

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2010-0500

IN THE MATTER OF

JOSE AND MARIA SILVA
LANGWORTH DAIRY
5306 LANGWORTH ROAD
OAKDALE, STANISLAUS COUNTY

This Order is issued to Jose and Maria Silva (hereafter collectively referred to as the Discharger), as owners and operators of Langworth Dairy (the Dairy), pursuant to California Water Code (CWC) section 13385, 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 CWC and the Waste Discharge Requirements General Order for Existing Milk Cow Dairies Order R5-2007-0035 (General Order).

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

1. The Discharger owns and operates the Dairy, which is located at 5306 Langworth Road, Oakdale, California.
2. The Dairy is a 550 milk cow dairy facility with a 17-acre production area and 55 acres of cropland currently used for manure application (wastewater and solids). The Dairy is located east of Langworth Road and north of Claribel Road. Wastewater from the Dairy is collected in wastewater retention ponds, where it is periodically discharged to cropland.
3. On 3 May 2007, the Central Valley Water Board issued the General Order, which regulates wastewater practices at milk cow dairies of all sizes, including the Langworth Dairy. On 3 July 2007, the Board sent certified mail notifications to the Discharger, notifying them that the Dairy was subject to the General Order.

BACKGROUND

4. On 8 March 2008, Department of Fish and Game staff conducted an investigation concerning wastewater in the Cavill Drain at Langworth Road. Department of Fish and Game staff determined that the Dairy was the source of a discharge of wastewater to the Cavill Drain.
5. The Discharger applies wastewater to a field. At the end of the field, open pipes allowed wastewater runoff to enter the Cavill Drain. The Cavill Drain flows into the Modesto Irrigation District Canal, which then flows west and enters the Stanislaus River.

6. Central Valley Water Board staff conducted a site inspection on 10 March 2008 to discuss the discharge with the Discharger and to confirm that the discharge had ceased. The 10 March 2008 inspection disclosed that the Discharger disposes of wastewater by irrigating half of the fields with wastewater, and then the Discharger turns off the supply valves. The water progresses down the graded fields, and is usually absorbed by the time it reaches the lower portion of the fields, thereby keeping the water out of the Cavill Drain. However, because open pipes at the end of the field can allow wastewater to enter the Cavill Drain, over-applying wastewater would result in a discharge to the Cavill Drain. The Discharger informed staff that grant funding had been awarded for a tailwater return system, which would ensure that, even if irrigation practices resulted in the over-application of wastewater, there would not be any discharge to the Cavill Drain. The Discharger told Board staff that it was planning on installing this system once the oat crop had been harvested, but that this system was not in place at the time of the discharge.

7. On 8 March 2008, five (5) water samples were collected by Department of Fish and Game, and tested by Fish and Wildlife Water Pollution Control Laboratory. All but the sample collected upstream from the discharge were determined to be deleterious to aquatic organisms living in waters of the state.

Sample Identification/ Location	Date	Time	EC (µs/cm)	pH	Temp (degrees Celsius)	Undissociated Ammonia as NH3 (mg/L)	Ammonia as N (mg/L)
1. Upstream Control East of Fence Line E/S Culvert	3/8/08	17:43	195	9.21	17.9	0.046	0.158
2. Discharge From White Pipe into Cavill Drain	3/8/08	17:52	7793	8.32	13.0	17.9	417
3. Field Side of White Pipe (Discharge)	3/8/08	17:57	7806	8.37	12.8	20.0	418
4. Discharge Below Blue Pipe into Drain	3/8/08	18:01	8093	12.9	8.39	24.2	452
5. Field Side of Blue Pipe	3/8/08	18:07	8163	8.31	12.7	20.0	465

These samples provide evidence of a discharge from the Discharger's property that affected surface waters.

8. On 1 April 2008, Board staff issued the Discharger a written Notice of Violation letter, giving notice of the violations.

9. In May 2008, the Discharger contacted staff to inform the Central Valley Water Board that the tailwater return system was installed. Staff conducted an inspection on 10 June 2008 and confirmed that the system was installed. The tailwater return system was placed at the end of the field where the discharge occurred. The pipes that allowed the wastewater to escape during the discharge had been removed. Wastewater from the field now collects in a ditch that runs along the edge of the field. The Discharger pumps any wastewater that accumulates in the ditch back into the wastewater retention ponds, effectively keeping any liquid and solid manure out of the Cavill Drain.

LEGAL AUTHORITY

10. CWC section 13385 states, in relevant part:

(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

...

(5) Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended.

...

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

...

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, 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 its ability to continue its 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 that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

11. The General Order, Prohibition A.10 states, in part:

The discharge of wastewater to surface waters from cropland is prohibited.

12. The General Order does not authorize the discharge of waste to surface waters. Any discharge of waste to surface waters is a violation of the Clean Water Act, section 301. CWC section 13385 authorizes the imposition of administrative civil liability for such violations.
13. **Maximum Civil Liability for Discharge to the Cavill Drain:** Per CWC section 13385, civil liability administratively imposed by the Central Valley Water Board may not exceed \$10,000 per violation per day, plus \$10 per gallon for each gallon of waste discharged over 1,000 gallons. For the purposes of this Order, the Central Valley Water Board has not performed an estimation of the number of gallons of waste that may have been discharged to the Cavill Drain, because the proposed penalty falls below the maximum that could be charged based only on one violation. As such, the maximum penalty for the purposes of this complaint is ten thousand dollars (\$10,000 x one (1) day of discharge = \$10,000).
14. **Minimum Civil Liability for Discharge to the Cavill Drain:** Pursuant to CWC section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The Central Valley Water Board considers the economic benefit to be equal to the deferred costs of delaying the installation of the tailwater return system described in Finding 9. These deferred costs are estimated to be below the proposed penalty, as the system has been installed at the time of this Order.
15. CWC section 13385(e) states,
- In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, 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 its ability to continue its 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 that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

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

Nature, circumstances, and gravity: The Central Valley Water Board understands that the discharge from the Dairy facility was an unintentional discharge that occurred due to improper design of the land application area. Once notified that the improper design could result in discharges of waste to surface waters, the Discharger began preparing changes to the design of the facility, and has now completed these modifications.

Whether the discharge is susceptible to cleanup or abatement: Once the discharge left the croplands, there was little the Discharger could do to clean up the discharge.

The degree of toxicity of the discharge: As described in Finding No. 7, the California Department of Fish and Game has determined that the discharge was deleterious to aquatic life.

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.

Voluntary Cleanup Efforts Undertaken: Once notified of the violations, the Discharger made significant expenditures to plug the drain and to develop and run power to a tailwater return system that would eliminate the chance that the facility's wastewater disposal practices would result in discharges to surface waters.

Prior History of Violations: The Discharger does not have a prior history of violations.

Degree of Culpability: The Discharger is solely responsible for complying with the terms of the General Order.

Economic Benefit or Savings: Economic benefit is described in Finding No. 14.

Other Matters the Justice May Require: The Discharger has been cooperative with investigations conducted by the California Department of Fish and Game and the Central Valley Water Board.

16. The Central Valley Water Board recognizes that the facility, after the upgrades described in Finding 9, is not "designed, constructed, operated, and maintained" to discharge to surface waters. The Board does not believe that the Discharger is required to obtain a NPDES permit for the facility, and that continued compliance with the General Order will sufficiently protect waters of the state.
17. Administrative Civil Liability Complaint R5-2009-0538 was issued to the Discharger on 15 May 2009 in the amount of five thousand dollars (\$5,000).
18. 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).
19. 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 Landau has the authority to issue this Order.

20. This tentative Order constitutes a settlement of the violations herein mentioned. Notice of this settlement is being published on the Central Valley Water Board's website and is being provided to all interested parties on 7 December 2009. Following the expiration of a 30 day public notice and comment period, this Order is set to become final on 7 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.

IT IS HEREBY ORDERED THAT:

1. Jose and Maria Silva and Langworth Dairy shall be assessed an Administrative Civil Liability in the amount of **four thousand dollars (\$4,000)**. The amount of the liability is based upon a review of the factors set forth in California Water Code section 13385 cited in Finding No. 15 above, and the State Water Resources Control Board's water quality enforcement policy. Upon full payment, the Central Valley Water Board will consider the violations charged in Administrative Civil Liability Complaint R5-2009-0538 resolved.
2. 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

7 January 2010

Payment Agreement

Pursuant to Administrative Civil Liability Order R5-2010-0500 ("Order"), Jose and Maria Silva (hereafter collectively referred to as the Discharger) are ordered to pay \$4,000 to the State Water Resources Control Board Cleanup and Abatement Account within 30 days of the date the Order issued. However, the Central Valley Water Board shall defer immediate collection of the \$4,000 civil liability if the Discharger complies with the following payment schedule:

The Discharger has agreed to pay \$4,000 to the State Water Resources Control Board Cleanup and Abatement Account in four quarterly payments of \$1,000 beginning on **15 January 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 R5-2010-0500". Subsequent payments are due by **15 April 2010, 15 July 2010, and 15 October 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

7 January 2010