

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the matter of:)	Complaint No. SWB-2008-4-0018
)	Mandatory Minimum Penalty
)	for
California Dairies, Inc.)	Violation of California Water Code § 13376
)	and
Artesia, CA 90701)	Order Nos. 99-136 and R4-2005-0070 (NPDES No. CA0057371)

This Complaint to assess the mandatory minimum penalty pursuant to California Water Code (CWC) § 13385 (h) is issued to California Dairies, Inc. (hereinafter Permittee) based on a finding of violation of waste discharge requirements prescribed in Order Nos. 99-136 and R4-2005-0070 (NPDES No. CA0057371, CI No. 6166).

The Assistant Executive Officer of the Regional Water Quality Control Board, Los Angeles Region (Regional Water Board) finds the following:

1. The Permittee operated the California Dairies facility (facility) located at 11709 East Artesia Boulevard, Artesia, CA. The Permittee discharged up to 220,000 gallons per day (gpd) of evaporator dairy wastewater from Discharge Point 001 (Latitude 33° 52' 23" North, Longitude 118° 04' 56" West) to Coyote Creek. The wastewater was susceptible to containing pollutants, including chlorine residual and biological oxygen demand (BOD5 @ 20° C) which can degrade water quality and impact beneficial uses of water, which are defined as wastes under the Porter-Cologne Water Quality Control Act (CWC § 13000 et seq.). The storm water flows through the drainage pipe system into Coyote Creek, a navigable water of the United States.
2. On December 9, 1999, the Regional Water Board adopted Order No. 99-136 (NPDES No. CA0057371) NPDES Permit and Waste Discharger Requirements for California Dairies, Inc., Artesia Facility.
3. On November 3, 2005, the Regional Water Board adopted Order No. R4-2005-0070 (NPDES No. CA0057371) NPDES Permit and Waste Discharge Requirements for California Dairies, Inc., Artesia Facility.
4. Order No. 99-136 (Part A.4., page 4) includes the following effluent limitations for BOD5 @ 20° C:

Constituent	Unit of Measure	Discharge Limitations (Daily Maximum)	Discharge Limitations (Monthly Average)
BOD5 @ 20° C	mg/L	30	20

5. Order No. R4-2005-0070 (Part IV.A., page 9) includes the following effluent limitation for chlorine residual:

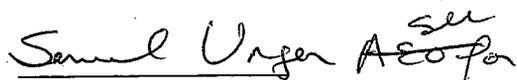
Constituent	Unit of Measure	Discharge Limitations (Daily Maximum)	Discharge Limitations (Monthly Average)
Chlorine, Total Residual	mg/L	0.10	--

6. The violations were noted in the Permittee's self-monitoring reports during 1st quarter report for 2004 and 2nd quarter report for 2006. The violations are identified in Exhibit "A" attached hereto and incorporated herein by reference.
7. On December 9, 2008, the Executive Director of the State Water Resources Control Board (State Water Board) issued the Permittee Offer to Participate in Expedited Payment Program (EPP) No. SWB-2008-4-0018, which included a Notice of Violation notifying the Permittee of the effluent limitation violations subject to mandatory minimum penalties.
8. Any discharge containing pollutants violating the effluent limitations set in the waste discharge requirements is prohibited by CWC § 13376.
9. CWC § 13385(h) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation. Pursuant to CWC § 13385(h)(2) "a serious violation is defined as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant by 20 percent or more, or for a Group I pollutant by 40 percent or more. Appendix A of Part 123.45 of Title 40 of the Code of Federal Regulations specifies the Group I and II pollutants."
10. The maximum amount of discretionary administrative civil liability assessable pursuant to CWC § 13385 for each day of violation is \$10,000 per day of violation plus \$10 times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

YOU ARE HEREBY GIVEN NOTICE THAT:

11. The Assistant Executive Officer proposes that the Permittee be assessed a mandatory minimum penalty in the amount of \$6,000 for the violations which occurred January 23, 2004 and June 6, 2006. Refer to Exhibit "A" for the calculation of the amount of mandatory minimum penalty.

12. The Permittee may waive the right to a hearing and pay the recommended administrative civil liability. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return it to the Regional Board by 5:00 pm on November 20, 2009. If the hearing is waived, a check in the amount of \$6,000 (payable to the State Water Pollution Cleanup and Abatement Account) must be received by the Regional Board by 5:00 pm on November 20, 2009.
13. If the Regional Board does not receive a waiver and full payment of the recommended penalty by November 20, 2009, the Complaint will be heard before the Regional Board or Regional Board Hearing Panel pursuant to California Water Code §§ 13228.14 and 13323. The Notice of Public Hearing contains that date, time, location, and specific procedures of the scheduled hearing of this matter.
14. If a hearing on this matter is held, the Regional Water Board will consider whether to affirm, reject, or modify (i.e. increase the proposed civil liability above the mandatory minimum) the proposed civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.
15. There are no statutes of limitation that apply to administrative proceedings. The statutes of limitation that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)
16. Notwithstanding the issuance of this Complaint, the Regional Board shall retain the authority to assess additional penalties for violations of the requirements of the Permittee's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
17. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code § 21000 et seq., in accordance with California Code of Regulations, title 14, § 15321.
18. Regulations of the US Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.


Samuel Unger, P. E.
Assistant Executive Officer
Los Angeles Regional Water Quality Control Board

October 30, 2009

WAIVER FORM

FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. SWB-2008-4-0018

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent California Dairies, Inc. (hereinafter "Permittee") in connection with Administrative Civil Liability Complaint No. SWB-2008-4-0018 (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

(Check here if the Permittee waives the hearing requirement and will pay the recommended liability.)

- a. I hereby waive any right the Permittee may have to a hearing before the Regional Water Board.
- b. I certify that the Permittee will remit payment for the civil liability imposed in the amount of **\$6,000** by check that references "ACL Complaint No. SWB-2008-4-0018" made payable to the "*Cleanup and Abatement Account*". Payment must be received by the Regional Water Board by November 20, 2009 or this matter will be placed on the Regional Board's agenda for a hearing as initially proposed in the Complaint.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period expires. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Permittee having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Permittee to further enforcement, including additional civil liability.

(Print Name and Title)

(Signature)

(Date)

EXHIBIT "A"
Effluent Limit Violations

Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category*	% Exceeded	Serious/Chronic	Water Code Section 13385	Penalty
01/23/04	1st Quarter 2004	Average Monthly	BOD5 @ 20° C	35.6	20	mg/L	1	78	Serious	(h)(1)	\$3,000
06/06/2006	2nd Quarter 2006	Daily Max	chlorine residual	0.2	0.1	mg/L	1	100	Serious	(h)(1)	\$3,000
										Total	\$6,000

* See paragraph 9 for a definition of Pollutant Categories.