

**04/05 JUNE 2020 BOARD MEETING
UNCONTESTED AGENDA ITEM**

AGENDA ITEM: 16

SUBJECT:

Joe Silva, Tony, Silva, and James Silva, Silva Brothers Dairy #1, San Joaquin County

BOARD ACTION:

Adoption of a Stipulated Cease and Desist Order.

BACKGROUND:

FACILITY BACKGROUND:

Joe Silva and Tony Silva are the owners, and Joe Silva, Tony Silva, and James Silva (together, Discharger) are the operators of the Silva Brothers Dairy #1 located at 12997 E. Peltier Road, in Acampo, San Joaquin County (Dairy). The Dairy has been in operation since 1979, and currently houses up to 1,265 milk and dry cows and 260 younger cows of varying sizes. Manured wastewater is applied to 108 acres of cropland. The dairy is enrolled in the *Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies*, Order R5-2013-0122 (Reissued General Order).

HISTORY OF VIOLATIONS:

The Discharger has been in violation of various water quality regulations for over 40 years. The Discharger allowed off-property discharges of manured wastewater to enter Gill Creek, a water of the State, in 1979, 1980, 1982, 1984, 1986, 1987, 1988, and 1989. The Central Valley Water Board issued a Cleanup and Abatement Order in 1980 and an Administrative Civil Liability in 1989, but the off-property discharges continued, and other agencies and parties joined the Water Board in filing suits against the Discharger. In 1995, 1998, and 2000, judgements were entered against the Discharger in the Superior Court of the United States District Court for the continued off-property discharges of wastewater. In 2007, a case brought by DeltaKeeper resulted in a settlement filed with the United States District Court. Recent Central Valley Water Board staff inspections have documented off-property discharges of wastewater from the dairy in 2013, 2014, and twice in 2017.

In March 2019, Central Valley Water Board staff inspected the dairy and found numerous violations of the Reissued General Order. Two of the three wastewater ponds had no freeboard and had merged together. The corrals contained a significant amount of ponded wastewater. The cropland also contained a considerable volume of ponded wastewater and the tailwater pond was being used to store wastewater. The Discharger later stated that almost 600,000 gallons of wastewater had been applied to the cropland, even though there had been 2.95" of rain in the five days preceding the application. The Discharger did not evaluate whether there was an agronomic need to apply the wastewater. Based on these facts, Central Valley Water Board staff determined that the Discharger had applied wastewater to cropland in violation of the Reissued General Order because there had been significant rainfall in the days prior to application, the soil was already saturated, and there was no indication that the nutrients in the wastewater were needed for crop health.

In general, the Discharger's long-standing water quality violations are the result of poor maintenance, lack of storage capacity, and/or lack of cropland.

COMPRESSED ACL AND MANURE SEPARATOR GRANT:

On 8 November 2019, the Assistant Executive Officer issued an "Offer to Settle Administrative Civil Liability R5-2019-0539" (Compressed ACL). The Compressed ACL was issued due to the severity of the violations observed during the March 2019 inspection. Almost 600,000 gallons of wastewater had been applied to rain-saturated cropland in violation of the Discharger's Nutrient Management Plan and the Reissued General Order. To allow for early settlement, a penalty of \$80,041 was proposed.

The Discharger subsequently provided documents showing that the California Department of Food and Agriculture awarded the Discharger a grant of \$764,800 to install a manure separator. The Discharger will finance the additional \$30,000 cost of the project. According to the project application package, the separator will remove 55% of the manure solids that currently enter the wastewater ponds, allowing for additional storage capacity and better nutrient management. Based on this new information, the Prosecution Team elected to prioritize issuance of a Cease and Desist Order containing timelines by which the Discharger must make improvements to the Dairy, rather than a monetary penalty.

ISSUES:

PROPOSED CEASE AND DESIST ORDER:

If the CDO is adopted as proposed, it would require that the Discharger make improvements to bring the Dairy into compliance with the Reissued General Order.

Manure Separator: The proposed CDO requires that the Discharger construct and install the manure separator this summer. A completion report is due by 1 October 2020.

Nutrient Management Plan (NMP): The Prosecution Team's review of the Discharger's current NMP and Annual Reports found that the Discharger has not followed the NMP, resulting in excessive nitrogen loading onto the cropland and the potential for impacts to groundwater. The proposed CDO requires that the Discharger follow its NMP, including exporting at least the pounds of nitrogen in manure solids described in the NMP and submitting a yearly enhanced Annual Report containing additional details related to nutrient applications.

Waste Management Plan (WMP): Although the Discharger's 2019 WMP states that the wastewater ponds and settling basins have adequate capacity to hold the required volume of wastewater through the winter, in order to have that capacity, each pond and basin must be empty or nearly empty of wastewater and solids by 1 November each year. A review of the Discharger's 2017 through 2019 freeboard monitoring records finds that the ponds and settling basins have never been lowered to the levels listed in the WMP by 1 November. The freeboard records also show that there was not enough capacity from January through June 2017, October 2017, April 2018, December 2018, and from January through April 2019.

The proposed CDO requires the Discharger to take immediate steps to reduce inputs into the pond storage system, including installing the manure separator, cleaning out the manure solids from the ponds and basins, accurately measuring the volume of each pond and basin, and redirecting clean rainfall runoff so that it does not enter the ponds. The CDO also requires that the Discharger update the WMP and prepare a Contingency Plan, which will be implemented if the Discharger is unable to meet the November 1st freeboard levels found in the WMP. The Contingency Plan is intended to ensure compliance with the Reissued General Order during the winter months.

The proposed CDO also requires the Discharger to complete enhanced monitoring and reporting. While the Reissued General Order requires monthly monitoring of the waste management structures, the proposed CDO requires weekly monitoring and monthly reporting during the winter and early spring, with monthly monitoring and quarterly reporting during the summer and fall. This additional monitoring is needed so that areas of potential non-compliance are addressed quickly.

DISCHARGER'S COMMENTS:

The Discharger provided verbal and written comments to the tentative CDO. As described in the Prosecution Team's Response to Comments, the proposed Order has been adjusted to address the comments. Most comments related to minor clarifications. With respect to the level to which the wastewater ponds are to be lowered by November 1st each year, the Prosecution Team agreed to the Discharger's request to use the "Critical Solids Level" instead of the more restrictive "Minimum Operating Level". If the Discharger lowers the ponds to the Critical Solids Level by November 1st each year, then there should be about 1 million gallons of excess capacity. Revisions were made to the frequency of enhanced monitoring and reporting, and to the items to which this provision applies.

The Discharger requested that the proposed CDO have a "sunset date" by which it would be rescinded. The Prosecution Team does not believe it appropriate to have an automatic rescission date because the Discharger's compliance will need to be evaluated by both Water Board staff and the Central Valley Water Board. However, the Prosecution Team has added language stating that the Discharger can request that Water Board staff evaluate its compliance record and if appropriate, schedule the Order for a rescission hearing before the Central Valley Water Board.

On 18 May 2020 the Prosecution Team and the Discharger entered into a Stipulation for Entry of a Cease and Desist Order.

RECOMMENDATION:

The Prosecution Team recommends that the Cease and Desist Order be adopted as proposed.

REVIEWS:

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| Management Review: | RDB 19 May 2020 |
| Legal Review: | CMH 19 May 2020 |

This document has been prepared by the Central Valley Water Board's Prosecution Team

BOARD MEETING LOCATION:

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

Internet Zoom Meeting