



California Regional Water Quality Control Board
Central Valley Region

Katherine Hart, Chair

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Arnold Schwarzenegger
Governor

Shirley S. Adams
Secretary for
Environmental
Protection

FILE

17 March 2010

David Albers (owner/operator)
Vintage Dairy
200 New Stine Road, Suite 200
Bakersfield, CA 93309

CERTIFIED MAIL
7008 1830 0003 4615 8121

CONDITIONAL EARLY SETTLEMENT OFFER R5-2009-0585-M

**RELATING TO VIOLATION OF WASTE DISCHARGE REQUIREMENTS ORDER
R5-2007-0035, VINTAGE DAIRY, WDID 5C10NC00151, FRESNO COUNTY**

Records of the Central Valley Regional Water Quality Control Board ("Central Valley Water Board" or "Board") show that the owner(s) and operator(s) of the Vintage Dairy ("Dairy") have violated the terms of the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 ("General Order") by failing to submit technical reports. *This letter gives the Discharger the opportunity to settle the outstanding violations through an expedited settlement process.*

NOTICE OF VIOLATION

The Dairy is owned and operated by David Albers ("Discharger"). The Dairy is located at 12103 Elkhorn Avenue, near Burrel. The Dairy facilities consist of a 5,384 mature cow dairy facility with a 100-acre production area, and 1,500 acres of cropland currently used for manure application (wastewater and solids).

On 3 May 2007, the Central Valley Water Board issued the General Order, which regulates wastewater practices at milk cow dairies of all sizes, including the Dairy. On 29 June 2007, the Board sent a certified mail notification to the Discharger, notifying the Discharger that the Dairy was subject to the General Order.

California Water Code (CWC) section 13267 authorizes the Central Valley Water Board to require persons who discharge waste to submit technical reports. Section J.1 of the General Order required the Discharger to develop and submit the following reports by 1 July 2009:

- ▶ Annual Report – required under Monitoring and Reporting Program R5-2007-0035, including Annual Dairy Facility Assessment with modifications implemented to date
- ▶ Documentation of completion of interim facility modifications for storage capacity and to balance nitrogen
- ▶ Retrofitting Plan with Schedule (for Nutrient Management Plan – retrofitting needed to improve nitrogen balance)
- ▶ The following Nutrient Management Plan Components:

- Land Application Area Information
- Nutrient Budget
- ▶ Salinity Report – identifies salt sources at the Dairy, evaluates salt minimization options
- ▶ A Preliminary Infrastructure Needs Checklist

On 23 July 2009, Central Valley Water Board staff issued a Notice of Violation, putting the Discharger on notice that the reports had not been received. The Notice of Violation also requested that the delinquent reports be submitted. On 25 August 2009, Board staff attempted to contact David Albers by phone, and left a voicemail message stating that the Board had not received the required reports. On 31 August 2009, Mr. Albers called Board staff and indicated that the overdue reports would be submitted by 20 August 2009. Board staff have checked the compliance tracking system and case files, and have verified that the Board has not received the reports.

STATUTORY LIABILITY

California Water Code section 13268 reads, in relevant part:

(a)(1) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267 . . . is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

Despite repeated requests from Central Valley Water Board staff, the Discharger has failed to submit the required reports. Maintaining accurate information about regulated facilities such as yours is critical to the Board's mission to preserve, enhance, and restore the quality of California's water resources.

The reports, ordered pursuant to CWC section 13267, were due by 1 July 2009. As of 17 March 2010, the reports are 259 days past due. The maximum liability that can be imposed under CWC section 13268 is \$1,000 per day late, which means that you currently have incurred potential liability of two hundred fifty-nine thousand dollars (\$259,000).

For these violations, the State Water Resources Control Board's Enforcement Policy states that the Central Valley Water Board should take formal enforcement action by issuing an administrative civil liability complaint ("Complaint"). Issuance of a Complaint would commence a process that would conclude with a hearing in front of the Board, where a penalty in the amount of up to the entire \$259,000 of liability could be imposed.

OFFER FOR EXPEDITED SETTLEMENT

To promote resolution of these violations, the Central Valley Water Board hereby makes this Conditional Early Settlement Offer ("Offer"). You may accept this Offer by waiving your right to a hearing, submitting the past-due reports, and paying a penalty in the amount of two thousand dollars (\$2,000). *This amount is significantly lower than the amount that could be legally imposed by the Central Valley Water Board at a hearing.*

If you accept this Offer (subject to the conditions below), the Central Valley Water Board will consider the violations identified above resolved. Accordingly, the Board will not issue a formal administrative complaint, will not refer the violations to the Attorney General, and will waive its right to seek additional penalties. This Offer does not address liability for any violation that is not specifically identified above.

If you choose to accept this Offer, you must submit the following to the Central Valley Water Board by **31 March 2010**:

- ▶ The enclosed Acceptance of Conditional Early Settlement Offer and Waiver of Right to Hearing ("Acceptance and Waiver"), and
- ▶ The past-due reports (please contact staff at the numbers listed below if you have questions regarding the missing reports).

CONDITIONS FOR CENTRAL VALLEY WATER BOARD ACCEPTANCE

The State Water Resources Control Board's Enforcement Policy specifies that the Central Valley Water Board must publish notices of proposed settlements for public comment. Upon receipt of the Discharger's Acceptance and Waiver, along with the past-due reports, staff will publish notice of the proposed settlement on the Board's website. If no substantive comments are received within the 30-day comment period, and unless new material facts become available, the Board's Executive Officer will execute the Acceptance and Waiver, at which point the Board will consider the matter resolved.

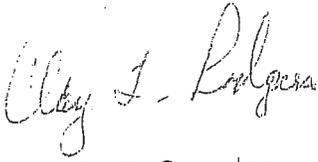
If significant comments are received in opposition to the settlement, the Central Valley Water Board may withdraw the Offer and your waiver, and may issue a Complaint as contemplated in the State Water Resources Control Board's Enforcement Policy. The Board agrees that the Discharger's acceptance of this Offer will not be used as evidence against the Discharger, should the matter proceed to a hearing.

In the event the Acceptance and Waiver is executed by the Executive Officer, payment of the assessed amount shall be due within ten (10) calendar days after the Discharger receives written notice of the Executive Officer's execution.

The **\$2,000** liability shall be made payable to the *State Water Resources Control Waste Discharge Permit Fund*. Failure to pay the penalty within the required time period shall negate the settlement, and may subject the Discharger to further liability.

This Offer has been entered into the California Integrated Water Quality System database as Regulatory Measure 372108 (Expedited Payment Letter).

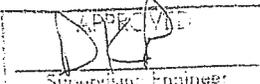
Should you have any questions about this Conditional Early Settlement Offer, please contact Dale Essary at (559) 445-5093 or Clay Rodgers at (559) 445-5102.



for Pamela C. Creedon
Executive Officer

Enclosure: Acceptance of Conditional Early Settlement Offer and Waiver of Right to Hearing

cc w/ encl: Mr. Reed Sato, Office of Enforcement, SWRCB, Sacramento
Mr. Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Ms. Emel Wadhvani, Office of Chief Counsel, SWRCB, Sacramento
Mr. Dan Radulescu, Enforcement Coordinator, Central Valley Water Board
Mr. Ken Landau, Assistant Executive Officer, Central Valley Water Board
Fresno County Department of Community Health


Supervising Engineer