

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2010-0502

IN THE MATTER OF

BUD, CHUCK, AND LOUIE COZZITORTO, OWNERS
FORMER COELHO DAIRY
939 CANAL SCHOOL RD
GUSTINE, MERCED COUNTY

This Order is issued to Bud, Chuck, and Louie Cozzitorto (hereafter referred to as Dischargers), owners of the former Coelho Dairy (the Dairy) pursuant to California Water Code (CWC) section 13268, which authorizes the imposition of Administrative Civil Liability, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Order is based on findings that the Discharger violated the Waste Discharge Requirements General Order for Existing Milk Cow Dairies Order R5-2007-0035 (General Order).

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

1. The Discharger owns the Dairy, which is located at 939 Canal School Rd, Gustine, California.
2. The Dairy is a 280 milk cow dairy facility, and has 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 General Order. The General Order regulates wastewater practices at milk cow dairies of all sizes, including the Dairy. On 29 June 2007, the Board sent certified mail notifications to the Dischargers, notifying the Dischargers that the Dairy was subject to the General Order.
4. 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.
5. Section J. 1 of the General Order, under "Schedule of Tasks" required 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 of the General Order. Table 1 required the submittal of the following reports by 1 July 2008:

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- Annual Report, per Monitoring and Reporting Program 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 reports pursuant to CWC section 13267.

6. Section J. 1 of the General Order, under "Schedule of Tasks" required 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 of the General Order. 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 reports pursuant to CWC section 13267.

7. On 8 August 2008, the Central Valley Water Board issued, via certified mail, a letter reminding the 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.

8. On 9 March 2009, the Central Valley Water Board issued, via certified mail, a letter reminding the 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.
9. Board staff checked the compliance tracking system and case files and it was verified that the Central Valley Water Board had not yet received the missing technical reports from the Dairy by the issue date of the Administrative Civil Liability Complaint, 15 May 2009.

VIOLATIONS

10. The technical reports that were due by 1 July 2008, described in Finding 5, were received on 5 June 2009, 340 days past due.
11. The technical reports that were due by 31 December 2008, described in Finding 6, were received on 5 June 2009, 156 days past due.

REGULATORY CONSIDERATIONS

12. 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.

13. 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.

14. CWC section 13268 (a) states:

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).

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15. 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.

16. 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.

17. The technical reports that were due by 1 July 2008, described in Finding 5, were submitted 340 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 forty thousand dollars (\$340,000).
18. The technical reports that were due by 31 December 2008, described in Finding 6, were submitted 156 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 fifty six thousand dollars (\$156,000).
19. The total maximum liability for the non-submittal of reports described in Findings 5 and 6 is four hundred and ninety six thousand dollars (\$496,000).
20. Administrative Civil Liability Complaint R5-2009-0528 was issued to the Discharger on 15 May 2009 in the amount of two thousand dollars (\$2,000).
21. On 23 April 2009, the Central Valley Water Board delegated the authority to issue Administrative Civil Liability Orders, where the matter is not contested by the Discharger, to the Executive Officer, or to an Assistant Executive Officer when the Executive Officer is serving as head of the Board's Prosecution Team (Resolution R5-2009-0027). Pamela Creedon is serving as the head of the Board's Prosecution Team for this matter, and therefore Assistant Executive Officer Kenneth D. Landau has the authority to issue this Order.
22. The Assistant Executive Officer has considered the nature, circumstances, extent, and gravity of the Dischargers' failure to submit technical reports, the Dischargers' ability to pay the proposed civil liability, the effect of the proposed civil liability on the Dischargers' ability to continue in business, any history of violations, the degree of culpability,

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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 Order.

The following factors were considered by the Central Valley Water Board in arriving at the final penalty amount:

Nature, circumstances, and gravity: The discharger failed to provide the technical report required in the General Order.

The Discharger's ability to pay and ability to continue in business: The Central Valley Water Board understands that the dairy industry in California has been significantly impacted by depressed commodity prices and increased feed costs. In this business climate, imposition of this relatively small administrative civil liability (such as the amount imposed here) will serve the same deterrent effect that a significantly higher penalty would have in a more favorable business climate.

Prior History of Violations: The Preliminary Dairy Facility Assessment and Existing Conditions report, due 31 December 2007, were submitted 238 days late on 25 August 2008.

Degree of Culpability: The Discharger, as the owner of the Dairy, is responsible for complying with the terms of the General Order.

Economic Benefit or Savings: Economic benefit is equal to the deferred costs of delaying the completion on the technical reports.

Other Matters the Justice May Require: The dairy completed the reports on 5 June 2009. The owners are trying to sell the facility as a dairy.

23. Central Valley Water Board staff spent a total of 5 hours preparing this Order. The total cost for staff time is \$675 based on a rate of \$135 per hour.
24. 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).
25. This tentative Order constitutes a settlement of the violations herein mentioned. Notice of this settlement was published on the Central Valley Water Board's website and was provided to all interested parties on 14 December 2009. Following the expiration of a 30-day public notice and comment period, this Order will become final on 13 January 2010, 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.

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IT IS HEREBY ORDERED THAT:

1. Bud, Chuck, and Louie Cozzitorto are hereby assessed 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. Upon full payment, the Central Valley Water Board will consider the violations charged in Administrative Civil Liability Complaint R5-2009-0528 resolved.

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 of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday (including mandatory furlough days), 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:

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

or will be provided upon request.

KENNETH D. LANDAU, Assistant Executive Officer

14 January 2010

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Payment Agreement

Pursuant to Administrative Civil Liability Order R5-2010-0502 ("Order"), Bud, Chuck, and Louie Cozzitorto (hereafter collectively referred to as the Discharger) are ordered to pay \$2,000 to the State Water Resources Control Board Cleanup and Abatement Account within 30 days of the date the Order is issued. However, the Central Valley Water Board shall defer immediate collection of the \$2,000 civil liability if the Discharger complies with the following payment schedule:

The Discharger has agreed to pay \$2,000 to the State Water Resources Control Board Cleanup and Abatement Account in four quarterly payments of \$500 beginning on **1 April 2010**. The payments shall be made by check, payable to the *State Water Pollution Cleanup and Abatement Account*, and remitted to the Central Valley Regional Board located at 11020 Sun Center Drive, Suite 200, Rancho Cordova, California. Each check shall have written upon it "ACL Order R5-2010-0502". Subsequent payments are due by **1 July 2010, 1 October 2010, and 1 December 2010**.

This memorializes and accepts the above payment schedule on the following conditions. If the Discharger fails to make the payments in accordance with the specified deadlines without obtaining explicit approval from the Assistant Executive Officer, the Assistant Executive Officer shall demand that the remaining unpaid balance be paid within 30 days of notification of such failure. Alternatively, the Assistant Executive Officer may refer this matter to the California Attorney General to obtain compliance with the terms of the Order.

KENNETH D. LANDAU, Assistant Executive Officer

14 January 2010