California Regional Water Quality Control Board
Central Valley Region
Karl E. Longley, ScD, P.E., Chair

Linda S. Adams
Secretary for Environmental Protection

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
http://www.waterboards.ca.gov/centralvalley

Arnold Schwarzenegger
Governor

JMLS

10 December 2009

Jeff Dykzeul (owner)
Former Uly's Dairy
5829 River Rd
Oakdale, CA 95361

CERTIFIED MAIL NO.
7007 0710 0004 3777 2027

RECEIVED
SACRAMENTO
CVRWQCB
10 MAR 22 PM 1:47

CONDITIONAL EARLY SETTLEMENT OFFER R5-2009-0590-M

RELATING TO VIOLATION OF WASTE DISCHARGE REQUIREMENTS ORDER R5-2007-0035, FORMER ULY'S DAIRY, STANISLAUS COUNTY

Records of the Central Valley Regional Water Quality Control Board ("Central Valley Water Board" or "Board") show that the owner of the Former Uly's Dairy ("Dairy") has violated the terms of the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 ("General Order") by failing to submit technical reports.

This letter gives the Dairy the opportunity to settle the outstanding violations through an expedited settlement process.

NOTICE OF VIOLATION

The Dairy is owned by Jeff Dykzeul (referred to as "Discharger"). The Dairy is located at 5831 River Road, in Oakdale. The Dairy facilities consist of a 604 mature cow dairy facility with a 30-acre production area, and 190 acres of cropland currently used for manure application (wastewater and solids).

On 3 May 2007, the Central Valley Water Board issued the General Order, which regulates wastewater practices at milk cow dairies of all sizes, including the Dairy. On 29 June 2007, the Board sent certified mail notifications to the Discharger, notifying the Discharger that the Dairy was subject to the General Order.

California Water Code (CWC) section 13267 authorizes the Central Valley Water Board to require persons who discharge waste to submit technical reports. Section J.1 of the General Order required the Discharger to develop and submit the following reports by 1 July 2009:

- Annual Report – required under Monitoring and Reporting Program R5-2007-0035, including Annual Dairy Facility Assessment with modifications implemented to date
- Documentation of completion of interim facility modifications for storage capacity and to balance nitrogen
- Retrofitting Plan with Schedule (for Nutrient Management Plan – retrofitting needed to improve nitrogen balance)

- The following Nutrient Management Plan Components:
  - Land Application Area Information
  - Nutrient Budget
- Salinity Report – identifies salt sources at the Dairy, evaluates salt minimization options
- A Preliminary Infrastructure Needs Checklist

On 27 July 2009, Central Valley Water Board staff issued a Notice of Violation, putting the Discharger on notice that the reports had not been received. The Notice of Violation also requested that the delinquent reports be submitted. On 27 August 2009, Board staff attempted to contact the Discharger by phone to discuss the missing paperwork. Staff was not able to reach the Discharger; however, a message was left requesting a return phone call to discuss the missing paperwork. On 24 September 2009 staff was contacted by the Discharger's brother. He indicated that they did not know what was due in July and needed assistance locating the forms. Staff followed up the phone call with an email to Mr. Pete Dykzeul with links for the Annual Report paperwork. On 14 October 2009 staff visited the facility because paperwork still had not been submitted. Board staff spoke with the owner, who indicated that they would be working on the missing paperwork. Board staff has checked the compliance tracking system and case files, and have verified that the Board has not received a response or the reports.

STATUTORY LIABILITY

California Water Code section 13268 reads, in relevant part:

> (a)(1) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267 . . . is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).
>
> (b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars ($1,000) for each day in which the violation occurs.

Despite repeated requests from Central Valley Water Board staff, the Discharger has failed to submit the required reports. Maintaining accurate information about regulated facilities such as yours is critical to the Board's mission to preserve, enhance, and restore the quality of California's water resources.

The reports, ordered pursuant to CWC section 13267, were due by 1 July 2009. As of 10 December 2009, the reports are 162 days past due. The maximum liability that can be imposed under CWC section 13268 is $1,000 per day late, which means that you currently have incurred potential liability of one hundred sixty-two thousand dollars ($162,000).

For these violations, the State Water Resources Control Board's Enforcement Policy states that the Central Valley Water Board should take formal enforcement action by issuing an administrative civil liability complaint ("Complaint"). Issuance of a Complaint would commence a process that would conclude with a hearing in front of the Board, where the entire $162,000 penalty could be imposed.

OFFER FOR EXPEDITED SETTLEMENT

To promote resolution of these violations, the Central Valley Water Board hereby makes this Conditional Early Settlement Offer ("Offer"). You may accept this Offer by waiving your right to a hearing, submitting the past-due reports, and paying a penalty in the amount of **two thousand dollars ($2,000).** *This amount is significantly lower than the amount that could be legally imposed by the Central Valley Water Board at a hearing.*

If you accept this Offer (subject to the conditions below), the Central Valley Water Board will consider the violations identified above resolved. Accordingly, the Board will not issue a formal administrative complaint, will not refer the violations to the Attorney General, and will waive its right to seek additional penalties. This Offer does not address liability for any violation that is not specifically identified above.

If you choose to accept this Offer, you must submit the following to the Central Valley Water Board by **14 January 2010**:

- The enclosed Acceptance of Conditional Early Settlement Offer and Waiver of Right to Hearing ("Acceptance and Waiver"), and
- The past-due reports (please contact staff at the numbers listed below if you have questions regarding the missing reports).

CONDITIONS FOR CENTRAL VALLEY WATER BOARD ACCEPTANCE

The State Water Resources Control Board's Enforcement Policy specifies that the Central Valley Water Board must publish notice of proposed settlements for public comment. Upon receipt of Discharger's Acceptance and Waiver, along with the past-due reports, staff will publish notice of the proposed settlement on the Board's website. If no substantive comments are received within the 30-day comment period, and unless new material facts that become available, the Board's Executive Officer will execute the Acceptance and Waiver, at which point the Board will consider the matter resolved.

If significant comments are received in opposition to the settlement, the Central Valley Water Board may withdraw the Offer and your waiver, and may issue a Complaint as contemplated in the State Water Resources Control Board's Enforcement Policy. In the event the Acceptance and Waiver is executed by the Executive Officer, payment of the assessed amount shall be due within ten (10) calendar days after the Discharger receives written notice of the Executive Officer's execution. The $2,000 liability shall be made payable to the *State Water Pollution Cleanup and Abatement Account.*

Should the matter proceed to a hearing, the Board agrees that the Discharger's acceptance of this Offer will not be used as evidence against the Discharger, if the Discharger complies with all the terms of the Offer. However, if the Discharger fails to submit payment within the required time period after receiving notice that the Executive Officer has executed the Acceptance and Waiver, all aspects of the settlement will be considered null and void. The Discharger may then be subject to further liability, and the Discharger's failure to pay per the agreement can be used as evidence of bad faith in any subsequent proceeding.

This Offer has been entered into the California Integrated Water Quality System database as Regulatory Measure 372192 (Expedited Payment Letter).

Should you have any questions about this Conditional Early Settlement Offer, please contact Charlene Herbst at (916) 464-4724 or Clay Rodgers at (559) 445-5102.

Pamela C. Creedon
Executive Officer

Enclosure: Acceptance of Conditional Early Settlement Offer and Waiver of Right to Hearing

cc w/ encl: Mr. Reed Sato, Office of Enforcement, SWRCB, Sacramento
Mr. Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Ms. Emel Wadhwani, Office of Chief Counsel, SWRCB, Sacramento
Mr. Dan Radulescu, Enforcement Coordinator, Central Valley Water Board
Mr. Ken Landau, Assistant Executive Officer, Central Valley Water Board

ACCEPTANCE OF CONDITIONAL EARLY SETTLEMENT OFFER AND WAIVER OF RIGHT TO HEARING

By signing below and returning this Acceptance of Conditional Early Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver) to the Central Valley Regional Water Quality Control Board (Central Valley Water Board), the owner of the Former Uly's Dairy (Discharger) hereby accepts the "Conditional Early Settlement Offer" and waives the right to a hearing before the Central Valley Water Board to dispute the allegations of violations transmitted with this offer and incorporated herein by reference.

The Discharger agrees that the Record of Violation (ROV) transmitted with this offer shall serve as a complaint pursuant to Article 2.5 of the California Water Code (CWC) and that no separate complaint is required for the Central Valley Water Board to assert jurisdiction over the alleged violations through its Executive Officer. The Discharger agrees to pay the penalties authorized by CWC section 13268, in the sum of **$2,000** (Expedited Payment Amount), which shall be deemed payment in full of any civil liability pursuant to CWC section 13268 that otherwise might be assessed for the violations described in the ROV. The Discharger understands that this Acceptance and Waiver waives the Discharger's right to contest the allegations in the ROV and the amount of civil liability for such violations.

This Acceptance and Waiver form must be accompanied by the past-due reports in order for the Central Valley Water Board to consider your Acceptance and Waiver. The Discharger understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the ROV.

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

Central Valley Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670

The Discharger understands that the Central Valley Water Board is required to publish notice of, and provide for public comment on, any proposed resolution of an enforcement action. Accordingly, this Acceptance and Waiver, prior to execution by the Executive Officer, will be published for public comment. If no comments are received within the notice period which causes the Executive Officer of the Central Valley Water Board to reconsider the Expedited Payment Amount, the Executive Officer may execute the Acceptance and Waiver.

The Discharger understands that if significant comments are received in opposition to the Expedited Payment Amount, the offer on behalf of the Central Valley Water Board to resolve the violations set forth in the Notice of Violation and its ROV may be withdrawn. In that circumstance, the Discharger will be advised of the withdrawal and an administrative civil liability complaint may be issued and the matter may be set for a hearing before the Central Valley Water Board. If the offer is withdrawn because of comments received, the Acceptance and Waiver executed by the Discharger will be treated as a settlement communication and will not be used as evidence in that hearing.

The Discharger understands that once the Acceptance and Waiver is executed by the Executive Officer of the Central Valley Water Board, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. The Discharger shall pay the Expedited Payment Amount of $2,000.

A cashiers or certified check for **$2,000** shall be made payable to the "**State Water Resources Control Waste Discharge Permit Fund.**" The payment shall be submitted to the Central Valley Water Board, Rancho Cordova Office, no later than ten (10) calendar days after the date the Discharger receives written notice that the Executive Officer of the Central Valley Water Board has executed this "Acceptance and Waiver."

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

BARBARA C. DYKZEUL
(Name of Dairy)

By: Barbara C. Dykzeul
(Signed Name)

3/9/10
(Date)

BARBARA C. DYKZEUL
(Printed or typed name)

OWNER
(Title)

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 13268
(To be executed after the conclusion of the public comment period)

Pamela C. Creedon, Executive Officer

(Date)