
Central Valley Regional Water Quality Control Board

9 May 2013

CERTIFIED MAIL
7011 2970 0003 2756 9203

James G. and Amelia M. Sweeney (owner/operator)
Sweeney Dairy
30712 Road 170
Visalia, CA 93292

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0539 FOR SWEENEY DAIRY,
WDID 5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY**

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code (Water Code) section 13268, for violations of the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order), which was issued by the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) on 3 May 2007. The Complaint charges James G. and Amelia M. Sweeney (hereinafter Discharger) with civil liability in the amount of **twenty thousand and four hundred dollars (\$20,400)**, which represents a penalty assessment that is based on a consideration of the failure to respond to requests made pursuant to Water Code section 13267(b) for technical reports.

Pursuant to Water Code section 13323, the Discharger may:

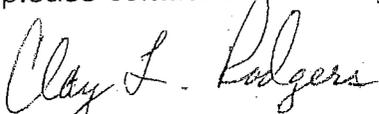
- Pay the assessed civil liability and waive its right to a hearing before the Central Valley Water Board by signing the enclosed waiver (checking off the box next to item #3) and submitting it to this office by **24 May 2013**, along with payment for the full amount; the amount of the assessed administrative liability (\$20,400) will be reduced provided the Discharger responds to the request for technical reports by **24 May 2013**;
- Waive the right to a 90-day hearing and agree to enter into settlement discussions with the Central Valley Water Board and request that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #4) and submitting it to this office by **24 May 2013**;
- Waive the right to a 90-day hearing in order to extend the hearing deadlines (checking off box next to item #5); *or*
- Contest the Complaint and/or enter into settlement discussions with the Central Valley Water Board without signing the enclosed waiver.

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations in the Complaint. This settlement will be considered final pending a 30-day period of public notice, during which time interested parties may comment on this action by submitting information to this office, attention Dale Essary. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the Complaint, return payment, and issue a new complaint.

If the Central Valley Water Board does not receive a signed waiver **by 24 May 2013**, then a hearing on this matter will be scheduled for the **25/26 July 2013** regular meeting of the Central Valley Water Board to be held at 11020 Sun Center Drive, Suite 200, in the City of Rancho Cordova, California, 95670. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify an Administrative Civil Liability Order based on the enclosed Complaint, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability. Specific notice about this hearing and its procedures are enclosed with this Complaint.

Payment of this assessed civil liability amount (\$20,400) does not absolve the Discharger from complying with the General Order, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Discharger fails to comply with the General Order in a timely manner.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Dale Essary at (559) 445-5093.



CLAY L. RODGERS
Assistant Executive Officer

Enclosure: Administrative Civil Liability Complaint R5-2013-0539
Hearing Procedures for Administrative Civil Liability Complaint R5-2013-0539

cc w/encl: Ms. Pamela Creedon, Central Valley Water Board, Rancho Cordova
Mr. Cris Carrigan, Office of Enforcement, SWRCB, Sacramento
Tulare County Resource Management Department, Visalia
Tulare County Health & Human Services Agency, Visalia

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0539

IN THE MATTER OF

JAMES G. AND AMELIA M. SWEENEY
SWEENEY DAIRY
TULARE COUNTY

This Complaint is issued to James G. and Amelia M. Sweeney (hereinafter Discharger) pursuant to California Water Code (Water Code) section 13268, which authorizes the imposition of Administrative Civil Liability (ACL), Water Code section 13323, which authorizes the Executive Officer to issue this Complaint, and Water Code section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that indicate that the Discharger failed to submit technical reports pursuant to an Order issued by the Regional Water Quality Control Board, Central Valley Region under the authority of Water Code section 13267.

The Executive Officer of the Regional Water Quality Control Board, Central Valley Region (hereinafter Central Valley Water Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger owns and operates the Sweeney Dairy located at 30712 Road 170, Visalia, California, County of Tulare.
2. The Dairy is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (hereinafter General Order), which was issued by the Central Valley Water Board on 3 May 2007. (Exhibit A.) Monitoring and Reporting Program R5-2007-0035 (hereinafter MRP) accompanies the General Order. (Exhibit B.) The General Order and the MRP contain reporting requirements for dairies regulated by the General Order. The General Order became effective on 9 May 2007.
3. The General Order and the MRP require the submission of an Annual Report for the 2011 calendar year for regulated facilities by 1 July 2012 (2011 Annual Report), including an Annual Dairy Facility Assessment with facility modifications implemented to date. The General Order also requires certification of completion statements by 1 July 2011, including certification that the Nutrient Management Plan for the Dairy has been completely implemented.
4. Under the MRP, the Executive Officer has authority pursuant to Water Code section 13267 to order the installation of monitoring wells based on the threat that an individual dairy or dairies pose to water quality. On 4 May 2012, the Executive Officer issued a Water Code section 13267 Order (13267 Order) to the Discharger that directed the Discharger to implement groundwater monitoring at the Dairy. (Exhibit C.) Specifically, the 13267 Order directed the Discharger to submit either: 1) written notification, by 25 May 2012, that the Discharger has joined a coalition group that will develop a representative groundwater monitoring program as an alternative to implementing an individual groundwater monitoring

program at the Dairy; or, 2) an acceptable groundwater monitoring well installation and sampling plan (MWISP) to the Central Valley Water Board by 29 June 2012.

STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED

5. An administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
6. Pursuant to Water Code section 13267, subdivision (b), a regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region... shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.
7. Pursuant to Water Code section 13268, subdivision (a), any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).
8. Pursuant to Water Code section 13268, subdivision (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.

ALLEGED VIOLATIONS

9. On 16 August 2012, the Central Valley Water Board staff issued a Notice of Violation, notifying the Discharger that the 2011 Annual Report with appurtenant components had not been received. (Exhibit D.) The Notice of Violation also requested that the delinquent report be submitted as soon as possible to minimize potential liability.
10. On 19 July 2012, the Central Valley Water Board staff issued a Notice of Violation notifying the Discharger that the MWISP had not been received by 29 June 2012. (Exhibit E.) The Notice of Violation also requested that the delinquent MWISP be submitted as soon as possible to avoid incurring any additional liability.

11. On 15 February 2013, the Central Valley Water Board staff issued a courtesy pre-filing settlement letter notifying the Discharger that staff was in the process of assessing civil liability for failure to submit the 2011 Annual Report and the MWISP. (Exhibit F.) The letter included a calculation of the maximum penalty (\$418,000) and a recommended penalty amount (\$13,050) as of 25 January 2013 for the failure to submit the missing reports. The Discharger was provided an opportunity to meet with the Central Valley Water Board staff to discuss the alleged violations and submit any information regarding the factors listed in Water Code section 13327 that would be deemed relevant to determining an appropriate monetary penalty. The letter requested that all responses be received by 15 March 2013. The letter also indicated that if staff did not receive a response from the Discharger by 15 March 2013, the Executive Officer would issue a Complaint to the Discharger. As of the date of issuance of this Complaint, the Central Valley Water Board staff has not received any response to the 15 February 2013 pre-filing settlement letter.
12. Central Valley Water Board's compliance tracking system and case files indicate that to date the Board has not received the 2011 Annual Report or any of the appurtenant components thereof, or the MWISP.
13. The Discharger is alleged to have violated the following sections of the General Order and of the MRP:
 - A) Provision E.3 of the General Order, which states:

"The Discharger shall comply with the attached Monitoring and Reporting Program No. R5-2007-0035 which is part of this Order, and future revisions thereto or with an individual monitoring and reporting program, as specified by the Central Valley Water Board or the Executive Officer."
 - B) Provision E.13 of the General Order, which states in part:

"The Discharger must comply with all conditions of this Order, including timely submittal of technical and monitoring reports as directed by the Executive Officer."
 - C) The MRP, which states in part:

"An annual monitoring report is due by 1 July of each year [T]he annual report shall cover information on crops harvested during the previous calendar year"
14. The Discharger violated both the General Order and the MRP by failing to submit the 2011 Annual Report with appurtenant components as directed by the MRP that accompanies the General Order, which contain reporting requirements for dairies regulated by the General Order.
15. The Discharger violated the General Order, the MRP, and the 13267 Order issued by the Executive Officer on 4 May 2012 by failing to submit the MWISP as required by the 13267

Order and as directed by the MRP that accompanies the General Order, which contains the requirements for implementing groundwater monitoring at dairies regulated by the General Order.

16. The Discharger petitioned the 13267 Order to the State Water Resources Control Board (State Board) for review of the Order in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 et seq. However, the filing of a petition to the State Board does not stay the Discharger's ongoing obligation to comply with the General Order, nor does it relieve Central Valley Water Board staff of its obligation to pursue formal enforcement for the Discharger's failure to comply with the General Order.

SUMMARY OF ALLEGED VIOLATIONS

1. **Violation No. 1:** The Discharger failed to submit an annual report for 2011 with appurtenant components by 1 July 2012 as required by the General Order and the MRP. As of the date of this Complaint this report is now 312 days late.
2. **Violation No. 2:** The Discharger failed to submit an MWISP by 29 June 2012 as required by the 13267 Order and the MRP. As of the date of this Complaint this report is now 314 days late.

The Discharger has been out of compliance for a total of 626 days. The pre-filing settlement letter issued to the Discharger on 15 February 2013 establishes a total of 418 days in which the Discharger has been out of compliance, and is the basis for determining the recommended civil liability amount (see below).

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

17. On 17 November 2009, the State Water Resources Control Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability. This policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final_111709.pdf.

18. The administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy. In summary, this penalty assessment is based on a consideration of the failure to respond to requests made pursuant to Water Code section 13267, subdivision (b), for Violations 1 and 2. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.

Violations under Water Code section 13267 are assessed on a per day basis. However, the violations at issue are primarily reporting violations and therefore qualify for the alternative approach to penalty calculation under the Enforcement Policy. The failure to submit an annual report or an MWISP does not cause daily detrimental impacts to the environment or the regulatory program. It is appropriate to assess daily penalties for the first thirty (30) days, plus one violation for each additional thirty-day period. For Violation 1, the days fined is reduced to 12 days, and for violation 2, the days fined is reduced to 13 days (Attachment B).

The required factors have been considered using the methodology in the Enforcement Policy, as explained in detail in Attachment A and shown in the Penalty Calculation for Civil Liability (Attachment B).

19. The maximum penalty for the violations described above is \$418,000 based on a calculation of the total number of per-day violations times the statutory maximum penalty (418 total days of violation X \$1,000). However, based on consideration of the above facts and after applying the penalty methodology, the Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **twenty thousand and four hundred dollars (\$20,400)** for the violations cited above. The specific factors considered in this penalty are detailed in Attachment A. The Discharger's culpability, history of violations, and ability to pay and continue in business were considered, but did not change the amount of liability. Other factors as justice may require were considered, but circumstances warranting an adjustment under this step were not identified by staff or provided by the Discharger.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

The Executive Officer proposes that the Discharger be assessed an administrative civil liability pursuant to Water Code sections 13323 and 13268 in the amount of **twenty thousand and four hundred dollars (\$20,400)** for failure to submit the 2011 Annual Report with appurtenant components by the 1 July 2011 deadline as required by the General Order and the MRP, and for failure to submit an MWISP by the 29 June 2012 deadline as required by the 13267 Order and the MRP.

The Executive Officer proposes that the amount of the assessed administrative liability (\$20,400) may be reduced provided the Discharger submits one or more of the following: 1) a complete 2011 Annual Report with appurtenant components; and/or 2) a complete MWISP. The amount of the assessed civil liability shall be reduced by \$2,000 for each report described above that is received by **24 May 2013** and which the Executive Officer finds complete. The total adjustment to the liability amount will not exceed \$4,000.

If the Central Valley Water Board holds a hearing, it may choose to impose an administrative civil liability in the amount proposed or for a different amount, decline to seek civil liability, or refer the matter to the Attorney General to have a Superior Court consider enforcement. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in

the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this administrative civil liability complaint through hearing.

There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.

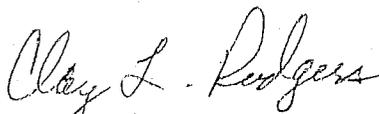
Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.

Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

Payment of the assessed liability amount does not absolve the Discharger from complying with the General Order, the MRP, or the 13267 Order, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Discharger fails to comply with the General Order, the MRP, the 13267 Order, and/or future orders issued by the Central Valley Water Board.

5/9/2013

Date



Clay L. Rodgers

Assistant Executive Officer

Central Valley Water Board Prosecution Team

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent James G. and Amelia M. Sweeney (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2013-0539 (hereinafter the "Complaint");
2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. (***Check here if the Discharger will waive its right to a hearing and accept the proposed liability amount of twenty thousand and four hundred dollars (\$20,400) subject to adjustment for timely submission of the required reports***) I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint; and

I certify that the Discharger will be liable for **twenty thousand and four hundred dollars (\$20,400) in full**. However, the Discharger has the ability to adjust the liability amount if the Discharger submits a complete 2011 Annual Report with appurtenant components, and/or an MWISP by **24 May 2013**.

The amount of the assessed civil liability shall be reduced if the Discharger submits one or more of the following documents by **24 May 2013**: 1) a complete 2011 Annual Report with appurtenant components; and/or 2) a complete MWISP.

The amount of the assessed civil liability shall be reduced by \$2,000 for each report described above that is received by **24 May 2013** and which the Executive Officer finds complete.

In addition to the reports, the Discharger shall also remit payment of the adjusted liability amount, by check, which will contain a reference to "ACL Complaint R5-2013-0539" and will be made payable to the "State Water Resources Control Board Cleanup and Abatement Account". Payment must be received by the Central Valley Water Board by **24 May 2013** or this matter will be placed on the Central Valley Water Board's agenda for consideration of adoption at the **25/26 July 2013** Central Valley Water Board meeting.

I understand that payment of the **\$20,400** in full is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

4. (***Check here if the Discharger will waive the 90-day hearing requirement, but wishes to engage in settlement negotiations. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.***) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the Complaint but reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
5. (***Check here if the Discharger will waive the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted. Attach a separate sheet with the amount of additional time requested and the rationale.***) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the Complaint but reserve the ability to request a hearing in the future. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)

EXHIBIT A

Waste Discharge Requirements General Order for Existing Milk Cow Dairies
Order R5-2007-0035

and

EXHIBIT B

Monitoring and Reporting Program R5-2007-0035

can be viewed at:

[http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/
r5-2007-0035.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2007-0035.pdf)

EXHIBIT C
Water Code §13267 Order
Issued 4 May 2012



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

4 May 2012

James G. & Amelia M. Sweeney
Sweeney Dairy (owner/operator)
30712 Road 170
Visalia, CA 93292

CERTIFIED MAIL
7011 2000 0001 1769 1428

GROUNDWATER MONITORING DIRECTIVE, ISSUED PURSUANT TO REVISED MONITORING AND REPORTING PROGRAM NO. R5-2007-0035, SWEENEY DAIRY, WIDID 5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY

You are legally obligated to respond to this directive. Please read this letter carefully.

The subject facility (Dairy) is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order), which was adopted by the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) on 3 May 2007. Monitoring and Reporting Program Order R5-2007-0035, revised 23 February 2011 (MRP), accompanies the General Order and contains requirements for implementing individual groundwater monitoring at the Dairy. Under the MRP, the Executive Officer has the authority to prioritize the order that dairies must comply with the individual monitoring requirements of the MRP. Prioritization is done as necessary based on ranking scheme found in Table 5 of Attachment A of the MRP.

As the owner and/or operator of a dairy, you are being notified that, based on the factors listed in the MRP, Attachment A (Groundwater Monitoring, Monitoring Well Installation and Sampling Plan and Monitoring Well Installation Completion Report for Existing Milk Cow Dairies), Table 5 (Groundwater Monitoring Factors for Ranking Priority), it is now a priority for your Dairy to obtain compliance with the Monitoring Requirements of the MRP. The information required by this letter is required by section 13267 of the Water Code.

The Executive Officer finds that:

1. You are the owner and/or operator of a dairy regulated under the General Order.
2. The MRP, and this subsequent directive, are issued pursuant to California Water Code (CWC) section 13267, which states, in relevant part:

KARL E. LONGLEY ScD, P.E., CHAIR | PAMELA C. CREEDON P.E., BOEE, EXECUTIVE OFFICER

1685 E Street, Fresno, CA 93706 | www.waterboards.ca.gov/centralvalley

(a) A regional board ... may investigate the quality of any waters of the state within its region.

(b)(1) In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region ... shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

3. The Central Valley Water Board adopted the Water Quality Control Plans for the Tulare Lake Basin, Second Edition, revised January 2004, and the Sacramento River and San Joaquin River Basins, Fourth Edition, revised October 2011, which designate beneficial uses of water. All groundwater within the vicinity of the site is designated as having a beneficial use of municipal and domestic water supply (MUN) and agricultural supply (AGR).
4. Groundwater monitoring shows that many dairies in the Central Valley Region have impacted groundwater quality. A study of several dairies in a high-risk groundwater area in the Region found that groundwater beneath dairies that were thought to have good waste management and land application practices had elevated levels of salts and nitrates beneath the production and land application areas. Groundwater monitoring has also shown groundwater pollution under many of the dairies, including where groundwater is as deep as 120 feet and in areas underlain by fine-grained sediments. Dairy waste constituents (primarily nitrogen and salts), when released to groundwater, are a significant threat to the beneficial uses of MUN and AGR.
5. No set of waste management practices has been demonstrated to be protective of groundwater quality in all circumstances. Since groundwater monitoring is the most direct way to determine if management practices at a dairy are protective of groundwater, the MRP requires groundwater monitoring to determine if a dairy is in compliance with the groundwater limitations of the General Order.
6. Attachment A to the MRP informs dairy owners/operators of the ongoing monitoring well installation and sampling plan (MWISP) process at existing milk cow dairies in the Central Valley. It specifies, "Dischargers choosing not to participate in a Representative Monitoring Program or those failing to notify the Central Valley Water Board of their decision to participate in a Representative Monitoring Program, will continue to be subject to the groundwater monitoring requirements of the Order and Monitoring and Reporting Program No. R5-2007-0035 (MRP). If necessary, the Executive Officer will prioritize these groundwater monitoring requirements based on the factors in Table 5 below."

7. The Central Valley Water Board has prioritized the order that these groundwater monitoring requirements are imposed based on the factors in Table 5 of Attachment A, titled "Groundwater Monitoring Factors for Ranking Priority." Groundwater monitoring directives have been issued to dairy farmers in phases of 100-200 dairies each year. To date, the Board has issued approximately 260 directives requiring installation of Monitoring Well Installation and Sampling Plans in six Rounds. Most of the dairies that received directives have joined a Representative Monitoring Program. In addition, approximately 1,000 other dairies have voluntarily joined a Representative Monitoring Program (see Finding 8, below). This is the final round of directives being issued by the Board. The dairy farms receiving directives in Round 6 all received comparable total scores based on the factors described in Table 5.
8. On 23 February 2011, the Central Valley Water Board issued a Revised MRP to allow dairymen to enroll in a Representative Monitoring Program as an alternative to submitting a site-specific MWISP. Membership in a Representative Monitoring Program is an alternative to achieve compliance with this directive without installing monitoring wells on an individual basis. The Central Valley Dairy Representative Monitoring Program is currently available to dairy farmers at a cost of \$1,500 plus \$81 per month.
9. In revising the MRP in 2011, the Central Valley Water Board concluded that it is reasonable and appropriate to require all existing milk cow dairies regulated by the General Order to enroll in a representative monitoring program or be subject to the individual monitoring requirements specified in the MRP.
10. The MRP states, in relevant part, the following:

II: Individual Monitoring Program Requirements

1. The Discharger shall install sufficient monitoring wells to:
 - a. Characterize groundwater flow direction and gradient beneath the site;
 - b. Characterize natural background (unaffected by the Discharger or others) groundwater quality upgradient of the facility; and
 - c. Characterize groundwater quality downgradient of the corrals, downgradient of the wastewater retention ponds, and downgradient of the land application areas.
3. Prior to installation of wells, the Discharger shall submit to the Executive Officer a Monitoring Well Installation and Sampling Plan (MWISP) (see [MRP Attachment A, Subsection IV: Monitoring Well Installation and Sampling Plan]) and schedule prepared by, or under the direct supervision of, and certified by, a California registered civil engineer or a California registered geologist with experience in hydrogeology. Installation of monitoring wells

shall not begin until the Executive Officer notifies the Discharger in writing that the MWISP is acceptable.

7. Within 45 days after completion of any monitoring well, the Discharger shall submit to the Executive Officer a Monitoring Well Installation Completion Report (MWICR) (see [MRP Attachment A, Subsection V: Monitoring Well Installation Completion Report]) prepared by, or under the direct supervision of, and certified by, a California registered civil engineer or a California registered geologist with experience in hydrogeology.

11. Following installation of the groundwater monitoring wells, groundwater data must be collected and groundwater monitoring reports submitted in accordance with the MRP.

You are hereby notified that, pursuant to CWC section 13267,

You are required to comply with the MRP according to the time schedule listed below. If you do not enroll in a representative monitoring program, you must submit a Monitoring Well Installation Completion Report (MWICR). The MWICR must contain the information required by Attachment A of the MRP.

In order to submit an MWICR that meets the requirements of this Order, there are a number of preliminary steps that are required.

You must submit an acceptable Monitoring Well Installation and Sampling Plan (MWISP) that contains the minimum information required by Section IV, Attachment A of the MRP to allow the collection of data that will identify whether the Dairy is impacting groundwater quality. Installation of the monitoring wells shall not begin until the Executive Officer notifies you in writing that the MWISP is acceptable.

Compliance with the MRP may be satisfied in accordance with either of the following schedules:

1. **By 25 May 2012**, provide written notification to the Central Valley Water Board that you have joined a coalition group that has developed or will develop a representative groundwater monitoring program pursuant to the General Order. Such notification must include a copy of your letter of intent to join a coalition or other certification of your participation and intent to comply with the conditions and terms of the coalition's efforts; **or**,
2. **By 29 June 2012**, submit an acceptable site-specific MWISP.
 - A.) An acceptable MWISP must include a schedule designed to result in submittal of an acceptable MWICR within **135 calendar days** after notification that the site-specific MWISP is acceptable. The MWICR must confirm that you have installed the accepted monitoring well system,

which must contain, at a minimum, the information required by Section V in Attachment A of the MRP.

- B.) Each well within the monitoring well system must be sampled semi-annually (twice per year) for field measurements of electrical conductivity, temperature, and pH, and laboratory analysis must be conducted for nitrate and ammonia. Depth to groundwater is to be measured in each monitoring well quarterly (four times per year) and prior to purging the well for each sampling event. During the first semi-annual event, and every two years thereafter, groundwater samples from each well shall also be analyzed in the laboratory for calcium, magnesium, sodium, potassium, bicarbonate, carbonate, sulfate, and chloride. As specified in Attachment A of the MRP, groundwater monitoring reports are submitted annually by 1 July of each year. The groundwater monitoring reports are to contain a detailed description of how the data were collected, copies of laboratory reports, a tabulated summary of the data, and an evaluation of whether the Dairy has impacted groundwater.
- C.) All technical reports are to be signed and stamped by a California Professional Engineer (Registered as a Civil Engineer) or Professional Geologist experienced in performing groundwater assessments. All laboratory analyses are to be performed by an analytical laboratory certified by the State of California for the analyses performed.

The failure to furnish any of the required reports, or the submittal of substantially incomplete reports or false information, is a misdemeanor, and may result in additional enforcement actions being taken against you, including issuance of an Administrative Civil Liability (ACL) Complaint pursuant to CWC section 13268. **Liability may be imposed pursuant to CWC section 13268 in an amount not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.**

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., within 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.

If you have questions regarding this matter, please contact Dale Essary of this office at (559) 445-5093 or at dessary@waterboards.ca.gov.

Clay L. Rodgers

for Pamela C. Creedon
Executive Officer

cc: Mr. John Menke, State Water Resources Control Board, Sacramento
Tulare County Health & Human Services Agency, Environmental Health, Visalia
Tulare County Resource Management Agency, Code Compliance, Visalia

EXHIBIT D

Notice of Violation Issued 16 August 2012
For Failure to Submit 2011 Annual Report



Central Valley Regional Water Quality Control Board

NOTICE OF VIOLATION

16 August 2012

CERTIFIED MAIL

70112970000327569166

James G. and Amelia M. Sweeney (owner/operator)
Sweeney Dairy
30712 Road 170
Visalia, CA 93292

POTENTIAL ADMINISTRATIVE CIVIL LIABILITY FOR FAILURE TO SUBMIT ANNUAL REPORT, SWEENEY DAIRY, WDID 5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY

The dairy facility identified above is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order No. R5-2007-0035 (General Order), which was issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) on 3 May 2007. The General Order required that a 2011 Annual Report be submitted for regulated facilities by 1 July 2012, including an Annual Dairy Facility Assessment with facility modifications implemented to date. The General Order also required certification that the Nutrient Management Plan has been completely implemented.

The required reports are requested pursuant to California Water Code (CWC) section 13267. CWC section 13268 provides that failure to submit the required reports can subject you to administrative civil liability (monetary penalties) at a rate of up to \$1,000 for each day each report is late or substantially incomplete if imposed by the Central Valley Water Board, or at a rate up to \$5,000 for each day a report is late or substantially incomplete if imposed by the superior court. It is important that you promptly provide the Central Valley Water Board with the reports required by the General Order that were due by 1 July 2012, to minimize your potential liability.

Please note that an annual report is required for the subject facility as long as it is regulated under the General Order, even if the facility was vacant during the 2011 calendar year. If the facility was vacant during 2011, no manure or wastewater was exported during 2011, and no manure or wastewater was land applied during 2011, you must submit a report containing this information and providing groundwater data for any domestic or agricultural wells on site. If the dairy is currently in the closure process, but it operated as a dairy during part of the 2011

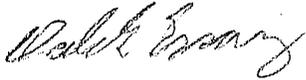
KARL E. LONGLEY ScD, P.E., CHAIR | PAMELA C. CREEDON P.E., BCEE, EXECUTIVE OFFICER

1685 E Street, Fresno, CA 93706 www.waterboards.ca.gov/centralvalley

APPROVED
DORF
Supervising Engineer

calendar year, you must submit a report which provides data on manure and crop production and land application or export of manure or wastewater, as well as groundwater data for any domestic or agricultural wells on site.

Please contact me at (559) 445-5093 if you have any questions regarding this matter.



DALE E. ESSARY
Senior Engineer
Confined Animals Unit

EXHIBIT E

Notice of Violation Issued 19 July 2012
For Failure to Submit MWISP



FILE



LEWIS G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

NOTICE OF VIOLATION

19 July 2012

James G. and Amelia M. Sweeney
Sweeney Dairy (owner/operator)
30712 Road 170
Visalia, CA 93292

CERTIFIED MAIL
701 2970 0003 2756 8435

FAILURE TO SUBMIT GROUNDWATER MONITORING WELL INSTALLATION AND SAMPLING PLAN, SWEENEY DAIRY, WDID 5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY

The subject facility (Dairy) is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order), which was issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) on 3 May 2007. Monitoring and Reporting Program R5-2007-0035 (MRP) accompanies the General Order, and contains requirements for implementing groundwater monitoring at the Dairy. Under the MRP, the Executive Officer has the authority to require groundwater monitoring at dairies that pose a threat to water quality.

By letter dated 4 May 2012 (copy enclosed), the Executive Officer directed operator(s) and owner(s) of the Dairy to submit either written notification that you have joined a coalition that will develop a representative groundwater monitoring program by 25 May 2012, or an acceptable site-specific groundwater monitoring well installation and sampling plan (MWISP) by 29 June 2012. The Executive Officer's 4 May 2012 Groundwater Monitoring Directive (Directive) was issued pursuant to California Water Code (CWC) section 13267, which authorizes the Board to require the submittal of technical reports. To date, the Board has not received either an MWISP or the written notification for the Dairy.

Your failure to complete and submit the MWISP or the written notification for the Dairy is a violation of CWC section 13267(b), and subjects you to potential administrative civil liability that is growing every day that the requested information is not submitted to the Board. The Board may impose administrative civil liability (monetary penalties) of up to \$1,000 for each day the submittal is late under CWC section 13268. Failure to comply with the Executive Officer's 4 May 2012 Directive may also subject you to termination of the authorization to discharge, pursuant to General Order Provision E.10.

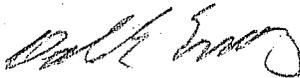
KARL E. LONGLEY SCD, P.E., CHAIR | PAMELA C. CREEDON P.E., BCEE, EXECUTIVE OFFICER

1685 F Street, Fresno, CA 93706 | www.waterboards.ca.gov/centralvalley

APPROVED
[Signature]
Supervising Engineer

As soon as possible, but no later than **17 August 2012**, you must submit either an MWISP or written notification that you have joined a coalition to avoid incurring additional potential liability. In developing an MWISP, you should consult Attachment A of the MRP, which describes the minimum information that must be included. A well-designed MWISP will allow you to collect data that will identify whether the Dairy is impacting groundwater quality. In addition, the Executive Officer's 4 May 2012 Directive provides details regarding the protocol by which the MWISP is to be implemented at the Dairy.

The submittal date stated above is for administrative purposes only, and does not change any due dates required by the Executive Officer's 4 May 2012 Directive. If you have any questions regarding this matter, please contact me at (559) 445-5093 or at dessary@waterboards.ca.gov.



DALE E. ESSARY, PE
RCE No. 53216
Senior Engineer
Dairy Compliance Unit

Enclosure: 4 May 2012 Directive

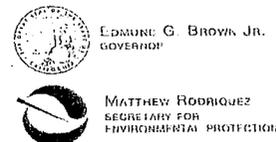
cc: (w/o enclosure)

Tulare County Health & Human Services Agency; Environmental Health, Visalia
Tulare County Resource Management Agency, Code Compliance, Visalia

EXHIBIT F

Letter Issued 15 February 2013

Forthcoming Assessment of Civil Liability for Failure to Submit 2011 Annual Report and
MWISP



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

CHRON

15 February 2013

James G. and Amelia M. Sweeney (owner/operator)
Sweeney Dairy
30712 Road 170
Visalia, CA 93292

CERTIFIED MAIL
7012 1010 0003 3173 0001

FORTHCOMING ASSESSMENT OF CIVIL LIABILITY FOR FAILURE TO COMPLY WITH CALIFORNIA WATER CODE SECTION 13267, SWEENEY DAIRY, WDID 5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY

The purpose of this letter is to inform you of a forthcoming Administrative Civil Liability Complaint (Complaint) and to notify you of your opportunity to negotiate and settle the assessment of monetary penalties for your failure to comply with the California Water Code. **Please read this notice carefully.**

The subject facility (Dairy) is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order), which was issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) on 3 May 2007. Monitoring and Reporting Program R5-2007-0035 (MRP) accompanies the General Order. The General Order and the MRP contain reporting requirements pursuant to section 13267 of the California Water Code, which authorizes the Central Valley Water Board to require dairies to furnish technical reports under penalty of perjury. Anyone failing to comply with section 13267 is guilty of a misdemeanor and liable civilly in accordance with section 13268 of the California Water Code in an amount of up to one thousand dollars (\$1,000) for each day the violation occurs.

The General Order and the MRP required, pursuant to section 13267 of the California Water Code, that an Annual Report for the calendar year 2011 (2011 Annual Report) be submitted for regulated facilities by 1 July 2012. On 16 August 2012, Central Valley Water Board staff issued a Notice of Violation notifying the owner and operator of the Dairy (Discharger) that the 2011 Annual Report had not been received. The Notice of Violation also requested that the delinquent report be submitted as soon as possible to avoid incurring any additional liability. To date, the required 2011 Annual Report has not been received.

In addition to the violation described above, on 5 May 2012 the Executive Officer issued a California Water Code section 13267 Order (13267 Order) that directed the Discharger to implement groundwater monitoring at the Dairy. Specifically, the 13267 Order directed the Discharger to submit either: 1) written notification, by 25 May 2012, that the Discharger has joined a coalition group that will develop a representative groundwater monitoring program as an alternative to implementing an individual groundwater monitoring program at the Dairy; or, 2) an acceptable groundwater monitoring well installation and sampling plan (MWISP) to the Central Valley Water Board by 29 June 2012. On 19 July 2012, Central Valley Water Board staff issued a Notice of Violation notifying the Discharger that the MWISP had not been received for the Dairy. The Notice of Violation also requested that the delinquent MWISP be submitted as soon as possible to avoid incurring any additional liability. To date, the required MWISP has not been received.

Central Valley Water Board staff is aware that you have petitioned the 13267 Order to the State Water Resources Control Board (State Board) for review of the Order in accordance with California Water Code section 13320 and California Code of Regulations, title 23, sections 2050 following et seq. However, the filing of a petition to the State Board does not stay your ongoing obligation to comply with any order of the Central Valley Water Board, nor does it relieve staff of its obligation to pursue formal enforcement for your failure to comply with the General Order or the 13267 Order.

As of 25 January 2013, the 2011 Annual Report and the MWISP are 208 days and 210 days overdue, respectively. The maximum cumulative penalty for these violations is four hundred eighteen thousand dollars (\$418,000), based on a calculation of the cumulative total number of per-day violations times the statutory maximum penalty (418 total days of violation X \$1,000). Based on the use of the State Water Resources Control Board's Water Quality Enforcement Policy, the Executive Officer of the Central Valley Water Board intends to issue you a Complaint in the amount of thirteen thousand fifty dollars (\$13,050) for these violations. This recommended penalty amount is based on information contained in the Central Valley Water Board's files and takes into account such factors as your culpability, cleanup and cooperation, history of violations, ability to pay and continue in business, and other factors as justice may require.

By way of this letter, you are being notified of the opportunity to meet with Central Valley Water Board staff prior to the issuance of the Complaint to discuss the alleged violations and proposed penalty amount. This meeting affords you the opportunity to potentially reduce the recommended penalty amount if you present new information to Central Valley Water Board staff regarding the factors listed above or other information you believe is relevant to determining an appropriate monetary penalty.

If you intend to argue that you have an inability to pay the proposed penalty amount, you must bring documentation with you to the meeting to demonstrate such an inability. Appropriate documentation **must include** at least the last three years of submitted federal income tax returns including schedules and a balance sheet with assets and liabilities **and may also include** credit card or line of credit statements, mortgage loan statements, bank account statements, or any other document that explains the special circumstances regarding past, current, or future financial conditions. This information may be used in determining an appropriate monetary penalty assessment to resolve this matter without a hearing. If a settlement is reached at this meeting, the Executive Officer will forego issuing the Complaint. To avoid further liability, you are urged to submit the outstanding reports.

In order to initiate any discussions to settle this matter, you must contact Dale Essary at (559) 445-5093 by **15 March 2013** to schedule a day and time to meet with Central Valley Water Board staff. If we do not receive a response from you by this date, the Executive Officer will issue you a Complaint in the proposed penalty amount and this matter will proceed to a formal enforcement hearing before the Central Valley Water Board or will refer the matter to the Attorney General's Office or other prosecution agency.

If you have any questions regarding this notice, please contact Dale E. Essary by telephone at (559) 445-5093 or by email at dessary@waterboards.ca.gov.



DOUGLAS K. PATTESON
Supervising WRC Engineer

cc: Ms. Pamela Creedon, Central Valley Water Board, Rancho Cordova
Mr. Cris Carrigan, Office of Enforcement, SWRCB, Sacramento
Tulare County Health & Human Services Agency, Visalia
Tulare County Resource Management Department, Visalia