

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R5-2009-0508

IN THE MATTER OF

FRANK MELO, FRANK MELO DAIRY
7399 COUNTY ROAD 21, ORLAND, GLENN COUNTY

This Order is issued to Frank Melo, owner and operator of Frank Melo Dairy (hereafter "Discharger"), pursuant to California Water Code (CWC) section 13350, which authorizes the imposition of Administrative Civil Liability for a discharge of waste in violation of a waste discharge requirement and CWC section 13268, which authorizes the imposition of Administrative Civil Liability for failure to furnish required reports. This Order is based on findings that the Discharger violated the CWC, and Waste Discharge Requirements General Order for Existing Milk Cow Dairies Order No. R5-2007-0035 ("General Order").

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

1. The Discharger is Frank Melo, owner and operator of Frank Melo Dairy, located at 7399 County Road 21, Orland, California.
2. Frank Melo owns and operates a 310 milk cow dairy facility with a 20 acre production area and 100 acres of cropland currently used for manure (wastewater and solids) application. The dairy is located south of County Rd 21 and east of County Rd S. Wastewater from the dairy is collected in wastewater retention ponds (also referred to herein as "lagoons"), where it is periodically discharged to cropland. According to a Preliminary Dairy Facility Assessment Report submitted to the Central Valley Water Board on 31 December 2007, this facility has adequate pond storage, even though the off-property discharge was caused by an overtopping lagoon.
3. On 3 May 2007, the Central Valley Water Board adopted the General Order. This order serves as general waste discharge requirements for discharges of waste from existing milk cow dairies (as defined in Finding 7 of the General Order) of all sizes including the Frank Melo Dairy. The General Order implements the requirements of State Water Resources Control Board (State Water Board) Resolution 68-16 (Statement of Policy with Respect to Maintaining High Quality of Waters in California); Title 27 of the California Code of Regulations, division 2, subdivision 1, chapter 7, subchapter 2, article 1, for confined animal facilities; the Central Valley Water Board's Water Quality Control Plan for the Sacramento and San Joaquin River Basins and the Water Quality Control Plan for the Tulare Lake Basin; and other applicable plans and policies of the State Water Board and the Central Valley Water Board. The Frank Melo Dairy was notified of its coverage under the General Order on 30 June 2007.

4. On 6 February 2008, Department of Fish & Game conducted an investigation concerning wastewater in a canal along County Rd 24. It was determined that Frank Melo Dairy was the source of the discharge. Frank Melo Dairy has three (3) wastewater lagoons on the property. The middle lagoon had overflowed into a ditch located west of it. The ditch runs south and then east along the south end of the cropland. The discharge had reached the end of the cropland and then continued south and into the canal at County Rd 24, which empties into the Sacramento River. Central Valley Water Board staff conducted a follow up site-inspection on 7 February 2008 and it was noted that the overflow from the lagoon had been sufficient to create a two (2) foot wide swale in the soil connecting the lagoon to the ditch. According to the Priority Reporting of Significant Events Report submitted by Frank Melo on 18 March 2008, approximately 1400 gallons of wastewater left the property. The 7 February 2008 inspection disclosed that none of the three lagoons on the dairy had the one foot (1) of freeboard required under the General Order. In addition, none of the fields had a tailwater return system that would prevent wastewater applied to cropland from leaving the property.

5. On 6 February 2008, six (6) water samples were collected by Department of Fish and Game, and tested by Fish and Wildlife Water Pollution Control Laboratory. All but the sample collected up gradient from the discharge were determined to be deleterious to aquatic organisms living in waters of the state.

Sample Identification/ Location	Date	Time	EC μ s/cm	PH	Temp (Celsius)	Undissociated Ammonia as NH ₃ mg/L (should not exceed .02 mg/L)	Ammonia as N mg/L (Should not exceed .1 - 4 mg/L)
1. Drain Up Gradient South Side of Property	2/6/08	16:17	6814	8.79	12.7	.016	.107
2. Field Ditch South Side Into Dairy	2/6/08	16:25	6263	7.55	10.3	3.26	398
3. Lagoon Overflow Into Drain	2/6/08	17:46	6505	7.23	10.0	1.52	396
4. Lagoon	2/6/08	17:48	6468	7.43	12.2	2.81	390
5. Canal South Side County Road 21 (East of I-5)	2/6/08	18:01	1147	8.40	11.7	5.92	96.0
6. Drain (North of County Road 24)	2/6/08	18:47	4990	8.18	10.1	8.71	259

6. On 7 March 2008, Central Valley Water Board staff issued the Discharger a written Notice of Violation letter, giving notice of the violations that had led to the issuance of this Order.

7. CWC section 13323 states, in part:

“Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.”

8. CWC section 13350 states, in part:

“Any person who...in violation of any waste discharge requirements, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged into waters of the state...shall be liable civilly”

The relevant penalty provisions of the statute at §13350(e) provide that:

“[A] regional board may impose civil liability administratively . . . either on a daily basis or on a per gallon basis, but not both. (1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs. . . . (2) The civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged.”

9. General Order Prohibition A.4 states:

“The collection, treatment, storage, discharge, or disposal of wastes at an existing milk cow dairy that results in (1) discharge of waste constituents in a manner which could cause degradation of surface water or groundwater except as allowed by this order, (2) contamination or pollution of surface or groundwater, or (3) a condition of nuisance (as defined by the California Water Code section 13050) is prohibited.”

This provision is designed to prevent waste discharges that could affect the quality of the waters of the state and create nuisances. The discharge of wastewater from the wastewater retention pond into the canal, observed by Central Valley Water Board staff on 6 February 2008, constituted a violation of Prohibition A.4 of the General Order and therefore is in violation of a Waste Discharge Requirement as specified in CWC section 13350.

10. By discharging waste into the irrigation canal, the Discharger "discharge[d] waste, or cause[d] or permit[ed] waste to be deposited where it is discharged into the waters of state" under CWC section 13350.

11. Monitoring and Reporting Program No. R5-2007-0035 (“MRP”) was issued pursuant to CWC Section 13267 and is incorporated into the General Order at Provision E3. CWC section 13268 provides that:

“Any person failing or refusing to furnish technical or monitoring program reports as required by... Section 13267 . . . may be liable civilly Civil liability may be administratively imposed by a regional board . . . in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.”

12. Section C of the MRP, under “Priority Reporting of Significant Events,” requires the discharger to report “any noncompliance that endangers human health or the

environment or any noncompliance with Prohibitions A.1, A.2, A.3, A.4, A.5, A.8, A.9, A.10, A.11, and A.12 in the [General] Order.” In relevant part, the discharger must submit a written report to the Regional Water Board within two weeks of becoming aware of the incident. The report must contain a description of the noncompliance, its causes, duration, and the actual or anticipated time for achieving compliance. The report must include complete details of the steps that the Discharger has taken or intends to take, in order to prevent recurrence. The Discharger became aware of the incident at the latest on 6 February 2008 when Central Valley Water Board staff inspected the discharge. The Discharger was required to submit a written report within two weeks of that date on 20 February 2008. The report was not received by the Central Valley Water Board until 18 March 2008, 27 days late.

13. **Maximum Civil Liability for Discharge to Irrigation Canal:** Per CWC section 13350 maximum civil liability for the discharge to the irrigation canal is fourteen thousand dollars ($\$10 \times 1,400 \text{ gallons} = \$14,000$).
14. **Minimum Civil Liability for Discharge to Irrigation Canal:** There is no minimum civil liability amount in accordance with CWC section 13350.
15. **Maximum Civil Liability for Failure to Submit Report:** Per CWC section 13268, the maximum civil liability for the failure to submit the written report is twenty-seven thousand dollars ($\$1,000 \times 27 \text{ days} = \$27,000$).
16. **Minimum Civil Liability:** There is no minimum civil liability amount in accordance with CWC section 13268.
17. **Total Maximum Civil Liability:** The total maximum civil liability is forty-one thousand dollars ($\$14,000 + \$27,000 = \$41,000$).
18. CWC section 13327 states:

“In determining the amount of civil liability, the regional board, and the state board upon review of any order pursuant to Section 13320, shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.”
19. An Administrative Civil Liability complaint in the amount of eight thousand dollars (\$8000) was issued to the Discharger on 11 July 2008.
20. Frank Melo spoke with Central Valley Water Board staff on 22 July 2008 requesting the Central Valley Water Board to consider a reduction in the Administrative Civil Liability or allow payment of the liability over time, and to consider allowing credit for remedial work done after the date of the discharge in lieu of a portion of the Liability.

21. The Discharger has taken steps to reduce his water use. He has put a restrictor on the water line, stopped pre-washing cows in the sprinkler pen, and removed the sprinkler heads. Since the discharge resulted from an overflowing lagoon, these are all positive steps to prevent future discharges due to an overfull lagoon. In addition, the Discharger will gutter his hay and free stall barns, and will relocate this clean roof water to the field via a new trench. The Discharger will purchase a new pump to move the water and will pay to install electricity to power the pump. The cost of these improvements will equal or exceed \$5000.
22. Issuance of this Administrative Civil Liability Order is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321 (a) (2).
23. On 15 March 2007, the Central Valley Water Board explicitly delegated to the Executive Officer the authority to issue orders to assess administrative civil liability where the matter is not contested by the discharger. (Resolution R5-2007-0009). Any person aggrieved by this action of the Central Valley Water Board may petition the 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., 30 days after the date that this tentative Order becomes final, except that if the thirtieth day following the date that this tentative Order becomes final 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. This tentative Order is set to become final on 12 March 2009. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality/ or will be provided upon request.
24. This tentative Order constitutes a settlement of the violations herein mentioned. Notice of this settlement is being published on the Central Valley Water Board's website and is being provided to all interested parties on 24 February 2009. Following the expiration of a 14 day public notice and comment period, this Order is set to become final on 12 March 2009, provided that significant comments raising issues that would cause the Central Valley Water Board to reconsider this action are not received in the public comment period. The Order will be effective immediately upon issuance.

IT IS HEREBY ORDERED THAT:

1. Frank Melo and Frank Melo Dairy shall be assessed an Administrative Civil Liability in the amount of **three thousand dollars (\$3,000)**, to be paid in four (4) quarterly installments beginning **1 April 2009**. The amount of the liability is based upon a review of the factors set forth in Water Code section 13327 cited in Finding No. 18 above, and the State Water Resources Control Board's water quality enforcement policy. .
2. In addition, Frank Melo and the Frank Melo Dairy shall document by receipts the expenditure of at least **five thousand dollars (\$5,000)** in the installation of the items described in Finding 21, above. This document shall be provided to the Executive Officer by **1 July 2009**.
3. The Executive Officer may extend the above mentioned deadlines if the Discharger demonstrates that unforeseeable contingencies have created delays, provided that the Discharger continues to undertake all appropriate measures to meet the deadlines. The discharger shall make a deadline extension request in writing.
4. The discharger must obtain explicit approval from the Executive Officer for any significant departures from the projects described in Finding 21 above. Failure to obtain approval for any significant departures will result in the assessment of the full amount of the original penalty.
5. If, in the judgment of the Executive Officer, the Discharger fails to make the payments or provide the receipts for the projects described in Finding 21 above in accordance with the specified time schedule without obtaining explicit approval from the Executive Officer, the original penalty of **eight thousand dollars (\$8,000)** must be paid within 30 days of notification by the Executive Officer of such failure.

PAMELA C. CREEDON
Executive Officer

12 March 2009
Date
