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19 **UNITED STATES DISTRICT COURT**

20 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

21 BERNADETTE BLACKWOOD,  
22 individually and as guardian ad litem for  
23 K.B. and E.B., et al.,

24 Plaintiffs,

25 v.

26 MARY DE VRIES, individually and dba  
27 N&M DAIRY (aka N&M DAIRY # 1  
28 and N&M DAIRY # 2) and as trustee of  
the NEIL AND MARY DE VRIES  
FAMILY TRUST; et al.,

Defendants.

Case No.: ED CV 14-00395 JGB SPx

**PLAINTIFFS' RULE 34 REQUEST  
FOR SITE INSPECTION**

1 Pursuant to Federal Rule of Civil Procedure 34(a)(2), Plaintiffs request  
2 to inspect the defendants' dairy beginning on Tuesday, June 24, 2014 as the  
3 first of a two-phase inspection, and on one additional occasion, commencing  
4 on a date to be determined as set forth below, for the purpose of inspecting,  
5 measuring, surveying, photographing, testing, and sampling N&M Dairy's  
6 property, buildings, manure handling, transferring, storage facilities,  
7 application fields, and operations.

8 The first phase of the inspection shall commence at 10:00 a.m. at the  
9 main entrance to the Dairy located at or about 18200 Lords Road [ 17215  
10 Wild Road ?] in Helendale, California, and shall conclude no later than 6:00  
11 p.m. that same day.

12 The second phase of the inspection shall be based in part upon analysis  
13 of discovery gathered during the first phase of the inspection, and shall  
14 commence at 10:00 a.m. at the same location and shall continue no later than  
15 6:00 p.m. each day, Tuesdays through Fridays, until completed.

16 Plaintiffs will give defendants ten (10) days written notice prior to the  
17 commencement of the second phase of the inspection.

18 Present during each phase of the inspection will be plaintiffs' experts,  
19 including experts' agents, assistants, and/or contractors; and members of  
20 plaintiffs' legal team, including counsel, agents, assistants, and/or contractors.

21 Plaintiffs' experts and consultants will apply for and obtain any  
22 necessary public approvals prior to undertaking any drilling activities.  
23 Plaintiffs request defendants provide information concerning any and all  
24 private utility services on-site (e.g., water drains, irrigation, or power sources)  
25 at least ten days before the first phase of inspection so that private locator  
26 services may be contacted, if necessary.

1 Plaintiffs anticipate that their proposed inspection and testing will cause  
2 minimal disruption to defendants' daily operations, as the dairy is now closed  
3 for operation and undergoing cleanup and abatement. Plaintiffs will work  
4 reasonably with defendants to minimize the burdens on defendants'  
5 operations during all phases of the inspection.

6 Plaintiffs' inspection will consist of two phases, as follows:  
7

8 **Phase One: Initial Site Inspection and Soil and Groundwater**

9 **Sampling**

10 Plaintiffs seek to commence Phase One of the inspection on June 24,  
11 2014. Plaintiffs' sampling during Phase One will be limited, non-intrusive  
12 sampling. Plaintiffs estimate that Phase One will take one to two days to  
13 complete.

14 Phase One will involve plaintiffs' experts assessing the site, taking  
15 measurements, and plotting the locations of defendants' lagoons, basins,  
16 ponds (collectively referred to hereinafter as "lagoons"), confinement pens,  
17 applications fields, monitoring wells, compost piles, former silage areas, and  
18 other locations at the site to be identified by plaintiffs' experts at the time of  
19 the inspection based on site conditions. Plaintiffs' experts will inspect all  
20 existing physical facilities, and will mark for future testing the locations of  
21 already-dismantled physical facilities, including but not limited to milking  
22 areas, confinement pens, lagoons, manure storage areas, wells and pumping  
23 equipment, and all other facilities and equipment related to waste processes  
24 and processing at the Dairy site. Plaintiffs' inspection will include all fields  
25 owned, leased, or otherwise controlled by defendants upon which any of the  
26 defendants or any of their agents or contractors apply, have applied, or plan to  
27 apply manure.

1 Plaintiffs request that defendants produce during the inspection a  
2 person familiar with the property as needed to guide plaintiffs' experts with  
3 respect to the locations of former facilities and lagoons that have already been  
4 dismantled.

5 Additionally, plaintiffs' experts may collect soil samples from (1) the  
6 former confinement pens, (2) areas in the application fields, and (3) areas at  
7 or near the lagoons.

8 Additionally, during Phase One groundwater samples may be taken  
9 from existing monitoring wells, and surface water samples from lagoons and  
10 any other surface waters on site, in the manner described below.

11  
12 **Phase Two: Soil and Surface Water Sampling, Drilling, and**  
13 **Monitoring Well Scoping**

14 The specific locations of sampling shall be further specified prior to  
15 Phase Two of the inspection, based on information acquired by plaintiffs'  
16 experts during the Phase One inspection. At this time, plaintiffs expect to take  
17 the following samples:

- 18 a. Surface water: plaintiffs' experts may take surface water samples  
19 from any water feature on Dairy premises, including but not limited  
20 to ditches, streams, and/or canals.
- 21 b. Lagoons: plaintiffs' experts will take water quality samples from  
22 each existing lagoon. Plaintiffs' experts will also take soil samples,  
23 using a Geoprobe, (i) near lagoons to evaluate lagoon seepage, and  
24 (ii) from any lagoons that have been dredged. Plaintiffs' experts will  
25 choose locations to Geoprobe at and/or near lagoons based on  
26 information analyzed from the Phase One inspection and their  
27 review of well logs. Samples shall be taken from between one-foot

1 and twenty-foot depths, depending on information obtained during  
2 the Phase One inspection.

- 3 c. Confinement pens: plaintiffs' experts may take, using a Geoprobe,  
4 one to three samples from the area where defendants confined their  
5 cattle. Subject to the analysis of Phase One, plaintiffs anticipate  
6 drilling up to twenty feet deep in the confinement pen areas.
- 7 d. Compost sites: plaintiffs' experts may take, using a Geoprobe, one  
8 to three samples from the area where defendants compost their  
9 manure. Subject to the analysis of Phase One, plaintiffs anticipate  
10 drilling up to twenty feet deep in the composting areas.
- 11 e. Silage areas: plaintiffs' experts may take, using a Geoprobe, one to  
12 three samples from the area where defendants stored the silage.  
13 Subject to the analysis of Phase One, plaintiffs anticipate drilling up  
14 to twenty feet deep in the silage areas.
- 15 f. Fields: plaintiffs' experts may take soil samples from the fields,  
16 using a Geoprobe.
- 17 g. Borings: Plaintiffs' experts may take up to ten borings on property  
18 owned, leased, or controlled by defendants. These borings will  
19 produce continuous core samples of the soil and any other  
20 subsurface features and are anticipated to be at depths of up to 100  
21 feet below ground surface. Plaintiffs anticipate using a Geoprobe to  
22 bore. Plaintiffs' borings will not damage any of defendants'  
23 structures, impoundments, or facilities. If groundwater is  
24 encountered while boring, then that groundwater will be sampled.  
25 Plaintiffs will provide defendants with their proposed boring plan  
26 and locations at least 21 days prior to the commencement of boring  
27

1 activities. This will include locations where plaintiffs may bore at or  
2 near lagoons. Boreholes will be abandoned per applicable standards.

3 h. Groundwater monitoring wells and sampling: Plaintiffs' experts  
4 may take groundwater samples from any wells already located on  
5 defendants' property, including any existing monitoring wells.  
6 Plaintiffs anticipate using a Geoprobe sampling device to obtain  
7 other groundwater samples.

8 Plaintiffs' inspection and sampling will focus on identification and  
9 characterization of potential sources of contamination from the defendants'  
10 facility, such as the existing and former lagoons, manure storage and handling  
11 areas, confinement pens, and application fields. Use of the Geoprobe as  
12 described herein will allow plaintiffs to evaluate the extent of direct  
13 contamination of soil and groundwater from defendants' property and  
14 activities and operations on the property. The inspection, sampling, and  
15 testing that plaintiffs intend to perform are not unduly intrusive on  
16 defendants' operations or property, and the information plaintiffs seek is not  
17 available by less intrusive means.

18 Phase Two of plaintiffs' inspection will take place later in the summer  
19 or in early autumn 2014. The exact date of Phase Two depends upon  
20 completion of Phase One and on plaintiffs' experts' analysis of the  
21 information obtained during the Phase One inspection.

22 Plaintiffs' experts and consultants will apply for and obtain any  
23 necessary permits or government agency approvals for their drilling activities.

24 ///

25 ///


26 ///

27 ///

1 Plaintiffs estimate that Phase Two will take two to three days to  
2 complete.

3  
4 Dated: May 23, 2014

**SIMMONS BROWDER GIANARIS**  
**ANGELIDES & BARNERD LLC**

6  
7 By:   
8 Deborah R. Rosenthal  
9 *Attorney for Plaintiffs*





1 I declare under penalty of perjury under the laws of the State of  
2 California that the foregoing is true and correct.

3 Executed on May 23, 2014, at San Francisco, California.  
4

5   
6

7 Sam Rattigan  
8