

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2011-0069

IN THE MATTER OF

DAVID ALBERS
VINTAGE DAIRY
FRESNO COUNTY

This Order is issued to David Albers, managing partner of Vintage Dairy (hereafter Discharger) pursuant to California Water Code (CWC) section 13268, which authorizes the imposition of Administrative Civil Liability. This Order is based on findings that the Discharger violated provisions of Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (hereinafter General Order).

The Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds the following:

1. The Discharger is the managing partner and owner of the Vintage Dairy located at 12103 W Elkhorn Avenue, Riverdale, CA 93656, County of Fresno.
2. The Dairy is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (hereinafter General Order), which was issued by the Central Valley Water Board on 3 May 2007. Monitoring and Reporting Program R5-2007-0035 (hereinafter MRP) accompanies the General Order. The General Order and the MRP contain reporting requirements for dairies regulated by the General Order. The General Order became effective on 9 May 2007.
3. CWC section 13267 authorizes the Regional Water Boards to require the submittal of technical and monitoring reports from any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge to waters of the state.
4. The General Order and the MRP required the Discharger to submit the 2008 Annual Report by 1 July 2009 pursuant to the Central Valley Water Board's authority in accordance with CWC section 13267.
5. The General Order and the MRP required the Discharger to submit the 2009 Annual Report by 1 July 2010 pursuant to the Central Valley Water Board's authority in accordance with CWC section 13267.

6. The General Order and MRP required the Discharger to submit a Waste Management Plan by 1 July 2009 pursuant to the Central Valley Water Board's authority in accordance with CWC section 13267. However, the General Order was amended by Order No. R5-2009-0029 to extend the deadline to submit the Waste Management Plan to 1 July 2010 in order to give enrollees additional time to submit this plan.
7. The Discharger violated CWC section 13267 by failing to submit the 2008 Annual Report, the 2009 Annual Report, and Waste Management Plan required by the General Order and Monitoring and Reporting Program by the required deadlines.
8. On 23 July 2009, the Central Valley Water Board staff issued a Notice of Violation, notifying the Discharger that the 2008 Annual Report had not been received. The Notice of Violation also requested that the delinquent report be submitted as soon as possible to minimize potential liability.
9. On 25 August 2009, the Central Valley Water Board staff attempted to contact David Albers by telephone, and left a voicemail message stating that the Board had not received the required 2008 Annual Report with appurtenant components. On 31 August 2009, Mr. Albers contacted Board staff by telephone and indicated that the overdue report would be submitted by 20 August 2009.
10. On 17 March 2010, the Executive Officer issued Conditional Early Settlement Offer R5-2009-0585-M (Offer) to the Discharger. The Offer provided the Discharger with an opportunity to settle the violation identified above through an expedited settlement process. The Offer provided the Discharger the option of accepting the conditions of the Offer by waiving the right to a hearing before the Central Valley Water Board, submitting the past-due 2008 Annual Report with appurtenant components, and paying a penalty in the amount of two thousand dollars (\$2,000), by 31 March 2010. If the Discharger accepted the Offer, the Central Valley Water Board would consider the identified violation resolved. On 30 March 2010, the Discharger submitted the signed acceptance of the Offer and waiver of right to a hearing. On 13 April 2010, the Discharger submitted the \$2,000 penalty. However, the Discharger did not submit the required 2008 Annual Report with appurtenant components. The Discharger therefore did not meet all the conditions of the Offer.
11. On 16 August 2010, the Central Valley Water Board staff issued two Notices of Violation pertaining to the two missing reports notifying the Discharger that the 2009 Annual Report and the Waste Management Plan

- had not been received. Both Notices of Violation requested that the delinquent reports be submitted as soon as possible to minimize potential liability.
12. On 6 December 2010, the Central Valley Water Board staff issued a letter informing the Discharger that staff was in the process of assessing civil liability for failure to submit the Annual Reports and the Waste Management Plan. The letter provided the Discharger the opportunity to submit any information regarding the factors listed in CWC section 13327 that would be deemed relevant to determining an appropriate monetary penalty. The letter requested that all responses be received by 31 December 2010. As of the date of issuance of this Complaint, the Central Valley Water Board has not received any response to staff's 6 December 2010 letter.
 13. On 5 May 2011, the Executive Officer issued Administrative Civil Liability Complaint (Complaint) No. R5-2011-0542 to the Discharger recommending that the Central Valley Water Board assess the Discharger an administrative civil liability in the amount of \$19,800 pursuant to CWC section 13268 for the failure to submit the 2008 Annual Report, the 2009 Annual Report and the Waste Management Plan.
 14. A Hearing Panel composed of three members of the Central Valley Water Board held a hearing on this matter in Fresno on 14 July 2011. The Hearing Panel recommended that civil liability should be imposed upon the Discharger in the amount of \$19,800.
 15. Upon considering the Hearing Panel's final report and making an independent review of the record, the Central Valley Water Board during its meeting on 13 October 2011 adopted the findings of the Hearing Panel's report as its own and upheld the imposition of the Hearing Panel's proposed administrative civil liability on the Discharger. Therefore, the Central Valley Water Board has determined that civil liability should be imposed upon the Discharger in the amount of \$19,800.
 16. Issuance of this Administrative Civil Liability Order to enforce CWC Division 7, Chapter 5.5 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).
 17. This Order is effective and final upon issuance by the Central Valley Water Board. Payment must be received by the Central Valley Water Board no later than thirty (30) days from the date on which this Order is issued.

18. In the event that the Discharger fails to comply with the requirements of this Order, the Executive Officer or her delegee is authorized to refer this matter to the Attorney General's Office for enforcement.

19. 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 that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday, 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.

IT IS HEREBY ORDERED that pursuant to section 13323 of the CWC, the Discharger shall make a cash payment of \$19,800 (check payable to the State Water Pollution Cleanup and Abatement Account) no later than thirty days from the date of issuance of this Order. I, Pamela C. Creedon, Executive Officer, do hereby certify that the foregoing is a full, true, correct copy of an Order issued by the California Regional Water Quality Control Board, Central Valley Region, and that such action occurred on 13 October 2011.

original signed by

PAMELA C. CREEDON, Executive Officer