



Central Valley Regional Water Quality Control Board

5 August 2019

CERTIFIED MAIL
7018 1830 0001 0062 1981

Mr. John Brasil
John Brasil Dairy #1 and John Brasil Dairy #3
2613 S. Mitchell Rd.
Turlock, CA 95380

OFFER TO SETTLE ADMINISTRATIVE CIVIL LIABILITIES R5-2019-0515 AND R5-2019-0516, JOHN BRASIL DAIRY #1 AND JOHN BRASIL DAIRY #3, TURLOCK, STANISLAUS COUNTY

This letter contains an offer from the Central Valley Regional Water Quality Control Board (Central Valley Water Board) Prosecution Team to settle potential claims for administrative civil liability arising out of alleged violations of the *Revised General Order for Existing Milk Cow Dairies, Order R5-2013-0122* (General Order) at the John Brasil Dairy #1 located at 2613 S. Mitchell Road in Turlock and at the John Brasil Dairy #3 located at 1707 S. Mitchell Road in Turlock.

As the legally responsible persons enrolled in the General Order, Mr. John Brasil (owner and operator) (hereafter referred to as Discharger), is responsible for complying with all elements of the General Order and is responsible for penalties associated with non-compliance.

Hereafter, this letter will be referred to as the "Settlement Offer." **This Settlement Offer provides the Discharger with an opportunity to resolve the alleged violations at both dairies through payment of \$108,608 (one hundred thousand six hundred and eight dollars). Please read this letter carefully and respond no later than 5 September 2019.**

Description of Alleged Violations at the John Brasil #1 Dairy

On 13 February 2019, Central Valley Water Board staff inspected the Discharger's dairy and found that manure slurry had been pumped onto the Dairy East field, completely covering the winter crop with manure. The field is not well graded and most of the manure slurry settled around the irrigation valves. The Turlock area had received about 3 inches of rain prior to the discharge and it was not necessary to irrigate for crop health. The Discharger subsequently submitted a PROSE report which stated that on 30 January 2019, about 96,000 gallons of wastewater had been applied to 40 acres of cropland. According to the Discharger, the pump

KARL E. LONGLEY ScD, P.E., CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

11020 Sun Center Drive #200, Rancho Cordova, CA 95670 | www.waterboards.ca.gov/centralvalley

that draws from the bottom layer of the lagoon was mistakenly used, instead of the pump that draws from the top layer of the lagoon.

The discharge violated the General Order as follows: (1) manure was applied to cropland for purposes other than nutrient recycling, (2) the application of process wastewater was not based on crop needs, and (3) wastewater was applied when the soil was already saturated. Please see the enclosed 1 March 2019 Notice of Violation and the 19 February 2019 Inspection Report for a full description of the inspection and violations.

Description of Alleged Violations at the John Brasil #3 Dairy

On 6 March 2019, Central Valley Water Board staff inspected the Discharger's dairy and adjacent heifer facility. At the dairy facility, staff noted that wastewater was ponding in the corrals, feed storage areas, and manure storage areas, with no drainage system to direct runoff to the storage lagoon. Runoff from these areas was directed to cropland (instead of a wastewater lagoon). Staff noted a heavy application of wastewater on cropland, which was already saturated from recent rains. The dairy lagoon had less than two feet of freeboard, as well as a recent drop in water level which indicated that wastewater had been applied to the saturated cropland. The lagoon berm was heavily impacted by animal burrows.

At the heifer facility, manure slurry had been pushed outside of the corral, with no drainage system to direct runoff to the storage lagoon. There was excess manure in the corrals and ponded water in the corrals. Corral runoff was directed to cropland. The heifer lagoon had less than two feet of freeboard and a pipe allowed wastewater to freely discharge from the lagoon to cropland. In addition, a cut in the lagoon berm was used to direct wastewater to cropland.

The Discharger has, at a minimum, violated the following sections of the General Order at the dairy and/or heifer facility:

- Prohibition A.9 (land application of process wastewater to cropland other than for nutrient recycling is prohibited);
- Attachment C, Technical Specification V.C.2 (wastewater shall not be applied when soils are saturated);
- Attachment C, Technical Specification V.C.1 (application of process wastewater is to be scheduled based on crop nutrient needs, the crop's daily water use, the water holding capacity of the soil, and the lower limit of soil moisture for the crop and soil);
- Pond Specification C.1 (wastewater ponds shall have a minimum of two feet of freeboard);
- Production Area Specification D.6 (corrals, manure storage areas, and feed storage areas shall be designed and maintained to convey all water in contact with animal waste or feed to a wastewater pond; to minimize standing water; and to minimize the infiltration of water);
- Land Application Specification E.2 (land application of all waste shall be conducted in accordance with a certified Nutrient Management Plan);
- Land Application Specification E.8 (all wastewater applied to land must completely infiltrate within 72 hours of application);

- Standard Provisions and Reporting Requirements B.16 (the Discharger must properly operate and maintain in good working order any unit installed to achieve compliance); and
- Standard Provisions and Reporting Requirements B.17 (wastewater lagoons shall be maintained to prevent erosion, slope failure, washout, overtopping, by-pass, and overflow).

Please see the enclosed 7 March 2019 Notice of Violation and the 24 April 2019 Inspection Report for a full description of the inspection and violations.

Statutory Liability

Pursuant to Section 13350 of the California Water Code, the Discharger is liable for administrative civil liabilities of up to \$5,000 per violation for each day in which the violation occurs or up to \$10 per gallon discharged. The statutory minimum civil liability is \$100 per day. The State Water Resources Control Board's *Water Quality Enforcement Policy* (Enforcement Policy) states that the minimum penalty is to be the economic benefit plus 10%. For the violations at the John Brasil Dairy #1, as described in the attachments, the maximum potential liability for the violations is \$960,000 and the minimum liability is \$17,517. For the violations at the John Brasil Dairy #3, as described in the attachments, the maximum potential liability for the violations is \$1,563,170 the minimum liability is \$35,505.

Proposed Settlement Offer

The Central Valley Water Board's Prosecution Team proposes to resolve the violation(s) at both dairies with this Settlement Offer of \$108,608. This Settlement Offer was determined based on an assessment of the factors set forth in Water Code section 13327 using the penalty methodology set forth in the Enforcement Policy. The enclosed "Penalty Calculation Methodology" describes in detail how the penalty amount was calculated for each dairy. The Prosecution Team believes that the proposed resolution of the alleged violations is fair and reasonable, fulfills the Central Valley Water Board's enforcement objectives, and is in the best interest of the public.

Should the Discharger choose *not* to accept this Settlement Offer, please be advised that the Prosecution Team reserves the right to seek a higher liability amount, up to the maximum allowed by statute, either through issuance of a formal administrative civil liability complaint or by referring the matter to the Attorney General's Office. The Prosecution Team also reserves the right to conduct additional investigation, including issuance of investigation orders and/or subpoenas to determine the number of gallons discharged and whether additional violations occurred. Any additional violations and gallons of discharge subjecting the Discharger to liability may be included in a formal enforcement action. The Discharger can avoid the risks inherent in a formal enforcement action and settle the alleged violations by accepting this Settlement Offer. Please note that the Settlement Offer does not address liability for any violation that is not specifically identified in the attached inspection report.

Options for Responding to the Settlement Offer

Option A: Accept the Offer

If the Discharger chooses to accept this Settlement Offer, then the enclosed *Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver)* shall be completed and submitted no later than **5 September 2019** to the following address:

Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
Attention: Robert Busby

Important! - Upon receipt of the *Acceptance and Waiver*, this settlement will be publicly noticed for a 30-day comment period. If no substantive comments are received within the 30 days, the Prosecution Team will ask the Central Valley Water Board's Executive Officer to formally endorse the *Acceptance and Waiver* as an order of the Central Valley Water Board. An invoice will then be mailed to the Discharger requiring payment of the administrative civil liability within 30 days of the date of the invoice.

If, however, substantive comments are received in opposition to this settlement and/or the Executive Officer declines to accept the settlement, then the Settlement Offer may be withdrawn. In this case, the Discharger will be notified and the Discharger's waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. The unresolved violations will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued, and the matter may be set for a hearing.

Option B: Contest the Alleged Violations

If the Discharger wishes to contest the violations or the methodology used to calculate the proposed liability, it must submit a written response identifying the basis for the challenge, including any evidence to support its claims. The Discharger's response must be received by the Central Valley Water Board no later than **5 September 2019**. The Prosecution Team will evaluate the Discharger's basis for a challenge and may seek clarifying information or schedule an in-person meeting. The Prosecution Team will inform the Discharger whether a reduction in the settlement amount is warranted, or whether the original settlement amount is appropriate. The Discharger will be provided a final opportunity to accept the revised/original settlement amount before proceeding to formal enforcement.

Option C: Reject Offer

If the Discharger chooses to reject this Settlement Offer and/or does not complete and return the *Acceptance and Waiver* by the due date, the Discharger should expect that the Prosecution Team will conduct further investigation of the violations, issue an administrative civil liability complaint, and schedule a hearing. The Discharger will receive notice of any deadlines associated with that action. As previously stated, in such an action, the liability amount sought and/or imposed may exceed the liability amount set forth in this Settlement Offer.

If you have any questions about this settlement offer, please contact Robert Busby at (916) 464-4666 or at Robert.Busby@waterboards.ca.gov.

ANDREW ALTEVOGT
Assistant Executive Officer

Enclosures:

- Acceptance of Settlement Offer and Waiver of Right to a Hearing
- John Brasil Dairy #1: Penalty Calculation Methodology
- John Brasil Dairy #3: Penalty Calculation Methodology
- John Brasil Dairy #1: 19 February 2019 Inspection Report, 1 March 2019 Notice of Violation, and PROSE submitted by the Discharger
- John Brasil Dairy #3: 7 March 2019 Inspection Report, 24 April 2019 Notice of Violation, and PROSE submitted by the Discharger

cc: Patrick Pulupa, Executive Officer, Central Valley Water Board, Rancho Cordova
David Lancaster, Office of Chief Counsel, State Water Board, Sacramento
Catherine Hawe, Office of Enforcement, State Water Board, Sacramento
Wendy Wyels, Office of Enforcement, State Water Board, Sacramento

ORDER NO. R5-2019-0515 AND ORDER NO. R5-2019-0516
ACCEPTANCE OF SETTLEMENT OFFER AND WAIVER OF RIGHT TO A HEARING
FOR
JOHN BRASIL
JOHN BRASIL DAIRY #A AND JOHN BRASIL DAIRY #3
STANISLAUS COUNTY

By signing below and returning this *Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver)* to the Central Valley Water Board, John Brasil (Discharger) hereby accepts the Settlement Offer described in the letter dated 5 August 2019 and titled *Offer to Settle Administrative Civil Liability, John Brasil Dairy #1 and John Brasil Dairy #3, Turlock, Stanislaus County* and waives the right to a hearing before the Central Valley Water Board to dispute the alleged violations described in the Settlement Offer and its enclosures.

The Discharger agrees that the Settlement Offer shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Central Valley Water Board to assert jurisdiction over the alleged violations. The Discharger agrees to perform the following:

- Pay an administrative civil liability in the sum of **\$108,608** (one hundred eight thousand six hundred and eight dollars) by cashier's check or certified check made payable to the "*State Water Resources Control Board Waste Discharge Permit Fund*". This payment shall be deemed payment in full of any civil liability pursuant to Water Code section 13350 that might otherwise be assessed for violations described in the Settlement Offer and its enclosures.
- Fully comply with the conditions of the *Revised General Order for Existing Milk Cow Dairies, Order R5-2013-0122* (General Order) at both the John Brasil Dairy #1 (located at 2613 S. Mitchell Road in Turlock) and at the John Brasil Dairy #3 (located at 1707 S. Mitchell Road in Turlock).

The Discharger understands that by signing this *Acceptance and Waiver*, the Discharger has waived its right to contest the allegations in the Settlement Offer and the civil liability amount for the alleged violation(s). The Discharger understands that this *Acceptance and Waiver* does not address or resolve any liability for any violation not specifically identified in the Settlement Offer and its enclosures.

Upon execution by the Discharger, the *Acceptance and Waiver* shall be returned to the following address:

Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
Attention: Robert Busby

The Discharger understands that the Prosecution Team will publish notice of and provide at least 30 days for public comment on this proposed resolution of an enforcement action. Accordingly, this *Acceptance and Waiver*, prior to being formally endorsed by the Central

Valley Water Board Executive Officer (acting as head of the Advisory Team), will be published for public comment.

If no comments are received within the notice period that cause the Prosecution Team to reconsider the Settlement Offer, then the Prosecution Team will present this *Acceptance and Waiver* to the Central Valley Water Board's Executive Officer for formal endorsement on behalf of the Central Valley Water Board.

The Discharger understands that if significant comments are received in opposition to the settlement, then the offer may be withdrawn by the Prosecution Team. If the Settlement Offer is withdrawn, then the Discharger will be notified and the Discharger's waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. The unresolved violation(s) will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued, and the matter may be set for a hearing.

The Discharger understands that once this *Acceptance and Waiver* is formally endorsed and an Order Number is inserted, then the full payment is a condition of this *Acceptance and Waiver*. An invoice will be sent upon endorsement, and full payment will be due within 30 days of the date of the invoice.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Discharger in the making and giving of this *Acceptance and Waiver*.

John Brasil Dairy #1 and John Brasil Dairy #3

By: _____ Original signed by John Brasil _____

Title: _____ OWNER _____

Date: _____ 11-27-19 _____

IT IS SO ORDERED, pursuant to California Water Code section 13350.

By: _____ Original signed by Patrick Pulupa _____
Patrick Pulupa, Executive Officer

Date: _____ 1/09/2020 _____

**PENALTY CALCULATION METHODOLOGY
FOR
JOHN BRASIL DAIRY #1, TURLOCK
STANISLAUS COUNTY**

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy), adopted in April 2017, establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13327. Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. [The Enforcement Policy](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf) can be found at: (https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

Violation #1 – Discharge of manure slurry to saturated cropland

On 13 February 2019, Central Valley Water Board staff inspected the John Brasil Dairy #1 (Discharger) and found that manure slurry had been pumped onto the Dairy East field, completely covering the winter crop with manure. The field is not well graded and most of the manure slurry settled around the irrigation valves. The Turlock area had received about 3 inches of rain prior to the discharge and it was not necessary to irrigate for crop health. The Discharger subsequently submitted a PROSE report which stated that on 30 January 2019, about 96,000 gallons of wastewater had been applied to 40 acres of cropland. The pump that draws from the bottom layer of the lagoon was mistakenly used, instead of the pump that draws from the top layer of the lagoon.

This discharge violated several sections of the reissued Dairy General Order, including Prohibition A.9 (land application of process wastewater to cropland other than for nutrient recycling is prohibited), Attachment C, Technical Specification V.C.2 (wastewater shall not be applied when soils are saturated), and Attachment C, Technical Specification V.C.1 (application of process wastewater is to be scheduled based on crop nutrient needs, the crop's daily water use, the water holding capacity of the soil, and the lower limit of soil moisture for the crop and soil).

For purposes of settlement, the Prosecution Team has elected to combine all violations of the reissued Dairy General Order into one penalty assessment. However, if this matter proceeds to a Board hearing, the Prosecution Team reserves the right to evaluate each violation separately.

PENALTY FACTOR	VALUE	DISCUSSION
Degree of toxicity of the discharge	3	Dairy wastewater contains high levels of suspended solids, pathogenic organisms, nutrients, oxygen-demanding organic compounds, and other pollutants. Untreated and undiluted dairy wastewater poses a direct threat to human and ecological receptors. The nutrients, oxygen demand, and bacteria in dairy wastewater can adversely affect aquatic organisms and can adversely impact groundwater quality. This material poses an above-moderate risk of direct threat to potential receptors.

PENALTY FACTOR	VALUE	DISCUSSION
Actual harm or potential for harm to beneficial uses	3	This discharge of manure slurry ponded on a small area of cropland. The soil was already saturated from recent rain and therefore it is expected that the nutrients in waste migrated through the soil profile toward or into groundwater. At staff's request, the Discharger collected soil samples which show TKN (total Kjeldahl nitrogen) levels up to 14 times higher in the discharge area than non-discharge area.
Susceptibility to cleanup or abatement	1	The manure slurry ponded in the field. Cleanup or abatement of 50% or more of the material was not possible.
Per gallon and per day factor for discharge violations	0.27	The "Deviation from Requirement" is Moderate because wastewater was pumped to one field and the majority remained in the storage lagoons. The value of 0.27 was determined from Table 1 of the Enforcement Policy.
Volume discharged	96,000	The Discharger reported that this volume was discharged to cropland.
Adjustment for high volume discharges	\$2/gallon	The maximum per-gallon penalty is \$10/gallon. However, the 2017 Enforcement Policy allows a "high volume discount" between \$2/gallon and \$10/gallon when more than 100,000 gallons is discharged. For settlement purposes, it is appropriate to use the high-volume discount with a value of \$2. However, if this matter were to proceed to Hearing, then the Prosecution Team would likely remove the high-volume discount because the amount discharged does not technically meet the criteria for a high volume discount.
Days of discharge	14	The discharge took place on 30 January 2019 and manure slurry was observed by staff on 13 February 2019. It is expected that the manure solids remained on the field for some time after that. If this matter were to proceed to Hearing, then the days of violation may be revised. However, Water Code section 13350 states that the penalty is based on gallons discharged or days of discharge, but not both. The Prosecution Team has elected to use the gallons discharged.
Initial Liability	\$51,840	The liability is calculated as per gallon factor (0.27) multiplied by the number of gallons (96,000) multiplied by the liability per gallon (\$2/gallon).

PENALTY FACTOR	VALUE	DISCUSSION
Adjustments for Discharger Conduct		
Culpability	1.1	In 2018, Board staff informed the Discharger about excessive application of manure solids at the Discharger's Diamond B Dairy. The Discharger was required to submit corrective action measures and did so, stating that he would train his employees to use the correct lagoon pump. A reasonable discharger would have trained the employees at his other dairies to also use the correct lagoon pump. However, the Discharger did not do so, and therefore caused the same type of manure overapplication at this dairy as the overapplication for which he was previously cited at the Diamond B Dairy.
Cleanup and Cooperation	1.0	The Discharger did not remove the manure slurry which had ponded on the cropland. However, the Discharger responded adequately to the Notice of Violation by collecting the required soil samples.
History of Violations	1.0	The Discharger has no known history of violations for which the Central Valley Water Board has taken formal enforcement.
Total Base Liability	\$57,024	The base liability is calculated as the initial liability multiplied by each of the above three factors.

The Enforcement Policy states that five other factors must be considered before obtaining the final liability amount.

PENALTY FACTOR	VALUE	DISCUSSION
Other Factor Considerations		
Ability to pay and continue in business	No adjustment	The Discharger owns at least two dairies and operates at least three dairies in Stanislaus County. According to the Discharger's 2017 Annual Report, the John Brasil Dairy #1 contains an average of 1,015 milk cows, 118 dry cows, 976 heifers, and 285 calves. Wastewater is applied to 193 acres of cropland. The value of the milk cows alone is over \$1 million (1,015 milk cows x \$1,000/cow). The dairy is an on-going business which generates profits. Absent other information, the Prosecution Team finds that the Discharger has an ability to pay the penalty and continue in business.

PENALTY FACTOR	VALUE	DISCUSSION
Other Factor Considerations		
Economic benefit	\$15,925	The violation occurred because the dairy lagoon was pumped to cropland at a time when irrigation was not necessary for crop health. The Discharger should have cleaned out the lagoon the previous summer or fall, in order to ensure adequate storage during the winter. The Discharger's lagoon holds 4,034,585 gallons of wastewater. Assuming that 50% of the manure slurry in the lagoon should have been pumped out, and assuming the cost of a tanker is \$75 per 9,500 gallons applied, the Discharger avoided a cost of at least \$15,925 by failing to empty the lagoon prior to the rainy season. If this matter goes to Hearing, the Prosecution Team may request additional information and may revise the economic benefit.
Other factors as justice may require	No adjustment	The costs of investigation and enforcement are "other factors as justice may require" and could be added to the liability amount. The Central Valley Water Board has incurred over \$3,000 in staff costs associated with the investigation and enforcement of the alleged violations. While this amount could be added to the penalty, it is not added at this time.
Maximum liability	\$960,000	Per California Water Code section 13350, the maximum liability is \$10 per gallon discharged.
Minimum liability	\$17,517	Per the 2017 Enforcement Policy, the minimum liability is to be the economic benefit plus 10%.
Final Liability	\$57,024	The final liability amount is the total base liability plus any adjustment for the ability to pay, economic benefit, and other factors. The final liability must be more than the minimum liability and less than the maximum liability.

**PENALTY CALCULATION METHODOLOGY
FOR
JOHN BRASIL DAIRY #3, TURLOCK
STANISLAUS COUNTY**

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy), adopted in April 2017, establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13327. Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The [Enforcement Policy](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf) can be found at: (https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

Summary of Inspection and Violations

On 6 March 2019, Central Valley Water Board staff inspected the Discharger's dairy and adjacent heifer facility. At the dairy facility, staff noted that wastewater was ponding in the corrals, feed storage areas, and manure storage areas, with no drainage system to direct runoff to the storage lagoon. Runoff from these areas was directed to cropland (instead of a wastewater lagoon). Staff noted a heavy application of wastewater on cropland, which was already saturated from recent rains. The dairy lagoon had less than two feet of freeboard, as well as a recent drop in water level which indicated that wastewater had been applied to the saturated cropland. The lagoon berm was heavily impacted by animal burrows.

At the heifer facility, manure slurry had been pushed outside of the corral, with no drainage system to direct runoff to the storage lagoon. There was excess manure in the corrals and ponded water in the corrals. Corral runoff was directed to cropland. The heifer lagoon had less than two feet of freeboard and a pipe allowed wastewater to freely discharge from the lagoon to cropland. In addition, a cut in the lagoon berm was used to direct wastewater to cropland.

The Discharger has, at a minimum, violated the following sections of Order R5-2013-0122, the reissued Dairy General Order, at the dairy and/or heifer facility:

- Prohibition A.9 (land application of process wastewater to cropland other than for nutrient recycling is prohibited);
- Attachment C, Technical Specification V.C.2 (wastewater shall not be applied when soils are saturated);
- Attachment C, Technical Specification V.C.1 (application of process wastewater is to be scheduled based on crop nutrient needs, the crop's daily water use, the water holding capacity of the soil, and the lower limit of soil moisture for the crop and soil);
- Pond Specification C.1 (wastewater ponds shall have a minimum of two feet of freeboard);
- Production Area Specification D.6 (corrals, manure storage areas, and feed storage areas shall be designed and maintained to convey all water in contact with animal waste or feed to a wastewater pond; to minimize standing water; and to minimize the infiltration of water);

- Land Application Specification E.2 (land application of all waste shall be conducted in accordance with a certified Nutrient Management Plan);
- Land Application Specification E.8 (all wastewater applied to land must completely infiltrate within 72 hours of application);
- Standard Provisions and Reporting Requirements B.16 (properly operate and maintain in good working order any unit installed to achieve compliance); and
- Standard Provisions and Reporting Requirements B.17 (wastewater lagoons shall be maintained to prevent erosion, slope failure, washout, overtopping, by-pass, and overflow).

Compressed ACL

For purposes of settlement, the Prosecution Team has elected to combine all the above violations of the reissued Dairy General Order into one penalty assessment. However, if this matter proceeds to a Board hearing, the Prosecution Team reserves the right to evaluate each violation separately.

For this Compressed ACL, the penalty is based on the discharge of wastewater from the dairy lagoon to cropland for purposes other than nutrient recycling and when the soils are already saturated. The Discharger submitted a Priority Report of Significant Events (PROSE) in which he stated that approximately 1,440 gallons of wastewater was discharged from the dairy lagoon, 1,440 gallons were discharged from the heifer lagoon, and 1,440 gallons were discharged from the silage area (a total of 4,320 gallons discharged). However, staff's inspection report shows that a much greater volume of wastewater has impacted the cropland. In addition, Photo 14 of the inspection report shows less than two feet of freeboard, as well as a recent drop in water level, in the dairy lagoon. Absent information to the contrary, it is assumed that this wastewater was applied to cropland during the period that the soil was saturated, and it was applied because the lagoon was too full (instead of for the purpose of nutrient recycling). The dairy lagoon is 516 feet by 162 feet. It appears that the wastewater level dropped by at least one foot, but for purposes of settlement, staff will assume that the water level dropped by only three inches, resulting in the approximated discharge of 156,317 gallons¹ of dairy wastewater. If this matter proceeds to a Board hearing, the Prosecution Team reserves the right to utilize a higher volume discharged than that used for this Compressed ACL.

PENALTY FACTOR	VALUE	DISCUSSION
Degree of toxicity of the discharge	3	Dairy wastewater contains high levels of suspended solids, pathogenic organisms, nutrients, oxygen-demanding organic compounds, and other pollutants. Untreated and undiluted dairy wastewater poses a direct threat to human and ecological receptors. The nutrients, oxygen demand, and bacteria in dairy wastewater can adversely affect aquatic organisms and can adversely impact groundwater quality. This material poses an

¹ Calculated as 516' x 162' x 0.25' = 20,898 cubic feet x 7.48 gallons/cubic foot

PENALTY FACTOR	VALUE	DISCUSSION
		above-moderate risk of direct threat to potential receptors.
Actual harm or potential for harm to beneficial uses	2	This discharge ponded on cropland. The soil was already saturated from recent rains (1.38" during the previous week, according to AccuWeather) and therefore it is expected that the nutrients in waste migrated through the soil profile toward or into groundwater. If this matter is not settled and proceeds to a Hearing, then staff will reevaluate the potential for harm. For purposes of settlement, staff will use a "below moderate" harm, with a factor of 2.
Susceptibility to cleanup or abatement	1	The dairy wastewater ponded in the field. Cleanup or abatement of 50% or more of the material was not possible.
Per gallon and per day factor for discharge violations	0.15	The "Deviation from Requirement" is Moderate because the majority of the wastewater remained in the storage lagoon. The value of 0.15 was determined from Table 1 of the Enforcement Policy.
Volume discharged	156,317	Calculated by Water Board staff based on an extremely conservative estimate of the drop in the wastewater level in the dairy pond. If this matter goes to Hearing, then staff may require additional information to verify or increase the volume discharged or may utilize a different volume based on the inspection records.
Adjustment for high volume discharges	\$2/gallon	The maximum per-gallon penalty is \$10/gallon. However, the 2017 Enforcement Policy allows a "high volume discount" between \$2/gallon and \$10/gallon when more than 100,000 gallons is discharged. For settlement purposes, it is appropriate to use the high volume discount with a value of \$2. If this matter were to proceed to Hearing, then the Prosecution Team may revise the high volume discount.
Days of discharge	unknown	Water Code section 13350 states that the penalty is based on gallons discharged or days of discharge, but not both. The Prosecution Team has elected to use the gallons discharged. However, if this matter proceeds to Hearing, the staff may request information to determine the days of discharge.

PENALTY FACTOR	VALUE	DISCUSSION
Initial Liability	\$46,895	The liability is calculated as per gallon factor (0.15) multiplied by the number of gallons (156,317) multiplied by the liability per gallon (\$2/gallon).
Adjustments for Discharger Conduct		
Culpability	1.1	The Discharger owns and operates multiple dairies and has been subject to the reissued Dairy General Order for years. A reasonable and prudent Discharger would have been aware of the terms of the General Order and if necessary, would have made improvements at his dairy in order to comply. In addition, a reasonable and prudent Discharger would have ensured that he had enough capacity in his dairy lagoon prior to the rainy season. This Discharger did neither, and therefore a Culpability of at least 1.1 is appropriate.
Cleanup and Cooperation	1.0	The Discharger did not remove the dairy wastewater which had ponded on the cropland. The Discharger submitted a PROSE; however, the volume he reported as discharged is questionable.
History of Violations	1.0	The Discharger has no known history of violations for which the Central Valley Water Board has taken formal enforcement.
Total Base Liability	\$51,584	The base liability is calculated as the initial liability multiplied by each of the above three factors.

The Enforcement Policy states that five other factors must be considered before obtaining the final liability amount.

PENALTY FACTOR	VALUE	DISCUSSION
Other Factor Considerations		
Ability to pay and continue in business	No adjustment	The Discharger owns at least two dairies and operates at least three dairies in Stanislaus County. According to the Discharger's 2017 Annual Report, the John Brasil Dairy #3 (including heifer ranch) contains an average of 580 milk cows, 70 dry cows, and 460 heifers. Wastewater is applied to 137 acres of cropland. The value of the milk cows at this dairy is over \$580,000 (580 milk cows x \$1,000/cow). The dairy is an on-going business which generates profits. Absent other information, the Prosecution Team finds that the Discharger has an ability to pay the penalty and continue in business.
Economic benefit	\$32,278	The violations occurred, in part, because both the dairy lagoon and the heifer lagoons were discharging to cropland at a time when irrigation was not necessary for crop health. The Discharger should have cleaned out the lagoons the previous summer or fall, in order to ensure adequate storage during the winter. The Discharger's dairy lagoon holds 6,104,039 gallons and the heifer lagoon holds 2,073,052 gallons of wastewater. Assuming that 50% of the manure slurry in the lagoons should have been pumped out, and assuming the cost of a tanker is \$75 per 9,500 gallons applied, the Discharger avoided a cost of at least \$24,095 at the dairy and \$8,183 at the heifer feedlot by failing to empty the lagoons prior to the rainy season. If this matter goes to Hearing, the Prosecution Team may request additional information and may revise the economic benefit.
Other factors as justice may require	No adjustment	The costs of investigation and enforcement are "other factors as justice may require" and could be added to the liability amount. The Central Valley Water Board has incurred over \$3,000 in staff costs associated with the investigation and enforcement of the alleged violations. While this amount could be added to the penalty, it is not added at this time.
Maximum liability	\$1,563,170	Per California Water Code section 13350, the maximum liability is \$10 per gallon discharged.
Minimum liability	\$35,505	Per the 2017 Enforcement Policy, the minimum liability is to be the economic benefit plus 10%.

PENALTY FACTOR	VALUE	DISCUSSION
Other Factor Considerations		
Final Liability	\$51,584	The final liability amount is the total base liability plus any adjustment for the ability to pay, economic benefit, and other factors. The final liability must be at least the minimum liability and less than the maximum liability.