

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**TENTATIVE
ORDER NO. R9-2008-0117**

**AN ORDER RESCINDING ORDER NO. 2000-163, NPDES NO. CA0109053
WASTE DISCHARGE REQUIREMENTS
FOR FRANK J. KONYN DAIRY
SAN DIEGO COUNTY**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds that:

1. On November 8, 2000, the Regional Board adopted *Order No. 2000-163, NPDES No. CA0109053, Waste Discharge Requirements for Frank J. Konyn Dairy, San Diego County*. Order No. 2000-163 established requirements for the discharge of wastewater, not to exceed a volume that is attributable to a mature milking cow herd size of 695 cows being milked twice per day, into retention ponds.
2. Frank J. Konyn Dairy (Facility) is identified as a medium concentrated animal feeding operations (Medium CAFO) pursuant to 40 CFR 122.23. An animal feeding operation (AFO) is defined as a lot or facility where: (1) animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in a 12-month period; and (2) where crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility. An AFO is defined or designated as a CAFO based on the number of animals at the facility and/or whether the facility discharges to waters of the United States.
3. On February 2003, the United States Environmental Protection Agency (USEPA) revised the effluent limitations and permitting regulations for CAFOs. The 2003 rule eliminated the exemption for operations that discharge only in a large 25-year, 24-hour storm event, and added requirements for land application areas under the control of the CAFO (68 FR 7176). The 2003 CAFO rule required any CAFO with a potential to discharge manure, litter, or process wastewater to waters of the U.S. to apply for an NPDES permit.
4. On February 28, 2005, the Second Circuit issued a decision in *Waterkeeper Alliance et al. v. EPA* regarding challenges to the 2003 rule. Among its decisions, the court vacated the 2003 rule requirement that CAFOs must apply for permits or demonstrate that they do not have the potential to discharge. A "No Potential to Discharge to Surface Water

Determination Request" has been submitted to the Regional Board for the Frank J. Konyon Dairy. The Regional Board concurs that this facility does not discharge pollutants to waters of the United States.

5. The discharge of waste from the above mentioned facility has the potential to cause or contribute to exceedances of applicable water quality objectives of groundwaters and as such, may be required to obtain Waste Discharge Requirements or a waiver of Waste Discharge Requirements.
6. The Regional Board has notified all known interested parties of its intent to rescind Order No. 2000-163.
7. The Regional Board, in a public hearing, heard and considered all comments pertaining to the rescission of Order No. 2000-163.
8. This action to rescind an NPDES permit is exempt from the provisions of CEQA, Public Resources Code sections 21100-21177 pursuant to California Water Code section 13389.

IT IS HEREBY ORDERED that Order No. 2000-163 is rescinded.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Board, San Diego Region, on November 12, 2008.

TENTATIVE

JOHN H. ROBERTUS
Executive Officer