Exhibit N

This story is taken from From cheese to pollution at sacbee.com.

Open water-panel meeting urged

By Chris Bowman -- Bee Staff Writer
Published 2:15 am PST Wednesday, January 26, 2005

Open-government advocates Tuesday urged directors of the state's Central Valley water-quality board to conduct its inquiry of enforcement lapses publicly rather than as a closed-door personnel hearing.

The request by the nonprofit Californians Aware concerns a closed session scheduled Thursday in response to a story in The Bee about a Merced County cheese factory's long history of pollution.

"The public is just as interested and entitled to hear the 'whys' of the situation as the board," wrote Terry Francke, an attorney and founder of Californians Aware, in a letter asking the inquiry be opened to the public.

The Bee's Dec. 12 story documented 16 years of Hilmar Cheese Co.'s violations and the water board's failure to penalize the company or enforce the rules.

The Central Valley Regional Water Quality Control Board later posted notice that the directors would meet privately "to evaluate the performance of the executive officer and other employees relative to the operation of the Fresno office."

Chairman Robert Schneider said he wanted to ask employees why the cheese maker's violations went unpunished for so long under their watch.

On Tuesday, Schneider said the closed portion of Thursday's meeting would focus solely on personnel matters, which under state law may be discussed only in private.

He said the board may hold a later public hearing to further investigate the enforcement of Hilmar Cheese and other cases handled by the agency's Fresno staff.

"I want the public to feel that we are aggressively addressing this problem, and that we don't want to have reoccurrences," he said.

Francke said, "That sounds a bit like the cart before the horse."

"It seems to me that first you find out what, if anything, went wrong, and later you assign accountability for what you find," Francke said. "I can't help but wonder whether reversing the inquiry like this is as much to protect the board as anything else."

California's open-meetings law allows certain exemptions, such as hearings on employee

termination or disciplinary actions.

The board will meet at 8:30 a.m. in Rancho Cordova at 11020 Sun Center Drive, Suite 200.

Californians Aware is a nonprofit that helps journalists and others defend open-government meetings and records laws. It was established last March by Francke, who worked with a similar advocacy group, California First Amendment Coalition.

California Aware's board of directors includes a newspaper editor, television producer and nonjournalists who have challenged government secrecy. The Bee is not represented on the board.

About the writer:

- The Bee's Chris Bowman can be reached at (916) 321-1069 or cbowman@sacbee.com.

Go to: Sacbee / Back to story

This article is protected by copyright and should not be printed or distributed for anything except personal use.
The Sacramento Bee, 2100 Q St., P.O. Box 15779, Sacramento, CA 95852
Phone: (916) 321-1000

Copyright © The Sacramento Bee

Exhibit O

Newsletters | Site Map | Subscribe to the Print Edition | Traffic | Weather | Wireless Delivery

The Sacramento Bee
Life. Captured daily.

Search Archives or Site Search

News | Sports | Business | Politics | Opinion | Entertainment | Lifestyle | Travel | Women | Classifieds | Homes | Cars | Jobs | Ye
Pages

Sacbee: / Bee Search

Powered by: accessBee -- Internet f

Sections: ? Search Bee Archive ? Movie Listings ? TV Listings

SUBSCRIBE NOV
The Sacr

We *specialize* in helping people
LOSE their GLASSES

Hilmar co-owner quits his state post

January 27, 2005
Section: MAIN NEWS
Page: A1

By Chris Bowman

Bee Staff Writer

--California's undersecretary of food and agriculture has resigned amid state investigations into his cheese company's long history of water-pollution violations.

Chuck Ahlem announced his resignation Wednesday on the eve of a state hearing on why the daily dumping of untreated wastewater by Hilmar Cheese Co. near Turlock went unpunished for 16 years.

Earlier this month, environmental groups called for Ahlem's ouster from Gov. Arnold Schwarzenegger's administration, saying that his company's "rogue operations and degradation of water quality" had run counter to the governor's commitment toward environmental protection.

Exposure of the company's environmental record in a story by The Sacramento Bee last month appear to have put the agricultural appointee at odds with Schwarzenegger, based on the statement Ahlem released Wednesday through the California Department of Food and Agriculture.

"I have chosen to resign as CDFA undersecretary effective immediately so that my presence here will not create further distractions from the governor's reform agenda and the important work that lies ahead for CDFA," Ahlem said in the four-sentence announcement.

The Bee's Arc
Sign Up for Nev
Account

Customer Ser
NewsLibrary serve
and supplies custo
for The Bee's fee-b
Please direct billing
information inquiri
NewsLibrary.

E-mail NewsLib
Customer Servi

Search Tips
Copyright Infor

Death Notices
Obituaries (Nev
Funeral Notices

Ahlem, a founder and part-owner of Hilmar Cheese, said he will return to the private sector to focus on completing a wastewater treatment operation that "will solve the environmental compliance problems the company has experienced in the past."

The plant, which the company previously said would be fully operational in January, will be completed "within a few months," Ahlem said.

State water-quality regulators have said the cheese maker should have installed such cleansing works at least a decade ago rather than discharge untreated cheese-making waste on land behind the factory.

Ahlem could not be reached Wednesday for comment.

Schwarzenegger appointed Ahlem to the $118,300-a-year agricultural post a year ago, citing his promotion of "environmental stewardship" in California's dairy industry, the largest in the nation. Ahlem also runs a dairy in the Merced County town of Hilmar, south of Turlock, and is a leading industry voice on environmental regulation of dairies.

Vince Sollitto, a spokesman for the governor, would say only that Schwarzenegger had accepted Ahlem's resignation.

The governor named A.J. Yates to replace Ahlem. Yates, 70, previously served as deputy secretary and later as undersecretary for the state agriculture department. In the past four years he has been a top administrator with the U.S. Department of Agriculture, overseeing programs to market American farm products.

Ahlem served from 1996 to 2000 as a Gov. Pete Wilson appointee to the state's Central Valley Regional Water Quality Control Board - the same agency that failed to take enforcement action against his company.

Ahlem previously told The Bee that he never sought special treatment for his company.

Environmental advocates who had called for Ahlem's resignation said Wednesday that the Hilmar dairyman was not alone to blame for the enforcement void.

"It's not just Chuck (Ahlem)," said Paul Mason, spokesman for Sierra Club California. "It's the regional water board and staff. They dropped the ball for decades."

Ahlem's resignation comes as the Valley water board begins an investigation into enforcement lapses in its Fresno staff's regulation of Hilmar Cheese and other San Joaquin Valley companies that drain wastewater on land or into streams or rivers.

Hilmar Cheese rose in 20 years to become the world's largest cheese factory, now making a million pounds a year under grocery store brands. The company's treatment of its factory waste - currently 700,000 gallons of milk residue daily - has lagged behind its rapid growth in production.

Directors of the Valley water board have scheduled a closed-door personnel hearing today to evaluate the job performance of their executive officer and other employees relative to enforcement, particularly in the Hilmar case.

Robert Schneider, the board's chairman, said the board may hold a public hearing at a later date to further explore the failure to penalize the cheese maker.

The board's probing comes as a result of The Bee's investigation of the cheese factory.

The Bee reported on Dec. 12 that, nearly every day for the past 16 years, the locally owned company violated state water-quality rules designed to keep groundwater drinkable.

Board staff recorded 4,000 violations against the company in the past four years alone. And state inspectors estimated that the company saved at least $27 million by delaying installation of proper wastewater treatment.

Neighbors have complained to regulators in recent years of overwhelming sour-milk odors, swarms of flies and, in some cases, polluted tap water.

In addition to the water board inquiry, the Governor's Office is reviewing the regulatory record, and the attorney general's office is investigating a former Hilmar worker's allegations of illegal canal dumping.

For more information: Go to www.sacbee.com/projects to see past stories, a photo gallery and related graphics in the "From Cheese to Pollution" series.

* * *

The Bee's Chris Bowman can be reached at (916) 321-1069 or cbowman@sacbee.com.

All content © The Sacramento Bee and may not be republished without permission.
Send comments or questions to NewsLibrary

Copyright ? The Sacramento Bee / ver. 4

Exhibit P

EXHIBIT
51

From: Jo Anne Kipps
To: COOK, MICHAEL
Date: Fri, Feb 11, 2005 1:53 PM
Subject: Re: WLAP 2005! Annual Meeting

Yes! I coming to Idaho. We issued Hilmar a $4 M penalty. Since we rushed to issue that fine, we're delaying Hilmar's permit until our Board's April meeting. Looking forward to seeing you all again (kindred spirits and all that). I'll gather some info together on Hilmar regarding loadings and soil and groundwater degradation. You might be interested in reviewing a recent staff information item (see attached files).

>>> "MICHAEL COOK" <mcook@deq.idaho.gov> 02/08/05 04:30PM >>>
Hello JoAnn:

I went to the Sacramento Bee website for the Hilmar Cheese controversy. My hope is that it will abate enough that you can join us in March. If it works out, we'd be really interested in a case study of cheese land app permitting and contamination issues. Cheese has been our most controversial industry type in ID.

Hang in there,

mjc

Exhibit Q

ITEM:	22
SUBJECT:	Regional Board Enforcement and Communication Policies
BOARD ACTION:	This is an informational item for Regional Board evaluation and discussion of enforcement and communication policies.
BACKGROUND:	Recent articles in the Sacramento Bee regarding the Hilmar Cheese Company, its waste discharges and regulatory actions by the Regional Board gave rise to a perception and/or concerns held by some observers that the Regional Board does not enforce against dischargers causing pollution. In response to this, the Regional Board met in closed session at its 27/28 January 2005 meeting to evaluate the performance of its Executive Officer and other employees relative to the operation of the Fresno Office. When the Board returned to open session, the Board Chair stated that the Regional Board expressed its confidence in the leadership of the Executive Officer, and directed staff to prepare a written report evaluating the enforcement and communications policies of the Regional Board to be discussed in open session at the March (2005) Regional Board meeting.
ISSUES:	The staff report discusses the following topics: • Enforcement policies; • Regional Board procedures; • Compliance and enforcement data; • Budget and resources; • Communications; • Work Plan

Mgmt. Review _____
Legal Review _____

17/18 March 2005

Central Valley Regional Water Quality Control Board
11020 Sun Center Dr. #200
Rancho Cordova, CA 95670

Exhibit R

Newsletters | Site Map | Subscribe to the Print Edition | Traffic | Weather | Wireless Delivery

The Sacramento Bee
Life. Captured daily.

Search Archives or Site Search

News | Sports | Business | Politics | Opinion | Entertainment | Lifestyle | Travel | Women | Classifieds | Homes | Cars | Jobs | Ye
Pages

Sacbee: / Bee Search

Powered by: accessBee -- Internet f

Sections: ? Search Bee Archive ? Movie Listings ? TV Listings

SUBSCRIBE NOV
The Sacn

The Bee's Arc
Sign Up for Nev
Account

Customer Ser
NewsLibrary serve
and supplies custo
for The Bee's fee-b
Please direct billing
information inquiri
NewsLibrary.

E-mail NewsLib
Customer Servi

Search Tips
Copyright Infor

Death Notices
Obituaries (Nev
Funeral Notices

Attention Employers!

Hilmar fiasco spurs changes
Water-quality regulators look at how to improve pollution enforcement.

March 19, 2005
Section: MAIN NEWS
Page: A3

By Chris Bowman

Bee Staff Writer

CAPITOL & CALIFORNIA

--Citing published reports of nonstop pollution from a giant Merced County cheese factory, state water-quality regulators are preparing plans to strengthen enforcement throughout the Central Valley.

Officials with the state Central Valley Regional Water Quality Control Board said Friday that the recent Sacramento Bee investigation of Hilmar Cheese Co. pointed up not only the perennial need for more inspectors but also a lack of leadership in setting enforcement priorities and sticking to them.

"The thing so frustrating about Hilmar is that we employed so many staff on that operation, and we hadn't achieved the enforcement objective," said Christopher Cabaldon, a water board director and mayor of West Sacramento.

Staff with the board's Fresno office said they spent more hours policing Hilmar's disposal of milky leftovers than on nearly all of the 800 other Valley food processors and wineries permitted to spread organic waste on land.

The regulators logged thousands of violations against Hilmar Cheese, making it

one of California's most chronic offenders of clean-water laws. Yet, for years, not a single fine or injunction was issued. Instead, officials kept raising the limit on wastewater volume at the company's request, as daily cheese production grew to a million pounds, The Bee reported.

Following the Dec. 12 story, a co-owner of the cheese plant, Chuck Ahlem, resigned as the state's agriculture undersecretary, saying he needed to tend to company wastewater issues.

The same day, Jan. 28, the board's executive director, Thomas Pinkos, issued a record $4 million fine against Hilmar Cheese. The enforcement action is for 1,039 days of pollution violations since January 2002 as the company flushed high volumes of milky wastewater onto land, fouling its neighbors' air and water supplies.

The chairman of the Central Valley water board, Robert Schneider, cited the Hilmar case Friday as he opened a public hearing on changes under way to improve enforcement.

The Central Valley water board is charged with protecting rivers, streams, lakes and groundwater from Redding to Bakersfield.

The board's purview is daunting: Wastewater from thousands of sewage treatment plants, runoff from 7 million acres of irrigated farmland, stormwater drainage from cities and construction sites, leakage of underground gasoline storage tanks, dredging of the Sacramento-San Joaquin Delta and disposal of food processing waste on land, as in the case of Hilmar Cheese.

The pressure for enforcement reform comes not only from exposure of the Hilmar case, but also from Gov. Arnold Schwarzenegger's appointees to the state Environmental Protection Agency.

Following an extensive assessment of Cal-EPA's many boards and departments, administration officials issued an "enforcement initiative" in November directing staff to consolidate databases on regulated businesses; rewrite ambiguous, hard-to-enforce permits; and form a Cal-EPA "intelligence team" to pursue complicated environmental crimes such as falsification of pollution tests.

At Friday's hearing, directors of the water board learned that the state database for tracking water pollution enforcement is unreliable because each of the state's nine regional water boards enters data differently, and some sporadically, according to Kelly Briggs, enforcement coordinator for the Central Valley region.

Further, the Central Valley board has no coherent system for prioritizing cases, Briggs said. As a result, she said, enforcement actions against minor violators sometimes trump cases against more serious, chronic offenders.

While state enforcers conduct periodic inspections, they rely mostly on an honor system where companies conduct their own sampling and testing.

Enforcers, however, are not well schooled in detecting fraudulent test reports, Briggs said.

To correct these problems, staff is undergoing training in environmental crimes and managers have designated certain staff to work exclusively on enforcement issues, Briggs said.

In addition, top managers at each of the board's offices in Sacramento, Redding and Fresno will together set enforcement priorities rather than leave it to the whims of lower-level inspectors and supervisors, said Ken Landau, an assistant executive director in Sacramento.

Board Chairman Schneider called the reforms "a good start."

* * *

The Bee's Chris Bowman can be reached at (916) 321-1069 or cbowman@sacbee.com.

All content © The Sacramento Bee and may not be republished without permission.
Send comments or questions to NewsLibrary

Contact Us/Feedback | Privacy Policy | Terms of Use

News | Sports | Business | Politics | Opinion | Entertainment | Lifestyle | Travel | Women

Cars | Classifieds | Homes | Jobs | Yellow Pages

Help | Newsletters | Site Map | Subscribe to the Print Edition | Traffic | Weather | Wireless Delivery

About Us | Advertise in The Bee | Advertise Online | Contact Circulation Customer Service | Events

[Sacramento Bee Web sites]

Sacbee.com | SacTicket.com | Sacramento.com

Copyright ? The Sacramento Bee / ver. 4

Exhibit S

STEEFEL, LEVITT & WEISS
A Professional Corporation

Author's Direct Dial: (415) 403-3277
E-Mail: mfogelman@steefel.com

May 5, 2005

VIA EMAIL AND U.S. MAIL

Lori T. Okun, Esq.
Senior Staff Counsel
Office of the Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento CA 95812

Re: Administrative Civil Liability Complaint No. R5-2005-05-01; First Request for Production of Documents to Central Valley Regional Water Quality Control Board Chair

Dear Ms. Okun:

Hilmar Cheese Company, Inc. and Hilmar Whey Protein, Inc. (collectively, "Hilmar") respectfully request that the documents described below be produced to Hilmar's counsel on or before close of business on May 11, 2005. To the extent such documents are confidential, Hilmar is willing to receive them under an appropriate protective order or non-disclosure agreement. To the extent it is claimed that the request for production of documents is objectionable, we ask that any objections be stated to us in writing on or before close of business on May 9, 2005. To the extent e-mails are sought, we ask that your good-faith search include the back-up tapes previously retained related to Mr. Schneider's inbox, outbox, sent items file, deleted items file, and any other files likely to contain e-mails sent or received by Mr. Schneider.

As we have previously indicated on several occasions, among the many issues that may be litigated in this proceeding are whether the Administrative Civil Liability Complaint ("complaint" or "ACL complaint") was the product of political pressure or influence, whether the complaint was the product of pressure from the media and the press, and whether the complaint was issued in an effort to save the Executive Officer from dismissal or other personnel or employment action by the Regional Board. These issues are relevant and material to the proceeding because they may demonstrate that the complaint was issued, and the amount of the proposed penalty was selected, for reasons having little to do with proper administrative enforcement action.

The documents, production of which is sought, are:

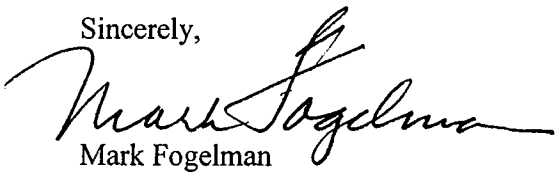
1. All documents of whatever kind, including but not limited to all e-mails, relating to possible personnel or employment action with respect to Executive Officer Pinkos, in the possession, custody or control of Mr. Schneider, including but not limited to those documents contained in Regional Board files over which Mr. Schneider has custody or control.

2. All documents of whatever kind, including but not limited to all e-mails, dated from September 1, 2004 to the date of the final conclusion of this ACL proceeding which in any way relate to this ACL proceeding or to the possibility of enforcement action with respect to Hilmar, including but not limited to all documents and e-mails referring to Hilmar or Hilmar Cheese Company or HCC, or having as an author, sender, recipient, cc, or bcc, Terry Tamminen, Thomas Pinkos or Chris Bowman, or referring to Hilmar, Tamminen, Pinkos or Bowman, or referring to any Sacramento Bee, Fresno Bee or Modesto Bee article(s) mentioning Hilmar. This document request seeks documents in the possession, custody or control of Mr. Schneider, including but not limited to those documents contained in Regional Board files over which Mr. Schneider has custody or control.

3. All documents of whatever kind, including but not limited to e-mails, relating to Hilmar, in the possession, custody or control of Mr. Schneider, including but not limited to those documents contained in Regional Board files over which Mr. Schneider has custody or control.

Thank you very much for your cooperation in this matter.

Sincerely,



Mark Fogelman

cc: M. Catherine George, Esq.
Craig S. Bloomgarden, Esq.
Rebecca M. Hoberg, Esq.

19116:6445375.1

Exhibit T

Alan C. Lloyd, Ph.D.
Agency Secretary

State Water Resources Control Board

Office of Chief Counsel
1001 I Street, 22nd Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5161 ♦ FAX (916) 341-5199 ♦ http://www.waterboards.ca.gov

Arnold Schwarzenegger
Governor

VIA EMAIL AND U.S. MAIL

May 16, 2005

Mark Fogelman, Esq.
Steefel, Levitt & Weiss
One Embarcadero Center, 30th Floor
San Francisco, CA 94111

Dear Mr. Fogelman:

HILMAR CHEESE COMPANY, INC., CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, CENTRAL VALLEY REGION ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2005-05-01; FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO REGIONAL WATER BOARD CHAIR

In a letter dated May 5, 2005, you requested that California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) Chairman Schneider produce certain documents. Any discovery propounded on the Board's Chair or any member of the Central Valley Water Board is improper. See, *City Of Santa Cruz v. Superior Court of Santa Cruz County* (1995) 40 Cal.App.4th 1146 [48 Cal.Rptr.2d 216]; *Kleitman v. Superior Court of Santa Clara County* (1999) 74 Cal.App.4th 324 [87 Cal.Rptr.2d 813]; *Board of Administration, Public Employees' Retirement System, v. Superior Court of Los Angeles County* (1975) 50 Cal.App.3d 314 [123 Cal.Rptr. 530].

The Central Valley Water Board members, including the Chair, constitute the adjudicatory body that will decide the merits of the Administrative Civil Liability complaint. As is the case with any judicial officer, there can be no discovery of the officer's motives or actions. To the extent that you wish to probe any alleged impact that the Central Valley Water Board (or any member thereof) had on the staff's decisions in prosecuting the complaint, you will have to do so through your document requests and other discovery directed at staff. If you have evidence that one or more of the Central Valley Water Board members are in fact biased, you may raise those issues at the appropriate time and in the appropriate manner.

Treating this request as a subpoena, the Central Valley Water Board Chair denies this document request in its entirety.

Please contact me if I can provide anything further. My phone number is 916.341.5177.

Sincerely,

Steven H. Blum
Senior Staff Counsel

cc: Mr. Robert Schneider, Chair
Ms. Antonia Vorster
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

Tracy Winsor, Esq.
Deputy Attorney General
Office of the Attorney General
Natural Resources Law Section
1300 I Street
Sacramento, CA 95814

M. Catherine George, Esq.
Office of Chief Counsel, SWRCB
c/o San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Russell Hildreth, Esq.
Deputy Attorney General
Office of the Attorney General
Natural Resources Law Section
1300 I Street
Sacramento, CA 95814

Exhibit U

EXHIBIT
55

CONFIDENTIAL

To: Members of the Regional Board, Central Valley Region
Craig M. Wilson, Chief Counsel, Office of the Chief Counsel
Frances McChesney, Senior Staff Counsel

From: Thomas R. Pinkos
Executive Officer

Subject: Hilmar Cheese

Background

The situation surrounding Hilmar cannot be understood without recognizing several significant events and their progeny.

A second significant occurrence was the reduction in staffing during FYs 02-03 and 03-04. Among other reductions was the reduction of nearly 16 PYs in land disposal and land discharge programs. Although a portion of these resources was reinstated, it was only on the condition that they be directed to the newly emerging program for the irrigated agricultural waiver. A consequence was that a program historically and already significantly underfunded, i.e., "Nonchapter 15" or Waste Disposal to Land, would be even more underfunded and the workload on N15 staff greatly increased. Most of this impact was in the Fresno office, i.e., more work and less staff to do the work.

RWB-022688
PRIVILEGED

Additionally because of the budget reductions, vacant positions were being held vacant and not being authorized by State Board to fill. One of these positions was the senior position for Enforcement Coordinator, which was vacated January 03, and not filled until November 04. For nearly two years the Regional Board had no primary person to coordinate and report to Executive on enforcement issues, which would include the need for enforcement on selected cases. This position was created by the Executive Officer (Gary Carlton) in January 2000 because of the growing importance and complexity of enforcement activities throughout the region.

Finally a third watershed event was the meeting at and tour of the Hilmar facility in December 01 by the Executive Officer (Carlton) and AEO (Harlow) and staff. A letter (dated 2 January 2002) from Carlton to Hilmar after that meeting informs Hilmar of "as yet unresolved areas of concern", namely bypass of the treatment system, impairment of adjacent domestic wells, and ground water quality in the prior waste reclamation area. The letter states that "We will be drafting updated requirements that govern your increased wastewater flow at the plant and include terms that ensure the above issues are properly addressed." Harlow interprets Carlton's letter as direction to focus primarily on revising the WDRs to achieve compliance, and not to do enforcement at this time. A staff memo dated 17 December 2001 to the File summarizes a Fresno staff meeting on Hilmar and concludes, in part "Hilmar continues to be cooperative. *As long as it addresses these issues as advanced by management* we should be able to propose WDRs without formal enforcement" [emphasis supplied].

Actions

The actions surrounding Hilmar must be viewed along several different but parallel and interrelated tracks. There are the actions by Hilmar, actions by the Regional Board in response, actions by third parties such as State Board and the Attorney General, and actions involving other sites, workload, budget and resources. The *attached table* shows a timeline for these four tracks from the time of the site visit by Carlton and Harlow, which, in my view, is the key event leading to the present time.

Actions by Hilmar

As the attached chronology shows, Hilmar has been progressively expanding their discharge flows (from 0.75 mgd to 1.25 mgd to 2.0 mgd) and submitting reports, albeit often incomplete or late. Unlike some dischargers, Hilmar is arguably "cooperative" in that they respond and they expend resources to manage their waste flows. Hilmar has altered course several times, not only in increasing flows, but also in whether it will treat and discharge to land or connect to Turlock Irrigation District.

Actions by Staff

Activities by staff are focused in three main areas. First is revising the waste discharge requirements to regulate actual and projected flows to allow the company to operate in compliance. Starting with a Report of Waste Discharge that was submitted in 2000, staff went back and forth and back and forth etc. with Hilmar as technical reports were submitted and reviewed and as Hilmar changed its plans regarding flows and wastewater treatments. At present a RWD submitted August 04 is the basis for WDRs that are expected to be presented to the Board in March 05.

The second area of staff response is to complaints from affected residents regarding odors and flies and general nuisance conditions. Complaints (total of ten) occurred primarily in August 02, March-April-May 03, and June-July-August 04. During each of these time periods staff contacted Hilmar management regarding the complaints, and in 03 and 04 conducted site inspections. Hilmar's cheese processing plant is about 80 miles and a two-hour drive from the Fresno office. Most of the complaints alleged odors typically occurring early in the morning or late at night. Accordingly, odor complaints were typically received after the odor incident, which complicated staff's efforts to confirm the allegations.

The third area of staff activity is the development of an enforcement strategy that addresses permit violations, that corrects water quality and public health problems, and that coordinates any administrative civil actions with prosecution of alleged criminal actions. These activities are then linked to the third track related to Hilmar, which involves....

Actions by Third Parties

After June 03 when complaints were directed to the State Board and allegations were made of criminal activity, Regional Board staff is presented with the tasks of distinguishing actions related to a civil versus a criminal case. Staff typically subordinates its civil enforcement to expected criminal investigation, and provides coordination and support to the criminal effort that would be the lead activity.

Of interest was a phone call from Celeste Cantu to me during summer of 04, saying she heard that someone named Kipps was knocking on doors of residents around Hilmar to survey for odor problems, and was inquiring on behalf of Chuck Ahlem as to what was going on. I replied that staff was doing their job and probably following up on complaints. Ahlem never called me.

Actions related to Budget and Workload
Finally Hilmar must be viewed through an understanding of the attendant effects of corresponding workload and budget and resources.

The Fresno office historically has been grossly understaffed compared to other offices, and beginning in 1988 adjustments began to remedy this. It has since had its fair share and in 04 has more than its proportionate share due to budget reduction policies. Between 1988 and 2002, regulatory decisions were dictated by resource cycles that were in turn dictated by staff turnover and budget cycles. Fresno staffed up in 1988 from the audited low to about 10 staff in N15 Program. This fell to about 5 staff by 1991, but in 1992/93 increased again to about 10. In 1993 the Fresno office took back Merced and Mariposa Counties. The number of N15 sites regulated by the Fresno office, excluding dairies, is over 500. Fresno increased to 14 staff in 99/00 for the N15 program, but this fell to 10 by the end of 2002. The Sacramento office took a greater budget hit on staff and Fresno picked up the N15 sites in Stanislaus and Tuolumne Counties. Except for a short period, until this FY at least one N15 staff person has been dedicated to dairy work. This significant turnover of staff causes fluctuating caseloads of from 50 to 140 sites and cycles where staff has little knowledge and experience. Whatever the staff numbers, the fact is that some staff are deficient in writing, analytical, and engineering skills which add to the workload productivity.

As noted in the timeline, the Region was without its Enforcement Coordinator for essentially all of 03 and 04, and beginning in December 02, staffing was severely reduced (approximately 15 PYs) in land discharge programs and redirected in other related programs. In addition, key Fresno staff (notably Harlow and VanVoris) were attending to enforcement matters on Kern Ridge Growers and Musco Olive, two facilities in the food processing industry with similar problems of ground water quality impacts, affected residents, and in the case of Kern Ridge, political interference.

Lastly on the budget, in 2000 the Water Boards produced a "Needs Analysis" for all the Regions and the State Board. In the NonChapter 15 program alone, the bulk of which is in the Fresno office, Region 5 had a total need of 119 PYs, a baseline of 42 PYs, and a resulting unmet need of 77 PYs. For the entire organization of Region 5, the respective totals, for existing core and new work in selected programs, are 538 PYs, 130 PYs, and 408 PYs. This unmet need of 408 PYs dwarfed the next highest unmet need of 180 PYs for Region 4 (Los Angeles). These numbers reflect the severe underfunding for the overall workload within the region that has only worsened as the workload has increased and staffing has decreased or remained static.

Interviews
What follows is my synthesis and interpretation of information and comment and opinion provided to me by various staff and other persons with whom I discussed Hilmar and the Fresno office.

RWB-022691
PRIVILEGED

Options for Responding

Hilmar

Options for addressing the problems at Hilmar are rather straightforward, and begin with the present CAO. Staff is drafting revised WDRs and a companion CDO that will put Hilmar under an enforceable time schedule for compliance. Hilmar will be faced with two major tasks: to fix their operations to accommodate both present and future discharges, and to remediate – clean up – the pollution they have caused. Neither of these activities will be cheap or easy.

Along with the CAO, WDRs, and CDO, staff is preparing an ACL complaint to assess civil liability for past violations. The amount of the proposed liability is unknown at this time, but, based on economic benefit alone, is expected to be substantial.

Finally the most effective enforcement to achieve compliance would be a court ordered injunction to cease all discharges that fail to comply. This would be a severe sanction and would no doubt result in litigation.

Personnel

RWB-022694
PRIVILEGED

Enforcement

The real flashpoint in the Hilmar story is the record on enforcement by the Board for this discharger. The headlined "Environmental Injustice" highlights the "past 16 years", "4,000 violations...in the past four years alone", and "not a single fine or injunction issued".

Relatively lengthy periods of non-enforcement for a given discharger – that is, of no formal enforcement that is manifested by enforceable Board-adopted or EO-issued orders - are not especially unusual, particularly in view of the inadequate resources the Board has for the size of its workload. Formal enforcement has normally been used only after a period of time wherein efforts to achieve compliance through a cooperative working relationship has proven unsuccessful, or where an acute and notorious situation has developed that demands forceful action. The decision to pursue formal enforcement is, and has been for years, very carefully considered in view of the tremendous strain on resources that often results.

What further affects the story of Hilmar is the concurrent evaluation of government through the Governor's California Performance Review and the CalEPA Enforcement Initiative. Both of these efforts have judged the enforcement of the water boards as wanting and ineffective, yet with little in the way of thorough analysis and comprehension of the factors that influence enforcement and the environment and structure under which enforcement is carried out. Thus CalEPA is proposing to "roll up" all enforcement resources from all the BDOs into CalEPA, for the alleged purpose of streamlining and coordinating environmental enforcement.

Environmental enforcement has experienced various cycles over the years, with reactions displayed in the form of Mandatory Minimum Penalties (MMPs) required by law or in the elimination of environmental attorneys in the Office of the Attorney General. Enforcement has always been a balancing act between the public's expectations that environmental laws be upheld and sanctions imposed on violators, and the concomitant expectation that businesses and employers not be destroyed by unreasonable requirements alleged to protect water quality. MMPs have complicated the enforcement picture since what had been a discretionary activity is now mandatory, resulting in the mandatory redirection of resources to pursue and complete enforcement in situations where, based on priorities and other relevant factors (such as impacts to water quality or to public health), such enforcement is not warranted.

Regarding the number of violations at Hilmar, State Board staff, in providing instructions for entering data in the SWIM compliance module, told regional board staff (Fresno included) to enter one violation per violation type per day in which the violation occurred. Hilmar has effluent limitations for daily maximum flow and daily maximum salinity as EC. Because Hilmar exceeded the flow and EC limits essentially every day since Order No. 97-206 was adopted, staff had been entering at least 60 violations per month for Hilmar. In contrast, other regions, as well as the Sacramento and Redding offices, apparently decided State Board's directive of entering one violation per day per violation was just too demanding of staff time and selected to streamline this data entry

RWB-022696
PRIVILEGED

effort. Some enter just one violation per month for facilities that have multiple violations, while others may enter one violation per violation type per month. As a result the aggregate count of violations for Hilmar presents a misleading picture of its significance. This has in effect flagged Hilmar as a greater problem than similar sites in the region and elsewhere because other sites have historically had no daily effluent limitation and, where they have, the data have been converted into a monthly summary entry into SWIM.

Enforcement in the Hilmar case is further compounded by actions of the Regional Board itself and the messages and signals it sends. Although the Board has certainly supported enforcement of a most significant nature – witness City of Redding, Kern Ridge Growers, and AKT as exhibits – the Regional Board has also espoused a modus operandi of "partnership" and "collaborative effort" where agriculture is concerned. This posture undermines, to an extent, the primary conventional role of the Board as a regulatory agency imbued with significant command-and-control powers, and sends a signal to staff to proceed with caution against agricultural interests.

Board staff has always proceeded in a progressive manner to work with dischargers to achieve compliance, and to use enforcement judiciously. The point in time at which a decision is made to engage in enforcement is one of considerable judgment, since it often results in a less than cooperative working relationship as adversarial lines are drawn. "Agriculture" – be it growers or processors – has historically been somewhat a "third rail" of environmental regulation, after municipalities and industry – "touch it and you die", politically or figuratively. SB 390 changed the paradigm and required the "regulation" of agriculture, and, although it changed nothing with respect to agricultural dischargers already being regulated (i.e., Hilmar), it reinforced a posture of "working with" agriculture because of the immense challenge brought on by regulating it.

Proposed Actions

Programmatic

For the N15 program – discharges of waste to land – I will direct staff to proceed to develop WDRs for Board consideration that will impose effluent limits on the discharge and require groundwater monitoring. The objective should be the prohibition of the discharge of high-strength organic waste to the environment, and particularly when those wastes also include high strength inorganic constituents. The primary goal should be that there be no net increase of salt loading that threatens water quality.

I will direct staff to follow a course that clearly instructs the discharger that the *burden is on the discharger* to demonstrate that their proposed discharge – which is a privilege and

RWB-022697
PRIVILEGED

not a right – will comply with water quality objectives, and that the *burden is not on staff* to prove that their discharge will not comply with the Basin Plan nor with water quality objectives.

Regarding Hilmar, I will direct staff to oversee closely Hilmar's compliance with the CAO, and to bring to the Board for consideration at the March 05 Board meeting proposed revised WDRs and companion CDO. I will also direct the staff to prepare for my deliberation, as soon as is practicable, an ACL complaint for past violations at Hilmar.

Enforcement

Personnel

RWB-022698
PRIVILEGED

END TRP 12/31/04

RWB-022699
PRIVILEGED

Exhibit V

EXHIBIT
54

From: Tom Pinkos
To: Brizard, Al; Cabaldon, Christopher; Longley, Karl; Palmer-Byrd, Lucille; Schneider, Robert
Date: Fri, Jan 14, 2005 4:45 PM
Subject: Hilmar Addenda

Board Members:

To assist you during the Closed Session on the 27th, attached is a compilation of items from past Executive Officer Reports regarding Hilmar Cheese. [note the document is both in Word format, and HTML, in case you do not have Word]

At the direction of Chairman Schneider I have commenced the implementation of the Proposed Actions described in my memorandum to you on this matter (pages 10 - 12). I met today with my management staff to review the Proposed Actions, and to receive a briefing from Kelly Briggs, our Senior Enforcement Coordinator. Kelly and Jim Pedri attended the Enforcement Roundtable held yesterday and Wednesday in San Diego. The Roundtable was headed by State Board's Compliance Assurance and Enforcement Unit and attended by all the Regional Boards, as well as representatives of CalEPA and USEPA. Also, I will be in the Fresno office on Tuesday and Wednesday of next week (18th and 19th). I will provide to you a status report on the Proposed Actions at the Closed Session. ....Tom

CC: McChesney, Frances; Wilson, Craig M.; Wyels, Philip

Exhibit W

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2005-0501

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

IN THE MATTER CERTIFIED COPY

OF

HILMAR CHEESE COMPANY, INC.

HILMAR WHEY PROTEIN, INC.

MERCED COUNTY

VOLUME II OF THE DEPOSITION OF

THOMAS PINKOS

Wednesday, August 17, 2005

NOTICING ATTORNEY: CRAIG S. BLOOMGARDEN, ESQ.

REPORTED BY: NANCY R. WALLACE, RPR, CSR NO. 10353

DISK ENCLOSED

Marcus
DEPOSITION REPORTING

5½ W. Pine Street, Suite 6 Lodi, CA 95240 Office: 800-682-2323 Fax: (209) 333-1133
e-mail marcusdepo@sbcglobal.net www.marcusdepo.com

1 associate with that is the communications I was
2 aware of in terms of scheduling the hearing and the
3 requests by Hilmar to postpone and so -- to the
4 extent I was aware of those communications either
5 through Ms. Okun, who was the counsel to
6 Mr. Schneider, or Mr. Cobb, and the request to
7 postpone the hearing. My understanding was that
8 some argument needed to be made to Mr. Schneider to
9 postpone it and the reasons for postponing.
10 MR. BLOOMGARDEN: Q. You also mentioned a
11 third communication with Mr. Schneider which was by
12 telephone about a month or a month and a half ago.
13 Can you describe that conversation for me insofar as
14 it concerned Hilmar?
15 A. As far as it concerned Hilmar was simply a
16 statement by Mr. Schneider that regarding Hilmar, if
17 you can settle it for two-and-a-half to
18 three-and-a-half million dollars, that would
19 probably be good with him. And I think he also
20 mentioned an SEP, a supplemental environmental
21 project.
22 Q. In addition to the two-and-a half to three
23 million dollars or as part of the two-and-a-half to
24 three million dollars, if you had an understanding?
25 A. That was unclear to me.
26 Q. Have you had any electronic mail
27 communications with Mr. Schneider since the ACL
28 complaint was issued on January 26th, 2005?

1 fact.

2 Q. Did you ever talk to Mr. Harlow about that?

3 A. I believe I did.

4 Q. Did you ever talk to him about this letter?

5 A. I believe I have.

6 Q. Do you recall anything about that discussion,

7 about either the letter or the tour?

8 A. No, I don't.

9 Q. Mr. Carlton states in this -- in the first

10 paragraph of the letter, the last clause, quote, I

11 was favorably impressed with the efforts Hilmar has

12 undertaken to improve wastewater management

13 practices at the facility, close quote.

14 Do you see that?

15 A. Yes.

16 Q. And then, again, in the second page of the

17 letter, the first full sentence, there's a reference

18 to, quote, I also want to acknowledge the level of

19 effort that you and your staff have expended to

20 bring your waste treatment and disposal operation to

21 its current status, close quote.

22 Do you see that?

23 A. Yes.

24 Q. Did you take both of those statements into

25 account in any fashion in considering the amount of

26 proposed liability in the ACL?

27 A. I did not specifically take those statements

28 and specifically focus on those in some particular

1 manner. The general letter, though, was available
2 to me. So the letter in and of itself I had at my
3 disposal, and I did consider it.
4 Q. And as you said yesterday, you've never been
5 to the Hilmar plant and taken a tour yourself and
6 observed the waste treatment and disposal operations
7 that they have, have you?
8 A. I have not.
9 Q. So you would have not afforded yourself the
10 same opportunity that Mr. Carlton had in January '02
11 to form an impression one way or another as to
12 whether you would be favorably impressed with the
13 efforts that Hilmar has undertaken, correct?
14 A. Well, I've never visited the plant the way
15 Mr. Carlton did.
16 Q. Don't you think that before you issue a
17 4-million-dollar fine, which is the largest fine in
18 the history of the California water boards, that you
19 should go to a discharger facility, visit the
20 facility, listen to what they have to say, hear
21 about the efforts that they've made, the costs that
22 they have incurred before you go ahead and issue a
23 proposed amount of liability?
24 MR. HILDRETH: Objection. Argumentative.
25 THE WITNESS: Me personally?
26 MR. BLOOMGARDEN: Q. Yeah, me personally --
27 I'm sorry. Yes, you personally. Sorry, Mr. Pinkos.
28 A. No.

1 Q. Okay. You don't think that you need to do
2 that in order to fairly and fully evaluate
3 circumstance -- the circumstance of the discharge
4 and the discharger's culpability?
5 MR. HILDRETH: Argumentative. And it's been
6 answered.
7 THE WITNESS: My answer is no.
8 MR. BLOOMGARDEN: Did we take a break
9 after --
10 MS. THORME: Um-hmm.
11 MR. BLOOMGARDEN: We did.
12 MR. HILDRETH: It's all a blur.
13 MS. WINSOR: We can take another break.
14 MR. BLOOMGARDEN: Actually, I would like to
15 take a break because I would like to get just one
16 document copied. Can I? Is there somebody here
17 that can do that for me?
18 MS. WINSOR: That would be me.
19 (Recess taken.)
20 (Whereupon, Exhibit No. 9 was marked for
21 identification.)
22 MR. BLOOMGARDEN: Q. I would like to have
23 the following document marked as Exhibit 9. This is
24 a document that bears Bates number RWB 000127. And
25 it's labeled "Confidential" at the top, "Staff
26 Report Administrative Civil Liability Complaint" --
27 I'm sorry. I misread that, "Administrative Civil
28 Liability Hilmar Cheese Company, Cheese Processing

language initially, correct?

MR. HILDRETH: Calls for speculation.

THE WITNESS: Yeah. I think it could be interpreted as one staff member's explanation of the facts surrounding the matter.

MR. BLOOMGARDEN: Q. And as things turn out, this -- the -- these facts as presented by this -- this staff person are favorable to Hilmar, are they not?

A. I don't know.

Q. Okay. Do you think it's -- do you think in presenting a staff report to the board that you have any obligation to present the facts fully and fairly so that the board can come to an informed decision in coming up with an appropriate amount of civil liability?

MR. HILDRETH: Argumentative.

THE WITNESS: I think the obligation is to prevent -- present a fair presentation, but also not to confuse the board, to try to bring forward a fairly -- I don't want to say simple case, but in presenting matters to the board, it's to present them in an understandable way and to not confuse the number of issues.

MR. BLOOMGARDEN: Q. Not to confuse the board by bringing to the board's attention facts and circumstances that may be favorable to the discharger?

1 MR. HILDRETH: Argumentative. And it's been
2 asked and answered.
3 THE WITNESS: No, I don't have -- as I
4 testified before, I think yesterday, certain facts I
5 have no problem bringing to the board as part of the
6 staff presentation. But, again, I feel no
7 obligation -- the discharger will have their
8 opportunity to present their entire case to the
9 board.
10 MR. BLOOMGARDEN: Q. Okay. And I take it
11 because these facts were stricken from the final
12 staff report that these were not facts that you
13 relied upon in coming up with the amount of the
14 proposed ACL, correct?
15 A. Well, I wouldn't jump to that conclusion. As
16 I said, everything was presented to me in one form
17 or another to the extent I was able to read it and
18 evaluate it, but I'm not going to claim in any way
19 that every specific sentence, every specific fact
20 brought to me I provided some kind of quantifiable
21 weight to it because that's not the way it works.
22 Q. And indeed you didn't come up with a
23 quantifiable weight to or attempt to come up with a
24 quantifiable weight to any of the factors that are
25 addressed in the staff report other than economic
26 benefit and board -- or staff costs, correct?
27 MR. HILDRETH: Asked and answered.
28 THE WITNESS: Well, you mean -- you end up

with a quantity in the end. So in the end everything has some quantifiable relationship. I only identified economic benefit as staff cost to readily become quantifiable.

MR. BLOOMGARDEN: Q. Okay. If I were to ask you, could you tell me the quantifiable relationship of each of the factors that are addressed in the staff report?

A. No.

MR. HILDRETH: Asked and answered. You covered this at length yesterday.

MS. THORME: I'm going to have to take off.

MR. BLOOMGARDEN: Okay. Let's go off the record.

(Recess taken from 3:10 p.m. to 3:21 p.m.)

MR. BLOOMGARDEN: Okay. I'd like to have marked as the next document in order Exhibit 10.

(Whereupon, Exhibit No. 10 was marked for identification.)

MR. BLOOMGARDEN: Sidekick is not here, you get a copy.

Q. This is a printout off of the Central Valley board's web page. And it's -- this is a board meeting notice, appears to have been dated December 30th of '04.

Mr. Pinkos, are you familiar with this notice or what is the content of the notice?

A. Yes.

1 depending on what you do with the document, you'll
2 reevaluate whether you will let me examine
3 Mr. Pinkos when we resume next week on that limited
4 scope of any discussion at the hearing.
5 Q. Mr. Pinkos, did the scheduling of this closed
6 session have any impact on your decision to proceed
7 with the ACL?
8 A. The decision -- my decision to proceed with
9 the ACL, I would proceed with an ACL regardless of
10 any scheduled closed session. I had no idea what
11 was going to happen in this closed session. I had
12 already been in the process of developing the ACL
13 with staff and to the extent that an outcome could
14 have been or at least in my own mind possibly my
15 termination, I wanted to conclude the business that
16 I had at hand. And I wanted to get that ACL issued
17 under my name regardless of what would happen at
18 that closed session.
19 In no way -- well, I think that answers the
20 question.
21 Q. Okay. So if I understand your testimony, the
22 scheduling of the closed session affected the timing
23 of your issuance of the ACL?
24 MS. WINSOR: I think your testimony speaks
25 for itself, what you just said.
26 THE WITNESS: Yeah. I think that's true.
27 MR. BLOOMGARDEN: Q. You issued the ACL on
28 January 26th, which was the day before the closed

Exhibit X

This story is taken from From cheese to pollution at sacbee.com.

'Environmental injustice'

Plant saved millions by breaking rules

By Chris Bowman -- Bee Staff Writer
Published 2:15 am PST Sunday, December 12, 2004

HILMAR, Merced County - For more than a decade, California water-quality enforcers have given the world's largest cheese factory a free ride, sparing the politically connected company millions of dollars in required sewage treatment and allowing it to foul local water supplies and the air of nearby neighborhoods.

Every day, Hilmar Cheese Co. makes a million pounds of cheddar, Colby, mozzarella and Monterey Jack at its sprawling factory south of Turlock and dumps an average 700,000 gallons of putrid waste onto nearby land leased from company owners and supplying dairies.

And virtually every day for the past 16 years, state records show, the wastewater's volume and salinity have far exceeded limits imposed by the state's Central Valley Regional Water Quality Control Board to keep the groundwater drinkable for neighbors. The water board has recorded at least 4,000 violations against Hilmar Cheese in the past four years alone, making it one of California's most chronic offenders of clean-water laws.

Yet, for years not a single fine or injunction was issued. Instead of cracking down, the Valley water board kept raising the limit on wastewater volume at the cheese maker's request, as production kept growing. Board records show regulators agreed to increases four times in eight years - 1990 through 1997 - each time counting on company promises to cut pollution.

Often the fixes did not follow. Sometimes they flopped.

"This is a clear case of environmental injustice," said Rafael Maestu, who last year reviewed the state's file on Hilmar Cheese as an inspector for California's nine regional water boards.

"Basically, they are above the law," Maestu said.

Only after The Bee spent three months investigating the plant's pollution did the water board take its first enforcement action, on Dec. 2. The "cleanup-and-abatement" order demands major corrections:

* An end to the "offensive" odors coming off 124 acres of waste fields by Jan. 1;

* The testing of nearly 100 residential and irrigation wells within a half-mile of the plant;

* Thorough cleanup of groundwater polluted by the many years of dumping the milky soup of

whey, salts and caustic cleansers.

The order "does not preclude" the possibility of fines for past violations, according to the water board's executive director, Thomas Pinkos, who signed the directive. Pinkos acknowledged that the timing of the order was tied to The Bee's investigation, but he said other factors also motivated him to finally act.

Among them was a state attorney general's investigation launched a year ago after neighbors complained of sour-milk odors, swarms of flies and polluted tap water, and after a former employee alleged illegal dumping into a nearby irrigation canal.

Hilmar Cheese officials maintain they should get credit for progress in the past few years.

"We recognize that we've had to improve the system," said John Jeter, Hilmar's chief executive officer. "We really work extremely hard."

Three years ago, the company began removing some of the saltiest waste from its sewage - about 1 percent of the total flow. And Jeter said he expects all the wastewater will be cleansed to state standards with the completion of a $37 million treatment plant this month - a full decade after such a system should have been operating, state regulators said.

Hilmar recently stepped up its fly and odor controls and offered to supply bottled water to neighbors, no matter the source of their well contamination.

"Our goal is to be a great neighbor and put ourselves in their shoes," Jeter said.

Yet, Hilmar Cheese appears to have had enough cash to comply with pollution rules all along.

Access to Governor's Office

The company sold $455 million worth of cheese last year, state records show, gaining access to Americans' refrigerators through such familiar brands as Kraft Foods, Safe-way's Lucerne and Raley's Sunnyside Farms.

As it grew, Hilmar Cheese also gained access to the Governor's Office.

The company was among the first of Gov. Gray Davis' major donors to switch to Arnold Schwarzenegger during the 2003 recall campaign, giving the Republican $21,200 - the maximum that corporations can give directly to gubernatorial candidates.

Three months after taking office, Schwarzenegger chose Chuck Ahlem, a Hilmar Cheese founding partner and part-owner, as California's undersecretary of agriculture.

The dairyman had served from 1996 though 2000 as a Gov. Pete Wilson appointee to the nine-member Valley water board, the same agency that allowed Hilmar Cheese to break its wastewater rules with impunity.

Ahlem, a leading industry voice on environmental regulation of dairies, told The Bee that he has never sought special treatment for his company.

"I don't ever want to portray myself as someone who slipped through the cracks," he said.

But water board records and interviews with board officials indicate Hilmar officials have lobbied Valley water board executives for lighter scrutiny - with some success.

Gary Carlton said Ahlem phoned him in the spring of 2001, when Carlton was executive director of the Valley water board.

Some new engineers and geologists had filed the harshest inspection report to date on Hilmar, board records show. Hilmar officials were offended that the board staff planned to cite the company for numerous violations, according to Carlton.

"The essence of (Ahlem's) call was, 'We're upset. ... We think we can solve these problems, and (board officials) are giving us undue levels of attention,' " said Carlton, now a Schwarzenegger appointee to the statewide Water Resources Control Board, which oversees the regional boards.

Along with Loren Harlow, head of the Valley board's Fresno office, Carlton accepted Ahlem's invitation that summer to tour the plant's first wastewater treatment works - a flawed system the company later abandoned.

Carlton and Harlow said they did not cut Hilmar any slack as a result of the visit, and Ahlem said, "I never wanted to have leniency applied."

But shortly after the tour, Harlow issued an unusual directive.

"We were told to back off," recalled Bert Van Voris, a supervising engineer in Fresno in charge of Hilmar. "If we were going to ask for any more information from Hilmar, it was going to be information that Loren Harlow agreed we needed. In other words, he would ask for it."

Van Voris cautioned a colleague about his boss's admonition in an Aug. 17, 2001 e-mail buried in the board's voluminous files on Hilmar.

"We are, by management directive, not to harass Hilmar Cheese unnecessarily with details," Van Voris wrote.

Harlow said his instruction to route Hilmar inquiries through him was "standard process." But Van Voris says he'd never experienced anything like it in his 16 years with the water board.

Visitors touring the Hilmar Cheese factory sense nothing of this long-brewing controversy.

'Field is full. Stinks bad'

Every day, steel tanker trucks hauling the milk of 150,000 cows veer off Highway 99 near Turlock and glide into docking stations at the factory's Nordic chalet façade.

At the Hilmar Cheese gift shop, visitors get a single-window view of the inner workings: workers wearing white hard hats, hairnets and uniforms crating 640-pound blocks of cheese in a room resplendent with stainless steel.

What visitors rarely see is the plant's backside, largely hidden behind a curtain of tall bushes.

There, nearby resident Frank Enes has documented Hilmar's disposal methods, videotaping

from the cab of his truck.

Enes' wobbly footage shows white wastewater gushing from pipes with the force of an open fire hydrant, opaque and steaming in the morning chill. The sewage floods furrowed fields of grayish dirt, where milky pools suggest the soil already has absorbed all it can.

"Field is full. Stinks bad," Enes narrates on the video, as he drives along Oslo Road the afternoon of April 11, 2003. "It's pretty creamy. There's steam coming out of the valve right now."

Disposing of organic wastewater on land is perfectly legal. Hundreds of Valley food processors from olive canneries to wineries spread their waste and let nature take its course. California allows the practice if it doesn't pollute the groundwater or create a public nuisance.

Enes, who lives about a quarter-mile from the cheese plant, says the smell alone told him Hilmar's dumping was out of control. Water board officials concurred in their inspection reports.

"Nobody has a problem with them being here," Enes continues in his narration. "They have a good business. But good neighbors don't stink up the town and act like they care about the community. That's it for now."

Enes leaned on water board officials to act, and after trading many phone calls, a statewide inspector paid him a visit on July 29, 2003. Enes popped one of his Hilmar movies into his living room VCR.

The inspector, Boris Trgovcich, said he was struck by footage of land drowning in wastewater. Hilmar officials had assured regulators that wastewater stood in the fields no longer than 48 hours, as their permit requires. Enes' videotapes indicated otherwise, Trgovcich said.

Hilmar, in a 2003 letter to the Valley water board, denied that its wastewater had been standing for five days, as Enes alleged.

But another year of problems passed before an exasperated Enes gathered signatures from 42 neighbors and petitioned Schwarzenegger's office to take action.

State water-pollution enforcement auditors Maestu and Trgovcich completed an extensive investigation of Enes' complaints of inaction 14 months ago. That report concluded that the Valley water board had failed to follow state policy calling for enforcement action against chronic violators.

The October 2003 report, obtained by The Bee, estimates that Hilmar Cheese had avoided spending at least $27 million by operating outside California's water pollution laws since January 1995.

The estimate, based on the company's own treatment and disposal cost projections, includes $15 million saved by installation of a conventional treatment works.

Hilmar spared itself an additional $12 million in transportation costs and disposal fees by not hauling the saltiest wastes to a sewage treatment plant - a process that only began three years ago, according to the state analysis.

Hilmar officials were baffled when The Bee informed them of the state's savings estimates.

"I've never seen it put that way," Jeter said, outlining various pollution-control investments the company did make over the years.

Despite those investments, the Dec. 2 water board order notes that Hilmar's disposal has caused a fivefold increase in groundwater salinity alone, citing the company's own tests. Furthermore, the order says, since 2000, neighbors have complained of odors and flies with "increasing frequency, blaming the conditions on (Hilmar Cheese)."

Hilmar Cheese officials are unaccustomed to such close environmental scrutiny.

Years of violations

Merced County approved Hilmar's 1984 application to build the cheese factory with just one sentence on environmental restrictions: "This use shall not be obnoxious or detrimental to surrounding properties." The county left it to the state water-quality enforcers to ensure Hilmar lived up to those words.

It would be years before neighbors began to realize that neither Hilmar nor state regulators were doing their duty.

Four years passed before the Valley water board even visited the plant, according to board records. No sooner did the board issue Hilmar a permit capping the daily flow at 60,000 gallons, than the company began violating it, the records show.

Yet another year passed before regulators noted that the offenses were a daily occurrence. By then, March 1990, the waste flow of leftover whey and other untreated cheese wastes had grown to 140,000 gallons a day, more than double the permitted limit.

Seven more years of continual violations passed before Hilmar officials agreed that their waste had overwhelmed the land's cleansing capacity, water board records show. In 1997, with Hilmar's Ahlem on the water board, the company offered to build a filtering system it said would "greatly diminish" pollutants.

The company also hoped to make money by selling the filtered-out proteins for calf feed.

The $15 million filtration system failed on both counts. Calves couldn't digest the feed, Jeter said, and the new system kept breaking down. But cheese production kept growing, as did the volume of untreated wastewater.

By 2001, public officials had begun to get complaints from plant neighbors.

One of them, Tresa Bucholtz, noticed something odd after steaming stamps off envelopes. The boiled water left a flour-like residue that smelled sweet, according to Merced County health records.

Water board officials found unsafe levels of nitrates in Bucholtz's tap water and that of one of her neighbors, and urged both not to drink the water. Today, the water board's Bert Van Voris says he believes Hilmar's dumping contributed to that contamination.

The following year, 2002, regulators received the most complaints ever about flies and odors

from Hilmar's waste fields. The flies seeped into Frank Silveira's house through the vents on his Jenn-Air gas range, making him resent his neighbor.

"How do they get away with that?" asked Silveira, a dairyman who has plenty of state rules to follow when irrigating crops with wastewater from his livestock stalls. "I'm not allowed to have standing water in my fields."

Jeter called a town meeting, apologized for the nuisance and promised relief: The company would pipe much of its wastewater four miles north to Turlock's sewage treatment plant.

"We believe this measure will resolve the situation you have been experiencing," Jeter said in a community letter.

About six months later, however, Hilmar officials decided the treatment plan wasn't going to work. Jeter said the Turlock sewage plant had run out of room; Turlock officials said Hilmar didn't want to pay a higher price.

In a second community letter, Jeter announced the change of plans: "Please be assured that wastewater management remains a priority for the company as we research new and better ways to manage our wastewater."

By then, 2003, the company was laying plans to expand production yet again, creating an average waste flow of 2 million gallons a day. In a letter to the company, the water board listed a litany of violations, but instead of denying the expansion, the board said it would set "minimum performance standards."

Regulators loath to act

By law, the statewide board can direct a regional board to take enforcement action or can impose penalties itself, according to Craig Wilson, chief counsel for the board. But it rarely exercises that authority - and it did not do so with Hilmar.

Trgovcich, one of the statewide water board inspectors, has a theory about why the Valley regional water board did not act either, until this month.

"We only take cases where we are 100 percent sure we are going to win," he said. "We only go after the guys who aren't going to fight us. They know Hilmar is going to fight it. This is why it pays to pollute."

After all, he said, there was no lack of proof.

Regulators only needed to tally the hundreds of violations Hilmar had documented in required "self-monitoring reports" of waste flows and concentrations.

The enforcers didn't lack teeth.

Backed by California's water pollution laws - considered the nation's strongest - state enforcers could have fined Hilmar up to $104 million for violating just one of several permit provisions: a prohibition on dumping highly concentrated waste onto the fields.

The regulators found that between April 2001 and January 2003, with equipment breaking down, Hilmar dumped 10.4 million gallons of high-saline water that was supposed to be

hauled away, records from the Hilmar file show. The maximum penalty for that violation is $10 per gallon.

The Fresno office can't even use its perennial short-staffing as a reason.

The office has spent more hours policing Hilmar Cheese's land disposal than on all but one of the 800 other companies it allows to spread organic waste on land - the Musco Family Olive Co. of Tracy - according to Van Voris, supervisor of the region's groundwater protection program.

In the case of Musco, the company paid a $150,000 fine in 2002 and is contesting a more recent penalty of $493,500 for failing to meet deadlines for fixes. Yet with Hilmar, state inspector Rafael Maestu said, for a decade the Fresno regulators "had all the information available to them. They had the resources. And they didn't act."

Carlton, the statewide water board member, characterized Harlow - who has worked for the water board since 1971 - as among a few veteran managers who reserve enforcement for the most recalcitrant violators.

"Enforcement was viewed as failure," Carlton said of the approach. "If you have to hit someone with a hammer, then you haven't done your job."

Harlow denies he has been weak on enforcement and blames Van Voris for failing to keep him abreast of Hilmar's violations.

"Frankly, I was unaware that these lingering problems were not being addressed until six or seven months ago," Harlow said. In hindsight, he said, "Enforcement action should have been taken three to four years ago."

With the water board's cleanup order earlier this month and the ongoing state attorney general's investigation, the lingering suspicions of some Fresno regulators are gaining currency.

The 'schizophrenic well'

For Jo Anne Kipps, one of the Fresno engineers, those suspicions began four years ago with screwy test results coming across her desk.

"I would see the groundwater-monitoring data fluctuate between good quality and bad," Kipps said. "I thought, 'What is going on here? It's a schizophrenic well.' "

It was not long before engineers figured it out.

The state had required Hilmar to drill downstream testing wells and routinely sample them so enforcers could see whether the company's wastewater was contaminating the groundwater. But clean water seeping beneath an irrigation canal was diluting those wells, according to an August 2000 inspection report.

Meanwhile, upstream monitoring wells that were supposed to sample groundwater unaffected by Hilmar were steeped in the cheese pollution, according to the state engineers. Why? The company was applying so much wastewater to the land that it had caused groundwater to reverse direction toward the upstream wells, inspectors said.

Hilmar officials said the phenomenon, if it happened, was unintentional.

More recently, a former Hilmar employee tipped state officials to an underground plumbing system that he maintains the company installed to shunt some wastewater to a nearby irrigation canal, which flows to the San Joaquin River. Hilmar's wastewater permit explicitly prohibits canal dumping.

Ken Rodrigues, who managed the company's wastewater in the mid-1990s, said his bosses closely tracked water table levels beneath the waste fields soon after underground drains were installed, in 1997. Water levels dropped 2 feet to 4 feet in the following two months - evidence, Rodrigues maintains, that the drains were carrying wastewater to the canal.

A boss told him that Hilmar managers "were very happy, and that this was exactly what they thought would happen," according to Rodrigues' account in an August 2003 letter to the Valley water board.

Hilmar officials dismiss Rodrigues as a disgruntled former employee. Jeter said the drain system was installed to benefit the nearby Hilmar Covenant Church, where the basement was flooded by rising groundwater. Hilmar nonetheless later plugged the drain at the board's insistence.

Water board officials told The Bee they have no doubt the drains carried cheese waste to the San Joaquin River.

"You're putting this much waste in a concentrated spot with a relief point around it," Van Voris said. "As soon as that water table comes up, that's going to go somewhere. Where can it go? Well, it's pretty obvious."

Hilmar officials earlier told regulators they did not know how much wastewater, if any, ended up in the canal. They nonetheless plugged the drain in early 2003 at the regulators' insistence, according to water board records.

Last summer, Rodrigues said, the attorney general's office brought him to Sacramento for an interview about those underground drains.

A sense of déjà vu

The attorney general's ongoing examination of Hilmar Cheese isn't the first dairy industry investigation. In 1997, news stories about Valley dairies fouling rivers and groundwater with cow manure and urine set off a flurry of local, state and federal prosecutions.

The dairy industry took the high road. Leaders responded by scolding the scofflaws and urging dairies to do a better job of policing themselves.

Chief among those critics was none other than Hilmar's Ahlem, who, in a California Farm Bureau Federation newsletter, encouraged regulators to get tough.

"If there are those people who are violating and discharging into the waterways," Ahlem was quoted as saying, "they need to be punished."

About the writer:

- The Bee's Chris Bowman can be reached at (916) 321-1069 or cbowman@sacbee.com.

Go to: Sacbee / Back to story

This article is protected by copyright and should not be printed or distributed for anything except personal use.
The Sacramento Bee, 2100 Q St., P.O. Box 15779, Sacramento, CA 95852
Phone: (916) 321-1000

Copyright © The Sacramento Bee