

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2009-0528
ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

BUD, CHUCK, AND LOUIE COZZITORTO, OWNERS
FORMER COELHO DAIRY
MERCED COUNTY

This Administrative Civil Liability Complaint (hereafter Complaint) is issued to Bud, Chuck, and Louie Cozzitorto, owners of the former Coelho Dairy, based on findings that show a failure to submit technical reports pursuant to California Water Code (CWC) section 13267, for which administrative civil liability may be imposed pursuant to CWC section 13268.

The Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds, with respect to Bud, Chuck, and Louie Cozzitorto's acts, or failure to act, the following:

1. The former Coelho Dairy is owned by Bud, Chuck, and Louie Cozzitorto and was formerly operated by Francisco and Cathleen Coelho, and is located at 939 Canal School Rd, Gustine.
2. The former Coelho Dairy consists of a 280 milk cow dairy facility with a 4-acre production area and 27 acres of cropland currently used for manure application (wastewater and solids).
3. On 3 May 2007 the Central Valley Water Board issued the Waste Discharge Requirements General Order for Existing Milk Cow Dairies Order. R5-2007-0035 ("General Order"). This order serves as general waste discharge requirements for discharges of waste from existing milk cow dairies of all sizes (as defined in Finding 7 of the General Order), including the Former Coelho Dairy. On 19 October 2007, Cathleen Coelho, on behalf of Former Coelho Dairy, signed the certified mail receipt notifying the Discharger of coverage under the General Order.
4. Bud, Chuck, and Louie Cozzitorto, as owners of the former Coelho Dairy, are subject to the General Order and is a Discharger both for the purposes of the General Order and this Complaint.
5. CWC section 13267 authorizes Regional Water Boards to conduct investigations and to require the submittal of technical or monitoring reports from any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste to waters of the state.
6. Section J. 1 of the General Order, under "Schedule of Tasks" requires the dischargers to develop and implement a Waste Management Plan and Nutrient Management Plan and submit an Existing Conditions Report, Proposed Interim Facility Modifications, Salinity

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Report, Preliminary Infrastructure Needs checklist, and Annual Reports according to the schedule in Table 1. Table 1 required the submittal of the following reports by 1 July 2008:

- Annual Report, per Monitoring and Reporting Program No. R5-2007-0035, including Annual Dairy Facility Assessment with proposed interim facility modifications considered to be implemented
- A Statement of Completion, in which the Discharger certifies that Items I.A.1, I.B, I.C, I.D, Item II, Item IV, and Item VI of the Nutrient Management Plan (NMP) have been completed and are available for review at the dairy;
- The following components of the Waste Management Plan: I.A, I.B, I.C, I.D, I.E, I.F.1a, I.F.2a, I.F.3, I.F.4, I.F.5 and Item V;
- An Identification of Backflow Problems Statement;
- Proposed Interim Facility Modifications as Necessary to Improve Storage Capacity, which details modifications that can be completed within the next 12 months to increase storage capacity, with a schedule to implement the proposed modifications within 12 months; and
- Proposed Interim Facility Modifications as Necessary to Balance Nitrogen, which details modifications that can be completed within the next 12 months to balance the nitrogen generated at the dairy with nitrogen removed by crops and exported, with a schedule to implement the proposed modification within 12 months.

The General Order required the Discharger to submit these these reports pursuant to CWC section 13267.

7. Section J. 1 of the General Order, under "Schedule of Tasks" requires the dischargers to develop and implement a Waste Management Plan and Nutrient Management Plan and submit an Existing Conditions Report, Proposed Interim Facility Modifications, Salinity Report, Preliminary Infrastructure Needs checklist, and Annual Reports according to the schedule in Table 1. Table 1 required the submittal of the following reports by 31 December 2008:

- A Statement of Completion, in which the Discharger certifies that Item V (Field Risk Assessment) of the Nutrient Management Plan, which evaluates the effectiveness of management practices to control waste discharges from land application areas, has been completed and is available for review at the Dairy; and
- A Preliminary Infrastructure Needs Checklist, which consists of identification and documentation of infrastructure changes that will be needed to properly manage wastes at the facility.

The General Order required the Discharger to submit these these reports pursuant to CWC section 13267.

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8. On 8 August 2008, the Central Valley Water Board issued, via certified mail, a letter reminding the former Coelho Dairy of the requirement to submit an Annual Report and all the elements listed in Finding 6. The certified mail receipt was signed as received by Cathleen Coelho on 7 August 2008.
9. On 9 March 2009, the Central Valley Water Board issued, via certified mail, a letter reminding the former Coelho Dairy of the requirement to submit the Preliminary Infrastructure Needs Checklist and the Statement of Completion, as per Finding 7. The certified mail receipt was signed as received by Cathleen Coelho on 20 March 2009. A second certified letter was signed as received by Annette Cozzitorto on 12 March 2009.
10. Board staff checked the compliance tracking system and case files and it was verified that the Central Valley Water Board has not yet received the missing technical reports from the former Coelho Dairy.

VIOLATIONS

11. The technical reports that were due by 1 July 2008, described in Finding 6, have not been submitted. As of 15 May 2009, these technical reports are 319 days past due.
12. The technical reports that were due by 31 December 2008, described in Finding 7, have not been submitted. As of 15 May 2009, these technical reports are 135 days past due.

REGULATORY CONSIDERATIONS

13. CWC section 13323(a) states;

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 of law authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

14. CWC section 13267 (b) states, in relevant part:

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.

15. CWC section 13268 (a) states:

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

16. CWC section 13268(b)(1) states:

Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with section 13323) or Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1000) for each day in which the violation occurs.

17. CWC section 13327 states, in relevant part:

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.

18. The technical reports that were due by 1 July 2008, described in Finding 6, are 319 days past due. The maximum liability under CWC section 13268(b)(1) for the nonsubmittal of these technical reports, is \$1,000 per day late, for a total of three hundred and nineteen thousand dollars (\$319,000).
19. The technical reports that were due by 31 December 2008, described in Finding 7, are 135 days past due. The maximum liability under CWC section 13268(b)(1) for the nonsubmittal of these technical reports is \$1,000 per day late, for a total of one hundred and thirty five thousand dollars (\$135,000).
20. The total maximum liability for the non-submittal of reports described in Findings 6 and 7 is four hundred and fifty-four thousand dollars (\$454,000).
21. The Executive Officer has considered the nature, circumstances, extent, and gravity of Bud, Chuck, and Louie Cozzitorto's failure to submit technical reports on behalf of the former Coelho Dairy as required, the Discharger's ability to pay the proposed civil liability, the effect of the proposed civil liability on the Discharger's ability to continue in business, any history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the failure to submit the technical report required, and other matters as justice may require, including the staff time required to prepare this Complaint.
22. Central Valley Water Board staff spent a total of 5 hours preparing this Complaint. The total cost for staff time is \$675 based on a rate of \$135 per hour.

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BUD, CHUCK, AND LOUIE COZZITORTO ARE HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board proposes that Bud, Chuck, and Louie Cozzitorto be assessed an administrative civil liability in the amount of **two thousand dollars (\$2,000)**. The amount of the proposed liability is based upon a review of the factors cited in CWC section 13327, as well as the State Water Resources Control Board's Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **13/14 August 2009**, unless Bud, Chuck, and Louie Cozzitorto do either of the following by **15 June 2009**:
 - i. Waive the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **two thousand dollars (\$2,000)**; or
 - ii. Agree to enter into settlement discussions with the Central Valley Water Boards and request that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board along with a letter describing the issues to be discussed.
3. If a hearing on this matter is conducted, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, which may include raising the monetary value of the civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

original signed by _____
PAMELA C. CREEDON, Executive Officer

(15 May 2009)