

15/16 OCTOBER 2020 BOARD MEETING CONTESTED AGENDA ITEM

AGENDA ITEM: 12

SUBJECT:

Germano and Jacinta Soares, Germano Soares Dairy #1, Stanislaus County

BOARD ACTION:

Consideration of a Cease and Desist Order.

BACKGROUND:

Germano and Jacinta Soares (Discharger) are the owners and operators of the Germano Soares Dairy #1 (Dairy) in Turlock, Stanislaus County. The Dairy has been in operation since at least 1993 and is authorized to house a maximum of 1,409 mature cows. Between 9 million and 24 million gallons of wastewater is generated yearly and used to irrigate 150 acres of cropland owned by entities controlled by the Discharger and up to 83 acres of leased land. Solid manure generated at the Dairy is either exported, used for bedding in the corrals, or applied to 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:

Although the record shows a history of violations prior to 2011, this proposed Cease and Desist Order (CDO) is focused on violations of the Reissued General Order from 2011 to the present. Based on eight inspections of the Dairy between 2011 and 2019, the Prosecution Team contends that the Discharger has committed multiple violations of the Reissued General Order (and the predecessor Order), including the following:

- Allowing dairy waste to be discharged to land not owned or controlled by the Discharger;
- Constructing new wastewater ponds without submitting a design report or a post-construction report, and placing waste in the new pond prior to receiving approval from the Executive Officer;
- Using manure to construct wastewater containment berms;
- Increasing the number of mature cows more than 15% above the number listed in the Report of Waste Discharge;
- Failing to collect all drainage from the feed storage areas and corrals;
- Failing to follow the Monitoring and Reporting Program;
- Failing to properly maintain wastewater pond berms to prevent failure;
- Failing to maintain adequate freeboard in the wastewater storage ponds;
- Failing to minimize standing water in corrals;
- Applying dairy wastewater to cropland for purposes other than nutrient recycling;
- Applying dairy wastewater to cropland when the soils are already saturated; and,

- Failing to apply dairy wastewater to cropland in a manner that allows the wastewater to completely infiltrate within 72 hours.

In general, the Discharger's long-standing water quality violations are the result of poor maintenance, lack of storage capacity, failure to implement the Dairy's Waste Management Plan and Nutrient Management Plan, and/or lack of cropland.

In February 2019, Central Valley Water Board staff inspected the Dairy and found numerous violations of the Reissued General Order. The two western ponds had zero feet of freeboard. Manure from these ponds had been placed into a new, unpermitted pond that had been constructed in the cropland adjacent to the western ponds. The berm of the unpermitted pond was not continuous; wastewater overflowed from the pond to cropland. Although the eastern pond had two feet of freeboard, the eastern settling basin had less than two feet of freeboard. A second new, unpermitted pond had been constructed next to the eastern settling basin and appeared to contain manure removed from the settling basin. There was significant ponding in the corrals that was not being conveyed to a pond. Staff found that there was a notch in the berm around the eastern cropland and another notch in the berm around the western cropland; therefore, it was possible for wastewater to flow off-site.

On 8 November 2019, the Assistant Executive Officer issued an "Offer to Settle Administrative Civil Liability R5-2019-0540" (Compressed ACL) to the Discharger. The Compressed ACL was issued due to the severity of the violations observed during the February 2019 inspection. To allow for early settlement, the Prosecution Team elected to base the penalty only on the construction and use of two unauthorized wastewater ponds for at least 154 days. A penalty of \$102,487 was proposed. However, after a full review of the Discharger's history of violations, the Prosecution Team has elected to prioritize issuance of this CDO, which contains timelines by which the Discharger must make improvements to the Dairy, rather than pursue settlement of the monetary penalty. If the Discharger does not comply with the CDO's terms, then the Discharger could be subject to additional enforcement including the outstanding Compressed ACL, a broader ACL, or injunctive relief which may require Dairy to shut down.

PROPOSED ORDER:

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

Corrals, Feed Storage Area, and Wastewater Ponds: The Proposed CDO requires that the Discharger make improvements to the corrals and feed storage areas such that all stormwater and leachate is collected and transferred to a wastewater pond. With respect to the wastewater ponds, the Discharger must follow its Operations and Maintenance Plan (O&M Plan) by ensuring adequate storage capacity in each pond by 1 November of each year. If the Discharger is unable to lower the ponds to the level specified in the O&M Plan, then it must prepare and submit a Contingency Plan describing how the wastewater will be managed in conformance with the Reissued General Order during the upcoming winter. In addition, a flow meter must be installed to measure the volume of wastewater released to cropland.

Waste Management Plan (WMP): The Reissued General Order requires that each Discharger prepare and implement a WMP and associated O&M Plan. The proposed CDO requires that the Discharger take steps to ensure that the WMP accurately reflects conditions at the Dairy. These include surveying the length, width, total depth, and depth below ground surface of each wastewater pond; installing a freeboard marker in each pond; and determining the practical minimum freeboard for each pond. The proposed CDO also requires the submittal of an Updated WMP and O&M Plan that accurately reflect conditions at the Dairy.

Nutrient Management Plan (NMP): The Reissued General Order requires that each Discharger prepare a NMP. The proposed CDO requires that the Discharger take several steps to implement its 2018 NMP, prevent overloading of nitrogen on the cropland, and submit accurate Annual Reports. These include (a) implementing a soil sampling program to determine the "existing soil nutrient content" portion of the crop nutrient budget in order to determine the appropriate amount of nitrogen to add to each crop, and (b) preparing and implementing a Plant Tissue Testing Protocol by customizing the guidance found on the Central Valley Water Board's website. To ensure that the Discharger is following the NMP, the proposed CDO requires submittals of Enhanced Annual Reports.

Installation of Piezometers: The Groundwater Limitations provision of the Reissued General Order states that the "discharge of waste shall not cause the underlying groundwater to exceed water quality objectives, unreasonably affect beneficial uses, or cause a condition of pollution or nuisance...." Groundwater pollution occurs when there is a direct connection between a dairy's wastewater pond and shallow groundwater. Based on a review of the Department of Water Resources groundwater data and monitoring data from regulated facilities, Central Valley Water Board staff has determined that there is the potential for wastewater ponds to intersect shallow groundwater at approximately 140 dairies in the Central Valley.

On 29 March 2019, the Central Valley Water Board's Executive Officer issued California Water Code (Water Code) section 13267 Orders to 71 dairymen in Merced County. The Orders required them to conduct a study of the separation between their wastewater ponds and high groundwater, and if the study indicated that a pond intercepts groundwater, to prepare a remedial workplan to eliminate threats to groundwater.

Germano and Jacinta Soares did not receive the 29 March 2019 Order to conduct a groundwater separation study because their Dairy is not in Merced County. However, data indicate that groundwater beneath the Dairy is encountered at 10 to 20 feet below ground surface and the wastewater ponds are up to 18 feet deep. As such, Central Valley Water Board staff had planned to include the Discharger in the second mail-out of Water Code section 13267 Orders that will require a groundwater separation study. However, because the proposed CDO is designed to address all violations at the Dairy, the Prosecution Team feels that it is appropriate to address potential groundwater impacts at this time. In addition, if any of the ponds intersect groundwater, then the remedial action has the potential to impact the solutions for other violations at the Dairy.

The proposed CDO follows the steps required of the Merced County dairymen. Specifically, the Discharger shall install piezometers and monitor them on a quarterly basis for depth to groundwater. If a quarterly monitoring report shows that the bottom of any of the wastewater ponds is within groundwater, then within 90 days of the determination, the Discharger shall submit a Groundwater Remediation Workplan.

Enhanced Monitoring and Reporting: The proposed CDO requires that the Discharger complete weekly or monthly inspections and submit monitoring reports in addition to the Annual Report required by the Reissued General Order. The majority of the inspections are already required by the Reissued General Order; however, the Prosecution Team believes it is appropriate that the proposed CDO also include these requirements, and that the Discharger submit the results on a regular basis, so that Central Valley Water Board staff can be assured that the Discharger is taking actions to comply with the CDO and the Reissued General Order.

DISCHARGER'S COMMENTS:

The Discharger has not submitted formal written comments to the Tentative CDO and therefore the Prosecution Team has not prepared a Response to Comments. However, the Prosecution Team has had several telephone conversations with the Discharger's legal counsel and one conversation with Luis Soares, the Discharger's son and the operator of the Dairy. The Discharger had three main concerns about the CDO: soil sampling, installation of piezometers, and enhanced reporting. The Discharger also discussed upcoming changes to the Dairy's ownership. The Prosecution Team has made edits to address these issues, as described below, and sent a Revised Tentative CDO to the Discharger. As of the date of this summary sheet, the Discharger has not responded to the Revised Tentative CDO.

Soil sampling: The Discharger was concerned about the cost of soil sampling. While it is preferable to have samples from three depths at each location, the Prosecution Team agreed to revise the CDO to only require samples from two depths at each location. In addition, the revised CDO states that after three years of sampling, the Discharger may request that the Executive Officer eliminate the soil sampling program if the actual nitrogen applied-to-removed ratios are reasonably similar to those anticipated in the Dairy's most recent NMP.

Piezometers: The Tentative CDO initially required that at least five piezometers be installed around the Dairy's four wastewater ponds to determine whether the bottom of the ponds are within high groundwater. To address the Discharger's concerns about cost, the Prosecution Team has now agreed that only four piezometers are necessary. In addition, the Revised Tentative CDO no longer requires determination of groundwater gradient, which will also provide cost savings.

Enhanced Reporting: The Tentative CDO required submittal of monthly reports between October and March, and quarterly reports from April through September. To respond to the Discharger's concern about the cost of reporting, the Prosecution Team has agreed to reduce the number of reports, such that monthly reports are due from October through December, and quarterly reports are due from January through September.

Change in ownership: The Discharger has informed the Prosecution Team that, as part of marital dissolution proceedings between Germano and Jacinta Soares, Stanislaus Superior Court has awarded the Dairy to Jacinta Soares, and she intends to operate the Dairy with her son, Luis Soares. Because the Discharger has not yet submitted a Change of Ownership Form to formally change the Dairy's owner and operator, this CDO is issued to Germano and Jacinta Soares, the owner and operator of record. Upon receipt and processing of the Change of Ownership Form, the Prosecution Team will prepare a Name Change Order for this CDO. It is noted that the record shows that both Jacinta Soares and Luis Soares have been fully involved in the operation of the Dairy during the period of alleged violations.

With the above changes, the Prosecution Team believes that it has addressed all the Discharger's concerns and that there are currently no known items of contention.

RECOMMENDATION:

The proposed CDO has been structured to provide the Discharger with a reasonable timeline to resolve the issues which have been identified at the Dairy and contributed to violations of the Reissued General Order. The Prosecution Team recommends that the Cease and Desist Order be adopted as proposed.

REVIEWS:

Management Review:	RB 18 September 2020
Legal Review:	CMH 18 September 2020

BOARD MEETING LOCATION:

Central Valley Regional Water Quality Control Board meeting
364 Knollcrest Drive, Suite 205
Redding, CA 96002

Internet Zoom Meeting