on problems with pipes freezing and other implementation constraints. Some residents have been forced to supplement their needs using contaminated well water, and have experienced advanced deterioration of household appliances caused by increased levels of total dissolved salts (TDS). Other residents have found the interim replacement water to be incompatible with existing water heating systems.

4. Investigative Order R6V-2010-0028 (*2010 Investigative Order*) was issued on July 8, 2010. It found that the *Alternative Water Supply Evaluation* submitted pursuant to order No. 1 of Amended Order 2 was insufficient. Investigative Order 2010 required the Dischargers to continue with ongoing plans to provide interim water as required in Amended Order 2, but extended the deadline for providing a new, sufficient long-term *Alternative Water Supply Supplemental Evaluation* (*Supplemental Evaluation*) to the Lahontan Water Board to August 9, 2010.
5. On November 8, 2010, the Lahontan Water Board received the *Supplemental Evaluation*, pursuant to the 2010 Investigative Order. The *Supplemental Evaluation* describes four options for providing permanent water supply to off-site affected residents: (1) treatment of existing groundwater supplies using reverse osmosis, (2) providing a new community water supply either (a) from a well on Thompson Road or (b) through connection to the PG&E force main, 3) providing new individual replacement water supply wells, and (4) continuing the current interim water supply delivery and storage. The *Supplemental Evaluation* recommends continued implementation of Alternate 4, while pursuing the feasibility of the other options. The latter entails discussions with PG&E for access to its force main, conducting a packer/ step test of current domestic

wells, drilling and sampling the deep groundwater, and evaluating constituents in domestic wells to properly size a reverse osmosis system.

6. On December 16, 2010, The Lahontan Water Board received the *Off-site Groundwater Investigation Workplan*, pursuant to Investigative Order No. R6V-2010-0005. The Workplan proposes an investigation to determine the off-site extent of groundwater contamination from unauthorized discharges at the DVD. The proposed investigation, however, is insufficient to define the full extent of contamination from the DVD. Furthermore, the Workplan failed to propose investigations from the former Nelson Dairy and the former field crop parcel. A revised workplan is needed to propose additional sampling locations for determining the plume boundaries from the DVD and other listed properties.
7. This *Amended Order 3* requires the Discharger to implement plans to provide long-term independent, uninterrupted replacement water service to affected properties. In consideration of public comments and our own concerns, we are requiring the DVD responsible parties to pursue the following permanent water supply alternatives from the November 8, 2010 Supplemental Evaluation in this order: Options 2b, 2a, and 3. Option 4 is not a desired option for permanent water supply by the affected residents. In the meantime, water delivery of water supply meeting state drinking water standards must continue until a permanent water supply alternative is fully operational.
8. This *Amended Order 3* requires work plans, monitoring, and reports pursuant to Water Code section 13267, subdivision (b). The Dischargers are responsible for increasing the number of testing wells in the area to define the extent of contamination in groundwater. The current proposed wells are located within the middle of the plume, and cannot be used to determine the extent of the affected aquifer. Starting at the DVD, we are requiring more multi-depth wells to be installed to delineate the extent of the contaminant plume along and west of Mountain View Road, to the north along Salinas Road, and east towards Summerset Road. An additional proposal is needed to define contamination from the former Nelson Dairy and the former adjacent field crops.
9. On January 26, 2011 the Lahontan Water Board issued Notice of Violation of Cleanup and Abatement Order R6V-2008-0034A2 and Investigative Order R6V-2010-0028 (*January 2011 NOV*) based on the Discharger's failure to deliver interim replacement water by the July 30, 2010 and October 11, 2010 deadlines in accordance with the *Amended Order 2* and *2010 Investigative Order*. This *Amended Order 3* in no way absolves the discharger from any liability for fines indicated in the *January 2011 NOV* based on violations of previous Orders. Findings and requirements that are in Cleanup and Abatement Order Nos. R6V-2008-0034, R6V-2008-0034A1, and R6V-2008-0034A2 and that are not amended by *Amended Order 3* remain in effect.

DIRECTIVES

IT IS HEREBY ORDERED, pursuant to the Water Code sections 13267 and 13304, that Mr. Paul Ryken, the estate of Nick Van Vliet, and Flaming Dairy, Inc., are primarily responsible for the discharge of waste that has caused or threatens to cause a condition of pollution or nuisance, and shall abate the effects of waste discharges at, near, and down gradient of the Facility as directed in Cleanup and Abatement Order No. R6V-2008-0034 and as amended below. As secondarily liable for the discharge of waste that has caused or threatens to cause a condition of pollution or nuisance, the K&H Van Vliet Children LLC and PG&E shall abate the effects of waste discharges at, near, or down gradient of the Facility as directed in Cleanup and Abatement Order No. R6V-2008-0034 and as amended below, in the event that Mr. Paul Ryken, the estate of Nick Van Vliet, and Flaming Dairy, Inc., fail to comply with all or any portion of this Amended Order after being so notified by the Water Board to comply with this Amended Order.

A. LONG-TERM REPLACEMENT WATER SUPPLY PLAN

1. **By April 11, 2011**, a workplan and schedule to provide permanent water supply via Option 2b to the affected residents for all indoor and outdoor domestic uses **by July 11, 2011**. Indoor and outdoor domestic uses include drinking, cooking, bathing, washing, appliances, domestic animals, landscaping, and similar uses. Include schematics showing the location of all relevant piping, structures, and properties required to implement this alternative. The schedule must list dates for completing tasks necessary to implement Option 2b. Permanent water supply must be able to meet state primary and secondary drinking water standards by the July 11, 2011 deadline.
2. **If not pursuing Option 2b, by March 23, 2011**, provide written notification and evidence to the Water Board if negotiations with outside parties are unsuccessful for providing permanent water supply to the affected residents for all indoor and outdoor domestic uses via Option 2b. Evidence must include dates of discussions, names of participants, and matters in dispute.
 - a. **By April 11, 2011**, you must provide a workplan and schedule for implementing Option 2a **by July 11, 2011**. The schedule must list dates for completing tasks necessary to implement Option 2a. Include schematics showing the location of all relevant piping, structures, and properties required to implement this alternative.
 - b. **By May 27, 2011**, investigation results of geology and water quality in the western and eastern portions of the affected areas along Thompson Road. Water quality data must be collected from the aquifer sufficiently below the zone of pollution and must include all parameters to meet state primary and secondary drinking water standards. Water samples from more than one depth may be necessary to meet this requirement. If one or more parameters from

the desirable depth do not meet drinking water standards, provide a remedy for making water potable. State whether implementation of Option 2a is feasible and reasonable.

3. **If not continuing to pursue Options 2a or 2b, by June 10, 2011**, provide written notification and evidence to the Water Board if providing permanent water supply to the affected residents for all indoor and outdoor domestic uses via Option 2a is not feasible. Evidence may be dates of discussions, names of participants, matters in dispute, or technical information.
 - a. **By June 10, 2011**, you must provide a workplan and schedule for implementing Option 3 by August 12, 2011. If one or more parameters from the desirable depth do not meet drinking water standards, provide a remedy for making water potable. Include schematics for each affected parcel showing the location of all relevant piping, structures, and properties required to implement this alternative. The schedule must list dates for completing tasks necessary to implement Option 3.
 - b. **By July 22, 2011**, investigation results of geology and water quality on each of the affected individual parcels along Thompson Road. Water quality data must be collected from the aquifer sufficiently below the zone of pollution and must include all parameters to meet state primary and secondary drinking water standards. Water samples from more than one depth may be necessary to meet this requirement. If one or more parameters from the desirable depth do not meet drinking water standards, provide a remedy for making water potable. State whether implementation of Option 3 is feasible and reasonable.

IT IS HEREBY ORDERED, pursuant to the Water Code sections 13267 and 13304, that all primary (Mr. Paul Ryken, the estate of Nick Van Vliet, and Flameling Dairy, Inc.) and secondary (the K&H Van Vliet Children LLC and PG&E) responsible parties, are responsible for the discharge of waste that has caused or threatens to cause a condition of pollution or nuisance, and shall investigate and abate the effects of waste discharges at, near, and down gradient of the Facility as directed in Investigative Order No. R6V-2010-0005 and as amended below.

B. GROUNDWATER INVESTIGATION AND CHARACTERIZATION

1. **Revised Off-site Groundwater Investigation Work Plan** - The Dischargers shall refine and update the existing proposal for groundwater sampling required by Investigative Order No. R6V-2010-0005 by sampling additional locations in the vicinity of the DVD, the former Nelson Dairy property (0494-221-11, -18, -47), and the former adjacent field parcel (APN 0494-221-51) Additional sampling locations in the north, west, east and south should be selected to determine the extent and temporal variability of nitrates, total

dissolved solids, and other waste constituents, routes of waste constituent migration, and the location and exposure points of actual and potential receptors (humans, animals, and plants). This report or reports shall be called a Groundwater Investigation and Characterization Report.

2. **Groundwater Investigation and Characterization Work Plan** - The Dischargers shall develop and submit to the Water Board by **April 1, 2011**, a work plan to guide the collection of information adequate to produce the Groundwater Investigation and Characterization Report described in Directive B.3.
 - a. **Proposed Action** - The work plan shall include a description of proposed actions including field methodologies, chemical analyses methods, detection limits, and proposed multi-depth monitoring well installation locations. Contingencies for collection of additional environmental samples shall be proposed in the work plan.
 - b. **Work Plan Implementation** - The Dischargers shall implement the work plan within 30 calendar days after submission of an adequate work plan, unless otherwise directed in writing by the Water Board. Before beginning these activities the Dischargers shall:
 - i. Notify the Water Board of the intent to initiate the proposed actions included in the work plan submitted at least one week before the start of field work; and
 - ii. Comply with any conditions set by the Water Board, including mitigation of adverse consequences from investigation activities.
3. **Groundwater Investigation and Characterization Report** - The Dischargers shall prepare and submit an adequate Groundwater Investigation and Characterization Report by June 30, 2011 presenting the final results of the groundwater investigation and characterization study. The Report shall contain the following information:
 - a. **Geologic Characterization** - The Report shall contain an accurate characterization of the subsurface geology, the hydrogeologic characteristics, and all preferential pathways that may affect groundwater flow and contaminant migration. The geologic characterization must be adequate to explain groundwater flow characteristics of the site, and how site geology and groundwater flow affect contaminant migration.
 - b. **Groundwater Flow Characterization** - The Report shall describe the rate(s) and direction(s) of local groundwater flow, in both the horizontal and vertical dimension, for all water-bearing units potentially affected

by the wastes discharged from the Site. A potentiometric map showing groundwater elevation contours must be included in the report.

- c. **Groundwater Monitoring Wells** - The Report shall describe the location of existing residential wells subject to monitoring under *Amended Order 1*, along with the location of additional monitoring wells to the north, west, east, and south needed to characterize the concentrations of waste constituents and their lateral and vertical extent in groundwater. Additional nested monitoring wells shall be proposed in locations adequate to determine the lateral and vertical extent of waste constituents throughout the plume extent to the background value in the subsurface. Proposed wells shall be located no more than 1,500 feet from each other. Proposed wells must also be sited in locations that will provide results that show whether the size and mass contaminant plume is expanding, stable or shrinking.
- d. **Field Methodologies** - The Report shall describe the field methodologies used for drilling, soil sampling, groundwater sampling, well and piezometer construction, and other activities. Methods for purging and sampling monitoring wells must be capable of providing representative samples of groundwater for detecting the waste constituents of interest.
- e. **Chemical Analyses** - The Report shall describe the laboratory analytical methods and protocols used for each environmental medium including but not limited to soil and groundwater. The suite of chemical analyses must be adequate to identify the full range of site-specific waste constituents identified in prior investigations. At a minimum, analyses shall be for chloride, nitrate as NO₃, potassium, total phosphorus, sodium, sulfate, and total dissolved solids. Records of other chemical use, storage, and disposal shall be evaluated and discussed in the Report to provide documentation that all of the waste constituents of concern have been identified. Bacterial analyses (fecal coliform) shall also be conducted for all wells located within 2,600 feet of the DVD. Laboratory chain of custodies must be included in the report and any discrepancies with the number of samples analyzed and reported shall be explained.
- f. **Sample Locations and Number** - The locations, type, and number of samples shall be identified and shown on a site map and cross sections. Maps must show the constituent concentration at each sampling location and show isoconcentration contours for nitrate and total dissolved solids. Contour lines shall be dashed where inferred or unknown. Cross sections must be able to show the vertical thickness of the contaminant plume in the Upper Aquifer. The number of samples and suite of chemical analyses must be sufficient to identify

the nature of waste constituent sources, to define the distribution of waste constituents in the subsurface, and to provide data for environmental risk assessment, remedy selection, and remedial design. In addition samples shall be collected to evaluate physical properties of soils and aquifer materials. All monitoring data shall be presented in graphical and tabular forms, to include the sample result, sample medium, location, depth, sampling method, analyses, and rationale for the method.

4. **Rescissions** - This Amended Order rescinds Orders No. 3 and 4 in Investigative Order No. R6V-2010-0005 requiring workplan implementation and reporting by specified deadlines.

PROVISIONS

1. **Duty to Comply** - The Dischargers shall properly manage, treat, and/or dispose of contaminated soils and groundwater in accordance with applicable federal, State, and local laws and regulations.
2. **Request to Provide Information** - The Dischargers may present characterization data, and preliminary interpretations and conclusions as they become available, rather than waiting until a final report is prepared. This type of on-going reporting can facilitate more effective and efficient regulatory oversight by the Water Board and may result in an overall reduction of the time necessary for the production of adequate deliverables required by this Order.
3. **Laboratory Qualifications** - Unless otherwise permitted by the Water Board, all analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services. Specific methods of analysis must be identified. If the Dischargers propose to use methods or test procedures other than those included in the most current version of "*Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846*" (U.S. Environmental Protection Agency) or 40 CFR 136, "*Guidelines Establishing Test Procedures for the Analysis of Pollutants; Procedures for Detection and Quantification*", the exact methodology must be submitted for review and must be approved by the Water Board prior to use. The Dischargers must use a laboratory capable of producing and providing quality assurance/quality control (QA/QC) records for Water Board review. The director of the laboratory whose name appears on the certification shall supervise all analytical work in his/her laboratory and shall sign all reports submitted to the Water Board.
 - a. **Laboratory Qualifications** - All samples must be analyzed by California State-certified laboratories using methods approved by the U.S. Environmental Protection Agency (USEPA) for the type of

analysis to be performed. Any report presenting new analytical data is required to include the complete Laboratory Analytical Report(s). The Laboratory Analytical Report(s) must be signed by the laboratory director and contain:

- i. Complete sample analytical report;
- ii. Complete laboratory quality assurance/quality control (QA/QC) report;
- iii. Discussion of the sample and QA/QC data, and
- iv. A transmittal letter that shall indicate whether or not all the analytical work was supervised by the director of the laboratory, and contain the following statement, "All analyses were conducted at a laboratory certified for such analyses by the California Department of Health Services in accordance with current USEPA procedures."

4. **Duty to Use Registered Professionals** - The Dischargers shall provide documentation that plans and reports required under this Order are prepared under the direction of appropriately qualified professionals. California Business and Professions Code Sections 6735, 7835 and 7835.1 require that engineering and geologic evaluations and judgments be performed by or under the direction of registered professionals. A statement of qualifications and registration numbers of responsible lead professionals shall be included in initial site investigation work plans and reports submitted by the Dischargers. The responsible lead professional shall sign and affix their registration stamp to the report, plan or document. If the responsible lead professional changes, then the statement of qualifications shall be updated with the next submittal.
5. **Corporate Signatory Requirements** - All reports required under this Order shall be signed and certified by a responsible corporate officer(s) of the Discharger described in paragraph 5.a. of this provision or by a duly authorized representative of that person as described in paragraph 5.b. of this provision.
 - a. **Responsible Corporate Officer(s)** - For the purposes of this provision, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy - or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment

recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

- b. **Duly Authorized Representative** - A person is a duly authorized representative only if:
 - i. The authorization is made in writing by a person described in paragraph (a) of this provision;
 - ii. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and
 - iii. The written authorization is submitted to the Water Board.
 - c. **Changes to Authorization** - If an authorization under paragraph (b) of this provision is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this provision must be submitted to the Water Board prior to or together with any reports or information to be signed by an authorized representative.
 - d. **Reporting of Changed Owner or Operator** - The Dischargers must notify the Water Board of any changes in facility occupancy or ownership associated with the property described in this Order.
6. **Penalty of Perjury Statement** - All reports must be signed by the Discharger's principal executive officer or its duly authorized representative, and must include a statement by the official, under penalty of perjury, that the report is true and correct to the best of the official's knowledge.
- a. **Certification Statement** - Any person signing a shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with

a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- b. **Electronic and Paper Media Reporting Requirements** - The Dischargers shall submit both electronic (on a CD) and paper copies of all reports required under this Cleanup and Abatement Order including work plans, technical reports, and monitoring reports. The Dischargers shall comply with electronic reporting requirements of CCR Title 23, Division 3, Section 3893, including the provision requiring that complete copies of all reports be submitted to Geotracker in PDF format, and include the signed transmittal letter and professional certification. Electronic documents must be in a text searchable PDF format.

NOTIFICATIONS

1. **Cost Recovery** - Pursuant to Water Code Section 13304(c), the Water Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by the Order.
2. **Enforcement Notification** - Pursuant to Water Code Section 13350, the Water Board may administratively impose civil liability on any person who violates a cleanup and abatement order, in an amount of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000), for each day in which the cleanup and abatement order is violated.
3. **Enforcement Notification** - Pursuant to Water Code Section 13385, the Water Board may administratively impose civil liability on any person who violates a cleanup and abatement order, for an activity subject to regulation under Division 7, Chapter 5.5 of the Water Code. Failure to comply with these requirements may subject you to the imposition of an administrative civil liability in an amount not to exceed ten thousand dollars (\$10,000) for each day in which the cleanup and abatement order is violated.
4. **Enforcement Discretion** - The Water Board reserves the right to take any enforcement action authorized by law for violations of the terms and conditions of this Order.

5. **Evidentiary Hearing before the Water Board** - Any person affected by this action of the Water Board may request an evidentiary hearing before the Water Board. The Water Board's Executive Officer may elect to hold an informal hearing or a "paper hearing" in lieu of scheduling a hearing before the Water Board itself.
 - a. The Water Board must receive your request within **30 calendar days** of the date of this Order.
 - b. Your request must include all comments, technical analysis, documents, reports, and other evidence that you wish to submit for the evidentiary hearing. However, please note that the administrative record will include all materials the Water Board has previously received regarding this Site. You are not required to submit documents that are already in the record.
 - c. The Executive Officer or Water Board may deny your request for a hearing after reviewing the evidence.
 - d. If you do not request an evidentiary hearing, the State Board may prevent you from submitting new evidence in support of a State Board petition.
 - e. Your request for an evidentiary hearing, if you submit one, does not stay the effective date of the Order, whether or not a hearing is scheduled.
 - f. A request for a hearing does not extend the 30-day period to file a petition with the State Board (see below). However, you we suggest that you ask the State Board to hold the petition in abeyance while your request for a hearing is pending. (Refer to CCR Title 23 Section 2050.5(d)) Additional information regarding the SWRCB petition process is provided below.

6. **Requesting Administrative Review by the State Board** - Any person affected by this action of the Water Board may petition the State Board to review the action in accordance with Section 13320 of the Water Code and CCR Title 23 Section 2050. The petition must be received by the SWRCB (Office of Chief Counsel, P.O. Box 100, Sacramento, California 95812) within **30 calendar days** of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

DESERT VIEW DAIRY
San Bernardino County

AMENDED CLEANUP AND ABATEMENT ORDER
NO. R6V-2008-0034A3
WDID NO. 6B360409002

All technical documents that include engineering calculations and geologic or hydrogeologic evaluations submitted to the Water Board must be signed by a California licensed geologist and civil engineer.

Please be sure that a copy of all documents sent to the Water Board's South Lake Tahoe office are also sent to the Water Board's Victorville office at: 14440 Civic Drive, Suite 200, Victorville, California 93292.

Ordered by: 
LAURI KEMPER, P.E.
ASSISTANT EXECUTIVE OFFICER

Dated: February 24, 2011

Attachment: Water Code Section 13267 Fact Sheet

DVD Amended CAO R6V-2008-0034A3.doc

**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 13267¹ 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 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.

¹ All code sections referenced herein can be found by going to www.leginfo.ca.gov. Copies of the regulations cited are available from the Regional Board upon request.