

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION
CLEANUP AND ABATEMENT ORDER R5-2024-0704
ISSUED TO JOHN AND TAMELA KISST
REQUIRING THE KISST DAIRY
TO ABATE THREATENED DISCHARGE OF WASTE

This Order is issued to John and Tamela Kisst (together, “Dischargers”), based on California Water Code (“Water Code”) section 13304, which authorizes the California Regional Water Quality Control Board, Central Valley Region (“Central Valley Water Board” or “Regional Board”) to issue a Cleanup and Abatement Order (“CAO”), and Water Code section 13267, which authorizes the Central Valley Water Board to require the submittal of technical reports. Pursuant to Water Code section 13304, this Cleanup and Abatement Order requires remedial action to abate threatened discharges of waste¹ to surface and groundwater, which are waters of the State, from manured wastewater at the Kisst Dairy.

The Assistant Executive Officer of the Central Valley Water Board finds, with respect to the Discharger's acts or failure to act, the following:

1. John Kisst is the operator of the Kisst Dairy (WDID 5B39NC00144) which is located at 20000 Cedar Avenue in Tracy, San Joaquin County. The Kisst Dairy is hereafter referred to as “Dairy.” John and Tamela Kisst are the owner of 20000 Cedar Avenue in Tracy, San Joaquin County.
2. The Dischargers are regulated by the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order No. R5-2013-0122 (“Reissued General Order”) which was adopted by the Central Valley Water Board on 3 October 2013. As an enrolled facility, the Dischargers are subject to the requirements of the Reissued General Order and its associated Monitoring and Reporting Program.
3. The Reissued General Order regulates waste discharges from the Dairy. The Reissued General Order, in part, requires the following:

¹ Water Code section 13304(e) defines “threaten” to mean “a condition creating a substantial probability of harm, when the probability and potential extent of harm makes it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, or natural resources.”

- a. *Prohibition A.2*: Except when authorized by a National Pollutant Discharge Elimination System (NPDES) permit, the direct or indirect discharge of waste and storm water from the production area to surface waters is prohibited. (Violation observed on 28 March 2023)
- b. *Prohibition A.3*: The discharge of waste from existing milk cow dairies to surface waters that causes or contributes to an exceedance of any applicable water quality objective in the Basin Plans or any applicable state or federal water quality criteria, or a violation of any applicable state or federal policies or regulations is prohibited. (Violation observed on 28 March 2023)
- c. *Prohibition A.4*: The collection, treatment, storage, discharge, or disposal of wastes at an existing milk cow dairy shall not result in the creation of a condition of pollution or nuisance. (Violation observed on 28 March 2023)
- d. *Production Area Specifications D.6*: The animal confinement area (including corrals), and manure and feed storage areas shall be designed and maintained to convey all water that has contacted animal wastes or feed to the wastewater retention ponds and to minimize standing water as of 72 hours after the last rainfall and the infiltration of water into the underlying soils. (Violation observed on 28 March 2023)
- f. *Prohibition A.9*: The land application of manure or process wastewater to cropland for other than nutrient recycling is prohibited. (Violation observed on 1 March 2022)
- g. *Prohibition A.15*: Under this General Order, the expansion of the existing milk cow dairy beyond the level as defined under the term “Expansion” is prohibited. Dischargers must submit a ROWD, document compliance with CEQA, and obtain coverage under individual waste discharge requirements before any material facility expansion. (Violation observed on 1 March 2022)
- h. *Pond Specifications C.2.b*: Ponds shall be managed and maintained to prevent breeding of mosquitoes and other vectors. Weeds shall be minimized through control of water depth, harvesting, or other appropriate methods. (Violation observed on 1 March 2022)
- i. *Pond Specification C.1*: “The level of waste in the process wastewater retention ponds (ponds) shall be kept a minimum of two (2) feet from the top of each aboveground embankment and a minimum of one (1) foot from the belowground pond.”

- j. *Pond Specification C.3*: “Ponds designated to contain the 25-year, 24-hour storm event runoff must have a depth marker that clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation from a 25-year, 24-hour storm event.”
- k. *General Specification B.1*: “The existing milk cow dairy shall have facilities that are designed, constructed, operated, and maintained to retain all facility process wastewater generated [during the 120-day storage period.]”
- l. *Land Application Specification E.2*: “Land application of all waste from the facility to areas under the Discharger’s control shall be conducted in accordance with a certified Nutrient Management Plan consistent with the technical standards for nutrient management as specified in Attachment C, The Nutrient Management Plan shall be modified within 90 days if monitoring shows that discharge from the land application fails to comply with the groundwater limitations of this Order or surface water quality objectives or criteria. The modifications must be designed to bring Dischargers into compliance with this Order.”
- m. *Land Application Specification E.9*: “Process wastewater shall not be applied to land application areas during periods when soil is at or above field moisture capacity unless consistent with a certified Nutrient Management Plan.”

4. California Water Code Section 13376:

“The discharge of pollutants to navigable waters of the United States without the appropriate WDRs or submission of a report of waste discharge is prohibited.” (Violation observed on 28 March 2023)

VIOLATIONS OF THE REISSUED DAIRY GENERAL ORDER

- 5. On 1 March 2022, Staff observed multiple violations of the Reissued General Order onsite. The violations included excessive vegetation on lagoon embankments, mature cow herd size above permitted number, outdated Nutrient Management Plan (NMP) and WMPs, and manure (liquid and solid) applications to fallowed Field 4.
- 6. On 28 March 2023, Staff were informed that an offsite discharge of dairy manure wastewater was occurring near the Dairy. Staff received similar complaints about the Dairy leading up to this event. Upon arrival, Staff discovered the Dairy Owner pumping dairy manure wastewater into an onsite ditch that flows off-property into the Alder Drain that subsequently flows via lift pumps into Paradise Cut/Old River.

Additionally, Staff observed uncontained corral runoff from the Dairy freely flowing off-property into the same onsite ditch that terminates at the Alder Drain. Major wastewater ponding was also observed on fallowed Field K1-4, also known as Field 4.

7. On 25 March 2024, Staff issued a 13267 Order for Technical and Monitoring Reports to John Kisst and Kisst Dairy #1. In part, the 13267 Order required submittal of Dairy Herd Improvement Association records or similar records generated by a third-party entity that established the maximum number of mature dairy cows that were on the property per calendar year for the last five calendar years. Those records were not submitted by the deadline and have not been submitted to date. Additionally, other record submittals were incomplete such as missing mortality records for 2019 and 2020. Also, the 13267 Order required soil sampling be performed in Field K1-4, also reported as Field 4, via a Soil Sampling and Analysis Work Plan for total nitrogen and nitrate-nitrogen.
8. On 29 May 2024, in response to the 25 March 2024 13267 Order noted above, soil sample results from Field K1-4 were uploaded into GeoTracker. Dischargers reported that soil sampling was conducted from three separate locations at three separate depths per location. Soil samples were also collected from a control location with samples collected from three separate depths. The soil sample results indicate nitrate loading was between 2 and 41 times greater in areas where manure was observed as being overapplied versus the control sample location. Total Nitrogen results were 3 to 249 times greater than the control sample. Since first observed in 2021, no attempt to farm Field K1-4 has been observed and it currently sits fallow.

REGULATORY CONTEXT

9. The Regional Water Board has jurisdiction over the discharge or threatened discharge of waste to waters of the State, including groundwaters.² It may also restrict or prohibit discharges to land to protect waters of the State.³
10. Water Code section 13267, subdivision (b)(1), states, in part, “In conducting an investigation... the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region ... shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires.”

² See Water Code sections 13050, 13260, and 13304.

³ See Water Code sections 13243, 13301, and 13263.

11. Water Code section 13304, subdivision (a), states, in part, “A person who...threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall, upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.”
12. Water Code section 13304, subdivision (a), further states, “Upon failure of a person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.”
13. A person who violates a cleanup and abatement order may be subject to an administrative civil liability of up to \$5,000 per day of violation or a civil liability of up to \$15,000 per day of violation.

THEREFORE, IT IS HEREBY ORDERED, pursuant to Water Code sections 13267 and 13304, the Discharger shall take action to abate the effects of failure to manage the Dairy solid manure and wastewater as follows:

1. **Immediately** stop the discharge of wastewater from the Kisst Dairy to cropland Field K1-4 and comply with Reissued General Order, General Specification B.1.
2. **Immediately** stop discharging wastewater and tailwater off-property into the Alder Drain from the Dairy.
3. **Within 30-days of adoption of this Order**, submit a plan for how the Dairy will prepare for the rainy season to prevent or significantly limit the movement of manure off-property or percolating down to groundwater. The plan must detail how existing manure will be stacked and consolidated prior to winter, how runoff from structures upon the Dairy property will be prevented from coming into contact with dried manure or manure in the drying process, and the mechanisms for monitoring manure left on-property to ensure a condition of contamination or pollution does not occur.
4. **Within 15-days of adoption of this Order**, all solid manure located on the Dairy property must be piled and stacked either in existing ponds, on impermeable surfaces or covered, with adequate heat ventilation and dissipation measures in place and relevant best management practices implemented to prevent or significantly mitigate potential surface or groundwater contamination. Manure

shall not be stored in such a way that results in the ponding of water. All stormwater runoff must be directed to existing lagoons designed for this purpose.

5. **Within 15-days of adoption of this Order**, remove any remaining water out of settling basin number one, pond one, and pond two, for use in crop irrigation at agronomic rates. If you are unable to use any excess wastewater for crop needs at agronomic rates and in accordance with your NMP, then management in accordance with the Dairy General Order is permitted.
6. **By July 2025**, scrape all manure solids in ponds one and two. Move the manure solids from ponds one and two to pond three.
7. **Within 30-days of adoption of this Order**, submit the following two plans: 1) a Pond Cleanout Plan, describing how each wastewater storage pond will be cleaned out, including settling basins; 2) a Dairy production area cleanup plan, detailing how the production areas, including the corrals and animal housing, areas will be cleaned of all manure remnants. The plans shall describe how the work will be completed in accordance with the conditions of the Reissued General Order, in particular, the requirement to ensure that leachate is collected and diverted to a retention pond, and that infiltration of leachate is minimized (See Reissued General Order, Attachment B, Item V.H). The plans shall also include information about how the semi-solid manure will be removed from the ponds, where it will be staged and dried, and where and when the solid manure will be ultimately recycled or disposed.
8. **By 1 October 2025**, or prior to repopulating the Dairy, whichever comes first, remove all manure remnants from Dairy production areas, including corrals and animal housing areas, and cleanout all ponds. Manure manifests must be submitted that track the exact volumes and destination of removed manure.
9. **Within 30-days after adoption of this Order**, plant a crop on Field K1-4 that can uptake the excess nutrients within the soil. Continue to plant crops upon Field K1-4 until nitrate levels found in soil tests upon the field are lower than or at least within 15% of the nitrate levels at a control location. Soil sampling shall be conducted at the same locations and depths as used to comply with the 25 March 2024, 13267 Order. Results shall be transmitted to the Central Valley Water Board immediately upon receipt.
10. After the completion of each individual pond cleanout, and prior to allowing cows back onto the property, install a depth gauge and a freeboard marker at the primary wastewater storage lagoons (i.e., Lagoons 1 through 4). Additionally, remeasure each primary wastewater storage lagoons to determine current lagoon capacity.

11. If operations upon the Dairy property change from what is described in the Dairy's current Nutrient Management Plan (NMP), a new NMP must be submitted prior to initiating any new operations.
12. **Within 90-days after adoption of this Order**, submit your plan (business plan) for the Dairy property moving forward. Specifically include, actions and implementation dates for non-dairy operations and/or income generation; actions and implementation dates for manure composting or off-site sales plan; and whether those actions include continuing to house mature milk cows, dry cows, bovine, or to opt for complete closure. If proposing to terminate coverage under the Reissued Dairy General Order, a closure package shall be completed and submitted by the above date.
13. This Order does not limit the authority of the Water Board to commence additional enforcement actions for past or continuing discharges of waste to surface waters in violation of waste discharge requirements or to require additional investigation and cleanup of the site consistent with the Water Code. This Order may be revised by the Executive Officer as additional information becomes available.

REPORTING REQUIREMENTS

1. **Signatory Requirements.** All reports required under this CAO shall be signed and certified by the Discharger or by a duly authorized representative of the Discharger and submitted to the Central Valley Water Board staff. A person is a duly authorized representative of the Discharger only if: (1) the authorization is made in writing by the Discharger and (2) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility of activity. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).
2. **Certification.** The following signed certification must be included with all reports submitted pursuant to this Order:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."
3. **Report Submittals.** All monitoring and technical reports required under this Order shall be submitted to:

John Baum
Assistant Executive Officer
California Regional Water Quality Control
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Attn: Dan Gamon
Email: Daniel.Gamon@waterboards.ca.gov
Phone: (916) 464-4724

NOTIFICATIONS

1. **Cost Recovery.** Pursuant to Water Code section 13304, subdivision (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 wastes and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action required by this Order.
2. **California Environmental Quality Act (CEQA) Compliance.** The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, section 21000 et seq.) pursuant to California Code of Regulations (“CCR”), title 14, section 15321, subdivision (a)(2). The issuance of this Order is also exempt from the provisions of CEQA based on the Kisst Dairy’s status as an “existing facility” pursuant to CCR, title 14, section 15301.
3. **Requesting Administrative Review by the State Water Board.** Any person aggrieved by an action of the Water Board that is subject to review as set forth Water Code section 13320, subdivision (a), may petition the State Water Resources Control Board (“State Water Board”) to review the action. Any petition must be made in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 and following. The State Water Board must receive the petition within 30 days of the date the action was taken, except that if the thirtieth day following the date the action was taken falls on a Saturday, Sunday, state holiday, or furlough day, then the State Water Board must receive the petition by 5:00 p.m. on the next business day. Copies of the [law and regulation applicable to filing petitions](http://www.waterboards.ca.gov/publicnotices/petitions/waterquality) may be found on the internet at: (<http://www.waterboards.ca.gov/publicnotices/petitions/waterquality>) or will be provided upon request.
4. **Request for Extension of Time.** If for any reason, the Discharger is unable to perform any activity or submit any document in compliance with the schedule

set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Assistant Executive Officer, the Discharger may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. An extension may be granted by the Regional Board or Executive Officer only by revision of or amendment to this Order.

5. **Enforcement Notification.** Failure to comply with the terms or conditions of this Cleanup and Abatement Order may result in additional enforcement action, which may include the imposition of administrative civil liability pursuant to California Water Code section 13350 and/or section 13268, in an amount not to exceed \$5,000 for each day in which the violation occurs under Water Code section 13304 or 13350, or referral to the Attorney General of the State of California for injunctive relief or civil or criminal liability.

Patrick Pulupa,

Executive Officer

Central Valley Regional Water Quality Control Board