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Ex. 1

March 28, 2010

California Regional Water Quality Control Board

Central Valley Region

1685 E Street

Fresno, CA 93706

Attention: David A Sholes

Mr. Sholes,

We operate a small dairy in Visalia, California milking about 300 cows. The financial burden placed on us to comply with the requirements of the Regional Water Quality Board is tremendous. The current economic conditions of the dairy industry compound our problems. We are unable to pay the bills which we have and are asking for a reprieve from your office.

If you check the previous reports from our dairy the water quality of is excellent. We do an outstanding job with our farming practices and export much of the manure generated to other farms. The amount of waste water is minimal as we do not flush. The only water is from washing the cows and washing the barn.

I would welcome a visit from you so that you can personally see our operation. A dairy has been operated on these premises for at least 75-80 years. If there was a problem with water contamination it would show up in the testing.

I grew up in San Francisco and have a deep appreciation for nature and protecting our environment. I, like most farmers, value the resources that we are blessed with. It seems unfair that a court decision that was directed at mega dairies should have such a devastating effect on our livelihood.

If you are unable to grant a waiver for this year I would like to ask to present my case to the Regional Water Quality Board at their next meeting.

Sincerely,

Jim Sweeney

Sweeney Dairy

30712 Road 170

Visalia, CA 93292

April 7, 2010

California Regional Water Quality Control Board

Central Valley Region

1685 E Street

Fresno, CA 93706

Attention: Ken Jones

Mr. Jones,

We operate a small dairy in Visalia, California milking about 300 cows. The financial burden placed on us to comply with the requirements of the Regional Water Quality Board is tremendous. The current economic conditions of the dairy industry compound our problems. We are unable to pay the bills which we have and are asking for a reprieve from your office that you suspend our reporting requirements for one year.

If you check the previous reports from our dairy the water quality is excellent. We do an outstanding job with our farming practices and export much of the manure generated to other farms. The amount of waste water is minimal as we do not flush. The only water is from washing the cows and washing the barn.

I would welcome a visit from you so that you can personally see our operation. A dairy has been operated on these premises for at least 75-80 years. If there was a problem with water contamination it would show up in the testing.

I grew up in San Francisco and have a deep appreciation for nature and protecting our environment. I, like most farmers, value the resources that we are blessed with. It seems unfair that a court decision that was directed at mega dairies should have such a devastating effect on our livelihood.

If you are unable to grant our request I would like to appeal your decision and request the opportunity to present my case to your board at some future meeting.

Sincerely,

Jim Sweeney

Sweeney Dairy

30712 Road 170

Visalia, CA 93292

cc. Mike Lasalle



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board Central Valley Region

Katherine Hart, Chair

1685 E Street, Fresno, California 93706
(559) 445-5116 • Fax (559) 445-5910
<http://www.waterboards.ca.gov/centralvalley>



Arnold
Schwarzenegger
Governor

Ex. 3

15 June 2010

Mr. James Sweeney
30712 Road 170
Visalia, CA 93292

**INFORMATION REVIEW, SWEENEY DAIRY, WDID #5D545155N01, 30712 ROAD 170,
VISALIA, TULARE COUNTY**

On 12 April 2010, Central Valley Regional Water Quality Control Board (Central Valley Water Board) staff received a letter from you regarding the subject facility (Dairy). In your letter, you requested that we "suspend" your reporting requirements for one year. Your letter also requested the opportunity to present your case to the Central Valley Water Board.

Your Dairy is enrolled under Order No. R5-2007-0035, Waste Discharge Requirements General Order for Existing Milk Cow Dairies (General Order). The General Order requires reporting as outlined in section H, Required Reports and Notices. The schedule for submitting the required reports is outlined in section J, Schedule of Tasks. Central Valley Water Board staff has no authority to suspend or otherwise modify the reporting requirements specified in the General Order.

The next meeting of the Central Valley Water Board is scheduled for 28, 29, and 30 July 2010 at our Sacramento Office, 11020 Sun Center Drive, #200, Rancho Cordova, CA 95670. Any member of the public may address the Board on any matter within the Board's jurisdiction and not scheduled for consideration at the meeting. Certain time limits and schedule restrictions for a public forum apply. An agenda of for the July meeting is not yet available. The agenda for the May Meeting with an outline of the meeting rules are attached. Additional information can be found on our website www.waterboards.ca.gov/centralvalley.

If you have any questions regarding this matter, please contact Ken Jones at kjones@waterboards.ca.gov or (559) 488-4391.



DALE E. ESSARY, PE
RCE No. 53216
Lead Associate
Confined Animals Unit

Enclosure

cc: Tulare County Resource Management Department, Visalia
Tulare County Health & Human Services Agency, Visalia

California Environmental Protection Agency

June 27, 2010

California Regional Water Quality Control Board

1685 E Street

Fresno, CA 93706

Attention: Dale E. Essary, PE

Mr. Essary,

This letter is in response to your letter dated June 15, 2010.

As you know the dairy business continues to suffer unprecedented financial hardship. Our dairy has had our loans put into distress and we have had to spend quite a bit of money protecting ourselves from Farm Credit West. We are doing our best to improve our financial position by my wife accepting a full time position at College of the Sequoias and by getting a part time job myself.

As I read paragraph 13 of Section E of your Order R5-2007-0035, I have the right to inform you of my anticipated noncompliance, but I must give you the date when I can be in compliance. I would hope that I could submit the 2010 Annual Report in one year, namely, on or before July 1, 2011.

If you have reviewed my prior reports, you can see that our dairy operation has a history of compliance and of protecting the underground water. I am unsure as if the authors of this policy ever considered the financial strain that it would place on smaller dairy farms regardless of the economic situation. Even if the dairy is in complete compliance the costs of hiring engineers and specialists to comply with current regulations places an undue stress on the operator.

If your agency suffered a drastic cut in state funding, it would have no choice but to curtail and/or suspend many of its current functions and everyone would understand. It is no different with us.

We would welcome if a member of your staff would come to the dairy and assist us filling out the reports needed and doing the engineering work required to bring us into compliance.

If you are unwilling to accept our proposal for a modification of the filing date for the 2010 Annual Report, then we appeal your determination to the Board. In such an event, I believe that we are entitled to a full hearing before the Board as a scheduled and properly noticed Agenda item. Because I cannot be away from the dairy for very long, I request that the matter be scheduled for a board meeting when it sits in Fresno.

Sincerely,

August 22, 2010

Central Regional Water Quality Control Board

1685 E Street

Fresno, CA 93706

Attention: Dale Essary

Mr. Essary,

This letter is in response to letters dated August 16, 2010 from your office.

I am appealing your decision to the Regional Board. It is my understanding that I have the right to appear as a separate agenda item before the Board when it sits in Fresno.

As I stated in an earlier letter dated June 27, 2010 the dairy industry continues to suffer unprecedented financial hardship. If your agency suffered a drastic cut in state funding, it would have no choice but to curtail and/or suspend many of its current functions and everyone would understand. It is no different with us.

I do not believe that the intention of the original ruling of the Court was to eliminate small dairies by burdening them with excessive regulations and expense. The original lawsuit was filed against construction of large dairies. It seems to be that actions initiated by the Regional Water Quality Board favor large operations.

There has been a dairy present at this location for eighty years. If you review our reports filed previously you will see that the water quality is excellent. How long does it take for a dairy to contaminate the ground water? How many dairies our size was included in the testing prior to the writing of these regulations?

Please advise us when you have scheduled the hearing on our appeal before the Regional Board, as well as the address where the hearing will be held. Please ensure that I am given at least 20 days advance notice so that I can make the necessary arrangements at the dairy. As I have said before I need to have the hearing held when the Board meets in Fresno since I cannot be away from the dairy for an extended period of time.

Thank you for your cooperation.

Sincerely,

1 And finally, the procedures for administrative
 2 regulations and rulemaking under chapter 3.5 of the APA do
 3 not apply to the adoption of waste discharge requirements.
 4 And that's explained in Section 11352 of the Government
 5 Code.

--o0o--

7 STAFF COUNSEL OKAMOTO: Secondly, you'll hear Mr.
 8 Sweeney argue that the complaint is premature because he
 9 hasn't had the opportunity to have his request to modify
 10 the reporting deadlines heard by the Regional Board
 11 because the staff refused to place this matter on a Board
 12 meeting agenda. Though Mr. Sweeney requested the staff
 13 provide relief from the reporting deadlines, staff itself
 14 does not have the ability to modify the monitoring and
 15 reporting requirements. Only you, as the Regional Board,
 16 or the Executive Officer to who you delegated authority
 17 would have the ability to modify the requirements.

18 A request for modification of requirements does
 19 not necessarily create an automatic procedural right to a
 20 hearing before the Regional Board. If it did, I would
 21 imagine that the Board -- you, as the Board, would be
 22 inundated with hearings and items on your agenda. Rather
 23 the decision to place a matter on the agenda remains
 24 within the discretion of your management in consultation
 25 with the Executive Officer as the gatekeeper.

1 Executive Officer in the Fresno office. I'll make the
2 closing statement.

3 I think the issue at hand here is the fact that
4 the reports were not submitted in a timely basis. The
5 large percentage of dairies that were in this
6 classification did do that.

7 Mr. Sweeney did approach us to ask for an
8 extension. We decided an extension -- as the gatekeepers
9 to the Board, that the extension of the Waste Management
10 Plan had already been granted. And that was granted in
11 such a manner that the implementation date did not change.
12 So that we would be ensured that water quality was
13 protected. Additional extensions of the Waste Management
14 Plan would have threatened that if there are issues like
15 cross connection, if there are issues like drainage.

16 As Mr. Sweeney stated, that inspection report
17 that staff did was from 2003. It was a cursory
18 approximation of what was done. And we needed more
19 definitive answers.

20 Other issues, he is near surface water. So we
21 also have surface water protection issues in addition to
22 the groundwater protection issues that needed to be
23 addressed by the Waste Management Plan. The Annual
24 Reports. It is critical that that information be collected
25 annually, submitted in a timely manner. So if issues are

Date: September 21, 2011

Re: Response to email of September 20, 2011 - Complaint R5-2011-0562 - Sweeney Dairy

Dear Mr. Meyer:

This letter is to respond to your email of September 20, 2011. As you know, commencing in April, 2010 and many times thereafter, my wife and I requested a hearing before the regional board in order to seek relief from some of the waste discharge requirements set forth in Order R5-2007-0035. When we informed you that we wish to make that request while we are appearing before the board during the October hearing, you have informed us that such a "request would not be appropriate at that time. In light of your position, then please schedule such a hearing at a future meeting of the regional board, and please promptly inform us of the date of such hearing. We do not believe it is within your authority or discretion to deny us that opportunity. We think the Water Code is clear that only the regional board has the non-delegable authority to modify or refuse to modify waste discharge requirements. How can the board make that decision if the staff intervenes to act as a barrier to the making of such a request? In his testimony before the Hearing Panel, your fellow employee, Mr. Clay Rodgers, freely boasted that your staff acts as the board's "gatekeeper."

While we are disappointed in most of the "Chair's" rulings, we are not surprised by the contents of your recent email. It was a predictable and shameful continuation of your Agency's transparently self-created deadlines, cut-off dates and decisions that are clearly designed to impede a party's ability to properly prepare his defenses and to thwart a fair hearing.

The record will show that we have made numerous requests for more time and for continuances, the most critical of which you denied. In light of all circumstances - representing ourselves, needing time to study to lay of the land, the law, determining what documents to request, reviewing over 34,000 pages of documents - we think a judge will view your denials of our requests for more time as a terrible abuse of discretion. As you well know, judges often deal with continuance requests and are quite sensitive to the need for all parties to have ample time to prepare.

You try to make it sound as if we have not shown the relevance of the administrative record to Order R5-2007-0035, or to your Complaint against us. We are still going through the 34,000 pages of administrative record. At this juncture, we have found that no evidence was introduced that the reporting requirements that existed before the adoption of the 2007 Order were insufficient, inadequate, unreliable or otherwise unsatisfactory. Moreover, there has been no showing of the need of the new reporting requirements adopted in the 2007 Order. We believe that the law is well settled that administrative rules and regulations are invalid and unenforceable unless supported by substantial evidence. If, upon completion of our review of the administrative record, we have found no substantial evidence, we intend to raise that as an additional defense to your Complaint against us. Your denial of additional time to complete our review of such a vast amount of documents and your unwillingness to let us introduce the results of our findings is an egregious abuse of discretion that deprives us of a fair hearing.

We intend to be present at the hearing on your proposed order regarding the Complaint against us. We intend to enter all relevant evidence into the record at that hearing.

Sincerely,

Jim Sweeney

EX 8

From: Alex Mayer <AMayer@waterboards.ca.gov>

To: Japlus3 <japlus3@aol.com>

Cc: Dale Essary <dessary@waterboards.ca.gov>; Ken Landau <klandau@waterboards.ca.gov>; Mayumi Okamoto <MOkamoto@waterboards.ca.gov>

Subject: Re: Sweeney

Date: Thu, Sep 29, 2011 4:36 pm

Mr. Sweeney,

In your letter to me dated September 21, 2011, you asked to me to schedule a hearing of the Central Valley Water Board to modify Order R5-2007-0035 (Dairy General Order). As staff counsel to the Advisory Team on Administrative Civil Liability Complaint R5-2011-0562, I do not have the authority to schedule such a hearing. You made a similar request in a letter dated September 5, 2011. In response to your September 5, 2011 letter, the Advisory Team consulted with the Chair of the Central Valley Water Board. On September 20, 2011, the Advisory Team reported the Chair's ruling to you and the Prosecution Team. That ruling explained that a request to modify the Dairy General Order would not be appropriate during the Board's upcoming agenda item to consider a proposed Administrative Civil Liability Order against your dairy for violation of the Dairy General Order. It also explained that you, as a member of the public, would be allowed to speak about that topic during the public forum portion of the Board meeting, or otherwise direct your request to the Board's staff, which includes its Executive Officer.

Sincerely,

Alex Mayer

Staff Counsel, Central Valley Regional Water Quality Control Board

>>> Japlus3 <japlus3@aol.com> 9/22/2011 1:05 PM >>>

EX 9

so then when I went last night, there was nothing on there again. So it was just on the website, you know. And it's in his e-mail. And it was to all you guys. It had just all your stuff, but none of my evidence.

CHAIRPERSON HART: Mr. Sweeney, I understand your concern, but I assure you that each and every Board member sitting here right now has read and reviewed all of the documentation that you have submitted. We have listened to the hearing tapes. We are fully advised of what your position is.

And in the interest of moving forward and dealing with this matter, please assume and know -- actually, you would be presuming that we understand what your concerns are with respect to the process. And we are essentially giving you a second chance that actually no one else has even requested with respect to presenting evidence on the size of dairies that may have been impacted.

So we are completely -- we understand the financial situation that you and your wife are in, and we actually are very sorry about that. We do need you to present the evidence on the limited scope that you have before us though. So do you understand?

MR. SWEENEY: Okay. I understand.

CHAIRPERSON HART: Excellent.

MR. SWEENEY: Okay. Could you put that slide

1 minutes to cross-examine Mr. Sweeney on his rebuttal
2 evidence or comment on the evidence. The prosecution team
3 will not present any new evidence.

4 Mr. Sweeney may then use any remaining time of
5 his five minutes for a closing statement. The prosecution
6 may use any remaining time for a closing statement.

7 All persons expecting to testify, please stand at
8 this time, raise your right hand, and take the following
9 oath.

10 (Whereupon all prospective witnesses were sworn.)

11 CHAIRPERSON HART: Thank you.

12 Please state your name, address and affiliation
13 and whether you've taken the oath before testifying.

14 Does the Board Advisory Counsel have any legal
15 issues to discuss? Mr. Mayer?

16 STAFF COUNSEL MAYER: My microphone is not
17 working. That's better.

18 Yes, Madam Chair. I had four procedural issues
19 that I'd like to discuss with you and the Board before we
20 get started with this matter.

21 The first is to clarify that there were a number
22 of written -- there was a number of written correspondence
23 between the advisory team and the designated parties in
24 this matter and that that written correspondence is being
25 added into the record along with the associated

MEETING
STATE OF CALIFORNIA
CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD
PARTIAL TRANSCRIPT
AGENDA ITEM 10

CENTRAL VALLEY REGIONAL
WATER QUALITY CONTROL BOARD
11020 SUN CENTER DRIVE, #200
RANCHO CORDOVA, CALIFORNIA

THURSDAY, OCTOBER 13, 2011
9:44 A.M.

TIFFANY C. KRAFT, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 12277

CALIFORNIA REPORTING, LLC
52 LONGWOOD DRIVE
SAN RAFAEL, CA 94901
(415) 457-4417

1 of itself does not require you to change the ACL. But you
2 have the discretion to do that.

3 And with that, I would like to enter this
4 presentation and the Power Point into the record of this.
5 And I'll be happy to answer any questions. And then we
6 would proceed with Mr. Sweeney's testimony.

7 CHAIRPERSON HART: Thank you, Ken.

8 Do we have any Board questions right now?

9 Seeing none, Mr. Sweeney, would you like to come
10 forward to testify?

11 MR. SWEENEY: My name is Jim Sweeney, and my wife
12 and I are the persons with which this complaint has been
13 brought. I'm here not because I'm charged with being a
14 polluter; I'm here because I'm charged with not filing the
15 annual reports that were due on July 1st, 2010. In other
16 words, I'm a paper violator.

17 You probably have not been told by your staff
18 that three months before these reports were due on July
19 1st, 2010, I asked them to schedule a hearing before you
20 so that I could ask a one-year extension of your filing
21 deadline due to financial necessity.

22 As probably learned, the dairy industry suffered
23 through a dreadful period during 2008 and 2009 when,
24 because of low milk prices and high feed costs, dairies
25 were losing money at an enormous rate and had to depend on

1 their bank to loan money to make up the shortfall.

2 My wife and I operate a dairy in which we milk
3 less than 200 cows. Our bank loans -- less than 300 cows.
4 Our bank loans were classified as distressed. We were
5 forced to hire an attorney just so we could stay in
6 business.

7 STAFF COUNSEL OKAMOTO: Madam Chair, if I can
8 object.

9 My understanding that the scope of Mr. Sweeney's
10 testimony today would be limited to the documents that he
11 submitted on September 30th. So I --

12 CHAIRPERSON HART: With respect to the size of
13 the dairy.

14 STAFF COUNSEL OKAMOTO: Correct. With respect to
15 compliance rates and herd size data. That was also
16 submitted by him on September 30th.

17 CHAIRPERSON HART: That's duly noted.

18 Mr. Sweeney, do you understand --

19 MR. SWEENEY: Can I make an objection to her
20 objection? Because on the website that you have, all your
21 stuff was presented, but none of mine was. And I brought
22 that to the attention of Mr. Landau. And he corrected it
23 for a day. And then I had contacted him and said, you
24 know, that some of the stuff that was on there was
25 actually dismissed earlier, that it wasn't allowed. And

1 so then when I went last night, there was nothing on there
2 again. So it was just on the website, you know. And it's
3 in his e-mail. And it was to all you guys. It had just
4 all your stuff, but none of my evidence.

5 CHAIRPERSON HART: Mr. Sweeney, I understand your
6 concern, but I assure you that each and every Board member
7 sitting here right now has read and reviewed all of the
8 documentation that you have submitted. We have listened
9 to the hearing tapes. We are fully advised of what your
10 position is.

11 And in the interest of moving forward and dealing
12 with this matter, please assume and know -- actually, you
13 would be presuming that we understand what your concerns
14 are with respect to the process. And we are essentially
15 giving you a second chance that actually no one else has
16 even requested with respect to presenting evidence on the
17 size of dairies that may have been impacted.

18 So we are completely -- we understand the
19 financial situation that you and your wife are in, and we
20 actually are very sorry about that. We do need you to
21 present the evidence on the limited scope that you have
22 before us though. So do you understand?

23 MR. SWEENEY: Okay. I understand.

24 CHAIRPERSON HART: Excellent.

25 MR. SWEENEY: Okay. Could you put that slide

1 back up for me?

2 CHAIRPERSON HART: Yes. We will get a slide back
3 up.

4 MR. SWEENEY: Okay. As you can see from these
5 slides, you know, the herd size -- and the reason I only
6 used the data from the Fresno office, that was the only
7 data that was provided by me as per my request from Jorge
8 Baca.

9 And you know, as you can see, dairies below 400
10 cows, 46 percent of them went out of business or did not
11 file reports. And between 400 and 700 cow dairies, 32
12 percent either went out of business between 2007 and 2010
13 or did not file the report. But if the dairy was above
14 700 cows, it was only .6 percent. So there is a big
15 discrepancy between what the big dairies and what the
16 small dairies could afford.

17 And in the EPA thing, they had -- you know the
18 water quality thing that they have, they have all the
19 dairies under 700 cows exempted. And in those things, the
20 little -- in the information that was provided to me, it's
21 34,000 pages of documents. They have a thing in there
22 that the EPA does the financial analysis of that. And
23 they found that the dairies under 700 cows could not
24 comply. And I don't think it was ever done for this, for
25 the dairies in California.

1 CHAIRPERSON HART: I'm sorry. Proceed if you --

2 MR. SWEENEY: No. If you have something --

3 CHAIRPERSON HART: I understand the information
4 that you're presenting to us. And when this Board -- I
5 think what you're referencing back to is the general dairy
6 Order. And during the hearings that we had on that Order,
7 this Board was advised. The staff did do a financial
8 analysis. We were well aware of the impacts on the small
9 dairies and understood that there would be a larger impact
10 on smaller dairies than on -- a larger impact on smaller
11 dairies than on the large dairies, for obvious reasons.
12 You have different economic situations going on.

13 And there was a policy determination that was
14 made with respect to water quality. And while many of us
15 were extremely concerned about the impacts on smaller
16 dairies, we were concerned with respect to the nitrate
17 problems that we have in the Central Valley and the water
18 quality problems that we have. So there was a policy
19 determination made sometime ago. So we do understand that
20 analysis that you're presenting to us again.

21 MR. SWEENEY: But through the Office of
22 Administrative law, weren't you guys required to do an
23 economic feasibility thing?

24 CHAIRPERSON HART: Yes. And we did it.
25 Correct me if I'm wrong, staff.

1 STAFF COUNSEL MAYER: The 2007 general waste
2 discharge requirements is a quasi -- the action of
3 adopting that permit is called a quasi-adjudicative
4 action. And those actions that the Board may take are not
5 submitted to the Office of Administrative Law. The Office
6 of Administrative Law reviews regulations that the --
7 quasi legislative acts like regulations that the Board may
8 adopt. So that review did not occur for the general waste
9 discharge --

10 CHAIRPERSON HART: I think what Mr. Sweeney is
11 getting at is there was a financial analysis that was
12 undertaken at some point in time by this Board on the
13 dairy Order, was there not? A limited analysis done at a
14 minimum?

15 ASSISTANT EXECUTIVE OFFICER LANDAU: Yes. There
16 was definitely discussion of the impact of the regulations
17 on the dairy industry. And as you've said, full
18 recognition that there would be a disproportionately large
19 economic impact on the smaller dairies.

20 MR. SWEENEY: Okay. Can I read a couple of
21 quotes?

22 CHAIRPERSON HART: Sure.

23 MR. SWEENEY: Ms. Asgil, an agricultural
24 economist, testified, "Because of these regulations, we're
25 probably looking at the smaller dairies going under.

1 Probably those dairies that we're usually fond of
2 protecting, dairies under 500 milking cows will be going
3 out."

4 And then a quote from Dr. Longley expressed
5 concerns: "Whereas, larger dairies, a 10,000 cow dairy
6 would be able to absorb the cost; a 100 cow dairy is going
7 to be faced with possible disaster."

8 And then a letter from the State Department of
9 Food and Agriculture mentioned that Governor
10 Schwarzenegger made a commitment to reject new regulations
11 that unfairly impacts small business. "It is expected
12 that new and existing regulations were reviewed for
13 economic impact to small business. We encourage the
14 Regional Water Board to review your proposal, propose
15 alternatives that are less burdensome."

16 And you know -- and I don't know if you saw the
17 letters that I submitted --

18 CHAIRPERSON HART: We did.

19 MR. SWEENEY: Okay. Well, I want to -- during
20 our July 14th hearing before the hearing panel, your staff
21 member Clay Rodgers testified that he acted as a
22 gatekeeper. That's the exact term he used. It was his
23 decision, he suggested, whether we should be granted any
24 relief from the 2007 Order. But his behavior is unlawful
25 under Water Code Section 13223, which says that only the

1 Regional Board has the authority to modify waste discharge
2 requirements. The staff has no authority to make these
3 decisions. And I was never allowed to talk to you guys.

4 CHAIRPERSON HART: Thank you, Mr. Sweeney. And
5 your time is up.

6 You are always welcome to come before this Board
7 at the public session, the public forum, to request that
8 an item be put on the agenda. So I want you to understand
9 that, first of all.

10 MR. SWEENEY: Well, I asked that specifically,
11 you know. And I have written documentation that at least
12 three times I asked for a Board -- I asked to appear
13 before the Board. And one time they said that I could
14 have three minutes.

15 CHAIRPERSON HART: Correct. Under the public
16 forum.

17 MR. SWEENEY: All the other times, they ignored
18 my request.

19 CHAIRPERSON HART: Okay. We apologize for that.
20 So in the future going forward, my understanding is your
21 concern is with the requirements that are in the waste
22 discharge Order.

23 MR. SWEENEY: It's going to put all the little
24 dairies out of business. And you know, this shows -- just
25 look what it did in those three years.

From: Ken Landau <klandau@waterboards.ca.gov>

To: Japlus3 <japlus3@aol.com>

Cc: Alex Mayer <AMayer@waterboards.ca.gov>; Dale Essary <dessary@waterboards.ca.gov>; Kiran Lanfranchi-Rizzardi <klanfranchi@waterboards.ca.gov>; Mayumi Okamoto <MOkamoto@waterboards.ca.gov>

Subject: Re: Sweeney

Date: Tue, Oct 25, 2011 2:02 pm

Attachments: Sweeney_Oct_2011_Board_Meeting_PowerPoint.pdf (150K), longley_confirmation_Aug_2006.pdf (440K), hart_confirmation_-_Sept_2009.pdf (267K), odenweller_appointment_Jan_2008.pdf (81K), odenweller_confirmation_Sept_2008.pdf (168K), hoag_appointment_december_2010.pdf (114K), meraz_confirmation_aug_2011.pdf (165K)

Mr. Sweeney,

I am responding to your email to Kiran Lanfranchi dated 13 October 2011.

- 1) The written testimony sent with your email cannot be entered into the record of the hearing, as the date for submittal of written evidence had passed prior to the hearing and the Chair did not specifically approve the late submission. Only what you actually said during the hearing is part of the record.
- 2) The court reporter is being asked to prepare a written transcript of the hearing, but that document is not usually available from the court reporter for a few weeks. I will inform you when the transcript becomes available. In the meantime, we can mail you an audio recording of the Board meeting (saved to a compact disk) if you would like. If you would like a copy of the recording, please let me know.
- 3) The documents made available to Board members for their consideration at the 13 October hearing include the following. Except for the attached files, you should already have all of these documents.
 - a. All agenda materials from the 14 July Panel Hearing in Fresno
 - b. The court reporter transcript of the 14 July Panel hearing, which was sent to Board members Hart and Hoag, who were not at the 14 July Panel hearing.
 - c. Your 8 July 2011 Written Testimony prepared for the July 14 Panel Hearing
 - d. Items (a)(15), (a)(16), and (a)(1) through (a)(13) as referenced in your June 13, 2011 letter to the Advisory Team (accepted into the record by Hearing Panel Chair Longley as documented in Alex Mayer's June 30, 2011 email)
 - e. Your June 30 evidentiary submission (accepted into the record as documented by Ken Landau's July 7, 2011 email).
 - f. Your 30 September 2011 Written Testimony prepared for the October 13 Board meeting
 - g. Your 30 September 2011 comment letter to Alex Mayer (accepted into the record by the Board Chair at the October 13 board meeting)
 - h. All agenda materials for the 13 October Board meeting in Rancho Cordova
 - i. The Advisory Team Power Point slides from the October 14 Panel Hearing (copy attached)
 - j. Documents related to the legal status of individual Board members handed out at the Board meeting (copies of which are attached),
 - k. Board meeting handouts of the PowerPoint slides of dairy compliance rates by the Prosecution and dairy attrition rates from you (given to you at Board meeting)

Ken Landau

ATTACHMENTS:

Advisory Team PowerPoint slides from 12 October 2011 Board meeting [item 3) i., above]
Documents on legal status of individual Board members [item 3) j., above]

Kenneth D. Landau
Assistant Executive Officer

Sweeney - written testimony 2
7/20/12

Date: July 20, 2012

To: Central Valley Regional Water Quality Control Board

FINAL
EX 12

Advisory Team

Kenneth Landau klandau@waterboards.ca.gov

Alex Mayer amayer@waterboards.ca.gov

Prosecution Team

Pamela Crendon

Clay Rodgers

Doug Patteson

Dale Essary dessary@waterboards.ca.gov

Ellen Howard ehoward@waterboards.ca.gov

Vanessa Young vyoung@waterboards.ca.gov

Re: Written Testimony submitted to the Central Valley Regional Water Quality Control Board for consideration at the August 2/3, 2012 Hearing on Administrative Civil Liability Complaint R5-2012-0542

A. Introduction.

We are James G. Sweeney and Amelia M. Sweeney, doing business as Sweeney Dairy, and are the "Dischargers" named under the Central Valley Regional Water Quality Control Board's Administrative Civil Liability Complaint R5-2012-0542 (Complaint). Our address is 30712 Road 170, Visalia, CA 93292. Our telephone number is (559) 280-8233 and our email address is japlus3@aol.com.

B. Statement of Facts/Background.

1. We operate a small dairy at 30712 Road 170, Visalia, CA. We milk around 300 cows on a site where a dairy has continuously been conducted for over eighty years.

1 So I ask you now will you grant my wife and I a
2 hearing where we can fully present our evidence supporting
3 the need and appropriateness of granting us a waiver for
4 the filing of these excessively costly reports that were
5 due on July 1st, 2010, and July 1st, 2011?

6 Thank you. That's a question.

7 CHAIRPERSON LONGLEY: I think the prosecution
8 team covered that very well. That would have to be --
9 that should have happened previously during the time that
10 the General Order was being formulated, and certainly it
11 cannot be part of this proceeding.

12 MR. SWEENEY: I'm not asking for one today. I'm
13 asking for one in the future.

14 CHAIRPERSON LONGLEY: Part of the General
15 Order -- my answer to that would be no. When we revisit
16 that General Order, it can be considered at that time.

17 VICE CHAIRPERSON COSTANTINO: I just had a
18 question.

19 what is the estimate that has been given to you
20 for the cost of this report?

21 MR. SWEENEY: 30,000.

22 VICE CHAIRPERSON COSTANTINO: So I will -- when
23 the prosecution team comes back up, I'll ask them -- or
24 you could. You had an economic benefit of 2500. I think
25 this is a key point to understand.

♀

1 has read --

2 MR. SWEENEY: Has read through all my -- you
3 know, this paper, you know, that you were presented and
4 the booklet.

5 LEGAL COUNSEL MAYER: Just for the record, when
6 you're pointing to this paper, are you talking about the
7 tabbed submission or the --

8 MR. SWEENEY: It's dated July 20th that I sent to
9 you to distribute to everybody. Has everybody got this
10 and this paper here and read them?

11 MS. SWEENEY: we would like to know for the
12 record if everybody actually read it.

13 BOARD MEMBER HART: Yes, we understand. The
14 question I believe pending from the dischargers is whether
15 or not each member of this Board has read their agenda
16 packet and their submittals. And I will say I have read
17 each and every piece of paper.

18 CHAIRPERSON LONGLEY: And I have, too. But I
19 don't think it's appropriate for you to be examining this
20 Board. It is inappropriate.

21 would you go on with your testimony, please?

22 MR. SWEENEY: Okay. I'd like to present this,
23 you know, just to make sure it gets into the record. This
24 is my written testimony and argument and then, you know,

25 all the attached exhibits. So who should I give this to?

♀

33

1 LEGAL COUNSEL MAYER: We already have that in the
2 record.

3 MR. SWEENEY: Okay. Then that's all my
4 testimony.

5 CHAIRPERSON LONGLEY: Any questions by members of
6 the Board?

7 Does staff wish to cross-examine?

8 MS. HOWARD: Mr. Sweeney, you testified that the
9 annual report is required to be submitted by a certified
10 engineer, yet you, yourself, submitted both the 2008 and
11 2007 annual reports. Doesn't that indicate that you, as
12 an individual dairyman, can submit the annual reports on
13 your own without help of a certified engineer?

14 MR. SWEENEY: That's not -- I think you
15 misunderstood what I said or I misstated it. The reports
16 themselves are required to be done by an engineer, you
17 know. But I can submit the reports. You know, the
18 measuring of the lagoon and the waste Management Plans,
19 they have to be done by a professional. I can't do those
20 myself.

21 MS. HOWARD: I'd like to ask Mr. Patteson to
22 speak more to the requirements.

23 SUPERVISING ENGINEER PATTESON: What Mr. Sweeney

Home → Board Decisions → Tentative Orders → 1208

Tentative Orders - 2/3 August 2012 Regional Board Meeting

THURSDAY, AUGUST 2, 2012 – 8:30 A.M.
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

(REVISED JULY 31, 2012)

Items to be considered by the Board at the 2/3 August 2012 Central Valley Regional Water Quality Control Board Meeting, organized by agenda item number.

Board Meeting Agenda, 69 KB, PDF ([PDF Info](#)) -(revised 07/26/2012)

Executive Officer's Report, 570 KB, PDF ([PDF Info](#))

ENFORCEMENT

6. Del Mar Farms, Jon Maring, Lee Del Don and Bernard N. & Barbara C. O'Neill Trust – *Consideration of Administrative Civil Liability Order*
(This Item has been moved to Friday, August 3, 2012)
7. James G. and Amelia M. Sweeney, Sweeney Dairy, Tulare County – *Consideration of Administrative Civil Liability Complaint R5-2012-0542 and Recommended Administrative Civil Liability Order*

Buff Sheet, 8 KB, PDF ([PDF Info](#))

Administrative Civil Liability Complaint, 4.02 MB*, PDF ([PDF Info](#))

Administrative Civil Liability Order, 84 KB, PDF ([PDF Info](#))

Hearing Procedures, 131 KB, PDF ([PDF Info](#))

Witness List, 6 KB, PDF ([PDF Info](#))

Evidence List, 9 KB, PDF ([PDF Info](#))

Discharger's Evidence List/Arguments, 1 MB*, PDF ([PDF Info](#))

Response to Discharger's Evidence/Arguments, 79 KB, PDF ([PDF Info](#))

Attachment 1a, 194 KB, PDF ([PDF Info](#))

Attachment 1b, 42 KB, PDF ([PDF Info](#))

Comments Received:

2011 Administrative Civil Liability Order, 31 KB, PDF ([PDF Info](#))

2011 PowerPoint Presentation, 111 KB, PDF ([PDF Info](#))

Compliance by Dairy Size Table, 13 KB, PDF ([PDF Info](#))

Certified Mail Receipt of ACL Complaint, 43 KB, PDF ([PDF Info](#))

(AGENDA ITEMS 19 THROUGH 21, BELOW, HAVE BEEN MOVED FROM FRIDAY, AUGUST 3, 2012)



California Regional Water Quality Control Board
Central Valley Region
Katherine Hart, Chair



Matthew Rodriguez
Secretary for
Environmental Protection

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<http://www.waterboards.ca.gov/centralvalley>

Edmund G. Brown Jr.
Governor

Ex 16

22 August 2011

James G. & Amelia M. Sweeney
Sweeney Dairy (owner/operator)
30712 Road 170
Visalia, CA 93292

**GROUNDWATER MONITORING AT SWEENEY DAIRY, WDID 5D545155N01, 30712 ROAD
170, VISALIA, TULARE COUNTY**

The subject Dairy is regulated by Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order), issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) on 3 May 2007. Monitoring and Reporting Program R5-2007-0035, revised 23 February 2011 (MRP), accompanies the General Order and contains requirements for implementing additional groundwater monitoring. Under the MRP, the Executive Officer has the authority pursuant to California Water Code (CWC) section (§) 13267 to order the installation of individual groundwater monitoring wells at the Dairy. **Based on results of site assessment and monitoring data reported to our office, your facility is on a list to receive a directive pursuant to CWC §13267 that requires the installation of an individual groundwater monitoring system.**

To satisfy the requirement for additional groundwater monitoring, you have two options. You may install an individual groundwater monitoring system at the Dairy, or you may elect to join a representative monitoring program (RMP) that will monitor groundwater at a set of representative facilities. Central Valley Water Board staff has been informed that the Central Valley Dairy Representative Monitoring Program intends to close membership by 1 November 2011. If an RMP is not available, your only option will be individual groundwater monitoring and the installation and sampling of groundwater monitoring wells on your Dairy.

If you intend to satisfy the groundwater monitoring requirement by joining an RMP, or if you have already joined an RMP, provide documentation that you have joined an RMP to the Central Valley Water Board by **30 September 2011**. While participating in an approved RMP does not guarantee you will not be required to perform individual groundwater monitoring in the future, it will remove your name from the current list of dairy owners and operators to receive an order from the Executive Officer to implement individual groundwater monitoring.

If you have questions regarding this matter, please contact me at (559) 445-5093.

Dale E. Essary

DALE E. ESSARY
Senior Engineer
Confined Animals Unit

California Environmental Protection Agency

Date: September 30, 2011

To: A. Meyer, counsel for Central Valley Regional Water Quality Control Board

Cc: klandau@waterboards.ca.gov

MOkamoto@waterboards.ca.gov

dessary@waterboards.ca.gov

Re: Response to Mayer email of September 29, 2011

Complaint R5-2011-0562 – Sweeney Dairy

Dear Mr. Meyer:

We have looked at Water Code section 13228.14, which states, in part, “The regional board, after making an independent review of the record, and taking additional evidence as may be necessary, may adopt, with or without revision, or reject, the proposed decision and order of the panel.”

We have made a number of reasonable and compelling arguments as to why (1) the hearing before the Hearing Panel and (2) the final hearing before the regional board should be continued. Basically it was because the deadlines set forth in your original Hearing Procedures were unconscionably short and did not allow us sufficient time to complete our discovery and properly prepare for the hearing.

On June 1, we made our timely request for a continuance of the July 14 hearing, and on June 13, you advised us that our request was denied. Hence, the presentation we were forced to submit for the July 14 hearing before the Hearing Panel was not all that we had hoped for.

We went on to ask that the October hearing before the regional board be continued and rescheduled at their next meeting. We needed to complete our review of the 34,000 page administrative record of the 2007 Order, which your agency did not provide us until after the July 14 hearing. We also needed time to develop and present whatever additional evidence and arguments we felt was fit and proper based on an adequate review of all documents.

Unfortunately, your email of September 29 advises us that the Chair of the regional board has decided (1) to not continue the hearing, and (2) and to not allow us to introduce anything new beyond that which we introduced at the July 14 hearing (except as to herd size data).

From our reading of the above section 13228.14, we do not see where it grants the Chair the sole authority to make these decisions. Rather, it would seem that these are decisions that a duly qualified and informed board must make after hearing arguments by both parties.

This brings us to our next point. Water Code section 13201 (b) provides that "All persons appointed to a regional board shall be subject to Senate confirmation, ..."

On June 26, 2011, we asked Mayumi Okamoto, counsel for the Prosecution Team, whether each of the current CVRWQCB members have had their appointment to the board confirmed by the State Senate, and asked for copies of documents reflecting such confirmation.

On June 30, Ms. Okamoto responded by saying that "Please find attached the documents reflecting the confirmation of Chair Hart. We are still in the process of searching for the other documents responsive to this request for the remaining four members."

We have never received any documents indicating that these other four members were confirmed by the State Senate. In the absence of such proof, we contend that the regional board does not possess a quorum of members qualified to make any decisions. And, it seems, your position to not admit any new evidence will similarly bar your agency from now introducing evidence into the record that the other members have been confirmed by the Senate.

Your email of September 29 also informed us that you do not have the authority to schedule a hearing before the regional board in connection with the request for relief that we have been making ever since April, 2010. Despite our repeated requests, such a hearing has never been scheduled, and no one has informed us that there is a particular person to whom we must direct this request. So we ask you: to whom should we direct our request, keeping in mind that it can be scheduled for some time after the regional board's October meeting? We look forward to your answer.

Sincerely,

Jim Sweeney



Matthew Rodriguez
Secretary for
Environmental Protection

California Regional Water Quality Control Board
Central Valley Region
Katherine Hart, Chair

1685 E Street, Fresno, California 93706
(559) 445-5116 • FAX (559) 445-5910
<http://www.waterboards.ca.gov/centralvalley>



Edmund G. Brown Jr.
Governor

EX 18

9 November 2011

James G. and Amelia M. Sweeney
Sweeney Dairy (owner/operator)
30712 Road 170
Visalia, CA 93292

**RESPONSE TO GROUNDWATER MONITORING AT SWEENEY DAIRY, WDDID
5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY**

The subject Dairy is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order), issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) on 3 May 2007. Monitoring and Reporting Program (MRP) R5-2007-0035, revised 23 February 2011, accompanies the General Order and contains requirements for implementing groundwater monitoring. Under the MRP, the Executive Officer has the authority pursuant to California Water Code (CWC) section 13267 to order the installation of individual groundwater monitoring wells at the Dairy.

Groundwater monitoring is being required of all dairies covered by the General Order in accordance with the MRP. We sent you a letter dated 22 August 2011 to inform you that to satisfy the requirement for additional groundwater monitoring, you had two options: 1) install an individual groundwater monitoring system at the Dairy; or, 2) join a representative monitoring program (RMP) that will monitor groundwater at a set of representative facilities. The letter also informed you that the Central Valley Dairy Representative Monitoring Program intends to close membership. The letter was sent as a courtesy so that dairy owners and operators would be aware of this option to avoid having to install and monitor an individual groundwater monitoring system at their facility. If an RMP is not available, the only option would be individual groundwater monitoring and the installation and sampling of groundwater monitoring wells on the Dairy. The letter was not an order to initiate individual groundwater monitoring.

Subsequent to the issuance of the 22 August 2011 letter, Central Valley Water Board staff received your 30 September 2011 response via email requesting clarification. Specifically, your letter requests that staff provide you with a written explanation of the need for putting in a monitoring well system.

The General Order and accompanying MRP were issued pursuant to California Water Code section 13267, which states, in relevant part:

- (a) A regional board ... may investigate the quality of any waters of the state within its region.

California Environmental Protection Agency

(b)(1) 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 ... 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.

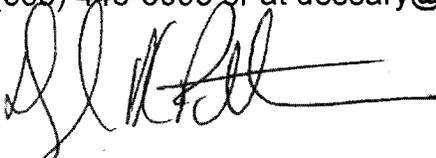
A cost/benefit evaluation of the burden associated with the submission of technical reports required by the General Order, including those associated with the implementation of groundwater monitoring at dairy facilities, was performed during the process of adoption and issuance of the General Order.

The Board adopted the Water Quality Control Plan for the Tulare Lake Basin, Second Edition, revised January 2004, which designates beneficial uses of water. Groundwater within the vicinity of the Dairy is designated as having a beneficial use of municipal and domestic water supply (MUN) and agricultural supply (AGR). Dairy waste constituents (particularly nitrogen and salts), when released to groundwater, are a significant threat to the beneficial uses of MUN and AGR. An investigation to assess whether the Dairy has impacted groundwater quality is reasonable and appropriate. The cost of the technical reports is justified by the fact that these reports will allow the Central Valley Water Board to assess whether current management practices are protective of groundwater beneath your Dairy.

Attachment A of the MRP explains that the Executive Officer will order all dischargers covered under the General Order to install monitoring wells to comply with the MRP. It was anticipated that this effort would occur in phases of approximately 100 to 200 dairies per year. The first group of dairies ordered to install wells included those dairies where nitrate was detected above water quality objectives in any one production well or subsurface (tile) drain in the vicinity of the dairy. The remaining dairies (including yours) have been approached in order of a ranking system that prioritized dairies based on the factors in Table 5 of Attachment A.

If you choose not to participate in an RMP, the Executive Officer will issue an order pursuant to CWC 13267 (13267 Order) that will require you to perform individual groundwater monitoring and that will include a formal explanation for the 13267 Order's justification.

If you have questions regarding this matter, please contact Dale Essary of this office at (559) 445-5093 or at dessary@waterboards.ca.gov.



DOUGLAS K. PATTESON
Supervising Engineer

November 29, 2011

To: Dale Essary, Central Valley Regional Water Quality Control Board

1685 E. Street

Fresno, CA 93706

Re: Sweeney Dairy, Groundwater Monitoring

Dear Mr. Eassry:

We received Mr. Patteson's letter dated November 9, 2011, which was a response to our letter to you dated September 30, 2011. While our letter posed a number of questions, Mr. Patteson's letter either failed to answer them satisfactorily or ignored them altogether. These questions were:

1. What is your explanation for the need to put in monitoring wells?

Patteson's letter stated that you need monitoring well sample results to "assess whether current management practices are protective of groundwater beneath your dairy." This is odd in light of the fact that your agency has been prescribing management practices for dairies for over thirty years (Title 27 of Calif. Code of Regulations and other agency requirements). We have followed all of your requirements while operating our dairy. Your staff inspected us in 1998 and in 2003, and after each visit, you sent us letters confirming that our dairy was in full compliance with your groundwater protection requirements.

Your agency has been collecting monitoring well data from a large number of dairies for at least fifteen years. I should hope by now that your agency has been able to assess whether your required management practices are useful and effective. You have never informed us that, on the basis of this collected data, you have found your required practices to be inadequate, flawed, or needed to be changed.

While your agency has required other dairies to put in monitoring well systems in the past, you had never required us to do so until now. Please explain what specific information you have regarding our dairy that has prompted you to impose them on us now.

Mr. Patteson's letter pointed out that Water Code section 13267 provides that "In requiring these [monitoring program] reports, the regional boards shall provide the person

with a written explanation with regard to the need for the reports, ..." While Mr. Patterson made the general assertion that "An investigation to assess whether the dairy has impacted groundwater quality is reasonable and appropriate," he did not cite any specific facts that would give support a concern that our dairy was causing a problem.

Water Code section 13267 goes on to say that "these reports shall bear a reasonable relationship to the need for the reports," and that the regional boards "shall identify the evidence that supports requiring that person to provide the reports." Mr. Patteson failed to provide us with any specific evidence about our dairy that supports the need for us to install monitoring wells and to submit reports of test results from them.

Indeed, as you should know, our dairy has provided your agency with a number of well water test results in 2003 and 2007. The results showed nitrate-nitrogen levels ranging from 1.1 to 3.4 mg/l, which are remarkably low. We had these same wells tested again in 2010 and the nitrate-nitrogen ranged from .2 to 1.4 mg/l, our lowest yet (If you want copies of these results, let us know). All of the 2003, 2007 and 2010 well test results come from a dairy site that has had a dairy operating on it for over eighty years.

Mr. Patteson mentioned that Attachment A of the MRP of the General Order provides that "the Executive Officer will order all dischargers covered under the General Order to install monitoring wells." He went on to explain that "It was anticipated that this effort would occur in phases of approximately 100 to 200 dairies per year. The first group of dairies ordered to install wells included those dairies where nitrate was detected above water quality objectives in any one production well in the vicinity of the dairy. The remaining dairies (including yours) have been approached in order of a ranking system that prioritized dairies based on the factors in Table 5 of Attachment A."

We noticed that Attachment A also sets forth a score card that is to be used to rank the priority for a dairy. Please send us a copy of the scorecard you used to score our dairy and tell us where our dairy ranked with respect to other dairies. In comparison to the other approximately 1500 dairies in your jurisdiction, where does our dairy's nitrate levels rank? What other information did you rely on to conclude that our dairy needed to spend considerable money to install one of these systems and to the pay the engineers and laboratories to pull and test water sample on an ongoing basis?

2. What would an individual monitoring well system on our dairy cost, both as to initial and recurring costs?

Since the costs would depend on the number of wells you would require, their depth, their location, the frequency that samples would have to be taken, who would take them

and how many different components would have to be tested for, you need to provide us with answers to these questions so that we can contact some firms to get cost estimates.

3. Where are the monitoring wells at “representative facilities” located in reference to our dairy? Why do you feel information from these remote wells would be meaningful? Executive Secretary

Your original letter mentioned that we had the option to enroll in the Central Valley Representative Monitoring Program as an acceptable “representative monitoring program.” When we asked where these monitoring wells were located with reference to our dairy, and why you would feel that test results from these wells would be meaningful, Mr. Patteson entirely failed to respond.

We look forward to you satisfactorily responding to our questions and requests.

Sincerely,

Jim Sweeney

Cc: Douglas K. Patteson
Clay Rogers



California Regional Water Quality Control Board

Central Valley Region

Katherine Hart, Chair



Matthew Rodriguez
Secretary for
Environmental Protection

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Edmund G. Brown Jr.
Governor

Ex 20

7 December 2011

James G. and Amelia M. Sweeney
Sweeney Dairy (owner/operator)
30712 Road 170
Visalia, CA 93292

RESPONSE TO LETTER REGARDING GROUNDWATER MONITORING AT SWEENEY DAIRY, WDID 5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY

Central Valley Water Board staff issued you a courtesy letter dated 22 August 2011 to inform you that to satisfy the requirement for additional groundwater monitoring, you had two options: 1) install an individual groundwater monitoring system at the Dairy; or, 2) join a representative monitoring program (RMP) that will monitor groundwater at a set of representative facilities. Subsequent to the issuance of the 22 August 2011 letter, staff received your 30 September 2011 response via email requesting clarification. Staff's letter dated 9 November 2011 provided the requested clarification.

Subsequent to the 9 November 2011 letter, staff received your 29 November 2011 response via email requesting further clarification. Specifically, your letter requested an explanation for the need to install wells at the Dairy and an estimate for the cost of installing the wells, and contained questions regarding the representativeness of the Central Valley Representative Monitoring Program (CVDRMP).

A completed Table 5 for the Dairy, which is a tool contained in the MRP that is used by staff to assess the threat that a dairy poses to groundwater, is enclosed, along with the ranking priority scores.

As stated in staff's 22 August 2011 letter, if you choose not to participate in an RMP, the Executive Officer will issue an order pursuant to California Water Code (CWC) section 13267 that will require you to perform individual groundwater monitoring. This order will contain an explanation of how the 13267 Order's burden, including costs, is justified.

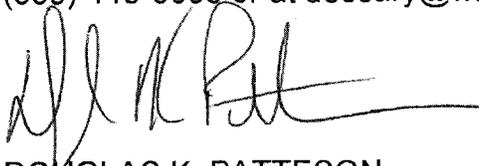
The CVDRMP developed a work plan for the first phase of representative monitoring, which involves the installation of wells in areas of Merced and Stanislaus counties that exhibit shallow groundwater and relatively permeable soils. Phase II of the program, which has yet to be submitted, will need to include sites that represent a cross-section of site conditions and management practices for member dairies located in all San Joaquin Valley Counties and selected counties in the Sacramento Valley. The burden is on the CVDRMP to demonstrate that the representative monitoring program is applicable to all its members. If a dairy is in such a unique situation that it cannot be represented by the CVDRMP, that dairy will need to implement individual groundwater monitoring. Details regarding the locations of the proposed

California Environmental Protection Agency

wells, the rationale for representative monitoring, and the drilling schedule are included in the approved Phase I work plan, which is available at

http://www.waterboards.ca.gov/centralvalley/water_issues/dairies/general_order_guidance/represent_monitoring/cafo_ph_1_rmp_wrkpln.pdf.

If you have questions regarding this matter, please contact Dale Essary of this office at (559) 445-5093 or at dessary@waterboards.ca.gov.



DOUGLAS K. PATTESON
Supervising Engineer

Sweeney Dairy, 30712 Rd. 170, Visalia

TABLE 5. GROUNDWATER MONITORING FACTORS FOR RANKING PRIORITY ¹			
FACTOR	SITE CONDITION	POINTS	SCORE
Highest nitrate concentration (nitrate-nitrogen in mg/l) in any existing domestic well, agricultural supply well, or subsurface (tile) drainage system at the dairy or associated land application area.*	< 10	0	∅
	10 - 20	10	
	>20	20	
Location of production area or land application area relative to a Department of Pesticide Groundwater Protection Area ² (GWPA).	Outside GWPA	0	∅
	In GWPA	20	
Distance (feet) of production area or land application area from an artificial recharge area ³ as identified in the California Department of Water Resources Bulletin 118 or by the Executive Officer.	> 1,500	0	∅
	601 to 1,500	10	
	0 to 600	20	
Nitrate concentration (nitrate-nitrogen in mg/l) in domestic well on property adjacent to the dairy production area or land application area (detected two or more times).	< 10 or unknown	0	∅
	10 or greater	20	
Distance (feet) from dairy production area or land application area and the nearest off-property domestic well.*	> 600	0	1∅
	301 to 600	10	
	0 to 300	20	
Distance (feet) from dairy production area or land application area and the nearest off-property municipal well.*	> 1,500	0	∅
	601 to 1,500	10	
	0 to 600	20	
Number of crops grown per year per field.*	1	5	1∅
	2	10	
	3	15	
Nutrient Management Plan completed by 1 July 2009*	Yes	0	∅
	No	100	
Whole Farm Nitrogen Balance. ⁴ *	<1.65	0	∅
	1.65 to 3	10	
	>3	20	

Total Score: 20

*This information will be provided by the Discharger. All other information will be obtained by the Executive Officer.

1 Information on each factor may not be available for each facility. Total scores will be the ratio of the points accumulated to the total points possible for each facility. Dairies with higher total scores will be directed to install monitoring wells first.

2 The Department of Pesticide Regulation (DPR) defines a Groundwater Protection Area (GWPA) as an area of land that is vulnerable to the movement of pesticides to groundwater according to either leaching or runoff processes. These areas include areas where the depth to groundwater is 70 feet or less. The DPR GWPA's can be seen on DPR's website at <http://www.cdpr.ca.gov/docs/gwp/gwpamaps.htm>.

3 An artificial recharge area is defined as an area where the addition of water to an aquifer is by human activity, such as putting surface water into dug or constructed spreading basins or injecting water through wells.

4 The Whole Farm Nitrogen Balance is to be determined as the ratio of (total nitrogen in storage - total nitrogen exported + nitrogen imported + irrigation nitrogen + atmospheric nitrogen)/(total nitrogen removed by crops) as reported in the Preliminary Dairy Facility Assessment in the Existing Conditions Report (Attachment A).

May 11, 2012

Clay L. Rodgers

Central Valley Regional Water Quality Control Board

1685 E. Street

Fresno, CA 93706

Re: Sweeney Dairy

30712 Road 170

Visalia, CA 93292

Dear Mr. Rodgers:

This letter is in response to your letter of May 4, 2012, which orders us to (1) submit to you a Monitoring Well Installation and Sampling Plan, (2) to install monitoring wells, (3) to submit to you a Monitoring Well Installation Completion Report, and (4) to submit reports from these wells in accordance with your various requirements.

As you know our appeal is pending with the State Water Resources Board and this is a form of intimidation. Until our appeal is decided we are under no legal obligation to comply with this order. Our dairy has a history of excellent water quality. We are members of the Kaweah River Sub Watershed and they have a series of monitoring wells. The information provided by these wells would more adequately reflect the water quality in our area rather than depending on wells provided by some coalition of dairymen in other areas.

You claim that "the Executive Officer has the authority to order the installation of monitoring wells based upon the threat that individual dairies pose to water quality," yet you fail to explain how you concluded that our dairy posed such a threat. This appears to be part of a continuing quest in which the Central Valley Regional Water Quality Control Board is driving the small dairies out of business. You already have access to the results of the test wells. How would our joining a coalition add any valuable information? This is just an unnecessary expense.

Your letter points out that Water Code section 13267 (a) requires you to "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."

You fail in your own obligation in that you have no evidence that would justify the need for monitoring wells. A dairy has been in existence at this site for over eighty years and if it has not contaminated the groundwater up to this point, how can you conclude that it will in the future?

The staff of the CVRWQB has failed to inform the regional board as to the real "potential threat" that small dairies pose. According to data provided by DHIA only .27% of the cows in Tulare County reside on dairies less than 300 cows while an additional 2.23% reside on dairies milking between 300-700 cows. In fact, according to the US Department of Agriculture, 2.9% of the nation's dairies produce over half of the nation's milk. It could be concluded that these same dairies produce over half of the waste as well.

Both the Bay Area Water Board and the North Coast Regional Water Quality Control Board chose to exempt the dairies which milk less than 700 cows. These dairies contain the majority of animals within their respective regions. I welcome the opportunity to testify before the regional board to make them aware of these facts. In our previous hearing the staff claimed that we received an "economic advantage" by not filing required reports but in fact the CVRWQCB has violated our civil rights by not guaranteeing us equal protection under the law.

As I testified at our earlier hearing, the CVRWQCB makes the rules, picks the jury, and changes the rules when it meets their needs. I intend to show that the board has no ACCOUNTABILITY. They have never done the economic studies required by law.

You adopted this Order without notifying us in advance of your intentions or of your evidence. It seems like standard procedure that you do not give us an opportunity to rebut your evidence and to submit our own evidence. The CVRWQB continues to deny us due process.

Therefore, we will do nothing until you have first satisfied your obligations under section 13267 (a). We welcome the opportunity to have our case heard before the Regional Board as we will be much more prepared this time. The board's decision may have to be appealed to the State Water Resources Control Board and ultimately a judge may have to rule on this matter.

Sincerely,

Jim Sweeney

EX 22



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

James G. & Amelia M. Sweeney
Sweeney Dairy (owner/operator)
30712 Road 170
Visalia, CA 93292

23 May 2012

RESPONSE TO GROUNDWATER MONITORING DIRECTIVE, ISSUED PURSUANT TO REVISED MONITORING AND REPORTING PROGRAM NO. R5-2007-0035, SWEENEY DAIRY, WDID 5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY

The subject Dairy is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order), issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) on 3 May 2007. Monitoring and Reporting Program Order R5-2007-0035, revised 23 February 2011 (MRP), accompanies the General Order and contains requirements for implementing groundwater monitoring. Under the MRP, the Executive Officer has the authority to order the installation of individual groundwater monitoring wells at the Dairy.

On 4 May 2012, the Executive Officer issued you a groundwater monitoring directive (the directive) pursuant to the MRP. The directive notifies you that your Dairy is now required to obtain compliance with the groundwater monitoring requirements of the MRP. The directive informs you that to satisfy the requirement for additional groundwater monitoring, you have two options: 1) install an individual groundwater monitoring system at the Dairy; or, 2) join a representative monitoring program (RMP) that will monitor groundwater at a set of representative facilities.

Subsequent to the issuance of the directive, staff received a letter from you via email dated 11 May 2012 in response to the directive. Specifically, the letter requested an explanation for the need to install wells at the Dairy.

The directive issued to you on 4 May 2012 provides you with an explanation of the need for conducting a water quality investigation, and identifies the evidence that supports requiring the investigation. It also explains how the burden of implementing the MRP, including costs, is justified. The directive also informs you of your right to petition the directive to the State Water Resources Control Board within 30 days of its issuance to review the action in accordance with California Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following.

Attachment A to the MRP informs dairy owners/operators of the ongoing monitoring well installation and sampling plan (MWISP) process at existing milk cow dairies in the Central Valley. It specifies, "Dischargers choosing not to participate in a Representative Monitoring Program or those failing to notify the Central Valley Water Board of their decision to participate in a Representative Monitoring Program, will continue to be subject to the groundwater monitoring requirements of the Order and Monitoring and Reporting Program No. R5-2007-0035

(MRP). If necessary, the Executive Officer will prioritize these groundwater monitoring requirements based on the factors in Table 5 below."

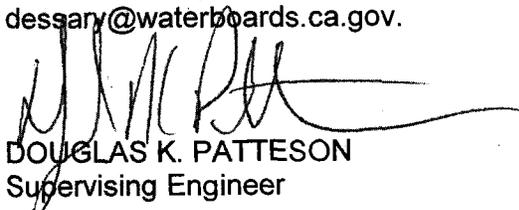
The Central Valley Water Board has prioritized the order that these groundwater monitoring requirements are imposed based on the factors in Table 5 of Attachment A, titled "Groundwater Monitoring Factors for Ranking Priority." Groundwater monitoring directives have been issued to dairy farmers in phases of 100-200 dairies each year. To date, the Board has issued approximately 260 directives requiring installation of Monitoring Well Installation and Sampling Plans in six rounds. Most of the dairies that received directives have joined an approved Representative Monitoring Program. In addition, approximately 1,000 other dairies have voluntarily joined a Representative Monitoring Program. This was the final round of directives being issued by the Board. The dairy farms receiving directives in Round 6 all received comparable total scores based on the factors described in Table 5.

On 23 February 2011, the Central Valley Water Board issued a Revised MRP to allow dairymen to enroll in a Representative Monitoring Program as an alternative to submitting a site-specific MWISP. Membership in a Representative Monitoring Program is an alternative to achieve compliance with this directive without installing monitoring wells on an individual basis. The Central Valley Dairy Representative Monitoring Program is currently available to dairy farmers at a cost of \$1,500 plus \$81 per month.

The purpose of implementing groundwater monitoring at the subject Dairy is to monitor first encountered groundwater beneath the facility to determine whether the facility's waste management practices have impacted groundwater quality. Groundwater supply wells are typically screened in deeper aquifer zones and do not necessarily reflect conditions in shallower zones. In particular, and as mentioned in your 11 May 2012 letter, any supply wells used by the Kaweah River Sub-Watershed for the purpose of monitoring groundwater quality may not be reflective of first encountered groundwater within the study area. In fact, the Kaweah River Sub-Watershed has not applied for or received approval to implement an RMP pursuant to the terms of the MRP. Likewise, groundwater quality data collected from the Dairy's on-site supply wells do not necessarily represent the quality of first encountered groundwater beneath the Dairy.

Central Valley Water Board staff acknowledges that you have petitioned the State Water Resources Control Board to invalidate Administrative Civil Liability Order R5-2011-0068 that was adopted by the Central Valley Water Board and issued to you on 13 October 2011 for your failure to submit past due technical reports. However, your petition was not a factor in issuance of the 13267 Order and does not absolve you from continued compliance with the General Order or from potential liability for failure to do so.

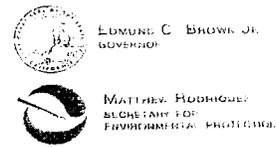
If you have questions regarding this matter or would like to schedule a meeting to discuss the matter further, please contact Dale Essary of this office at (559) 445-5093 or at dessary@waterboards.ca.gov.



DOUGLAS K. PATTESON
Supervising Engineer

cc: Alex Mayer, Office of Chief Counsel, State Water Resources Control Board, Sacramento (via email)

Ex 23



Central Valley Regional Water Quality Control Board

FILE

4 May 2012

James G. & Amelia M. Sweeney
Sweeney Dairy (owner/operator)
30712 Road 170
Visalia, CA 93292

CERTIFIED MAIL
7011 2000 0001 1769 1428

GROUNDWATER MONITORING DIRECTIVE, ISSUED PURSUANT TO REVISED MONITORING AND REPORTING PROGRAM NO. R5-2007-0035, SWEENEY DAIRY, WDID 5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY

You are legally obligated to respond to this directive. Please read this letter carefully.

The subject facility (Dairy) is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order), which was adopted by the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) on 3 May 2007. Monitoring and Reporting Program Order R5-2007-0035, revised 23 February 2011 (MRP), accompanies the General Order and contains requirements for implementing individual groundwater monitoring at the Dairy. Under the MRP, the Executive Officer has the authority to prioritize the order that dairies must comply with the individual monitoring requirements of the MRP. Prioritization is done as necessary based on ranking scheme found in Table 5 of Attachment A of the MRP.

As the owner and/or operator of a dairy, you are being notified that, based on the factors listed in the MRP, Attachment A (Groundwater Monitoring, Monitoring Well Installation and Sampling Plan and Monitoring Well Installation Completion Report for Existing Milk Cow Dairies), Table 5 (Groundwater Monitoring Factors for Ranking Priority), it is now a priority for your Dairy to obtain compliance with the Monitoring Requirements of the MRP. The information required by this letter is required by section 13267 of the Water Code.

The Executive Officer finds that:

1. You are the owner and/or operator of a dairy regulated under the General Order.
2. The MRP, and this subsequent directive, are issued pursuant to California Water Code (CWC) section 13267, which states, in relevant part:

KARL E. LONGLEY SCD, P.E., CHAIR PAMELA C. GREEDON P.E., BOEE EXECUTIVE OFFICER
1685 F Street, Fresno, CA 93706 www.waterboards.ca.gov/centralvalley

APPROVED
DKP
Supervising Engineer

(a) A regional board ... may investigate the quality of any waters of the state within its region.

(b)(1) 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 ... 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.

3. The Central Valley Water Board adopted the Water Quality Control Plans for the Tulare Lake Basin, Second Edition, revised January 2004, and the Sacramento River and San Joaquin River Basins, Fourth Edition, revised October 2011, which designate beneficial uses of water. All groundwater within the vicinity of the site is designated as having a beneficial use of municipal and domestic water supply (MUN) and agricultural supply (AGR).
4. Groundwater monitoring shows that many dairies in the Central Valley Region have impacted groundwater quality. A study of several dairies in a high-risk groundwater area in the Region found that groundwater beneath dairies that were thought to have good waste management and land application practices had elevated levels of salts and nitrates beneath the production and land application areas. Groundwater monitoring has also shown groundwater pollution under many of the dairies, including where groundwater is as deep as 120 feet and in areas underlain by fine-grained sediments. Dairy waste constituents (primarily nitrogen and salts), when released to groundwater, are a significant threat to the beneficial uses of MUN and AGR.
5. No set of waste management practices has been demonstrated to be protective of groundwater quality in all circumstances. Since groundwater monitoring is the most direct way to determine if management practices at a dairy are protective of groundwater, the MRP requires groundwater monitoring to determine if a dairy is in compliance with the groundwater limitations of the General Order.
6. Attachment A to the MRP informs dairy owners/operators of the ongoing monitoring well installation and sampling plan (MWISP) process at existing milk cow dairies in the Central Valley. It specifies, "Dischargers choosing not to participate in a Representative Monitoring Program or those failing to notify the Central Valley Water Board of their decision to participate in a Representative Monitoring Program, will continue to be subject to the groundwater monitoring requirements of the Order and Monitoring and Reporting Program No. R5-2007-0035 (MRP). If necessary, the Executive Officer will prioritize these groundwater monitoring requirements based on the factors in Table 5 below."

7. The Central Valley Water Board has prioritized the order that these groundwater monitoring requirements are imposed based on the factors in Table 5 of Attachment A, titled "Groundwater Monitoring Factors for Ranking Priority." Groundwater monitoring directives have been issued to dairy farmers in phases of 100-200 dairies each year. To date, the Board has issued approximately 260 directives requiring installation of Monitoring Well Installation and Sampling Plans in six Rounds. Most of the dairies that received directives have joined a Representative Monitoring Program. In addition, approximately 1,000 other dairies have voluntarily joined a Representative Monitoring Program (see Finding 8, below). This is the final round of directives being issued by the Board. The dairy farms receiving directives in Round 6 all received comparable total scores based on the factors described in Table 5.
8. On 23 February 2011, the Central Valley Water Board issued a Revised MRP to allow dairymen to enroll in a Representative Monitoring Program as an alternative to submitting a site-specific MWISP. Membership in a Representative Monitoring Program is an alternative to achieve compliance with this directive without installing monitoring wells on an individual basis. The Central Valley Dairy Representative Monitoring Program is currently available to dairy farmers at a cost of \$1,500 plus \$81 per month.
9. In revising the MRP in 2011, the Central Valley Water Board concluded that it is reasonable and appropriate to require all existing milk cow dairies regulated by the General Order to enroll in a representative monitoring program or be subject to the individual monitoring requirements specified in the MRP.
10. The MRP states, in relevant part, the following:

II: Individual Monitoring Program Requirements

1. The Discharger shall install sufficient monitoring wells to:
 - a. Characterize groundwater flow direction and gradient beneath the site;
 - b. Characterize natural background (unaffected by the Discharger or others) groundwater quality upgradient of the facility; and
 - c. Characterize groundwater quality downgradient of the corrals, downgradient of the wastewater retention ponds, and downgradient of the land application areas.
3. Prior to installation of wells, the Discharger shall submit to the Executive Officer a Monitoring Well Installation and Sampling Plan (MWISP) (see [MRP Attachment A, Subsection IV: Monitoring Well Installation and Sampling Plan]) and schedule prepared by, or under the direct supervision of, and certified by, a California registered civil engineer or a California registered geologist with experience in hydrogeology. Installation of monitoring wells

shall not begin until the Executive Officer notifies the Discharger in writing that the MWISP is acceptable.

7. Within 45 days after completion of any monitoring well, the Discharger shall submit to the Executive Officer a Monitoring Well Installation Completion Report (MWICR) (see [MRP Attachment A, Subsection V: Monitoring Well Installation Completion Report]) prepared by, or under the direct supervision of, and certified by, a California registered civil engineer or a California registered geologist with experience in hydrogeology.

11. Following installation of the groundwater monitoring wells, groundwater data must be collected and groundwater monitoring reports submitted in accordance with the MRP.

You are hereby notified that, pursuant to CWC section 13267,

You are required to comply with the MRP according to the time schedule listed below. If you do not enroll in a representative monitoring program, you must submit a Monitoring Well Installation Completion Report (MWICR). The MWICR must contain the information required by Attachment A of the MRP.

In order to submit an MWICR that meets the requirements of this Order, there are a number of preliminary steps that are required.

You must submit an acceptable Monitoring Well Installation and Sampling Plan (MWISP) that contains the minimum information required by Section IV, Attachment A of the MRP to allow the collection of data that will identify whether the Dairy is impacting groundwater quality. Installation of the monitoring wells shall not begin until the Executive Officer notifies you in writing that the MWISP is acceptable.

Compliance with the MRP may be satisfied in accordance with either of the following schedules:

1. **By 25 May 2012**, provide written notification to the Central Valley Water Board that you have joined a coalition group that has developed or will develop a representative groundwater monitoring program pursuant to the General Order. Such notification must include a copy of your letter of intent to join a coalition or other certification of your participation and intent to comply with the conditions and terms of the coalition's efforts; or,
2. **By 29 June 2012**, submit an acceptable site-specific MWISP.
 - A.) An acceptable MWISP must include a schedule designed to result in submittal of an acceptable MWICR within **135 calendar days** after notification that the site-specific MWISP is acceptable. The MWICR must confirm that you have installed the accepted monitoring well system,

which must contain, at a minimum, the information required by Section V in Attachment A of the MRP.

- B.) Each well within the monitoring well system must be sampled semi-annually (twice per year) for field measurements of electrical conductivity, temperature, and pH, and laboratory analysis must be conducted for nitrate and ammonia. Depth to groundwater is to be measured in each monitoring well quarterly (four times per year) and prior to purging the well for each sampling event. During the first semi-annual event, and every two years thereafter, groundwater samples from each well shall also be analyzed in the laboratory for calcium, magnesium, sodium, potassium, bicarbonate, carbonate, sulfate, and chloride. As specified in Attachment A of the MRP, groundwater monitoring reports are submitted annually by 1 July of each year. The groundwater monitoring reports are to contain a detailed description of how the data were collected, copies of laboratory reports, a tabulated summary of the data, and an evaluation of whether the Dairy has impacted groundwater.
- C.) All technical reports are to be signed and stamped by a California Professional Engineer (Registered as a Civil Engineer) or Professional Geologist experienced in performing groundwater assessments. All laboratory analyses are to be performed by an analytical laboratory certified by the State of California for the analyses performed.

The failure to furnish any of the required reports, or the submittal of substantially incomplete reports or false information, is a misdemeanor, and may result in additional enforcement actions being taken against you, including issuance of an Administrative Civil Liability (ACL) Complaint pursuant to CWC section 13268. **Liability may be imposed pursuant to CWC section 13268 in an amount not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.**

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., within 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Ex 24

Central Valley Regional Water Quality Control Board

James G. & Amelia M. Sweeney
Sweeney Dairy (owner/operator)
30712 Road 170
Visalia, CA 93292

23 May 2012

RESPONSE TO GROUNDWATER MONITORING DIRECTIVE, ISSUED PURSUANT TO REVISED MONITORING AND REPORTING PROGRAM NO. R5-2007-0035, SWEENEY DAIRY, WDID 5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY

The subject Dairy is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order), issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) on 3 May 2007. Monitoring and Reporting Program Order R5-2007-0035, revised 23 February 2011 (MRP), accompanies the General Order and contains requirements for implementing groundwater monitoring. Under the MRP, the Executive Officer has the authority to order the installation of individual groundwater monitoring wells at the Dairy.

On 4 May 2012, the Executive Officer issued you a groundwater monitoring directive (the directive) pursuant to the MRP. The directive notifies you that your Dairy is now required to obtain compliance with the groundwater monitoring requirements of the MRP. The directive informs you that to satisfy the requirement for additional groundwater monitoring, you have two options: 1) install an individual groundwater monitoring system at the Dairy; or, 2) join a representative monitoring program (RMP) that will monitor groundwater at a set of representative facilities.

Subsequent to the issuance of the directive, staff received a letter from you via email dated 11 May 2012 in response to the directive. Specifically, the letter requested an explanation for the need to install wells at the Dairy.

The directive issued to you on 4 May 2012 provides you with an explanation of the need for conducting a water quality investigation, and identifies the evidence that supports requiring the investigation. It also explains how the burden of implementing the MRP, including costs, is justified. The directive also informs you of your right to petition the directive to the State Water Resources Control Board within 30 days of its issuance to review the action in accordance with California Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following.

Attachment A to the MRP informs dairy owners/operators of the ongoing monitoring well installation and sampling plan (MWISP) process at existing milk cow dairies in the Central Valley. It specifies, "Dischargers choosing not to participate in a Representative Monitoring Program or those failing to notify the Central Valley Water Board of their decision to participate in a Representative Monitoring Program, will continue to be subject to the groundwater monitoring requirements of the Order and Monitoring and Reporting Program No. R5-2007-0035

(MRP). If necessary, the Executive Officer will prioritize these groundwater monitoring requirements based on the factors in Table 5 below."

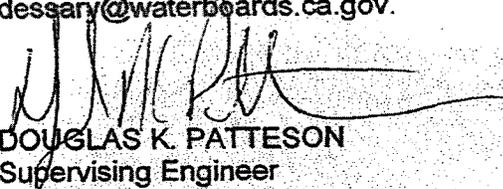
The Central Valley Water Board has prioritized the order that these groundwater monitoring requirements are imposed based on the factors in Table 5 of Attachment A, titled "Groundwater Monitoring Factors for Ranking Priority." Groundwater monitoring directives have been issued to dairy farmers in phases of 100-200 dairies each year. To date, the Board has issued approximately 260 directives requiring installation of Monitoring Well Installation and Sampling Plans in six rounds. Most of the dairies that received directives have joined an approved Representative Monitoring Program. In addition, approximately 1,000 other dairies have voluntarily joined a Representative Monitoring Program. This was the final round of directives being issued by the Board. The dairy farms receiving directives in Round 6 all received comparable total scores based on the factors described in Table 5.

On 23 February 2011, the Central Valley Water Board issued a Revised MRP to allow dairymen to enroll in a Representative Monitoring Program as an alternative to submitting a site-specific MWISP. Membership in a Representative Monitoring Program is an alternative to achieve compliance with this directive without installing monitoring wells on an individual basis. The Central Valley Dairy Representative Monitoring Program is currently available to dairy farmers at a cost of \$1,500 plus \$81 per month.

The purpose of implementing groundwater monitoring at the subject Dairy is to monitor first encountered groundwater beneath the facility to determine whether the facility's waste management practices have impacted groundwater quality. Groundwater supply wells are typically screened in deeper aquifer zones and do not necessarily reflect conditions in shallower zones. In particular, and as mentioned in your 11 May 2012 letter, any supply wells used by the Kaweah River Sub-Watershed for the purpose of monitoring groundwater quality may not be reflective of first encountered groundwater within the study area. In fact, the Kaweah River Sub-Watershed has not applied for or received approval to implement an RMP pursuant to the terms of the MRP. Likewise, groundwater quality data collected from the Dairy's on-site supply wells do not necessarily represent the quality of first encountered groundwater beneath the Dairy. X

Central Valley Water Board staff acknowledges that you have petitioned the State Water Resources Control Board to invalidate Administrative Civil Liability Order R5-2011-0068 that was adopted by the Central Valley Water Board and issued to you on 13 October 2011 for your failure to submit past due technical reports. However, your petition was not a factor in issuance of the 13267 Order and does not absolve you from continued compliance with the General Order or from potential liability for failure to do so.

If you have questions regarding this matter or would like to schedule a meeting to discuss the matter further, please contact Dale Essary of this office at (559) 445-5093 or at dessary@waterboards.ca.gov.


DOUGLAS K. PATTESON
Supervising Engineer

cc: Alex Mayer, Office of Chief Counsel, State Water Resources Control Board, Sacramento
(via email)

Groundwater Monitoring

Beginning within six months of adoption of the Order, the Discharger shall sample each domestic and agricultural supply well and subsurface (tile) drainage system present in the production and/or land application areas to characterize existing groundwater quality. This monitoring shall be conducted at the frequency and for the parameters specified in Table 4 below.

Table 4. GROUNDWATER MONITORING
Domestic and Agricultural Supply Wells Annually: Field measurements of electrical conductivity. Laboratory analyses of nitrate-nitrogen.
Subsurface (Tile) Drainage System Annually: Field measurements of electrical conductivity. Laboratory analyses of nitrate-nitrogen and total phosphorus.

1. Groundwater samples from domestic wells shall be collected from the tap nearest to the pressure tank (and before the pressure tank if possible) after water has been pumped from this tap for 10 to 20 minutes. Groundwater samples from agricultural supply wells shall be collected after the pump has run for a minimum of 30 minutes or after at least three well volumes have been purged from the well. Samples from subsurface (tile) drains shall be collected at the discharge point into a canal or drain.

General Monitoring Requirements

1. The Discharger shall comply with all the "Requirements Specifically for Monitoring Programs and Monitoring Reports" as specified in the Standard Provisions and Reporting Requirements.
2. Approved sampling procedures are listed on the Central Valley Water Board's web site at http://www.waterboards.ca.gov/centralvalley/available_documents/index.html#confined. When special procedures appear to be necessary at an individual dairy, the Discharger may request approval of alternative sampling procedures for nutrient management. The Executive Officer will review such requests and if adequate justification is provided, may approve the requested alternative sampling procedures.
3. The Discharger shall use clean sample containers and sample handling, storage, and preservation methods that are accepted or recommended by the selected analytical laboratory or, as appropriate, in accordance with approved United States Environmental Protection Agency analytical methods.

May 27, 2012

To: Douglas K. Patteson dpatteson@waterboards.ca.gov

Dale Essary dessary@waterboards.ca.gov

Central Valley Regional Water Quality Control Board

1685 E. Street

Fresno, CA 93706

Re: Jim and Amelia Sweeney, dba Sweeney Dairy

30712 Road 170

Visalia, CA 93292

Dear Mr. Patteson:

Your letter of May 23, 2012 says that we may comply with your directive if we join a "representative monitoring program (RMP) to monitor groundwater at a set of representative facilities." Since we are facing a short deadline, please provide us by May 30, 2012 with the name(s) and contact information of those RMPs whose results your agency would accept as meeting your requirements for our dairy.

We await your prompt reply.

Sincerely,

Jim Sweeny

Ex 27

-----Original Message-----

From: Clay Rodgers <CRodgers@waterboards.ca.gov>

To: Japlus3 <japlus3@aol.com>

Cc: jpc <jpc@dolphingroup.org>; Alex Mayer <AMayer@waterboards.ca.gov>; Doug Patteson <dpatteson@waterboards.ca.gov>

Sent: Sun, May 27, 2012 9:04 am

Subject: Re: Sweeney Dairy

Dear Mr. Sweeney:

The approved representative monitoring program that covers Tulare County is the Central Valley Dairy Representative monitoring program. Their address is

CVDRMP
915 L Street, C-431
Sacramento, CA 95814

Detailed information can be viewed on the Dairy CARES website at <http://www.dairycares.com/CVDRMP/>. I have copied this e-mail to J. P. Cataviela of Dairy CARES, who can provide additional assistance if needed.

If you have any questions or need additional information, please contact me or Doug Patteson.

>>> Japlus3 <japlus3@aol.com> 5/26/2012 4:48 PM >>>

EX 28

From: J.P. Cativiela <jpc@dolphingroup.org>
To: japlus3 <japlus3@aol.com>
Cc: Laura Kistner <laurak@dolphingroup.org>
Subject: RE: Sweeney Dairy
Date: Tue, May 29, 2012 10:39 am
Attachments: 4.Letterof_Intent.pdf (35K), 5.CVDRMP.Deduction.assignment.REVISED.12.13.11.pdf (28K),
3.Participation_Agrmnt.pdf (182K)

Dear Mr. Sweeney:

To join the Central Valley Dairy Representative Dairy Monitoring Program (CVDRMP), please submit a completed participation agreement and letter of intent (attached and also available at www.dairycares.com/CVDRMP)

Both of these documents need to be signed by the landowner and dairy operator if they are not the same person. A check for \$2,472 must be enclosed with the application. This covers the \$1,500 application fee and \$81/month dues from July 1, 2011 to June 30, 2012 (the deadline for joining the program was January 2011, and all late joiners are required to pay dues back to the first month of collection).

Both the Participation Agreement and Letter of Intent and payment should be mailed to:

CVDRMP

915 L Street C-438

Sacramento, CA 95814

Once your application is complete, we will notify the Central Valley Regional Water Quality Control Board that you are a CVDRMP member. To continue as a member you agree to pay monthly fees of \$81 after July 1, 2012. You have the option to be invoiced for these quarterly or to pay by Milk Check Deduction if your creamery participates in that. CDI, DFA and LOL all participate – if you ship milk elsewhere and want to check if they participate, let me know.

I strongly advise you to act promptly as the CVDRMP Board has raised the application fee as of July 1, 2012 to \$6,500.

-J.P. Cativiela

For CVDRMP

(916) 441-3318



EX 29
EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

NOTICE OF VIOLATION

19 July 2012

James G. and Amelia M. Sweeney
Sweeney Dairy (owner/operator)
30712 Road 170
Visalia, CA 93292

CERTIFIED MAIL
701 2970 0003 2756 8435

FAILURE TO SUBMIT GROUNDWATER MONITORING WELL INSTALLATION AND SAMPLING PLAN, SWEENEY DAIRY, WDID 5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY

The subject facility (Dairy) is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order), which was issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) on 3 May 2007. Monitoring and Reporting Program R5-2007-0035 (MRP) accompanies the General Order, and contains requirements for implementing groundwater monitoring at the Dairy. Under the MRP, the Executive Officer has the authority to require groundwater monitoring at dairies that pose a threat to water quality.

By letter dated 4 May 2012 (copy enclosed), the Executive Officer directed operator(s) and owner(s) of the Dairy to submit either written notification that you have joined a coalition that will develop a representative groundwater monitoring program by 25 May 2012, or an acceptable site-specific groundwater monitoring well installation and sampling plan (MWISP) by 29 June 2012. The Executive Officer's 4 May 2012 Groundwater Monitoring Directive (Directive) was issued pursuant to California Water Code (CWC) section 13267, which authorizes the Board to require the submittal of technical reports. To date, the Board has not received either an MWISP or the written notification for the Dairy.

Your failure to complete and submit the MWISP or the written notification for the Dairy is a violation of CWC section 13267(b), and subjects you to potential administrative civil liability that is growing every day that the requested information is not submitted to the Board. The Board may impose administrative civil liability (monetary penalties) of up to \$1,000 for each day the submittal is late under CWC section 13268. Failure to comply with the Executive Officer's 4 May 2012 Directive may also subject you to termination of the authorization to discharge, pursuant to General Order Provision E.10.

As soon as possible, but no later than **17 August 2012**, you must submit either an MWISP or written notification that you have joined a coalition to avoid incurring additional potential liability. In developing an MWISP, you should consult Attachment A of the MRP, which describes the minimum information that must be included. A well-designed MWISP will allow you to collect data that will identify whether the Dairy is impacting groundwater quality. In addition, the Executive Officer's 4 May 2012 Directive provides details regarding the protocol by which the MWISP is to be implemented at the Dairy.

The submittal date stated above is for administrative purposes only, and does not change any due dates required by the Executive Officer's 4 May 2012 Directive. If you have any questions regarding this matter, please contact me at (559) 445-5093 or at dessary@waterboards.ca.gov.



DALE E. ESSARY, PE
RCE No. 53216
Senior Engineer
Dairy Compliance Unit

Enclosure: 4 May 2012 Directive

cc: (w/o enclosure)

Tulare County Health & Human Services Agency, Environmental Health, Visalia
Tulare County Resource Management Agency, Code Compliance, Visalia

March 26, 2013

Douglas K. Patteson

Supervising WRC Engineer

Central Valley Regional Water Quality Control Board

1685 E Street

Fresno, CA 93706

Re: Sweeney Dairy

Dear Mr. Patteson:

My wife and I acknowledge receipt of your letter dated February 15, 2013. Your letter advised us that your agency would be serving us with an Administrative Civil Liability Complaint for failing to file an Annual Report for 2011.

As you well know, you have sought civil liabilities against us for failing to file the 2009 and 2010 reports which were specified by your General Dairy Order, R5-2007-0035 (2007 Order). We opposed both of these proceedings on various legal grounds. For the most part, our defense has been that your 2007 Order is illegal and unenforceable. Although your Regional Board ruled against us in each case, the California Water Code gives us the right to appeal the Regional Board's decisions by way of filing a petition for review with the State Water Resources Control Board (SWRCB). We have done so both cases, and, as you also know, we are still waiting on the SWRCB to decide these appeals.

If the SWRCB supports our position, then it will be established that the 2007 Order is indeed unlawful and unenforceable, and you will have no legal basis to seek civil liabilities against us for not filing your 2011 Annual Report, or for not filing the 2009 and 2010 reports. If, on the other hand, the SWRCB rules against us, the Water Code then gives us the right to petition the Superior Court for a Writ of Administrative Mandate.

As long as these matters and issues have not been adjudicated by the appellate processes afforded us by law, it would be prejudicial, unjust, and would cause irreparable harm to us if we spent the money necessary to prepare, complete and file this 2011 report and it is later determined that the 2007 Order is illegal and unenforceable.

We should have been afforded a prompt determination of our appeals by now. It is not our fault that the SWRCB has failed to hear and decide our petitions for review. What is the point of the law providing an appellate process if the appeals are never heard and decided? It would clearly

deprive us of these statutory rights and would be a denial of due process. I think the burden is on your agency to press the SWRCB to hear and decide these matters, and you have no right to blame us for this inexcusable delay.

You also called to our attention that your letter of May 25, 2012 ordered us to either install groundwater monitoring wells or join a representative groundwater monitoring program (RMP). You had advised us earlier that the Central Valley Dairy Representative Monitoring Program would be an acceptable RMP. So we sent you a letter dated September 30, 2011 in which we asked you to "inform us why you think their program would provide you with meaningful information" as to our dairy. We also asked you to specify where their monitoring wells were located relative to the location of our dairy. You have never responded to or otherwise answered these legitimate questions. Please do so now so that we can assess whether this RMP is a suitable avenue.

Finally, your letter invited us to meet with you regarding a solution to these matters. We remain open to discussions, and suggest that you present us with some dates and times when you can meet us here at our dairy.

Sincerely,

Jim Sweeney

Cc:

Dale Essary (email)

Pamela Creedon (email)

Ex 31



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

19 April 2013

James G. and Amelia M. Sweeney
Sweeney Dairy (owner/operator)
30712 Road 170
Visalia, CA 93292

CERTIFIED MAIL
7011 0110 0001 2272 4366

**RESPONSE TO PRE-FILING SETTLEMENT LETTER, SWEENEY DAIRY, WDID
5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY**

The subject facility (Dairy) is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order), which was issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) on 3 May 2007. Monitoring and Reporting Program R5-2007-0035 (MRP) accompanies the General Order. The General Order and the MRP contain reporting requirements pursuant to section 13267 of the California Water Code, which authorizes the Central Valley Water Board to require dairies to furnish technical reports.

The General Order and the MRP required, pursuant to section 13267 of the California Water Code, that an Annual Report for the calendar year 2011 (2011 Annual Report) be submitted for regulated facilities by 1 July 2012. On 16 August 2012, Central Valley Water Board staff issued a Notice of Violation notifying you that the 2011 Annual Report had not been received. The Notice of Violation also requested that the delinquent report be submitted as soon as possible to avoid incurring any additional liability. To date, the required 2011 Annual Report has not been received.

In addition to the violation described above, on 29 June 2012 the Executive Officer issued a California Water Code section 13267 Order (13267 Order) that directed you to implement groundwater monitoring at the Dairy. Specifically, the 13267 Order directed you to submit either: 1) written notification, by 25 May 2012, that you have joined a coalition group that will develop a representative groundwater monitoring program as an alternative to implementing an individual groundwater monitoring program at the Dairy; or, 2) an acceptable groundwater monitoring well installation and sampling plan (MWISP) to the Central Valley Water Board by 29 June 2012. On 19 July 2012, Central Valley Water Board staff issued a Notice of Violation notifying you that the MWISP had not been received for the Dairy. The Notice of Violation also requested that the delinquent MWISP be submitted as soon as possible to avoid incurring any additional liability. To date, the required MWISP has not been received.

KARL E. LONGLEY SCD, P.E., CHAIR | PAMELA C. CREEDON P.E., BCEE, EXECUTIVE OFFICER

1685 E Street, Fresno, CA 93706 | www.waterboards.ca.gov/centralvalley

On 14 February 2013, Central Valley Water Board staff issued a pre-filing settlement letter notifying you that staff was in the process of assessing civil liability for your failure to submit the 2011 Annual Report and the MWISP. The letter included a calculation of the maximum penalty (\$418,000) and a recommended penalty amount (\$13,050) as of 25 January 2013 for your failure to submit the missing reports. You were provided an opportunity to meet with Central Valley Water Board staff to discuss the alleged violations and submit any information regarding the factors listed in CWC section 13327 that would be deemed relevant to determining an appropriate monetary penalty. The letter requested that all responses be received by 15 March 2013. The letter also indicated that if staff did not receive a response from you by 15 March 2013, the Executive Officer would issue a Complaint to you in the proposed penalty amount (\$13,050).

Subsequent to the issuance of the 14 February 2013 letter, Central Valley Water Board staff received your 26 March 2013 response. The response did not indicate an interest on your part to enter into settlement negotiations. A phone conversation held on 5 April 2013 between you and staff confirmed your position. In addition, the response refers to a letter you sent us, dated 30 September 2011, in which you asked staff to inform you why joining the Central Valley Dairy Representative Monitoring Program (CVDRMP) would provide meaningful information at the Dairy. Staff had responded to your request by letter of 9 November 2011, a copy of which is enclosed.

Central Valley Water Board staff is aware that you have petitioned the 13267 Order to the State Water Resources Control Board (State Board) for review of the Order in accordance with California Water Code section 13320 and California Code of Regulations, title 23, sections 2050 following et seq. However, the filing of a petition to the State Board does not stay your ongoing obligation to comply with the General Order, nor does it relieve staff of its obligation to pursue formal enforcement for your failure to comply with the General Order.

If you have questions regarding this matter, please contact Dale Essary of this office at (559) 445-5093 or at dessary@waterboards.ca.gov.



DOUGLAS K. PATTESON
Supervising Engineer

Enclosure: 9 November 2011 letter



Matthew Rodriguez
Secretary for
Environmental Protection

California Regional Water Quality Control Board

Central Valley Region

Katherine Hart, Chair

1685 E Street, Fresno, California 93706
(559) 445-5116 • FAX (559) 445-5910
<http://www.waterboards.ca.gov/centralvalley>



Edmund G. Brown Jr.
Governor

9 November 2011

James G. and Amelia M. Sweeney
Sweeney Dairy (owner/operator)
30712 Road 170
Visalia, CA 93292

RESPONSE TO GROUNDWATER MONITORING AT SWEENEY DAIRY, WDID 5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY

The subject Dairy is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order), issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) on 3 May 2007. Monitoring and Reporting Program (MRP) R5-2007-0035, revised 23 February 2011, accompanies the General Order and contains requirements for implementing groundwater monitoring. Under the MRP, the Executive Officer has the authority pursuant to California Water Code (CWC) section 13267 to order the installation of individual groundwater monitoring wells at the Dairy.

Groundwater monitoring is being required of all dairies covered by the General Order in accordance with the MRP. We sent you a letter dated 22 August 2011 to inform you that to satisfy the requirement for additional groundwater monitoring, you had two options: 1) install an individual groundwater monitoring system at the Dairy; or, 2) join a representative monitoring program (RMP) that will monitor groundwater at a set of representative facilities. The letter also informed you that the Central Valley Dairy Representative Monitoring Program intends to close membership. The letter was sent as a courtesy so that dairy owners and operators would be aware of this option to avoid having to install and monitor an individual groundwater monitoring system at their facility. If an RMP is not available, the only option would be individual groundwater monitoring and the installation and sampling of groundwater monitoring wells on the Dairy. The letter was not an order to initiate individual groundwater monitoring.

Subsequent to the issuance of the 22 August 2011 letter, Central Valley Water Board staff received your 30 September 2011 response via email requesting clarification. Specifically, your letter requests that staff provide you with a written explanation of the need for putting in a monitoring well system.

The General Order and accompanying MRP were issued pursuant to California Water Code section 13267, which states, in relevant part:

- (a) A regional board ... may investigate the quality of any waters of the state within its region.

California Environmental Protection Agency

(b)(1) 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 ... 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.

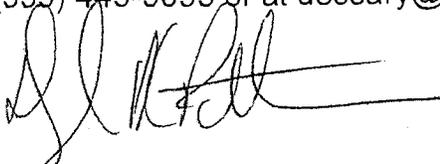
A cost/benefit evaluation of the burden associated with the submission of technical reports required by the General Order, including those associated with the implementation of groundwater monitoring at dairy facilities, was performed during the process of adoption and issuance of the General Order.

The Board adopted the Water Quality Control Plan for the Tulare Lake Basin, Second Edition, revised January 2004, which designates beneficial uses of water. Groundwater within the vicinity of the Dairy is designated as having a beneficial use of municipal and domestic water supply (MUN) and agricultural supply (AGR). Dairy waste constituents (particularly nitrogen and salts), when released to groundwater, are a significant threat to the beneficial uses of MUN and AGR. An investigation to assess whether the Dairy has impacted groundwater quality is reasonable and appropriate. The cost of the technical reports is justified by the fact that these reports will allow the Central Valley Water Board to assess whether current management practices are protective of groundwater beneath your Dairy.

Attachment A of the MRP explains that the Executive Officer will order all dischargers covered under the General Order to install monitoring wells to comply with the MRP. It was anticipated that this effort would occur in phases of approximately 100 to 200 dairies per year. The first group of dairies ordered to install wells included those dairies where nitrate was detected above water quality objectives in any one production well or subsurface (tile) drain in the vicinity of the dairy. The remaining dairies (including yours) have been approached in order of a ranking system that prioritized dairies based on the factors in Table 5 of Attachment A.

If you choose not to participate in an RMP, the Executive Officer will issue an order pursuant to CWC 13267 (13267 Order) that will require you to perform individual groundwater monitoring and that will include a formal explanation for the 13267 Order's justification.

If you have questions regarding this matter, please contact Dale Essary of this office at (559) 445-5093 or at dessary@waterboards.ca.gov.



DOUGLAS K. PATTESON
Supervising Engineer

Ex 32

From: Essary, Dale@Waterboards <Dale.Essary@waterboards.ca.gov>
To: japlus3 <japlus3@aol.com>
Cc: Patteson, Doug@Waterboards <Doug.Patteson@waterboards.ca.gov>; Rodgers, Clay@Waterboards <Clay.Rodgers@waterboards.ca.gov>; Young, Vanessa@Waterboards <Vanessa.Young@waterboards.ca.gov>
Subject: Response to your 6 June 2013 letter
Date: Thu, Jun 20, 2013 12:38 pm

Good day, Mr. Sweeney,

We are in receipt of your 6 June 2013 letter, requesting information pertaining to the locations of monitoring wells installed and monitored by the Central Valley Dairy Representative Monitoring Program (CVDRMP). To review, our 7 December 2011 response to your 29 November 2011 letter provided you with a link to the CVDRMP's Phase 1 work plan, which provided details as to the proposed locations of the wells to be installed in Merced and Stanislaus counties. At the time, the Phase 2 work plan had not been submitted. The Phase 2 work plan has now been submitted, and provides the proposed locations of wells to be installed in the counties of San Joaquin, Madera, Fresno, Kings, Tulare, Kern, Tehama, and Glenn. The link below will take you to the Phase 2 work plan.

http://www.swrcb.ca.gov/rwqcb5/water_issues/dairies/general_order_guidance/represent_monitoring/cafo_ph2_rmp_wkpln_2012jun6.pdf

Please contact me should you have further questions in this regard.

Dale Essary

Senior Engineer

Dairy Compliance Unit

MONITORING AND REPORTING WORKPLAN AND MONITORING WELL INSTALLATION AND SAMPLING PLAN

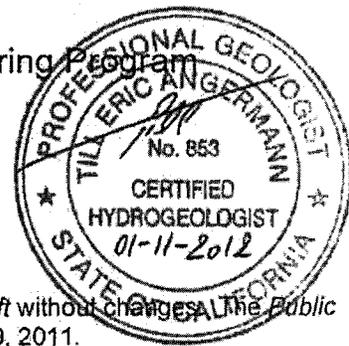
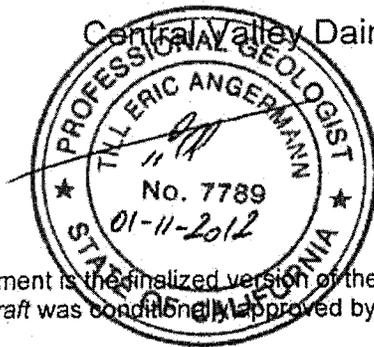
PHASE 1:
INITIATION OF REPRESENTATIVE GROUNDWATER MONITORING NETWORK DESIGN &
MONITORING PROGRAM
EXISTING MILK COW DAIRIES – STANISLAUS AND MERCED COUNTIES, CALIFORNIA

Prepared for

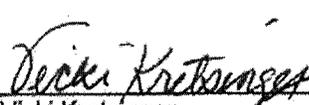
Central Valley Dairy Representative Monitoring Program

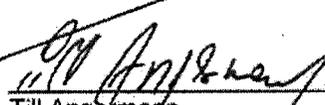
January 11, 2012

FINAL



This document is the finalized version of the June 16, 2011 Public Review Draft without changes. The Public Review Draft was conditionally approved by the Executive Officer September 9, 2011.


Vicki Kretsinger
Principal Hydrologist


Till Angermann
Senior Hydrogeologist

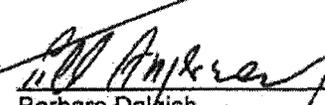
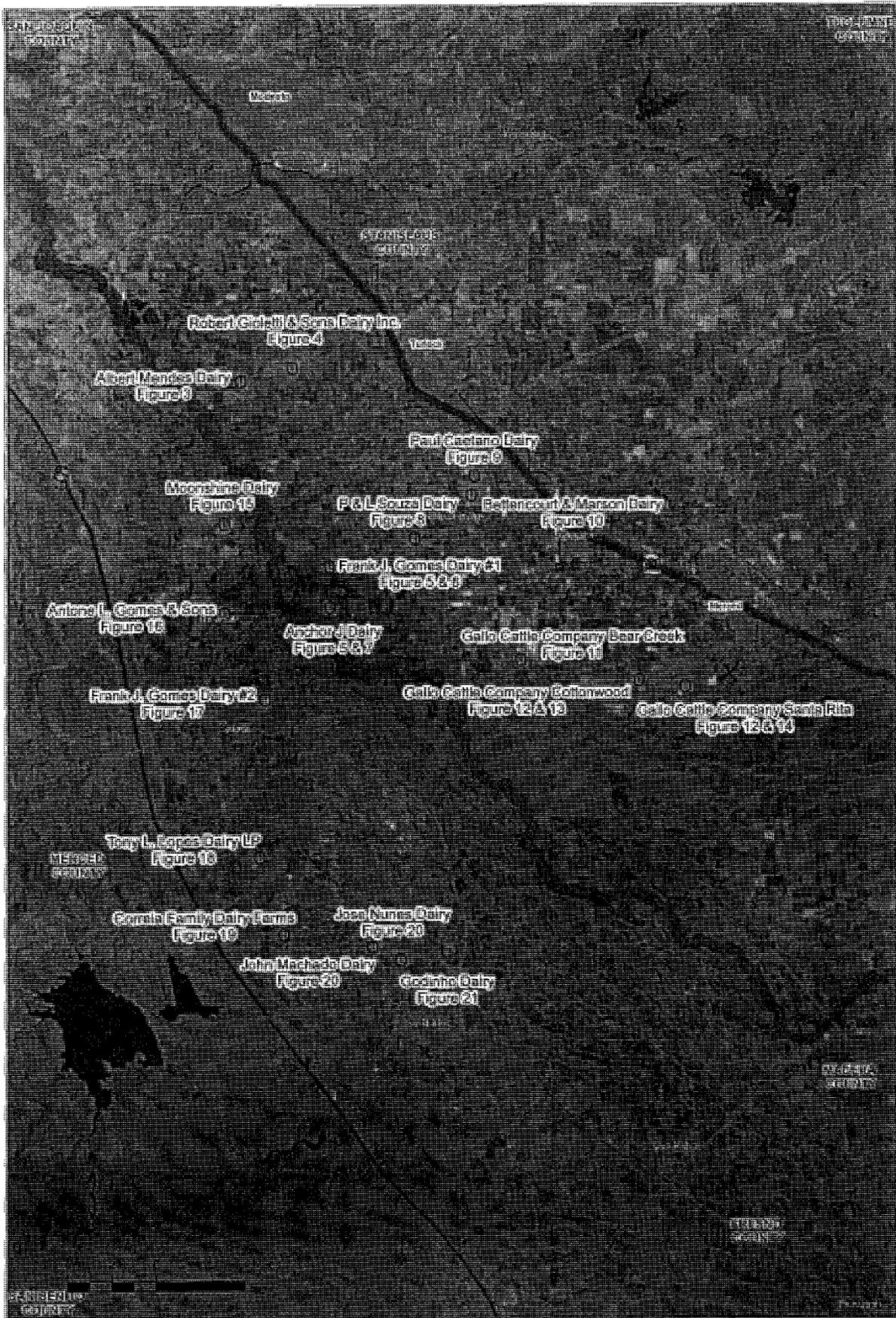

FOR
Barbara Dalgish
Project Hydrogeologist

Table 1
Dairy Farm Selection for Monitoring Well Installation
Phase 1 Representative Groundwater Monitoring Workplan

Dairy Farm	Address	City, State, Zip Code	Facility Detail
East Side			
Albert Mendes Dairy	1100 Ruble Rd	Crows Landing, CA 95313	Figure 3
Anchor J. Dairy	24507 First Ave	Stevinson, CA 95374	Figures 5 and 7
Bettencourt and Marson Dairy	18128 American Ave	Hilmar, CA 95324	Figure 10
Frank J. Gomes Dairy #1	5301 N. DeAngelis Road	Stevinson, CA 95374-9726	Figures 5 and 6
Gallo Cattle Company Bear Creek	15751 W. Hwy. 140	Livingston, CA 95334	Figure 11
Gallo Cattle Company Cottonwood	10561 Hwy. 140	Atwater, CA 95301	Figures 12 and 13
X Gallo Cattle Company Santa Rita	91 S. Bert Crane	Atwater, CA 95301	Figures 12 and 14
P. & L. Souza Dairy	20633 Crane Ave	Hilmar, CA 95324	Figure 8
Paul Caetano Dairy	9436 Griffith Ave	Delhi, CA 95315	Figure 9
Robert Gioletti and Sons Dairy	118 N. Blaker Road	Turlock, CA 95380	Figure 4
West Side			
Antone L. Gomes and Sons Dairy	515 E. Stuhr Rd	Newman, CA 95360	Figure 16
Correia Family Dairy Farms	26380 W. Fahey Rd	Gustine, CA 95322	Figure 19
Frank J. Gomes Dairy #2	890 Kniebes Rd	Gustine, CA 95322	Figure 17
Godinho Dairy	12710 S. Wilson Rd	Los Banos, CA 93635	Figure 21
John Machado Dairy	22495 W. China Camp	Los Banos, CA 93635	Figure 20
Jose Nunes Dairy	22484 W. China Camp Rd.	Los Banos, CA 93635	Figure 20
Moonshine Dairy	22922 Kilburn Rd	Crows Landing, CA 95313	Figure 15
Tony L. Lopes Dairy LP	27500 Bunker Road	Gustine, CA 95322	Figure 18



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Figure 2
Index Map - Selected Dairy Farms
Phase 1 Representative Groundwater Monitoring Program

Ex 34

University of Nebraska - Lincoln
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Agronomy -- Faculty Publications

Agronomy and Horticulture

1-1-2008

When Does Nitrate Become a Risk for Humans

David S. Powlson
Rothamsted Research

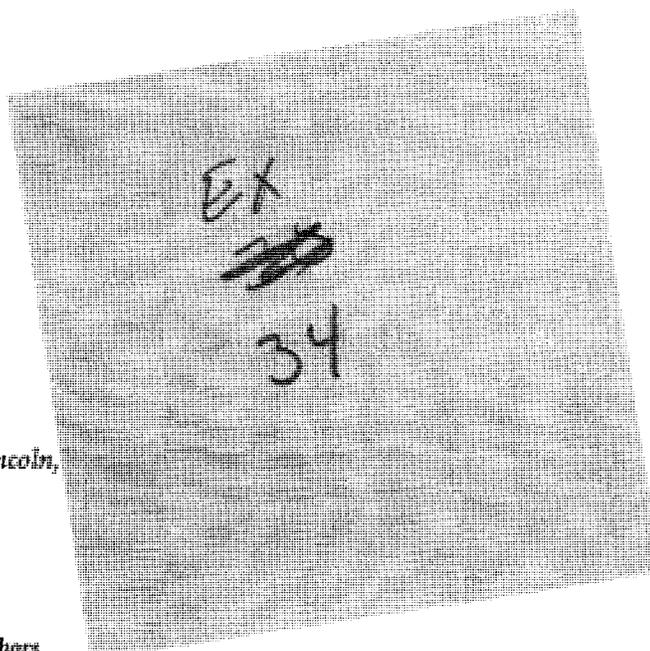
Tom M. Addiscott
Rothamsted Research

Nigel Benjamin
Derriford Hospital

Kenneth G. Cassman
University of Nebraska - Lincoln

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University Maastricht

See next page for additional authors



Powlson, David S.; Addiscott, Tom M.; Benjamin, Nigel; Cassman, Kenneth G.; de Kok, Theo M.; van Grinsven, Hans; L'hir Jean-Louis; Avery, Alex A.; and Van Kessel, Chris, "When Does Nitrate Become a Risk for Humans?" (2008). *Agronomy -- Faculty Publications*. Paper 102.

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Authors

David S. Powlson, Tom M. Addiscott, Nigel Benjamin, Kenneth G. Cassman, Theo M. de Kok, Hans v Grinsven, Jean-Louis L'hirondel, Alex A. Avery, and Chris Van Kessel

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When Does Nitrate Become a Risk for Humans?

David S. Powlson and Tom M. Addiscott Rothamsted Research

Nigel Benjamin Derriford Hospital

Ken G. Cassman University of Nebraska

Theo M. de Kok University Maastricht

Hans van Grinsven Netherlands Environmental Assessment Agency

Jean-Louis L'hirondel Centre Hospitalier Universitaire de Caen

Alex A. Avery Hudson Institute

Chris van Kessel* University of California—Davis

Is nitrate harmful to humans? Are the current limits for nitrate concentration in drinking water justified by science? There is substantial disagreement among scientists over the interpretation of evidence on the issue. There are two main health issues: the linkage between nitrate and (i) infant methaemoglobinaemia, also known as blue baby syndrome, and (ii) cancers of the digestive tract. The evidence for nitrate as a cause of these serious diseases remains controversial. On one hand there is evidence that shows there is no clear association between nitrate in drinking water and the two main health issues with which it has been linked, and there is even evidence emerging of a possible benefit of nitrate in cardiovascular health. There is also evidence of nitrate intake giving protection against infections such as gastroenteritis. Some scientists suggest that there is sufficient evidence for increasing the permitted concentration of nitrate in drinking water without increasing risks to human health. However, subgroups within a population may be more susceptible than others to the adverse health effects of nitrate. Moreover, individuals with increased rates of endogenous formation of carcinogenic N-nitroso compounds are likely to be susceptible to the development of cancers in the digestive system. Given the lack of consensus, there is an urgent need for a comprehensive, independent study to determine whether the current nitrate limit for drinking water is scientifically justified or whether it could safely be raised.

Is nitrate harmful to humans? Are the current concentration in drinking water justified by science? These questions were addressed at a symposium on "The Nitrate Cycle and Human Health" held at the annual meeting of the Science Society of America (SSSA). Although many questions, it became clear there is still substantial disagreement among scientists over the interpretation of evidence on this issue—disagreement that has lasted for more than 50 years.

This article is based on the discussion at the symposium and subsequent email exchanges between some of the authors. It does not present a consensus view because some authors hold strongly divergent views, drawing different conclusions from the same data. Instead, it is an attempt to summarise the current audience, some of the main published information on the subject, light current thinking and the points of contentions. It concludes with some proposals for research and the divergent views among the authors, each author necessarily agree with every statement in the article.

Present Regulatory Situation

In many countries there are strict limits on the concentration of nitrate in drinking water and surface waters. The limit is 50 mg of nitrate L⁻¹ in the UK and 10 mg L⁻¹ in the USA (equivalent to 11.3 and 10 mg N L⁻¹ respectively). These limits are in accord with World Health Organization (WHO) recommendations established in 1970 and recently reaffirmed (WHO, 2004). The limits were originally based on human health considerations, although environmental concerns, such as nutrient enrichment and eutrophication of surface waters, are now seen as being similarly relevant.

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D.S. Powlson and T.M. Addiscott, Soil Science Dep., Rothamsted Research, Harpenden AL5 2JQ, United Kingdom; N. Benjamin, Derriford Hospital, Cornwall

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Published in *J. Environ. Qual.* 37:291–295 (2008).

doi:10.2134/jeq2007.0177

Received 10 Apr. 2007.

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Kessel, Dep. of Plant Sciences, Univ. of California, Davis, CA, 95

issues that are the main cause of disagreement; the contrasting views are set out in the following two sections.

Nitrate and Health

There are two main health issues: the linkage between nitrate and (i) infant methaemoglobinaemia, also known as blue baby syndrome, and (ii) cancers of the digestive tract. The evidence for nitrate as a cause of these serious diseases remains controversial and is considered below.

An Over-Stated Problem?

The link between nitrate and the occurrence of methaemoglobinaemia was based on studies conducted in the 1940s in the midwest of the USA. In part, these studies related the incidence of methaemoglobinaemia in babies to nitrate concentrations in rural well water used for making up formula milk replacement. Comly (1945), who first investigated what he called "well-water methaemoglobinaemia," found that the wells that provided water for bottle feeding infants contained bacteria as well as nitrate. He also noted that "In every one of the instances in which cyanosis (the clinical symptom of methaemoglobinaemia) developed in infants, the wells were situated near barnyards and pit privies." There was an absence of methaemoglobinaemia when formula milk replacements were made with tap water. Re-evaluation of these original studies indicate that cases of methaemoglobinaemia always occurred when wells were contaminated with human or animal excrement and that the well water contained appreciable numbers of bacteria and high concentrations of nitrate (Avery, 1999). This strongly suggests that methaemoglobinaemia, induced by well water, resulted from the presence of bacteria in the water rather than nitrate per se. A recent interpretation of these early studies is that gastroenteritis resulting from bacteria in the well water stimulated nitric oxide production in the gut and that this reacted with oxyhaemoglobin in blood, converting it into methaemoglobin (Addiscott, 2005).

The nearest equivalent to a present-day toxicological test of nitrate on infants was made by Cornblath and Hartmann (1948). These authors administered oral doses of 175 to 700 mg of nitrate per day to infants and older people. None of the doses to infants caused the proportion of haemoglobin converted to methaemoglobin to exceed 7.5%, strongly suggesting that nitrate alone did not cause methaemoglobinaemia. Furthermore, Hegesh and Shiloah (1982) reported another common cause of infant methaemoglobinaemia: an increase in the endogenous production of nitric oxide due to infective enteritis. This strongly suggests that many early cases of

recognized that it was compromise and methodological bias. For example, water from wells were only taken months after the occurrence of infant

About 50 epidemiological studies testing the link between nitrate and cancer and mortality in humans, including the National Academy of Sciences (1981), the Food in Britain (Acheson, 1985), the Food in Europe (European Union, 1995), the Free on Nitrate and Nitrite in Drinking Water (1995) all concluded that no convincing link between stomach cancer incidence and mortality

A study reported by Al-Dabbas (1995) found no significant difference in cancer incidence between workers using nitrate fertilizer (and exposed through dust) and workers in the same jobs but without the exposure to nitrate.

Based on the above findings showing no link between nitrate in drinking water and cancer, it has been concluded that there is now sufficient evidence for increased nitrate in drinking water to be a concern for human health (L'hirondel et al., 2002).

Space does not permit here to discuss the health effects of dietary nitrate, such as increased blood pressure, fetal loss, genotoxicity, congenital malformations, early onset of hypertension, and increased incidence of cancer. For views of other possible health concerns, see L'hirondel (2002) and Ward et al. (2005).

Nitrate is made in the human body, the rate of production being influenced by diet (Allen et al., 2005). In recent years it has been found that cells produce nitric oxide from the same enzyme that produces nitrate, and that this production is vital to maintain health (Richardson et al., 2002) and prevent disease (Benjamin, 2000). Nitric oxide is released from nitrate, which is conserved by the kidneys in the saliva. Nitrate can also be chemically reduced in the stomach, where it can aid in the killing of pathogens that can cause gastroenteritis.

Evidence is emerging of a possible link between nitrate and vascular health. For example, the coronaries of rats for 18 months that contained sodium nitrate in their drinking water dilated that the coronaries of the rats in the control group (1977). Nitrate levels in

infant methaemoglobinaemia attributed at that time to nitrate in well water were in fact caused by gastroenteritis. Many scientists now interpret the available data as evidence that the condition is caused by the presence of bacteria rather than nitrate (Addiscott, 2005; L'hirondel and L'hirondel, 2002). The report of the American Public Health Association (APHA, 1950) formed the main basis of the current recommended 50 mg L⁻¹ nitrate limit, but even the authors of the report

and Guicher, 1977). Nitrate levels in correlation coefficient with the standa all cardiovascular diseases (Pocock et a volunteers, a short-term increase in di blood pressure (Larsen et al., 2006). E hypothesize that nitrate might also pl health benefit of vegetable consumpti high concentrations of nitrate) (Lund

last few decades, and the trend is set to continue (Galloway et al., 2003; 2004). The subsequent N enrichment causes changes to terrestrial and aquatic ecosystems and to the environmental services they provide. Examples include nitrate runoff to rivers causing excessive growth of algae and associated anoxia in coastal and estuarine waters (James et al., 2005; Rabalais et al., 2001) and deposition of N-containing species from the atmosphere causing acidification of soils and waters and N enrichment to forests and grassland savannahs (Goulding et al., 1998). All of these impacts can radically change the diversity and numbers of plant and animal species in these ecosystems. Other impacts almost certainly have indirect health effects, such as nitrous oxide production, which contributes to the greenhouse effect and the destruction of the ozone layer, thereby allowing additional UV radiation to penetrate to ground level with the associated implications for the prevalence of skin cancers.

Losses of nitrate to drinking water resources are also associated with leaky sewage systems. Leaky sewage systems need to be improved for general hygiene considerations. This need is especially important in developing countries and poor rural areas that do not have well developed sewage and waste disposal infrastructure.

Returning Question

In considering the management of nitrogen in agriculture and its fate in the wider environment, the debate keeps returning to the original question: "Is nitrate in drinking water really a threat to health?" Interpretations of the evidence remain very different (L'hirondel et al., 2006; Ward et al., 2006). The answer has a significant economic impact. The current limits established for ground and surface waters require considerable changes in practice by water suppliers and farmers in many parts of the world, and these changes have associated costs. If nitrate in drinking water is not a hazard to health, could the current limit be relaxed, perhaps to 100 mg L⁻¹? The relaxation could be restricted to situations where the predominant drainage is to groundwater. Such a change would allow environmental considerations to take precedence in the case of surface waters where eutrophication is the main risk, and N limits could be set to avoid damage to ecosystem structure and function. Phosphate is often the main factor limiting algal growth and eutrophication in rivers and freshwater lakes, so a change in the nitrate limit would focus attention on phosphate and its management—correctly so in the view of many environmental scientists (Sharpley et al., 1994). It is possible that a limitation on phosphate might lead to even lower nitrate limits in some freshwater aquatic environments to restore the diversity of submerged plant life (James et al., 2005). It could be argued that setting different limits, determined by health or environmental considerations as appropri-

- There is circumstantial and often the enhanced risk of cancers of the bladder and colon with an increase in the concentration of nitrate in drinking water. There is an urgent need to improve our knowledge and understanding, or to carry out research if necessary, to reach clear and widely accepted conclusions on the magnitude of the risk. The need for collaboration between scientists and the public over the interpretation of current evidence and the possibility that subgroups within the population differently requires quantification of the risk.
- Nitrogen oxides have a function in human physiology, but they are also a cause of the induction of oxidative stress and air pollution. A challenge is to quantify and evaluate the costs and benefits of nitric oxide exposure. What are the health effects of intake of nitrate in drinking water? What are the mechanisms to combat infectious diseases? What are the benefits of nitric oxide, produced from nitrate in drinking water and food, what are the health effects of nitric oxide compared with other negative health effects from high levels of nitric oxide?
- If the evaluation of potential health effects from chronic exposure to nitrate in drinking water above 50 mg L⁻¹ demonstrates that adverse effects can be considered, what are the health effects compared with other issues of health loss from air pollution or life style, would the current drinking water standard be relaxed to meet the health risk? What concentration standards be considered? What are the other potential investments in research?

Although science may not provide a definitive conclusion about the relationship between nitrate and health over the short term, it is worth further exploring the issue (Ward et al., 2006). It remains difficult to predict the health risk from nitrate consumption from water that exceeds the current drinking water standard. One complication is the production of nitrate, which makes it difficult to accurately realized to relate health to nitrate in drinking water.

Practical management strategies to reduce the use of nitrogen by crops and to minimize the release of other N-containing compounds to the environment have been developed for agricultural systems.

Given the lack of consensus, there is a need for a comprehensive, independent study to determine the current nitrate limit for drinking water.

ate, is a logical response to the scientific evidence.

Given the criticisms of the scientific foundation of present drinking water standards and the associated cost-benefits of prevention or removal of nitrate in drinking water, we propose the need to consider the following issues in discussing an adjustment of the nitrate standards for drinking water:

- Nitrogen intake by humans has increased via drinking water and eating food such as vegetables.

whether it could safely be raised. Meta- for generating conclusions about specific (e.g., stomach cancer, colon cancer, bladder cancer, reproductive outcomes). Unfortunately, the risk for any particular health effect is likely to be estimated by meta-analyses (Van Grinsven et al., 2002) which are often focused on susceptible subgroups, developed for demonstration of endogenous nitrosamines.

The Need for Caution

Although there is little doubt that normal physiological levels of nitric oxide play a functional role in vascular endothelial function and the defense against infections (Dykhuizen et al., 1996), chronic exposure to nitric oxide as a result of chronic inflammation has also been implicated, though not unequivocally identified, as a critical factor to explain the association between inflammation and cancer (Sawa and Oshima, 2006; Dincer et al., 2007; Kawanishi et al., 2006). Nitric oxide and NO-synthase are known to be involved in cancer-related events (angiogenesis, apoptosis, cell cycle, invasion, and metastasis) and are linked to increased oxidative stress and DNA damage (Ying and Hofseth, 2007). Rather than nitrate, the presence of numerous classes of antioxidants is generally accepted as the explanation for the beneficial health effects of vegetable consumption (Nishino et al., 2005; Potter and Steinmetz, 1996).

A recent review of the literature suggests that certain subgroups within a population may be more susceptible than others to the adverse health effects of nitrate (Ward et al., 2005). Although there is evidence showing the carcinogenicity of N-nitroso compounds in animals, data obtained from studies that were focused on humans are not definitive, with the exception of the tobacco-specific nitrosamines (Grosse et al., 2006). The formation of N-nitroso compounds in the stomach has been connected with drinking water nitrate, and excretion of N-nitroso compounds by humans has been associated with nitrate intake at the acceptable daily intake level through drinking water (Vermeer et al., 1998). The metabolism of nitrate and nitrite, the formation of N-nitroso compounds, and the development of cancers in the digestive system are complex processes mediated by several factors. Individuals with increased rates of endogenous formation of carcinogenic N-nitroso compounds are likely to be susceptible. Known factors altering susceptibility to the development of cancers in the digestive system are inflammatory bowel diseases, high red meat consumption, amine-rich diets, smoking, and dietary intake of inhibitors of endogenous nitrosation (e.g., polyphenols and vitamin C) (de Kok et al., 2005; De Roos et al., 2003; Vermeer et al., 1998). In 1995, when the Subcommittee on Nitrate and Nitrate in Drinking Water reported that the evidence to link nitrate to gastric cancer was rather weak (NRC, 1995), the stomach was still thought to be the most relevant site for endogenous nitrosation. Previous studies, such as those reviewed in the NRC (1995) report, which found no link between nitrate and stomach cancer, concentrated on the formation of nitrosamines in the stomach. Recent work indicates that larger amounts of N-nitroso compounds can be formed in the large intestine (Cross et al., 2003; De Kok et al., 2005).

Some scientists argue that there are plausible explanations for

studies (e.g., Van Loon et al., 1998) in general, statistically significant evidence for an association between nitrate intake and gastric, colon, or rectum cancer. The design of most of these studies may not have allowed for the determination of such a relationship.

Population studies have the problem that adverse health tend to be confounded with other factors. This necessitates molecular epidemiological studies and more sophisticated methods for assessing exposure in susceptible populations. This approach requires the development of biomarkers for the quantification of individual levels of nitrate and N-nitroso compounds exposure and more accurate quantification of exposure-mediated health effects.

Nitrate, Food Security, and the Environment

It is beyond dispute that levels of nitrate in the environment are increasing. Nitrate-containing species have increased in many parts of the world due to increased use of fertilizers and combustion of fossil fuels. At present, 2 to 3% of the population in the EU are potentially exposed to public drinking water exceeding the present WHO (and USA) guideline for nitrate in drinking water. The proportion of the population in the emerging and developing countries is larger and increasing (Van Grinsven et al., 2005).

The environmental impacts of reactive nitrogen are increasing, and continued research on agricultural nitrogen management practices that decrease losses and improve utilization efficiency of N throughout the food chain is needed. In the future, the central role of N in world agriculture. Agriculture without N fertilizer is not an option for the 9 billion people currently in the world and the 9 billion people to be fed (Cassman et al., 2003). Losses of reactive nitrogen to the environment are not restricted to agricultural systems from manures and the residues from legume crops (discuss, 2005). Research indicates that simplification of N fertilizer application rates does not reduce N losses because there is typically a poor relationship between the amount of N fertilizer applied by farmers and the actual crop N demand in time and space. Instead, an integrated systems management approach that better match the amount and timing of N fertilizer to the actual crop N demand in time and space would lead to decreased losses of reactive nitrogen to the environment without decreasing crop yields. Many of the environmental problems caused by too much nitrogen in the wrong place are being addressed by the International Nitrogen Initiative (INI; h

the apparent contradictory absence of adverse health effects of nitrate from dietary sources (Van Grinsven et al., 2006; Ward et al., 2006). Individuals with increased rates of endogenous formation of carcinogenic N-nitroso compounds are more likely to be at risk, and such susceptible subpopulations should be taken into account when trying to make a risk-benefit analysis for the intake of nitrate. In view of these complex dose-response mechanisms, it can be argued that it is not surprising that ecological and cohort

networking activity sponsored by several int

The adverse environmental impact of re all N-containing molecules other than the gas that comprises 78% of the atmosphere. Some of these molecules, such as nitrogen combustion of fossil fuels in automobiles a culture, however, is the dominant source th of N₂-fixing crops and the manufacture an (Turner and Rabalais, 2003). Both have in

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accurate quantification of mediating factors may provide part of the answers. Moreover, there is also a separate need for determining water quality standards for environmental integrity of aquatic ecosystems. It is time to end 50 yr of uncertainty and move forward in a timely fashion toward science-based standards.

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