

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

AGENDA ITEM: 17

SUBJECT:

DARIN LEMOS, LOCKWOOD III DAIRY, STANISLAUS COUNTY

BOARD ACTION:

Adoption of a Stipulated Cease and Desist Order

BACKGROUND:

FACILITY BACKGROUND

Darin Lemos (Discharger) owns and operates the Lockwood III Dairy at 15343 Tim Bell Road in Waterford, Stanislaus County. The Dairy has been in operation since 1974, and currently houses 510 milk and dry cows and 385 younger cows of varying sizes. Manured wastewater is applied to 71 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 proposed CDO describes the history of enforcement at the Dairy since 2013. In general, violations are due to excessive solid manure in the wastewater pond, and the Discharger's failure to clean out the pond on a regular basis. Solid manure left in the pond has reduced the storage capacity, leading to violations of the Reissued General Order.

Multiple Central Valley Water Board staff inspections demonstrate that the Discharger has been unable to consistently maintain the required one foot of freeboard in the pond. In addition, the Discharger has been unable to store wastewater, rainfall, and drainage through manured areas during the required 120-day storage period in the winter.

In May 2017, Central Valley Water Board staff found that dairy wastewater had overflowed from the Dairy's pond to a pasture and into nearby Dry Creek, a water of the State. In February 2019, staff found that wastewater was overtopping the pond's embankment and flowing uncontrolled into the pasture. When staff returned two weeks later, they found that the pond had two feet of freeboard, there was standing wastewater in the cropland, and the lower pasture was inundated with solid manure and 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 over 2.8" of rain that month, the soil was already saturated, and there was no indication that the nutrients in the wastewater were needed for crop health.

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

COMPRESSED ACL AND MANURE SETTLING BASIN GRANT

On 16 August 2019, the Assistant Executive Officer issued an "Offer to Settle Administrative Civil Liability R5-2019-1519" (Compressed ACL). The Compressed ACL was issued due to the severity of the violations observed during the February 2019 inspections, in which Central Valley Water Board staff found that at least 206,000 gallons and up to 1.2 million gallons of wastewater was 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 \$68,142 was proposed.

The Discharger subsequently provided documents showing that he had been awarded a \$113,134 grant to install a manure settling basin. The total project is estimated to cost \$160,000 (in 2018 dollars). By removing solid manure from the wastewater stream, the Discharger should be able to regain storage capacity in the wastewater pond and resolve many of the current violations. 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 Settling Basins: The Prosecution Team's intention was that the basins be installed and operational prior by the end of 2020, to help ensure that there is adequate storage capacity during the winter. However, the Discharger recently requested that an additional year be allowed, in part so that he could more fully evaluate the most appropriate design. The Prosecution Team agreed that construction could wait until the summer of 2021, but in exchange the proposed CDO requires that the Discharger submit a 2020 Contingency Plan describing the steps that will be taken in this summer to remove manure solids from the wastewater pond and/or reduce the herd size in order to have the required wastewater pond storage capacity during the upcoming winter.

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 submit an updated NMP that addresses the overapplication of nitrogen.

The Discharger has applied nutrients to the pasture, either through overflows from the pond or corrals, or through tailwater from the cropland. These nutrient loads are not accounted for in the current NMP. Therefore, the proposed CDO prohibits nutrient applications to the pasture unless the application complies with an updated NMP and the Reissued General Order.

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The Reissued General Order prohibits the discharge of stormwater to surface water unless the cropland has been managed consistent with an NMP. The Discharger currently allows stormwater to flow from the cropland to a nearby creek. Because the Discharger does not comply with the NMP, this discharge is a violation of the Reissued General Order. Therefore, the proposed CDO prohibits the discharge of stormwater from the cropland until the Discharger can demonstrate that the cropland is managed as described in the NMP.

Waste Management Plan (WMP): The Prosecution Team's review of the Discharge's WMP finds that it does not adequately describe the Dairy and does not include all the items required by the Reissued General Order. The proposed CDO requires surveying of the wastewater pond to determine the actual size, installation of a flow meter to accurately measure the volume of wastewater applied to the cropland, submittal of an Operations and Maintenance (O&M) Plan describing how the pond will be drawn down throughout the year to provide the required winter storage, submittal of a Contingency Plan describing how winter storage capacity for wastewater will be ensured if the O&M Plan targets are not met, submittal of an annual report describing the steps taken to implement the O&M Plan and if necessary, the Contingency Plan.

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. In particular, the due dates for the major items have been extended by one year. This includes extending the due date for construction of the manure settling basins from November 2020 to October 2021. Two reports have been deleted (revisions to the 2017 and 2018 Annual Reports), and the Agronomic Need report has been simplified to only apply to the cropland. Several Findings have been clarified. And finally, the Discharger requested that the CDO be automatically rescinded when compliance has been reached. The Prosecution Team does not believe it appropriate to do so 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:

Management Review:	RDB 14 May 2020
Legal Review:	CMH 14 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