

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2016-0084

IN THE MATTER OF

CMC LAND HOLDINGS, LLC
STANISLAUS COUNTY

This Administrative Civil Liability Order (Order) is issued to CMC Land Holdings, LLC (Discharger) pursuant to Water Code section 13323. This Order is based on findings that the Discharger violated provisions of the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order) and that administrative civil liability (ACL) may be imposed in accordance with Water Code section 13350.

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

BACKGROUND

1. CMC Land Holdings, LLC owns the dairy property that is being operated as a heifer facility located at 4207 W Linwood Avenue, Turlock, Stanislaus County (Facility). The Facility is located at Stanislaus County Assessor's Parcel Number 044-004-028-000.
2. The Facility is currently regulated by the Reissued General Order and the accompanying Monitoring and Reporting Program (MRP), which was adopted by the Central Valley Water Board on 3 October 2013. The Reissued General Order replaces the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (Dairy General Order) and accompanying MRP. The Reissued General Order is 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.
3. The previous property owner submitted a Report of Waste Discharge on 13 October 2005 and enrolled the Facility under the Dairy General Order. The Facility has not expanded operations since 17 October 2005. The Facility is authorized to house a maximum of 536 mature dairy cows. Milking ceased in June 2014. The Facility is currently not being used as a dairy but is housing dairy support stock (heifers). As an enrolled facility, the Facility is subject to the requirements of the Reissued General Order for regulatory purposes.
4. The Facility was purchased by the Discharger on or about 30 May 2014 and coverage under the Reissued General Order was transferred to CMC Land Holdings LLC on 22 October 2014. The Facility is located to the west of the City of Turlock, within the legal boundaries of the San Joaquin River Basin (East Valley Floor Major Subarea, Turlock Area Minor Subarea). The Facility production area occupies approximately 14 acres, and includes freestall barns, a solid settling basin, and a wastewater storage pond. The solids settling basin is to the north and the wastewater storage pond is to the south. The two ponds share a common embankment. The Turlock Irrigation District (TID) canal bisects the dairy production area from east to west. The TID canal is located south of the wastewater storage pond embankment and north of the northern corrals. The TID canal is a tributary to the Ceres Main Canal, which is a tributary to the Harding Drain, approximately 3 miles downgradient. The Harding Drain is a tributary to the San Joaquin River. There are 53 acres of cropland associated with the Facility, which can receive dairy wastewater.

5. The Facility's production area is surrounded on the west by another dairy farm owned by CMC Land Holdings LLC (Former John Nunes Dairy #1); by Discharger-owned cropland to the north; and by cropland to the east not owned by the Discharger. The south perimeter of the Facility is W Linwood Avenue. South of W Linwood Avenue are 3-acre ranchettes and another dairy farm (J-S Jimenez Dairy) to the southeast.
6. On 20 May 2014, Central Valley Water Board staff conducted a routine inspection of the Facility and noted excessive holes in the berm that "may jeopardize the integrity of the lagoon."
7. On 20 November 2015, Central Valley Water Board staff received a Hazardous Materials Spill Report from the California Office of Emergency Services that a pond embankment at the Facility had failed early that morning, flooding the front yards and driveways of neighboring homes with wastewater, which also entered an irrigation canal. Wastewater surrounded at least two domestic wells serving houses located south of W Linwood Avenue (i.e., 4030 W Linwood Avenue and 4406 W Linwood Avenue). Staff observed a breached berm on the south side of the wastewater storage pond that had since been repaired. The pond did not have the required two feet of freeboard based on observed water marks in the lagoon. Staff also noted that the Discharger did not properly implement the waste management plan and nutrient management plan. The corrals on the north and south sides of the animal housing barn were flooded with wastewater. Cropland to the west of the wastewater storage pond was flooded with wastewater. Staff observed the front and back yards of many houses south of W Linwood Avenue, including the areas around domestic wells, were flooded with wastewater. Staff followed the TID canal until it discharged into the Harding Drain. Staff observed wastewater in the Harding Drain.
8. The Central Valley Water Board issued the Discharger a Cleanup and Abatement Order (Order No. R5-2015-0757) on 2 December 2015 directing the Discharger to supply replacement drinking water to all residences served by private domestic wells in the impacted area, to sample the domestic wells at the residences, and to submit a plan for providing long-term replacement water for those residences whose wells continue to show impacts from wastewater.
9. The Central Valley Water Board issued the Discharger a 13267 investigative order on 15 January 2016 requesting, among other information requests, the calculation of the volume of released wastewater that was returned to the pond.

REGULATORY CONSIDERATIONS

10. Prohibition A.4 of the Reissued General Order states: "*The collection, treatment, storage, discharge or disposal of wastes at an existing milk cow dairy shall not result in the creation of a condition of pollution or nuisance.*"
11. Standard Provisions and Reporting Requirements (SPRR) Standard Provision B.17 of the Reissued General Order states: "*Animal waste storage areas and containment structures shall be designed, constructed, and maintained to limit, to the greatest extent possible, infiltration, inundation, erosion, slope failure, washout, overtopping, by-pass, and overflow.*"
12. Pond Specification C.1 requires that the level of waste in ponds be kept at a minimum of two (2) feet from the top of each aboveground embankment. "*Less freeboard may be approved by the Executive Officer when a Civil Engineer registered in California, or other person as may be permitted under the provisions of the California Business and Professions Code to assume*

responsible charge of such work, demonstrates that the structural integrity of the pond will be maintained with the proposed freeboard.”

13. 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 Water Resources Control Board (State Water Board). These requirements implement the Basin Plan.
14. Groundwater underlies the Facility and surrounding area at a depth of approximately 13 feet below ground surface. The beneficial uses of groundwater in the area as stated in the Basin Plan are municipal, domestic, agricultural, and industrial supply.
15. The Central Valley Water Board may impose administrative civil liabilities where a discharger, in violation of a waste discharge requirement, discharges waste, or causes or permits waste to be deposited where it is discharged, into waters of the state pursuant to the procedures described in Water Code section 13323. This Administrative Civil Liability Order finds the Discharger's conduct constitutes a violation of the Reissued General Order, resulting in a discharge to waters of the State. The Central Valley Water Board seeks administrative civil liability in accordance with Water Code section 13350.
16. Issuance of this Administrative Civil Liability Order to enforce Division 7, chapter 5.5 of the Water Code 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, sections 15307, 15308, 15321 (a)(2) and all applicable law.

VIOLATION: Unauthorized Discharge of Dairy Wastewater to Groundwater

17. The depth to groundwater at the facility is approximately 13 feet below ground surface, based on well data (State Well No: 734780N1208879W001) from the California Department of Water Resources from a well located a half-mile east of the Site. Given the close proximity of wastewater to the domestic wells and the shallow depth to groundwater, it is reasonable to conclude that the unpermitted discharge of wastewater unreasonably affected or will unreasonably affect the quality of the underlying groundwater such that beneficial uses would be impaired.
18. The Central Valley Water Board finds the Discharger violated Prohibition A.4 and Standard Provisions and Reporting Requirements (SPRR) Standard Provision B.17 of the Reissued General Order when, on 20 November 2015, the berm of the wastewater pond broke and 2,264,823 gallons of wastewater was released. An estimated 129,048 gallons of wastewater was not pumped back to the pond, applied to cropland, or captured by vacuum trucks and this volume is considered an unpermitted discharge for which the Board may impose civil liability pursuant to Water Code section 13350.
19. Reasonable inferences point to a number of factors that could have weakened the embankment. Though a pipe buried in the berm may have contributed to the berm failure, adequate inspections of the berm by the Discharger could have revealed structural deficiencies. The Central Valley Water Board finds that there is no one cause that can be deemed a proximate cause of the berm failure, but that additional care may have prevented the breach from occurring.

CALCULATION OF CIVIL LIABILITY UNDER WATER CODE SECTION 13350

20. Water Code section 13350, subdivision (a)(2) states in part, that any person who, in violation of a waste discharge requirement, discharges waste, or causes or permits waste to be deposited where it is discharged into the waters of the state, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (e).
21. Water Code section 13350, subdivision (e) states in part, that the state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis [per subsection (e)(1)] or on a per gallon basis [per subsection (e)(2)], but not both. The civil liability on a per gallon basis shall not exceed ten dollars (\$10) for each gallon of waste discharged.
22. **Maximum Administrative Civil Liability for Violation Based on Volume Only Pursuant to Water Code Section 13350(e)(2):** Per Water Code section 13350, subdivision (e)(2), civil liability administratively imposed by the Central Valley Water Board may not exceed ten dollars (\$10) for each gallon of waste discharged.
23. The Central Valley Water Board finds that CMC Land Holdings discharged 129,048 gallons of wastewater in a manner that can be reasonably expected to unreasonably affect the quality of the underlying groundwater such that beneficial uses would be impaired. The maximum administrative civil liability that may be assessed for the alleged violation based on the volume discharged pursuant to Water Code section 13350, subdivision (e)(2) is **\$1,290,048**.
24. **Minimum Administrative Civil Liability:** Pursuant to the State Water Board's Water Quality Enforcement Policy (Enforcement Policy), administrative civil liability, at a minimum, must be assessed at a level that recovers ten percent more than the economic benefits, if any, derived from the acts that constitute the violation. The economic benefit gained by non-compliance has been estimated at \$54,097. Therefore, the minimum civil liability which must be assessed pursuant to the Enforcement Policy is \$59,507 (i.e., economic benefit of \$54,907 plus 10%).

ADMINISTRATIVE CIVIL LIABILITY

25. Pursuant to Water Code section 13327, the Central Valley Water Board shall take into account the nature, circumstances, extent, and gravity of the violation, 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 the ability to continue in 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 as justice may require.
26. On 17 November 2010, the State Water Board adopted the Enforcement Policy. The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13327. The entire Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final_111709.pdf

27. The recommended administrative civil liability was derived using the penalty methodology in the Enforcement Policy, and Water Code sections 13327 and 13350, subdivision (e)(2), as explained in detail in Attachment A to this Order. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
28. As described above, the maximum penalty for the violation on a per gallon basis pursuant to Water Code section 13350, subdivision (e)(2) is **\$1,290,480**. The minimum penalty is \$59,507. Based on consideration of the above facts, and after applying the penalty methodology, the Central Valley Water Board imposes civil liability in the amount of **\$308,038** against the Discharger. The specific factors considered in this civil liability assessment are detailed in Attachment A.
29. The Payment of the assessed liability amount does not absolve the Discharger from complying with the Reissued General Order or the MRP, the terms of which remain in effect. Notwithstanding the issuance of this Order, the Central Valley Water Board retains the authority to assess additional civil liability for violations of waste discharge requirements and/or applicable orders for which civil liability have not yet been assessed, or for violations that may subsequently occur.
30. On Monday, December 05, 2016, the Central Valley Water Board, in a public meeting, heard and considered all evidence, testimony, and comments submitted in accordance with the Hearing Procedure applicable to this proceeding or otherwise admitted by the Board or the Board Chair. The Board made modifications to the proposed ACL Order in accordance with evidence, testimony, and comments received at the hearing.

IT IS HEREBY ORDERED that CMC Land Holdings, LLC shall pay a civil liability of \$308,038 as follows:

Within 30 days of issuance of the Order, the Discharger shall pay **\$308,038 (three hundred eight thousand and thirty-eight dollars)**, by check made payable to the Waste Discharge Permit Fund. The check shall have written upon it the number of this ACL Order.

I, Pamela C. Creedon, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region on 5 December 2016.

Pamela C. Creedon, Executive Officer

(Date)

ATTACHMENT A TO ACL ORDER R5-2016-0084

SPECIFIC FACTORS CONSIDERED FOR ADMINISTRATIVE CIVIL LIABILITY

CMC LAND HOLDINGS LLC
STANISLAUS COUNTY

The State Water Resources Control Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under Water Code section 13327. Each factor of the ten-step approach is discussed below, as is the basis for assessing the corresponding score.

The Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

VIOLATION: UNAUTHORIZED DISCHARGE OF 574,000 GALLONS OF DAIRY WASTEWATER FROM DAIRY POND TO GROUNDWATER

On 20 November 2015, approximately 2,264,823 gallons of wastewater was released when a portion of the south embankment failed at a storage pond located at the dairy facility at 4207 W Linwood Avenue in Turlock; the facility is owned by CMC Land Holdings, LLC. Approximately 1,080,000 gallons of wastewater were recovered and applied agronomically to cropland. Approximately 1,046,775 gallons of wastewater were recovered and returned to the pond. Approximately 9,000 gallons were captured by vacuum trucks. Approximately 129,048 gallons of wastewater were discharged in a manner that can be reasonably expected to affect the quality of the underlying groundwater such that beneficial uses would be impaired.

The following steps are used in determining administrative civil liability for the production area discharge.

Step 1 – Potential for Harm for Discharge Violations

The “potential harm to beneficial uses” factor considers the harm that resulted, or may result, from exposure to the pollutants in the illegal discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) whether the discharge is susceptible to cleanup or abatement.

Factor 1: Harm or Potential Harm to Beneficial Uses.

A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm to beneficial uses ranges from negligible (0) to major (5). In this case, the potential harm to beneficial uses was determined to be “**Moderate**” (i.e., a score of 3). Discharges that pose a moderate harm to beneficial uses are discharges where impacts are observed or reasonably expected, and where impacts to beneficial uses are likely to attenuate without appreciable acute or chronic effects.

Dairy waste, including manure and urine, can impact groundwater unless the discharges are carefully managed. Such discharges can introduce nitrogen, salts, and bacteria to the groundwater, either by the movement of waste constituents through soil or by the movement of waste constituents through man-made conduits such as wells. Nitrogen contamination, in the form of both nitrate and ammonia, poses a serious threat to beneficial uses, including the drinking water supply. However, wastewater

such as the wastewater stored in the pond is also used as source of irrigation water and represents a valuable source of water for the agricultural community.

As acknowledged by CMC, there is a regional nitrate problem in the vicinity of the Site. However, although the evidence in the record indicates that neighboring properties have been affected by nitrate pollution and possible short-term pathogen contamination, the evidence is inconclusive as to whether the discharge of wastewater from the pond breach was the proximate cause of such impacts. While the unpermitted discharge of wastewater that occurred due to the pond breach likely contributed to the regional nitrate problem, the magnitude of impacts due to the pond breach itself are appropriately categorized as moderate.

Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge.

A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material. The constituents of concern present in wastewater that ultimately discharged to waters of the State include nitrogen, salts, and bacteria. Nitrate-nitrogen has a primary Maximum Contaminant Level (MCL) of 10 mg/L. TDS has a secondary MCL range from 500 mg/L (Recommended) to 1,000 (Upper) to 1,500 (Short-term). E.coli bacteria have a primary MCL of zero. In this case, the risk or threat of the discharge was deemed **above-moderate** and a score of **3** was assigned. The Enforcement Policy, at page 13, provides that the risk or threat is above-moderate where the chemical and/or physical characteristics of the discharged material exceed known risk factors and /or there is substantial concern regarding receptor protection¹.

The discharge was wastewater from a heifer facility with levels of total and fecal coliform that pose a risk or threat to potential human receptors. Wastewater from a heifer facility contains bacteria that can cause a variety of diseases or illnesses through physical contact or if ingested. This wastewater has high levels of pollutants that can degrade groundwater quality with existing beneficial uses of municipal and domestic water supply, agricultural supply, industrial service and process water supply.

Factor 3: Susceptibility to Cleanup or Abatement.

A score of 0 is assigned for this factor if 50% or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned if less than 50% of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated by the discharger.

The Board finds that it could either impose a per-gallon liability based on the total volume of wastewater discharged from the ponds, or it could impose a per-gallon liability based on the volume of wastewater discharged from the ponds and *not* recovered. If the Board chose to assess liability based on the total volume discharged, it is self-evident that over 50% was susceptible to cleanup or abatement, since over 50% was, in fact, recovered. However, in this case, the Board finds that it is reasonable to assess liability based on the volume of wastewater that the Discharger could not recover, as this ultimately recognizes the Discharger's substantial efforts in attempting to recover as much of the released wastewater as possible. Since the Board is opting to assess liability in this case on the volume of wastewater that was not recovered (and is likely not recoverable), it is reasonable to assign a score of **1** for this factor. In this case, the Board's decision to impose a per-gallon liability based on the volume of

¹ "Potential receptors" are those identified considering human, environmental, and ecosystem exposure pathways.

wastewater discharged from the ponds and not recovered results in a significantly lower assessment, even with an assignment of 1 to this factor.

Final Score – “Potential for Harm”

The scores of the three factors are added to provide a Potential for Harm score for each violation or group of violations. In this case, a **final score of 7** was calculated. The total score is then used in Step 2, below.

Step 2 – Per Gallon Assessment for Discharge Violations

When there is a discharge, the Central Valley Water Board is to determine the initial liability amount on a per-gallon or per-day basis under Water Code section 13350 using the sum of the Potential for Harm scores from Step 1 and the extent of Deviation from Requirement of the violation. The Potential for Harm score from Step 1 is **7** and the extent of Deviation from Requirements is considered **Major**. The “per gallon” factor (determined from Table 1 of the Enforcement Policy) is **.31**.

The purpose of the requirements in the Central Valley Water Board Order R5-2013-0122 (Reissued General Order) is to limit degradation of high-quality waters so that there will not be long-term impacts to beneficial uses. Here, the discharge of wastewater violated these requirements. The Reissued General Order Standard Provision and Reporting Requirements (SPRR) provides that, “Animal waste storage areas and containment structures shall be designed, constructed, and maintained to limit, to the greatest extent possible, infiltration, inundation, erosion, slope failure, washout, overtopping, bypass, and overflow” (SPRR 17). Reissued General Order Prohibition A.4 provides, “The collection, treatment, storage, discharge or disposal of wastes at an existing milk cow dairy shall not result in the creation of a condition of pollution or nuisance.” Here, the pond’s integrity was compromised when a portion of the pond embankment collapsed, releasing approximately 3.4 million gallons of wastewater. A major deviation is appropriate where the requirements in the Reissued Dairy General Order have been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

The discharge was to groundwater not to surface water, so it is appropriate to seek penalties under Water Code section 13350, which allows either per-gallon penalties or per-day penalties, but not both. For this violation, the Central Valley Water Board finds it reasonable to assess liability for this discharge based on a per-gallon basis.

High Volume Discharges

The Enforcement Policy allows for a reduction in the per gallon factor from \$10/gallon to \$2/gallon where the volume can be very large and the resultant penalty is not inappropriately low. The Central Valley Water Board finds that it is reasonable to apply a reduction factor of \$7, as the discharge subject to this assessment (129,048 gallons) is moderately high, but not so high as to justify a reduction to the minimum \$2.

The Per Gallon Assessment is calculated as: (129,048 gallons) x (.31 factor from Table 1) x (\$7 per gallon). The **Initial Liability Amount** is **\$\$280,034**.

Step 3 – Per Day Assessment for Non-Discharge Violation

Step 3 applies only to non-discharge violations for which there are none alleged in this Complaint.

Step 4 – Adjustment Factors

The Enforcement Policy also describes three factors related to the violator's conduct that should be considered for modification of the initial liability amount: the violator's culpability, efforts to clean up the discharge or cooperate with regulatory authority, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior.

The Central Valley Water Board finds that there is no one cause that can be deemed a proximate cause of the berm failure, but that additional care may have prevented the breach from occurring. The Discharger was assessed a multiplier value of **1.1**. This multiplier is warranted because the Discharger failed to maintain the integrity of the pond to limit to the greatest extent possible inundation, erosion, slope failure, and wash out. A reasonably prudent discharger who acquires a facility regulated under the Reissued General Order should have thoroughly evaluated its facility to determine the condition and operational status of control facilities and infrastructure.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation.

For the violation, the cleanup and cooperation multiplier is **1.0**. The Discharger made efforts to clean-up surface discharges of wastewater as mandated by the incident command personnel onsite at the time of the spill. The Discharger did not provide replacement water to the users of the neighboring affected wells until ordered to do so by Cleanup and Abatement Order No. R5-2015-0757, which required the provision of replacement water to neighboring residences and was issued by the Central Valley Water Board on 2 December 2015. A factor of 1.0 may be assessed where the Discharger acted as a reasonable person would have done under the circumstances.

History of Violations

This factor is used to increase the liability when there is a history of repeat violations using a minimum multiplier of 1. The Board has no evidence that the Discharger has had a discharge similar to this one that discharged to groundwater. Therefore, a factor of **1.0** is appropriate.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability for the violation is determined by multiplying the Initial Liability Amount determined in Step 2 by the multipliers associated with each of the Adjustment Factors from Step 4.

Total Base Liability Amount: This value is calculated as the Initial Liability **\$280,034 X Adjustment Factors (1.1) (1.0) (1.0)** and is equal to **\$308,038**.

Step 6 - Ability to Pay and Ability to Continue in Business

The ability to pay and to continue in business must be considered when assessing administrative civil liabilities. The Prosecution Team conducted an initial inquiry regarding the Discharger's ability to pay based on publically available information and financial documents provided by the Discharger.

The Discharger, CMC Land Holdings, LLC, is a corporation formed for the purpose of property ownership. In addition to owning the site at issue, 4207 W Linwood Avenue, the Discharger also owns the following properties in Turlock: 1400 S. Washington Road (APN 044-004-003- 000), 3925 W. Linwood Ave.(APN 044-004-028-000), and 1318 S. Washington Road (APN 044-004-002-000). Below is a table of the total assessed value of each property.

APN	Total Assessed Value (2014)	Property Type/Land Use
044-004-003-000	\$1,677,277.00	Agricultural/Dairy Farm
044-004-028-000	\$5,016,261.00	Agricultural/Dairy Farm
044-004-002-000	\$1,914,275.00	Agricultural/Dairy Farm/Mobile Homes
044-004-027-000	\$126,987.00	Single Family Residence/Rural home
TOTAL:	\$8,734,800.00	

The Discharger leases the property at APN 044-004-028-000 to a heifer operation, an ongoing business that potentially generates profit in the form of rent. Based on this initial assessment of information, the Discharger has the assets to pay the Total Base Liability. The Discharger's current use of the land is leasing the property to a heifer operation. The Prosecution Team has considered that the sale of part of the Discharger's assets to pay the proposed penalty could prevent the Discharger from continuing to lease the land as a heifer operation. The Discharger has conveyed a future business concept of starting a creamery at this Facility, however, unless the business is actually operating, consideration of the viability of a conceptual business model is outside of the analysis conducted in Step 6. The Prosecution Team has not applied a reduction in liability for this Discharger.

Step 7 – Other Factors as Justice May Require

If the Central Valley Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this. No adjustments under this step have been made.

Step 8 – Economic Benefit

Pursuant to the Enforcement Policy, administrative 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 plus ten percent. The Enforcement Policy suggests that the Board compare the Economic Benefit amount

to the Total Base Liability and ensure that the Total Base Liability is at a minimum, 10 percent greater than the Economic Benefit. Doing so should create a deterrent effect and will prevent administrative civil liabilities from simply becoming the cost of doing business.

The initial assessment of economic benefit is based on the temporary wastewater storage required for the excess volume of wastewater that the lagoon contained above the required freeboard. The cost estimate does not include mobilization/demobilization, stabilized pad construction, conveyance design and piping, or a pumping system. Using USEPA's BEN computer program, the minimum economic benefit of noncompliance is estimated at \$54,097.

Step 9 – Maximum and Minimum Liability Amounts

Minimum Liability Amount: The Enforcement Policy requires that the minimum liability amount imposed not to be below a discharger's economic benefit plus 10 percent or **\$59,507**.

Maximum Liability Amount: The maximum administrative civil liability amount is the maximum amount allowed by Water Code section 13350, which is \$10 for each gallon discharged. The maximum liability for this violation is **\$1,290,480**.

Step 10 – Final liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount, based on gallons discharged, for the violations is **\$308,038 (three hundred eight thousand and thirty-eight dollars)**. This liability falls within the statutory maximum and minimum liability amounts.

Penalty Calculation Methodology Worksheet - Version Date: 2/4/2014

Instructions

1. Select Potential Harm for Discharge Violations
2. Select Characteristics of the Discharge
3. Select Susceptibility to Cleanup or Abatement
4. Select Deviation from Standard
5. Click "Determine Harm & per Gallon/Day..."
6. Enter Values into the Yellow highlighted fields

Select Item 3 = Moderate
 Select Item 3 = Discharged material poses above moderate r
 Select Item < 50% of Discharge Susceptible to Cleanup or Ab
 Select Item Major

Discharger Name/ID: CMC Land Holdings LLC, 4207 W Linwood Avenue, Turlock

		Violation 1	
Discharge Violations	Step 1	Potential Harm Factor (Generated from Button)	7
	Step 2	Per Gallon Factor (Generated from Button)	0.31
		Gallons	129,048
		Statutory Maximum	10.00
		High Volume	7.00
		Total	
	Step 3	Per Day Factor (Generated from Button)	0
		Days	
		Statutory Max per Day	
		Total	
Non-Discharge Violations	Step 3	Per Day Factor	
		Total Days	
		Multiple Day Violation Reduction	
		Statutory Max per Day	
	Total		\$ -
Initial Amount of the ACL			\$ 280,034.16
Add'l Factors	Step 4	Culpability	1.1
		Cleanup and Cooperation	1
		History of Violations	1
		Maximum for this Violation	\$ 1,290,480.00
	Amount for this Violation		\$ 308,037.58
Step 5 Total Base Liability Amount			\$ 308,037.58
Step 6 Ability to Pay & to Continue in Business			\$ -
Step 7 Other Factors as Justice May Require		Staff Costs	\$ -
			\$ -
Step 8 Economic Benefit		\$ 54,097	
Step 9 Minimum Liability Amount			\$ 59,507.00
		Maximum Liability Amount	\$ 1,290,480.00
Step 10 Final Liability Amount			\$ 308,037.58

Penalty Day Range Generator

Start Date of Violation=

End Date of Violation=

Maximum Days Fined (Steps 2 & 3) = Days

Minimum Days Fined (Steps 2 & 3) = Days