

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER R5-2015-0707

FOR

VAN DER HOEK AND SONS DAIRY #2

STANISLAUS COUNTY

This Order is issued to Michael Van Der Hoek, operator of the Van Der Hoek and Sons Dairy #2, and Jelle Van Der Hoek, trustee of the Van Der Hoek 1994 Trust, owner of the dairy property (collectively referred to as Discharger), based on provisions of California Water Code (Water Code) section 13304, which authorizes the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board) to issue a Cleanup and Abatement Order (CAO or Order), and Water Code section 13267, which authorizes the Central Valley Water Board to require the submittal of technical reports.

The Assistant Executive Officer of the Central Valley Water Board finds, with respect to the Discharger's acts or failure to act, the following:

1. Van Der Hoek and Sons Dairy #2 (Dairy) (WDID 5B50NC00113) is located at 1636 Gates Road, Modesto, Stanislaus County. The property is owned by the Van Der Hoek 1994 Revocable Trust¹ (Van Der Hoek Trust) and operated by Michael Van Der Hoek.
2. The Dairy is covered by the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued Dairy General Order), a set of general waste discharge requirements that apply to owners and operators of existing milk cow dairies that (1) submitted a Report of Waste Discharge in response to the Central Valley Water Board's 8 August 2005 request and (2) have not expanded operations since 17 October 2005. A Report of Waste Discharge was filed for the Manuel Meirinho Dairy on 6 October 2005 (the owner/operators at that time) and the Dairy operation has not expanded the herd size beyond 15 percent; the Van Der Hoek and Sons Dairy #2 is therefore covered by the Reissued Dairy General Order.
3. The Manuel Meirinho Dairy was in operation at the property when a Report of Waste Discharge was filed on 6 October 2005. The operation was purchased by the Van Der Hoeks on 26 November 2008. The Van Der Hoek and Sons Dairy #2 is permitted under the Reissued Dairy General Order to house up to 1,093 mature dairy cows, and currently houses approximately 800 mature cows. The Dairy's production area occupies approximately 22 acres, with milk cows housed in two freestall barns with flush lanes,

¹ Jelle Van Der Hoek is the trustee of the Van Der Hoek 1994 Trust.

each with adjoining corrals. There are five wastewater storage lagoons (three settling basins and two lagoons) at the Dairy. The two lagoons about the south embankment of Modesto Irrigation District (MID) Lateral No. 3. Wastewater and manure in the freestall barns are flushed into a collection pit and then pumped into the first settling basin. The depth to groundwater in the production area is approximately 10 feet below ground surface, based on monitoring well data collected 4 October 2012 from a site located approximately 1.7 miles north from the Dairy site. The bottoms of the lagoons are approximately four feet (Lagoon #1) and eight feet (Lagoon #2) below ground surface; the bottoms of the three settling basins are eight feet below ground surface.

4. The Dairy production area is surrounded by cropland on the south side. The Dairy cropland totals approximately 108 acres to which manure (process wastewater or solid manure) can be applied; an additional 34 acres is leased. Manure (liquid and solids) land application areas under the Discharger's control are considered to be part of the Dairy facility for purposes of the Reissued Dairy General Order. The Dairy production area is bordered on the west by Gates Road and bordered on the north and east by Modesto Irrigation Lateral No. 3.
5. Compliance inspections of the Dairy by Central Valley Regional Water Board staff have been completed on two recent occasions. An inspection of the Dairy was conducted 2 October 2014 at which time it was noted that manure solids were piled outside a corral, and manure solids were stored piled on native soil with no drains and no grading to convey manure leachate and/or stormwater to the wastewater lagoons. Abundant weeds were present on the impoundment berms and within the impoundments. The inspection report of 2 October 2014 is included as Attachment 1.
6. Regional Board staff received notice from the California Fish and Wildlife of dairy process wastewater discharging from a lagoon into MID Lateral No. 3 on 17 January 2015. It is estimated by the dairy operator that a total of 500 gallons of process wastewater flowed into the MID Lateral. This is the second discharge to the MID Lateral No. 3 from the Dairy, the first having occurred 13 June 2012. Regional Board staff visited the Dairy 22 January 2015 to discuss with the operator the reason and cause of the discharge. Process wastewater was no longer present in the lateral at the time of the site meeting. At that time it was noted that there was no freeboard in Lagoon #1 from which the process wastewater had flowed. However, the Waste Management Plan (WMP) prepared for the Dairy lists two feet of freeboard for each lagoon and enough storage volume for the 120-day storage period. Based on the findings of this meeting a Notice of Violation (NOV) was issued 25 February 2015 for (1) off-property discharge of process wastewater, and (2) improper maintenance of Lagoon #1. The discharge inspection report and the NOV are included as Attachment 2.
7. Reconnaissance inspection of the lagoons by Regional Board staff was conducted 24 February 2015. It was evident that over-application/discharge of manure solids/slurry and process wastewater to cropland adjacent to the south side of the lagoons had occurred. In addition, there was no freeboard in Lagoon #1, the westernmost lagoon.

8. Reconnaissance inspection of the lagoons by Regional Board staff was again conducted on 26 February 2015 at which time wastewater from Lagoon #1 was being pumped and applied to adjacent cropland; there was no freeboard in the lagoon at this time. It appeared the wastewater was being pumped and applied as a means to manage the volume in the lagoon rather than as a necessary agronomic requirement of the oat crop. The discharge inspection report for both the 24 and 26 February 2015 inspections is included as Attachment 3.
9. The Dairy was again inspected by Regional Board staff on 10 March 2015 and it was determined that: (1) mortality records were not available for review, (2) irrigation records for 2015 were not available and there was no record of wastewater/manure slurry application to cropland having occurred immediately prior 24 February 2015 and actively occurring 26 February 2015, (3) manure solids had been piled on native soil in various locations throughout the production area with no means to manage stormwater runoff or runoff, or to direct manure leachate to the impoundments, (4) abundant weeds were present on the impoundment berms and within Settling Basin #2 and Lagoon #2, (5) over-application of process wastewater and manure slurry to cropland had occurred, and (6) no evidence indicated that the Nutrient Management Plan was being implemented onsite. A copy of the 10 March 2015 inspection report is included as Attachment 4.

VIOLATIONS OF REISSUED DAIRY GENERAL ORDER

10. The Reissued Dairy General Order places restrictions on the discharge of wastes from dairy facilities that are intended to prevent pollution and nuisance conditions from occurring or persisting, and will limit the amount of degradation that will occur, so that discharges from dairy facilities will not cause long-term impacts to beneficial uses. This CAO focuses on violations of the Reissued Dairy General Order which represent a threatened discharge to waters of the state, as documented in the Central Valley Regional Water Board's inspection reports of 2 October 2014, 22 January 2015, 24 and 26 February 2015, and 10 March 2015 and the 25 February 2015 NOV:

- a. Dairy lagoons had less than the two feet of freeboard required for above-grade lagoons under the Reissued Dairy General Order.

The failure to maintain the required minimum amount of freeboard is a violation of Pond Specification 1 of the Reissued Dairy General Order.

- b. Land application of waste to cropland not done in conformance with a certified Nutrient Management Plan – There are no mechanisms or infrastructure in place to accurately quantify nutrient loading on Dairy cropland, i.e., the volumes of wastewater applied to cropland are based on pump output and time, a very imprecise method for measuring nutrient applications. In addition, it is not possible to measure the volume of manure slurry applied to cropland when it is derived as a heterogeneous mixture with wastewater from the lagoons. Thus, it is not possible to quantify the amount of nitrogen within manure slurry applied to cropland.

Portions of the cropland adjacent to Lagoon #1 had a thick layer of manure slurry at the time of the inspections of 24 and 26 February 2015 such that the oat crop was completely inundated. In addition, a broad area of the oat crop adjacent to both Lagoons #1 and #2 was yellow due to evident over application of process wastewater/manure slurry.

Land applications of all waste from the facility to areas under the Discharger's control shall be conducted in accordance with a certified Nutrient Management Plan consistent with the technical standards for nutrient management as specified in Attachment C of the Reissued Dairy General Order. Failure to do so is a violation of Land Application Specifications 2, 5, and 6 of the Reissued Dairy General Order.

- c. Poorly managed Dairy production area – There is a regular lack of proper maintenance of the Dairy production area. (1) There is no well-defined manure stacking area; manure appears to be piled in specific areas for convenience rather than to control or mitigate potential impacts to water quality as noted in the inspections of 2 October 2015 and 10 March 2015. Manure should only be placed in designated manure stacking areas identified in the certified Waste Management Plan. (2) The corral at the west side of the Dairy production area regularly contains excessive manure solids and/or manure slurry within and outside the fenced corral as noted in the inspections of 2 October 2015 and 10 March 2015. (3) A deep pit, on the north side of the production area and adjacent to the north side of the settling basins, regularly contains impounded water as noted during reconnaissance inspections on 22 January 2015 and 11 February 2015. This pit is not defined as an impoundment in the Waste Management Plan.

The failure to manage manure in accordance with the requirements of the Reissued Dairy General Order, can potentially result in the creation of a condition of pollution or nuisance, a violation of Prohibition 4 of the Reissued Dairy General Order.

- d. Poor record keeping – Records pertaining to the operation of the Dairy and associated cropland are not kept up to date and/or are not available for review. Available inspection documents of the Dairy production area do not accurately reflect actual conditions. Visual inspection documents produced by the Discharger and reviewed during the compliance inspections of 2 October 2015 and 10 March 2015 indicated that the lagoon freeboard was maintained at greater than the required minimum; however, Central Valley Regional Water Board staff have regularly noted during this time period that little or no freeboard was evident. Process wastewater is applied to cropland but records for 2015 of the volumes of process wastewater applied and the dates of application were not

available during the compliance inspection of 10 March 2015, nor were any other irrigation records available for review. In addition, there were no records of any discharges having occurred from the lagoon or during application of process wastewater.

Dischargers shall maintain on-site for a period of five years from the date they are created all information as follows (Owners must maintain their own copies of this information): ...All information necessary to document implementation and management of the Nutrient Management Plan ...All records for the production area ... All records for the land application area ... Tracking Manifest forms ... All analyses ...The failure to maintain records is a violation of Record-Keeping Requirements B. of the Reissued Dairy General Order.

REGULATORY CONSIDERATIONS

11. This Order conforms to, and implements policies and requirements of, the Porter-Cologne Water Quality Control Act (Division 7, commencing with Water Code section 13000) including: (1) Water Code sections 13267 and 13304; (2) applicable state and federal regulations; (3) the 2013 Central Valley Regional Water Quality Control Board Reissued Waste Discharge Requirements for Existing Milk Cow Dairies General Order R5-2013-0122 (Reissued Dairy General Order); (4) all applicable provisions of Statewide Water Quality Control Plans adopted by the State Water Resources Control Board (State Board) and the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, Fourth Edition, revised October 2011, (hereafter "Basin Plan") adopted by the Regional Board; (5) State Board policies and regulations, including State Board Resolution No. 68-16 (Statement of Policy with Respect to Maintaining High Quality of Waters in California), and Resolution No. 92-49 (Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code section 13304) ("Resolution 92-49"); CCR Title 23, Section 3890 et. seq., and (6) relevant standards, criteria, and advisories adopted by other state and federal agencies.
12. As a result of the events and activities described in this Order, such as the dumping of manure on native soil and the application of manure and process wastewater to cropland without following a certified Nutrient Management Plan, the potential for infiltration of waste constituents to groundwater is increased; depth to groundwater at the dairy is approximately 10 to 15 feet below ground surface. Therefore, the Regional Board finds that the Discharger has caused or permitted, or threatens to cause or permit, waste to be discharged in such a manner that it is, or probably will be, discharged into waters of the state and creates or threatens to create, a condition of pollution or nuisance. The Discharger's actions, as described in this Order, subject the Discharger to the requirements of Section 13304 of the California Water Code.

13. Water Code section 13304(a) states, in relevant part:

Any person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or by the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including but not limited to, overseeing cleanup and abatement efforts... Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the regional board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order...

14. Water Code section 13304(c)(1) states, in relevant part:

The person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial actions.

15. Water Code section 13267(b)(1) states, in relevant part:

In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

16. Pursuant to Water Code section 13267, subdivision (b), this Order requires the Discharger to submit technical and monitoring reports, including but not limited to work plans, to Central Valley Water Board Staff. The Central Valley Water Board requires technical and monitoring reports to determine the extent of the impacts of the discharge and/or to evaluate the measures necessary to prevent a discharge of waste where there is a threatened discharge. Technical monitoring reports are also necessary to assess additional cleanup and/or remediation measures at the Dairy beyond what is required in this Order.

17. On 23 April 2009, the Central Valley Water Board adopted Resolution R5-2009-0027 which delegates the Central Valley Water Board's authority to issue Cleanup

and Abatement Orders to Pamela C. Creedon, its Executive Officer. On 14 February 2014, the Executive Officer designated Andrew Altevogt, Assistant Executive Officer, as the Lead Prosecution Officer for all enforcement matters, including the issuance of Cleanup and Abatement Orders, originating in the Central Valley Region.

18. The Central Valley Water Board has considered the financial and technological resources available to the Discharger, and has determined that the directives required by this Order are feasible to implement and will be effective and necessary to protect the water quality of waters of the state. Therefore, the Assistant Executive Officer is authorized to issue this Cleanup and Abatement Order in accordance with Water Code sections 13304 and 13267 to the Discharger to cleanup and abate the effects of the discharge of waste. The burden, including costs of producing the technical reports, is outweighed by the needs of the reports in ensuring compliance with the Dairy General Order and ensuring that the quality of groundwater is not compromised by dairy activities.
19. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (hereafter Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Board. The Dairy is located in the Lower San Joaquin River Watershed, East Valley Floor Subarea. Pursuant to Water Code section 13263(a), the Reissued Dairy General Order implements the Basin Plan. The Van Der Hoek and Sons Dairy #2 is subject to the prohibitions and requirements of the Basin Plan.
20. The beneficial uses of the underlying groundwater are municipal and domestic supply, agricultural supply, industrial service supply and industrial process supply.
21. The Van Der Hoek and Sons Dairy #2 is bordered on the north by the Modesto Irrigation District Lateral No. 3 which discharges into the Stanislaus River, which in turn discharges into the San Joaquin River in the Sacramento-San Joaquin Delta, which are waters of the United States. The beneficial uses of the Sacramento-San Joaquin Delta are municipal and domestic supply, agricultural supply, industrial supply, water contact recreation, non-contact water recreation, warm freshwater habitat, cold freshwater habitat, migration of aquatic organisms, spawning reproduction and/or early development, wildlife habitat, and navigation.

IT IS HEREBY ORDERED that, pursuant to Water Code sections 13304 and 13267, the Van Der Hoek and Sons Dairy #2 shall take the necessary remedial action to abate threatened water quality impacts, in accordance with the scope and schedule set forth below.

1. **Beginning with the second quarter 2015 and continuing for one year**, the Discharger shall submit quarterly progress reports describing the remedial actions completed to date to comply with the Reissued Dairy General Order, as well as what work will be conducted in the next quarter; in addition, the quarterly reports will include a copy of all irrigation records for the Dairy for the previous quarter, i.e., application records for manure solids, process wastewater, fresh water, and any commercial fertilizer. The Quarterly Progress Reports shall be submitted by the **30th day of the month following the end of the quarter**, i.e., by 30 July, 30 October, 30 January, and April 30. Specific tasks to be completed are as follows.
2. **By 29 May 2015:**
 - (1) Provide a detailed description of how the settling basin-lagoon system works, i.e., how manure and process wastewater moves through the system from the point of generation through the three settling basins and into the two lagoons,
 - (2) Determine the amount of solids in Lagoons #1 and #2 and recalculate the maximum and minimum available storage at any time using this information,
 - (3) Prepare an updated Operation and Maintenance Plan for the Dairy that presents specific procedures and practices for management of process wastewater and solid manure, and maintenance of operational systems and infrastructure, e.g., cleanout schedule for lagoons and settling basins, and
 - (4) Install calibrated depth markers in each lagoon in a manner so the measured level of freeboard is easily recognized.
3. **By 29 May 2015**, describe the location and flow of wastewater, including from the corrals to the lagoons to cropland, related to the management of process wastewater at the Dairy ; on a map and/or schematics of the Dairy, identify the location of all piping that carries wastewater throughout the Dairy and to the associated cropland. For any planned changes to the piping system, provide a detailed description of the changes, including the purpose of the change, and include a schedule with dates for when these changes will be initiated and completed.
4. **By 29 May 2015**, propose a specific and precise method than timing of pump output for measuring the volume of process wastewater applied to Dairy cropland; provide a schedule for the construction and incorporation of the proposed method to be used at the Dairy.
5. **By 29 May 2015**, provide a map showing a proposed defined manure stacking area within the Dairy production area. The manure stacking area must be developed to provide a graded low-permeability base and include appropriate

drains to direct stormwater and manure leachate to the lagoons per Production Area Specifications D.6. in the Reissued Dairy General Order.

6. **By 29 May 2015**, submit a soil sampling work plan for total nitrogen and nitrate nitrogen from the areas where excessive wastewater/manure slurry was discharged on the East Field (marked as 1, 2 and 3 on the attached map). Discrete (not composite) samples are to be collected at depths of 0-12 inches, 12 to 24 inches, and 24 to 36 inches from each sampling point. Once the soil sampling work plan has been received, a determination will be made as to its adequacy. If approval is granted, **the soil sampling must be completed no later than 30 days from the date of the work plan approval**. No additional nutrients should be applied on the East Field until further notice; fresh water only may be applied.
7. The Discharger must develop and maintain proper record-keeping procedures and continue to comply with the inspection and sampling requirements of the Reissued Dairy General Order. The Discharger must maintain required freeboard in the lagoons, keep the embankments of the lagoons free of vegetation, regularly remove excessive manure from corrals, and maintain corrals to prevent ponding of stormwater per requirements of the Reissued Dairy General Order.

GENERAL REQUIREMENTS

The Discharger shall:

8. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, have reports prepared by, or under the supervision of, a registered professional engineer or geologist and signed by the registered professional. All technical reports submitted by the Discharger shall include a cover letter signed by an authorized representative of the Discharger, certifying under penalty of law that the signer has examined and is familiar with the report and that to their knowledge, the report is true, complete, and accurate. The Discharger shall also state if it/they agree with any recommendations/proposals and whether it/they approved implementation of said proposals.
9. Obtain all local and state permits and access agreements necessary to fulfill the requirements of this Order prior to beginning the work. The Discharger will continue any remediation or monitoring activities until such time as the Assistant Executive Officer determines that sufficient assessment and/or remediation has been accomplished to fully comply with this Order and this Order has been either amended or rescinded in writing.
10. If, for any reason, the Discharger is unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Assistant Executive Officer, the Discharger may request, in writing, an extension of the time

specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as the situation is recognized and no later than the compliance date. An extension may be granted by revision of this Order or by a letter from the Assistant Executive Officer. Extension requests not approved in writing by the Assistant Executive Officer with reference to this Order are denied.

11. This Order does not limit the authority of the Water Board to institute additional enforcement actions or to require additional investigation and cleanup of the site consistent with the Water Code. This Order may be revised by the Assistant Executive Officer as additional information becomes available. **Failure to comply with the terms or conditions of this Cleanup and Abatement Order will result in additional enforcement action**, which may include the imposition of administrative civil liability pursuant to Water Code including sections 13350 and 13268 or referral to the Attorney General of the State of California for civil enforcement.

REPORTING REQUIREMENTS

1. **Signatory Requirements.** All reports required under this Cleanup and Abatement Order shall be signed and certified by the Discharger or by a duly authorized representative of the Discharger and submitted to the Central Valley Water Board staff. A person is a duly authorized representative of the Discharger only if: (1) the authorization is made in writing by the Discharger and (2) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility of activity. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).
2. **Certification.** Include the following signed certification with all reports submitted pursuant to this Order:

I certify under penalty of perjury under the laws of the State of California that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

3. **Report Submittals.** All monitoring and technical reports required under this Order shall be submitted to:

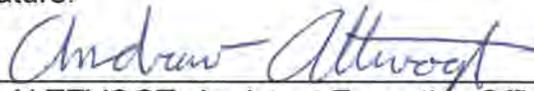
California Regional Water Quality Control Board
Central Valley Region - Sacramento Office
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
Attn: Charlene Herbst, Chief, Confined Animal Unit
Email: Charlene.herbst@waterboards.ca.gov
Phone: (916) 464-4724

Notifications:

4. **Cost Recovery.** Pursuant to Water Code section 13304, the Water Board is entitled to, and may seek, reimbursement for all reasonable costs actually incurred by the Water Board to investigate unauthorized discharges of wastes and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action required by this Order.
5. **Applicability of Other Orders.** This Order does not affect the Discharger's obligation to comply with any previously issued Orders, including the 2013 Reissued Dairy General Order (R5-2013-0122). The requirements and legal enforceability of these Orders are not superseded or affected upon issuance of this Order.
6. **California Environmental Quality Act (CEQA) Compliance.** The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), pursuant to California Code of Regulations (CCR), title 14, section 15321(a)(2). The issuance of this Order may also be considered an action by a regulatory agency for the protection of the environment, exempt pursuant to CCR, title 14, section 15308. This action is also exempt from the provisions of CEQA in accordance with section 15061(b) (3) of Chapter 3, Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
7. **Requesting Administrative Review by the State Water Board.** Any person aggrieved by an action of the Central Valley Water Board that is subject to review as set forth in Water Code section 13320, subdivision (a), may petition the State Water Resources Control Board (State Water Board) to review the action. Any petition must be made in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 and following. The State Water Board must receive the petition within 30 days of the date the action was taken, except that if the thirtieth day following the date the action was taken falls on a Saturday, Sunday, state holiday, then the State Water Board must receive the petition by 5:00 p.m. on the next business day. Copies of the law and regulation applicable to filing petitions may be found on the internet at:
<http://www.waterboards.ca.gov/publicnotices/petitions/waterquality> or will be provided upon request.

8. **Enforcement Notification.** If, in the opinion of the Assistant Executive Officer, the Discharger fails to comply with the provisions of this Order, the Assistant Executive Officer may refer this matter to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability. Failure to comply with the terms or conditions of this Cleanup and Abatement Order may result in additional enforcement action, which may include the imposition of administrative civil liability in an amount not to exceed \$5,000 for each day in which there is a violation of a requirement in an order issued pursuant to Water Code section 13304 and not to exceed \$1,000 for each day in which the Discharger fails to comply with Water Code section 13267, or referral to the Attorney General of the State of California for injunctive relief or civil or criminal liability.

This Order is effective upon the date of signature.



ANDREW ALTEVOGT, Assistant Executive Officer

4/28/15

(Date)

- Attachment 1 Inspection Report 2 October 2014
- Attachment 2 Discharge Inspection Report 22 January 2015
Notice of Violation 25 February 2015
- Attachment 3 Discharge Inspection Report 24 and 26 February 2015
- Attachment 4 Inspection 10 March 2015
- Map of Soil Sampling Locations

ATTACHMENT 1

CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

INSPECTION REPORT

DATE: 6 October 2014

LOCATION & COUNTY: Van Der Hoek & Sons Dairy #2
1636 Gates Road, Modesto 95358
Stanislaus County

CONTACTS: Michael Van Der Hoek 209-581-6133

INSPECTION DATE: 2 October 2014

INSPECTED BY: Daniel J. Davis, CVRWQCB

ACCOMPANIED BY: Sean Walsh, CVRWQCB

OBSERVATIONS AND COMMENTS:

Regional Water Board staff visited the dairy site on 2 October 2014. The purpose of the visit was to review operations documents and inspect the dairy facility operational components. There are currently approximately 800 milking cows at the dairy. The maximum permitted number of mature cows is 1,093 including the additional 15 percent. Operational documents through July 2014 were generally in good order and available for review. Rendering is contracted to Baker Commodities; records were available for January-September 2014.

Stormwater events were recorded for February and March 2014 and no discharges occurred. Visual inspections of the lagoons showed freeboard maintained at or below the required minimum; no discharges from the lagoons have occurred. Process wastewater is applied to the East and West fields. The volume of wastewater applied is based on pump output (gallons per minute) and number of hours pumping occurs.

Manure solids were noted placed and/or stored at various locations in the production area, including (1) outside a corral on the west side of the production area, (2) in large piles on native soil in the central production area, (3) in large piles on native soil in the heifer facility area, and (4) on native soil adjacent to the south side of Settling Basin #1.

Five impoundments, three settling basins and two lagoons, are used at the dairy. At the time of the inspection freeboard was greater than the required minimum in each impoundment. Abundant weeds were evident on the interior berms of the impoundments; in addition, abundant weeds were present throughout Settling Basin #2 and in Lagoon #1.

The removal rates for triticale (285 and 301 pounds nitrogen per acre) and corn (333, 373, and 350 pounds nitrogen per acre) listed in the Nutrient Management Plan (NMP) are too high and are not reasonable. In addition, review of the Annual Reports from 2011, 2012, and 2013 show reported nitrogen removal rates for winter forage, triticale, and corn that are not reasonable and are likely due to sample handling error and/or laboratory error.

CONCLUSION

The dairy appears to be generally well-managed. However, manure solids are currently placed on native soil in various locations throughout the production area with no apparent means to manage stormwater runoff or runoff, or to direct manure leachate to the impoundments. Manure solids must be managed in a way that will prevent potential impacts to groundwater quality. Abundant weeds are present on impoundment berms and within Settling Basin #2 and Lagoon #1; the weeds should be removed and the impoundments maintained to prevent buildup of weeds.

Volumes of application wastewater applied to cropland are based on pump output and time, a very imprecise method for measuring nutrient applications. Some other more precise method should be implemented at the dairy for measuring nutrient applications, e.g., flow meters. Review of the NMP showed nutrient removal rates for triticale and corn are too high. Review of Annual Reports showed reported nitrogen removal rates for winter forage, triticale, and corn that are not realistic.



View northwest showing pile of manure solids adjacent to corral fence at west side of production area.



View west across central production area showing large pile of manure solids.



View east showing stacked manure solids; manure solids were removed from adjacent Settling Basin #1.



View northwest showing stacked manure solids; manure solids were removed from adjacent Settling Basin #1.



View north across east side of heifer facility showing stacked manure solids.



View southwest across Settling Basin #1; note abundant weeds on impoundment berm.



View west across Settling Basin #2; note abundant weeds within impoundment.



View west across Settling Basin #3; note abundant weeds on impoundment berm.



View east across Lagoon #1; note abundant weeds within the impoundment and on the berm.



View west across Lagoon #1; note abundant weeds within the impoundment.



View east across Lagoon #2; note manure solids in foreground and weeds on interior berm.



View west across Lagoon #2; note weeds on interior berm.

ATTACHMENT 2

CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

DISCHARGE INSPECTION REPORT

DATE: 23 January 2015

LOCATION & COUNTY: Van Der Hoek Dairy #2
1636 Gates Road, Modesto 95358
Stanislaus County

CONTACTS: Michael Van Der Hoek

INSPECTION DATE: 22 January 2015

INSPECTED BY: Daniel J. Davis, CVRWQCB

ACCOMPANIED BY: Sean Walsh, CVRWQCB

OBSERVATIONS AND COMMENTS:

The Central Valley Regional Water Quality Control Board (Regional Board) received a text message on 17 January 2015 from Joe Mello, a lieutenant with the California Department of Fish and Wildlife, reporting that a discharge of dairy process wastewater into Modesto Irrigation Lateral 3 had occurred from a lagoon at the Van Der Hoek Dairy #2. The text message included a photograph showing a berm in the MID lateral constructed by the dairy operator to contain the discharge so the process wastewater could be pumped back to the lagoon.

Staff of the Regional Board met with the operator at the dairy on 22 January 2015 to inspect the site of the discharge and discuss (1) the reason for the discharge, and (2) prevention of future discharges. The lagoon (Lagoon 2) is adjacent to the south embankment of MID Lateral 3. It was explained by the operator that a pump hose disconnected and swung out over the berm of Lagoon 2 to discharge into the canal. The dairy operator reported an estimated 500 gallons process wastewater discharged based on the pump rate of 50 gallons per minute and the discharge occurring for ten minutes. A berm constructed in the canal lateral downgradient from the discharge contained the wastewater which was then pumped back into the lagoon. The dairy operator explained that in the future some better means of maintaining the pump and piping in place will be employed.

At the time of the inspection no process wastewater remained in the MID Lateral. The berm constructed by the dairy operator remained in the lateral but had been breached to allow water to flow through it. It was noted that a large pond of impounded water was present on the north side of the dairy production area near the north side of Settling Basin 3; the presence and use of this impoundment is not in the Waste Management Plan for the dairy.



01 17 2015 – View east-southeast showing berm in MID canal; photo by CA Fish & Wildlife personnel.



01 22 2015 – View southeast showing berm in MID canal; note breach in center of berm.



View south across MID Lateral 3 showing Lagoon 2 berm and source of discharge.



View east up MID Lateral 3.



View west down MID Lateral 3.



View west across Lagoon 2; note lack of freeboard.



View northwest across east end of Lagoon 2; note lack of freeboard.



View west across Lagoon 2; note lack of freeboard



View west along north side of Lagoon 2, note lack of freeboard.



View southwest across Lagoon 2 from north berm showing pump intake.



View west down north berm of Lagoon 2 at point of discharge.



View northwest across north berm of Lagoon 2 at point of discharge.



View east down north berm of Lagoon 2 showing pump intake at right and point of discharge at left; note lack of freeboard.



View south across west end of Lagoon 2; note lack of freeboard.



View east across Lagoon 2 showing no freeboard.



View west across dairy production area from north berm of Lagoon 2; note full Settling Basin 3 in center and large unidentified pond at right in photo.



Central Valley Regional Water Quality Control Board

NOTICE OF VIOLATION

25 February 2015

**CERTIFIED MAIL
7013 2250 0000 3465 9014**

Michael Van Der Hoek
337 Gates Road
Modesto, CA 95358

OFFSITE WASTE DISCHARGE AND IMPROPER MAINTENANCE OF LAGOONS, VAN DER HOEK DAIRY #2, 1636 GATES ROAD, MODESTO, STANISLAUS COUNTY

The Regional Water Quality Control Board (Regional Board) received notice from staff of the California Fish and Game of dairy process wastewater discharging from your dairy into Modesto Irrigation District (MID) Lateral 3 on 17 January 2015. It was subsequently explained that a pump hose disconnected and swung out over the berm of Lagoon 2 to discharge in the MID Lateral.

The off-property discharge of wastewater is a violation of Reissued General Waste Discharge Requirements Order No. R5-2013-0122 and of Title 27 of the Confined Animal Facility Regulations for the State of California and may be a violation of the Federal Clean Water Act. The violation is subject to enforcement action.

Priority Reporting of Significant Events

Pursuant to Monitoring and Reporting Program (MRP) Section C, "Priority Reporting of Significant Events", the written report required by this section was submitted to the Regional Board. The report contained a description of the noncompliance, its causes, duration, and steps taken to remediate the problem. Remediation involved building an earthen berm in the MID lateral and removal of all discharged process wastewater. The quantity of process wastewater discharged was estimated to be 500 gallons.

Lagoon Operation

It was noted during the site investigation of the discharge that no freeboard was evident in Lagoon 2. This is in violation of Section C.1. Pond Specifications listed in the General Order:

- *“The level of waste in the process wastewater retention ponds shall be kept a minimum of two (2) feet from the top of each aboveground embankment.”*

All lagoons at the dairy must be operated and maintained with freeboard greater than or equal to the minimum required by the General Order.

It is understood that the discharge has stopped and cleanup of the site has been completed. A written plan must be prepared that (1) outlines specific preventative measures such that similar discharges will not occur in the future, and (2) includes specific methods for maintaining required freeboard in each dairy lagoon. The preventative measures and methods must be implemented and a copy of the written plan/specifications submitted to the Regional Board office no later than **24 March 2015**. Following receipt and review of the plan an inspection by Regional Board staff will be conducted.

You will continue to accrue potential daily liability until you comply with this Notice of Violation. If you fail to comply with this Notice of Violation, you will be subject to additional enforcement action, and/or termination of authorization to discharge according to the General Order, Provision E.10.

Please contact Daniel Davis at 916-464-4739 or ddavis@waterboards.ca.gov with questions.

Charlene Herbst
Chief, Confined Animal Facility Unit

Enclosure: Inspection Report

ATTACHMENT 3

CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

DISCHARGE INSPECTION REPORT

DATE: 6 March 2015

LOCATION & COUNTY: Van Der Hoek Dairy #2
1636 Gates Road, Modesto 95358
Stanislaus County

CONTACTS: Michael Van Der Hoek

INSPECTION DATE: 24 & 26 February 2015

INSPECTED BY: Daniel J. Davis, CVRWQCB

ACCOMPANIED BY: Sean Walsh, CVRWQCB

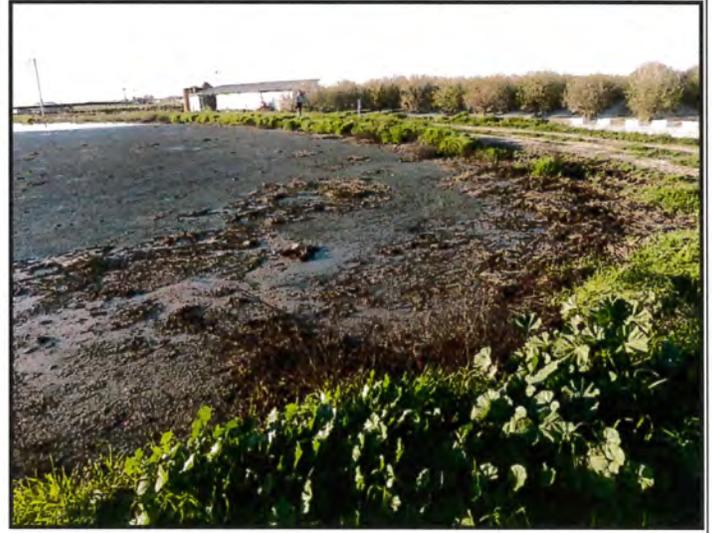
OBSERVATIONS AND COMMENTS:

During reconnaissance of dairy sites west of Modesto on 24 and 26 February 2015 staff of the Central Valley Regional Water Quality Control Board (Regional Board) noted apparent over-application of lagoon-derived wastewater and solids into cropland at the Van Der Hoek Dairy #2. The perceived over-application was based on the thickness of manure solids in the cropland adjacent to Lagoon #1 and (1) the absence of crop, or (2) yellowing of the crop. Application of dairy wastewater in the manner noted is considered a discharge since it is clearly evident that nutrient over-application to cropland has occurred or was ongoing.

Inspection on both dates revealed Lagoon #1 had no appreciable freeboard. At the time of the 26 February 2015 inspection wastewater from Lagoon #1 was being pumped and applied to the adjacent cropland; this appeared as much a means to manage the volume of wastewater in the lagoon as any necessary nutrient requirement of the oat crop.



02 24 2015 – View west along south embankment of Lagoon #1; note lack of freeboard.



02 24 2015 – View northwest across east end of Lagoon #1; note lack of freeboard.



02 24 2015 – View southeast across cropland adjacent to Lagoon #1 showing over-application of manure solids/slurry.



02 24 2015 – View south across cropland adjacent to Lagoon #1 showing over-application of manure solids/slurry.



02 26 2015 – View west along south embankment of Lagoon #1; note lack of freeboard.



02 26 2015 – View northwest across east end of Lagoon #1; note lack of freeboard. The pipe is part of the pumping mechanism for applying wastewater to cropland.



02 26 2015 – View southeast across cropland adjacent to Lagoon #1 showing over-application of manure solids/slurry.



02 26 2015 – View southwest across cropland adjacent to Lagoon #1 showing over-application of manure solids/slurry.



02 26 2015 – View west showing evidence of nutrient over-application in cropland adjacent to Lagoon #1; note blue pipe in left foreground used to convey lagoon water/slurry to cropland.



02 26 2015 – View west showing application of lagoon water/slurry to cropland adjacent to Lagoon #1; note blue pipe in center used to convey lagoon water/slurry to cropland.



02 26 2015 – View south across cropland adjacent to Lagoon #1 showing application of lagoon water.

ATTACHMENT 4

CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

INSPECTION REPORT

DATE: 11 March 2015

LOCATION & COUNTY: Van Der Hoek & Sons Dairy #2
1636 Gates Road, Modesto 95358
Stanislaus County

CONTACTS: Michael Van Der Hoek 209-581-6133

INSPECTION DATE: 10 March 2015

INSPECTED BY: Daniel J. Davis, CVRWQCB

ACCOMPANIED BY: Sean Walsh, CVRWQCB
Kathryn Wilkins

OBSERVATIONS AND COMMENTS:

Regional Water Board staff visited the dairy site on 10 March 2015. The purpose of the visit was to review operations documents and inspect the dairy facility operational components. There are currently approximately 800 milking cows at the dairy. The maximum permitted number of mature cows is 1,093 including the additional 15 percent. Visual inspections records for the lagoons from January to the date of the inspection listed freeboard maintained at greater than the required minimum; no discharges from the lagoons were noted. Process wastewater is applied to the East and West fields – records for 2015 of the volumes of wastewater applied and the dates of application were not available nor were any other irrigation records available for review. Rendering is contracted to Baker Commodities; no records were available for 2015.

The corral on the west side of the production area shows evidence of ponding and contains excessive manure solids. Manure solids have also been scraped outside the east side of the corral to an area adjacent to the east corral fence. Manure solids are stored at various locations in the production area – in large piles on native soil in the central production area and on native soil adjacent to the south side of Settling Basin #1 (the southernmost settling basin). The manure solids stacked adjacent to the settling basin have been placed in a manner such that it appeared the area was being used as another impoundment, i.e., the manure solids were piled into berm-like structures.

Five impoundments – three at-grade settling basins and two above-grade lagoons – are used at the dairy. Abundant weeds were present on the berms of the settling basins and lagoons. Freeboard was greater than the required minimum in each impoundment; however,

reconnaissance inspections of the lagoons conducted from November 2014 to the first week of March 2015 regularly showed the lagoons with zero freeboard.

Over-application of nutrients to cropland

Cropland adjacent to the south side of Lagoon #1 and the west side of Lagoon #2 showed evidence of over-application of lagoon-derived wastewater and solids. The perceived over-application was based on the thickness of manure solids in the cropland and (1) the absence of crop, or (2) yellowing of the crop. Wastewater from Lagoon #1 was actively being pumped and applied to the cropland during the reconnaissance inspection of 26 February 2015; at that time this appeared as much a means to manage the volume of wastewater in the lagoon as any necessary nutrient requirement of the oat crop since Lagoon #1 had no appreciable freeboard. There was no record of this application of wastewater or of any other wastewater applications that have occurred at the dairy since the beginning of the year.

CONCLUSION

There are issues with (1) record keeping, (2) management of manure solids, (3) impoundment maintenance, and (4) wastewater application to cropland.

- (1) Mortality records were not available for review at the time of the inspection. No irrigation records, either of fresh water or wastewater, were available at the dairy during the inspection. There was no record of the wastewater/manure slurry application noted occurring on 26 February 2015. In addition, there was no record of the discharge from Lagoon #1 that occurred 17 January 2015 when wastewater flowed into the adjacent Modesto Irrigation District Lateral 3.
- (2) Manure solids are currently placed on native soil in various locations throughout the production area with no means to manage stormwater runoff or runoff, or to direct manure leachate to the impoundments. Manure solids must be stored in a way that will prevent potential impacts to groundwater quality. Excess manure solids were present within and outside the west corral.
- (3) Abundant weeds are present on impoundment berms and within Settling Basin #2 and Lagoon #2; the weeds should be removed and the impoundments maintained to prevent buildup of weeds.

- (4) Over-application of dairy process wastewater and manure slurry to cropland is considered a discharge since it is clearly evident that nutrient over-application to cropland has occurred or is ongoing. A *Priority Reporting Of Significant Events* form must be completed sent to the Regional Board office.

As noted in previous inspections the volumes of wastewater applied to cropland are based on pump output and time, a very imprecise method for measuring nutrient applications. Some other more precise method should be implemented at the dairy for measuring nutrient applications, e.g., flow meters.



View northwest across west corral showing manure solids piled outside fence; note evidence of water ponding in corral to left in photo.



View west across central corral not currently in use; note abundant weeds.



View northwest across central production area showing stacked manure solids.



View north showing stacked manure solids; note evidence of ponding in low-lying area at center of photo.



Manure solids stacked adjacent to south side of settling basins.



Manure solids stacked adjacent to south side of settling basins.



Manure solids stacked adjacent to south side of settling basins; this area appears to be used as another impoundment.



Manure solids stacked adjacent to south side of settling basins; this area appears to be used as another impoundment.



Manure solids stacked at south side of settling basins.



View west across Settling Basin #1; note abundant weeds around the impoundment.



View southeast across Settling Basin #2; note weeds around and within impoundment.



View east across Settling Basin #3; note weeds on berm in foreground.



View east across Lagoon #1; note freeboard and weeds on the berm.



View north across Lagoon #1; note freeboard and weeds on the berm.



View northwest across east end of Lagoon #1; note freeboard and weeds on the berm.



View west across Lagoon #1; note weeds on the berm.



View east across Lagoon #2; note freeboard and abundant weeds on the berm.



View north across Lagoon #2; note freeboard and abundant weeds on the berm.



View west showing layer of manure solids/slurry in cropland; Lagoon #2 is to right in photo.



View west showing layer of manure solids/slurry in cropland; Lagoon #2 is to upper right in photo .



View west across cropland showing dead and yellow oats as evidence of wastewater over-application.



View south across cropland showing dead and yellow oats and bare ground as evidence of wastewater over-application.

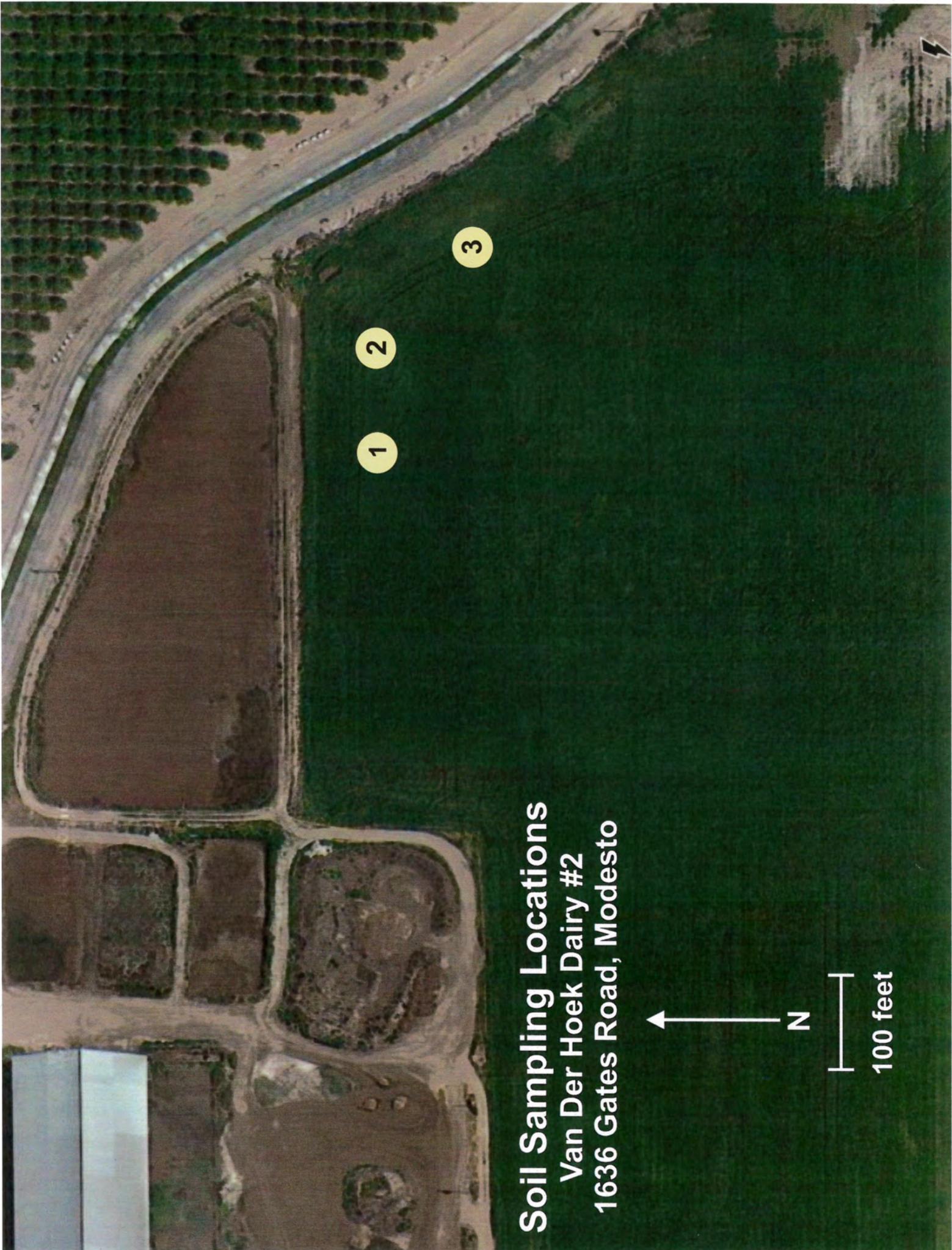


View northwest across cropland showing dead and yellow oats and bare ground as evidence of wastewater over-application.



View west across cropland showing dead and yellow oats and bare ground as evidence of wastewater over-application.

**MAP OF SOIL
SAMPLING LOCATIONS**



Soil Sampling Locations
Van Der Hoek Dairy #2
1636 Gates Road, Modesto

