California Regional Water Quality Control Board

San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Linda Adams
Secretary for Environmental Protection

Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4340
(858) 467-2952 • Fax (858) 571-6972
http:// www.waterboards.ca.gov/sandiego

CERTIFIED MAIL 7005 1160 0000 4217 5973

May 8, 2007

In Reply Refer to:
SCR:08-0228.02:wghoram

Mr. Frank J. Konyn, Owner
Frank Konyn Dairy
15777 Old Milky Way
Escondido, CA 92027

Dear Mr. Konyn:

SUBJECT: TENTATIVE ORDER NO. R9-2007-0053, NPDES PERMIT NO. CA0109053: REISSUANCE OF WASTE DISCHARGE REQUIREMENTS FOR ORDER NO. 2000-0163

FACILITY: FRANK KONYN DAIRY, 15777 OLD MILKY WAY, ESCONDIDO, CA, SAN DIEGO COUNTY

Enclosed is a copy of tentative Order No. R9-2007-0053, which is scheduled to be considered for adoption by the San Diego Regional Water Quality Control Board (Regional Board) at its regularly scheduled meeting on June 13, 2007. If adopted, tentative Order No. R9-2007-0053 would update and renew Order No. 2000-0163, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0109053 for Frank Konyn Dairy, San Diego County, and would supersede Order No. 2000-0163.

The tentative Order is also available on the Regional Board's web site. The web site address is: http://www.waterboards.ca.gov/sandiego/

The tentative Order contains updates and changes from your current Waste Discharge Requirements Order No. 2000-0163, NPDES Permit No. CA0109053, including requirements for a Nutrient Management Plan that complies with 40 CFR (Code of Federal Regulations) 122.42(e) and 412.4(1).

The **June 13, 2007** Regional Board meeting will begin promptly at 9:00 a.m. and will be held at the following location:

San Diego Regional Water Quality Control Board
Regional Board Meeting Room
9174 Sky Park Court, Suite 100
San Diego, California 92123

Please review and comment on the tentative Order at your earliest convenience. To ensure that the Regional Board has the opportunity to fully study and consider written material, comments should be received in the Regional Board's office no later than 5:00 p.m. on Wednesday May 30, 2007. Written material submitted after 5:00 p.m. on Wednesday June 6, 2007 will not be provided to the Regional Board members and will not be considered by the Regional Board.

The heading portion of this letter includes a Regional Board code number after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board.

If you have any questions regarding the above, please contact Ms. Whitney Ghoram by e-mail at *WGhoram@waterboards.ca.gov* or at (858) 467-2967.

Respectfully,

MICHAEL P. McCANN
Supervising Engineer
San Diego Regional Water Quality Control Board

Enclosure: Tentative Order No.R9-2007-0053, NPDES Permit No. CA0109053

cc: (w/o enclosure)

John Ungvarsky, USEPA, Region 9, WTR-9, 75 Hawthorne Street, San Francisco, CA 94105

John Menke, State Water Resource Control Board, Division of Water Quality, 1001 I Street, Sacramento, CA 95814

Robert Feenstra, California Milk Council, Executive Director, 13545 Euclid Ave, Ontario, CA 91761

S:\CoreRegulatoryUnits\South\Ghoram\FrankKonynDairyTentTransmittalLetterMay8-2007

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN DIEGO REGION

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
http://www.waterboards.ca.gov/sandiego

TENTATIVE ORDER NO. R9-2007-0053
NPDES NO. CA0109053

WASTE DISCHARGE REQUIREMENTS FOR FRANK KONYN DAIRY SAN DIEGO COUNTY

The following Discharger is subject to waste discharge requirements as set forth in this Order:

Table 1. Discharger Information

Discharger	**Frank J. Konyn**
Name of Facility	**Frank Konyn Dairy**
Facility Address	**15777 Old Milky Way**
	Escondido, CA 92027
	San Diego County
The U.S. Environmental Protection Agency (USEPA) and the Regional Water Quality Control Board have classified this discharge as a minor discharge.	

The discharge by the Frank Konyn Dairy from the discharge point identified below is subject to waste discharge requirements as set forth in this Order:

Table 2. Discharge Location

Discharge Point	Effluent Description	Discharge Point Latitude	Discharge Point Longitude	Receiving Waters
001	Manure, litter, wash water from production areas; manure from storage piles and land application areas; nutrient laden storm water	33 º, 09', 83.0" N	117 º, 00', 154." W	Surface Water: Santa Ysabel Creek, a tributary to Lake Hodges and the San Dieguito River of the San Dieguito Wastershed Groundwater: Las Lomas Muertas Subarea (905.32) of the San Pasqual Hydrologic Area (905.30) of the San Dieguito Hydrologic Unit (905.00)

Table 3. Administrative Information

This Order was adopted by the Regional Water Quality Control Board on:	**June 13, 2007**
This Order shall become effective on:	**July 1, 2007**
This Order shall expire on:	**June 13, 2012**
The Discharger shall file a Report of Waste Discharge in accordance with title 23, California Code of Regulations, as application for issuance of new waste discharge requirements no later than:	**180 days prior to the Order expiration date**

IT IS HEREBY ORDERED, that this Order supercedes Order No. 2000-0163 except for enforcement purposes, and, in order to meet the provisions contained in division 7 of the Water Code (commencing with section 13000) and regulations adopted thereunder, and the provisions of the federal Clean Water Act (CWA) and regulations and guidelines adopted thereunder, the Discharger shall comply with the requirements in this Order.

I, John H. Robertus, Executive Officer, do hereby certify that this Order with all attachments is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on June 13, 2007.

TENTATIVE

JOHN H. ROBERTUS, Executive Officer

Table of Contents

I. Facility Information 4
II. Findings 4
III. Discharge Prohibitions 8
IV. Effluent Limitations and Discharge Specifications 9
A. Effluent Limitations 9
B. Land Discharge Specifications 9
V. Receiving Water Limitations 9
A. Surface Water Limitations 9
B. Groundwater Limitations 9
VI. Provisions 9
A. Special Provisions 9
1. Nutrient Management Plan (NMP) 9
2. Facility Management 12
3. Flood Protection 12
4. Reopener Provisions 13
5. Special Studies, Technical Reports and Additional Monitoring Requirements 14
B. Standard Provisions 14
C. Monitoring and Reporting Program (MRP) Requirements 16
VII. Compliance Determination 16

List of Tables

Table 1. Discharger Information 1
Table 2. Discharge Location 1
Table 3. Administrative Information 2
Table 4. Facility Information 4

List of Attachments

Attachment A – Definitions A-1
Attachment B – Map B-1
Attachment C – Flow Schematic C-1
Attachment D – Standard Provisions D-1
Attachment E – Monitoring and Reporting Program (MRP) E-1
Attachment F – Fact Sheet F-1

I. FACILITY INFORMATION

The following Discharger is subject to waste discharge requirements as set forth in this Order:

Table 4. Facility Information

Discharger	**Frank J. Konyn**
Name of Facility	**Frank Konyn Dairy**
Facility Address	**15777 Old Milky Way**
	Escondido, CA 92027
	San Diego County
Facility Contact, Title, and Phone	**Frank Konyn, Owner/Operator, (760) 746-6319**
Mailing Address	**Frank J. Konyn** **2165 Oro Verde** **Escondido, CA 92027**
Type of Facility	**Concentrated Animal Feeding Operation – Large CAFO (Dairy)**
Facility Design Flow	**1,315 Milking Cows**

II. FINDINGS

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

A. **Background.** Frank Konyn (hereinafter Discharger) is currently discharging pursuant to Order No. 2000-0163 and National Pollutant Discharge Elimination System (NPDES) Permit No. CA0109053. The Discharger submitted a Report of Waste Discharge, dated May 2, 2005, and applied for a NPDES permit renewal to discharge manure, and process wastewater generated from the Frank Konyn Dairy, hereinafter Facility. The application was deemed complete on November 15, 2005. Due to a lawsuit challenging U.S. Environmental Protection Agency's (EPA) Concentrated Animal Feeding Operation (CAFO) Rule, the U.S. Court of Appeals for the Second Circuit Court ruled on February 28, 2005 that, in issuing an NPDES permit, the permitting authority must include terms of a Nutrient Management Plan (NMP) as part of the permit, and must allow the public to review and comment on the NMP (see Finding D below). As a result of the court ruling, the Regional Board requested the Discharger to submit an NMP to the Regional Board. On November 15, 2005, the Regional Board received an NMP from the Discharger prepared by Sierra Engineering Services, Irvine, CA office.

   For the purposes of this Order, references to the "discharger" or "permittee" in applicable federal and state laws, regulations, plans, or policy are held to be equivalent to references to the Discharger herein.

B. **Facility Description.** The Discharger owns and operates a CAFO facility. Manure, litter, and wash water from production areas; manure from storage piles and land application areas; and nutrient laden storm water are generated at the Facility. The

facility is currently permitted to discharge and manage waste volume not exceeding those attributable to a mature milking cow herd of 695 cows being milked twice per day. As reported in the NMP, the facility uses approximately 50 gallons of water per milking cow per day. The Facility has two surface drainage retention ponds, and one overflow pond with a total combined storage capacity of 764,620 ft^3, which provide adequate storage capacity to contain wastewater production for 60 days, as well as run off from the production area and manured areas during a 24-hour, 25-year storm event. In addition, the facility has 30 acres of planted irrigated pasture area (graded borders) and an additional 10 acres of pasture area, for a total of 40 acres of pasture area.

However, without adequate measures and best management practices, wastewater and storm water runoff could discharge into Santa Ysabel Creek, a tributary to Lake Hodges and the San Dieguito River of the San Dieguito Watershed, as well as adversely impact groundwater in the Las Lomas Muertas Subarea (905.32) of the San Pasqual Hydrologic Area (905.30) of the San Dieguito Hydrologic Unit (905.00). Attachment B provides a map of the area around the facility. Attachment C provides a flow schematic of the facility.

C. Legal Authorities. This Order is issued pursuant to section 402 of the federal Clean Water Act (CWA) and implementing regulations adopted by the U.S. Environmental Protection Agency (USEPA) and chapter 5.5, division 7 of the California Water Code (commencing with section 13370). It shall serve as a NPDES permit for point source discharges from this facility to surface waters. This Order also serves as Waste Discharge Requirements (WDRs) pursuant to article 4, chapter 4, Division 7 of the Water Code (commencing with section 13260).

D. U.S. EPA Proposed Rule Change

U.S. EPA's 2003 CAFO rule required all CAFOs to seek coverage under an NPDES permit. CAFO industry organizations and environmental groups filed petitions for judicial review of certain aspects of the 2003 CAFO rule. On February 28, 2005, the U.S. Court of Appeals for the Second Circuit ruled on these petitions and upheld most provisions of the 2003 rule but vacated and remanded others. In response to the court ruling, U.S. EPA issued a proposed rule on June 30, 2006 (Federal Register Vol. 71, No. 126), intends to make only those changes necessary to address the court's decision. First, U.S. EPA proposes to require only the owners and operators of those CAFOs that discharge or propose to discharge to seek coverage under a permit. Second, U.S. EPA proposes to require CAFOs seeking coverage under a permit to submit their nutrient management plan (NMP) with their application for an individual permit or notice of intent to be authorized under a general permit. Permitting authorities would be required to review the plan and provide the public with an opportunity for meaningful public review and comment. Permitting authorities would also be required to incorporate terms of the NMP as NPDES permit conditions. Third, this action proposes to authorize permit writers, upon request by a CAFO, to establish best management, zero discharge effluent limitations when the facility demonstrates that it has designed an open containment system that will comply with the no discharge requirements. The

proposed rule also responds to the court's remand orders regarding water-quality based effluent limitations (WQBELs) and pathogens.

E. **Background and Rationale for Requirements**. The Regional Water Board developed the requirements in this Order based on information submitted as part of the application, through monitoring and reporting programs, and other available information. The Fact Sheet (Attachment F), which contains background information and rationale for Order requirements, is hereby incorporated into this Order and constitutes part of the Findings for this Order. Attachments A through E and G through I are also incorporated into this Order.

F. **California Environmental Quality Act (CEQA).** Under Water Code section 13389, this action to adopt an NPDES permit is exempt from the provisions of CEQA, Public Resources Code sections 21100-21177.

G. **Technology-based Effluent Limitations.** Section 301(b) of the CWA and implementing USEPA permit regulations at section 122.44, title 40 of the Code of Federal Regulations[1], require that permits include conditions meeting applicable technology-based requirements at a minimum, and any more stringent effluent limitations necessary to meet applicable water quality standards. A detailed discussion of the technology-based effluent limitations is included in the Fact Sheet.

H. **Water Quality-Based Effluent Limitations.** Section 301(b) of the CWA and section 122.44(d) require that permits include limitations more stringent than applicable federal technology-based requirements where necessary to achieve applicable water quality standards. A detailed discussion of the water quality-based effluent limitations is included in the Fact Sheet.

I. **Water Quality Control Plans.** The Regional Water Board adopted a Water Quality Control Plan for the San Diego Region (hereinafter Basin Plan) on September 8, 1994 that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the plan. The Basin Plan incorporates Regional Board dairy waste management policy (Resolution No. 87-71) to be implemented as one of the Basin Plan's regulatory programs. In addition, the Basin Plan implements State Water Resources Control Board (State Water Board) Resolution No. 88-63, which established state policy that all waters, with certain exceptions, should be considered suitable or potentially suitable for municipal or domestic supply. Beneficial uses applicable to the Santa Ysabel Creek and groundwater in the Las Lomas Muertas Subarea (905.32) of the San Pasqual Hydrologic Area (905.30) of the San Dieguito Hydrologic Unit (905.00) are as follows:

[1] All further statutory references are to title 40 of the Code of Federal Regulations unless otherwise indicated.

Table 5. Beneficial Uses.

Discharge Point	Receiving Water Name	Beneficial Use(s)
001	Santa Ysabel Creek	Existing: Municipal (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Industrial Process Supply (PROC); Non-contact Water Recreation (REC-2); Warm Fresh water Habitat (WARM); Wildlife Habitat (WILD); and Rare Wildlife Habitat (RARE) Potential: Contact Water Recreation (REC-1)
	Ground waters(s) in the Las Lomas Muertas Subarea (905.32) of the San Pasqual Hydrologic Area (905.30) of the San Dieguito Hydrologic Unit (905.00)	Existing: Municipal (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND). Intermittent: None. Potential: None.

Requirements of this Order implement the Basin Plan.

J. **Alaska Rule.** On March 30, 2000, USEPA revised its regulation that specifies when new and revised state and tribal water quality standards (WQS) become effective for CWA purposes. (40 C.F.R. § 131.21; 65 Fed. Reg. 24641 (April 27, 2000).) Under the revised regulation (also known as the Alaska rule), new and revised standards submitted to USEPA after May 30, 2000, must be approved by USEPA before being used for CWA purposes. The final rule also provides that standards already in effect and submitted to USEPA by May 30, 2000 may be used for CWA purposes, whether or not approved by USEPA.

K. **Antidegradation Policy.** Section 131.12 requires that the state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. The Regional Water Board's Basin Plan implements, and incorporates by reference, both the state and federal antidegradation policies. As discussed in detail in the Fact Sheet the permitted discharge is consistent with the antidegradation provision of section 131.12 and State Water Board Resolution No. 68-16.

L. **Anti-Backsliding Requirements.** Sections 402(o)(2) and 303(d)(4) of the CWA and federal regulations at title 40, Code of Federal Regulations section 122.44(l) prohibit

backsliding in NPDES permits. These anti-backsliding provisions require effluent limitations in a reissued permit to be as stringent as those in the previous permit, with some exceptions where limitations may be relaxed. All discharge prohibitions in this Order are as stringent as the effluent limitations in the current Order.

M. **Endangered Species Act.** This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the Federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). This Order requires compliance with effluent limits, receiving water limits, and other requirements to protect the beneficial uses of waters of the state. The discharger is responsible for meeting all requirements of the applicable Endangered Species Act.

N. **Monitoring and Reporting.** Section 122.48 requires that all NPDES permits specify requirements for recording and reporting monitoring results. Water Code sections 13267 and 13383 authorizes the Regional Water Board to require technical and monitoring reports. The Monitoring and Reporting Program establishes monitoring and reporting requirements to implement federal and State requirements. This Monitoring and Reporting Program is provided in Attachment E.

O. **Standard and Special Provisions.** Standard Provisions, which apply to all NPDES permits in accordance with section 122.41, and additional conditions applicable to specified categories of permits in accordance with section 122.42, are provided in Attachment D. The discharger must comply with all standard provisions and the required nutrient management plan (NMP) per section 122.42, in the Special Provision.

P. **Notification of Interested Parties.** The Regional Water Board has notified the Discharger and interested agencies and persons of its intent to prescribe Waste Discharge Requirements for the discharge and has provided them with an opportunity to submit their written comments and recommendations. Details of notification are provided in the Fact Sheet of this Order.

Q. **Consideration of Public Comment.** The Regional Water Board, in a public meeting, heard and considered all comments pertaining to the discharge. Details of the Public Hearing are provided in the Fact Sheet of this Order.

III. DISCHARGE PROHIBITIONS

A. The discharger shall not cause pollution, contamination, or nuisance as those terms are defined in CWC Section 13050, as a result of the treatment, storage or discharge of wastes.

B. Discharges of wastes, including windblown spray and runoff of effluent applied for irrigation, to lands which have not been specifically described to the Regional Board and for which valid Waste Discharge Requirements are not in force, are prohibited.

C. The dumping or deposition of oil in any manner that may permit it to be washed into waters of the United States is prohibited.

D. The wastewater or waste solids disposal operation shall not cause unusual odors or other nuisance beyond the limits of the dairy property.

E. The Discharger shall comply with the waste discharge prohibitions contained in the Basin Plan.

IV. EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

A. Effluent Limitations

Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the overflow may be discharged into U.S. waters.

B. Land Discharge Specifications

Discharges of facility wastewater to disposal fields shall not result in surface runoff from disposal fields and shall be managed to minimize percolation to ground water.

V. RECEIVING WATER LIMITATIONS

A. Surface Water Limitations

Discharges from the facility shall not, by themselves or jointly with any other discharge or discharges, cause violation of the water quality objectives, established in the Basin Plan for Santa Ysabel Creek surface water in the San Dieguito River Watershed (Table 3-2).

B. Groundwater Limitations

The storage, transport, evaporation, and disposal of animal waste and process wastewater shall not cause the TDS concentration of the ground water to exceed 1,000 mg/L.

VI. PROVISIONS

A. Special Provisions

1. Nutrient Management Plan (NMP)

The Discharger shall implement the following best management practices and procedures, which are necessary to implement applicable effluent limitations and standards:

a. *Take appropriate steps to ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities that include, but are not limited to:*

Facility Wastewater

i. The discharge of facility wastewater shall not exceed a volume that is attributable to a mature milking cow herd size of 1,315 cows being milked twice per day unless the discharger submits for approval by the Regional Board a report certifying that the dairy has adequate facilities for a higher discharger volume.

ii. Facility Wastewater shall not be applied to any cropland or pastureland within the property or at a property which is owned, rented, or leased by the CAFO owner or operator.

iii. Wastewater from the milking barn cow washing activities, flush alleys and other areas shall be collected and stored in the five waste storage ponds for evaporation. No other disposal methods shall be used.

iv. The Discharger shall transfer wastewater from the main storage pond to other ponds to increase evaporation rate.

v. Waste storage ponds shall be lined with, or underlain by, soils which contain at least 10 percent clay and not more than 10 percent gravel, or artificial materials of equivalent impermeability.

vi. Waste storage ponds shall be designed, constructed and managed to contain (1) facility wastewater generated over a period of 60 days, and (2) all runoff from corrals and other manured areas from a 25-year, 24-hour storm.

vii. Water levels in the waste storage ponds shall be sufficiently lowered by November 1 of each year to provide adequate storage capacity prior to the beginning of the wet weather periods. As specified in 40 CFR 412.37 (a)(2), all open surface impoundments must have a depth marker which clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25 year, 24-hour rainfall event.

viii. All water lines, including wastewater and drinking water or cooling water lines shall be inspected daily; the waste storage ponds shall be inspected weekly for levels indicated by the depth marker in paragraph (vii); and all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the storage ponds shall be inspected weekly.

Solid Waste

ix. Manured areas shall be maintained to prevent nuisance conditions and shall be managed to minimize infiltration of water into underlying soils. The corrals shall be cleaned of excess manure by October 1 of each year prior to the beginning of the rainy season.

x. Solid waste from the corrals, the desedimentation tank, and the waste storage ponds shall be collected and removed from the property.

xi. Solid waste shall not be applied to any cropland or pastureland within the property or at a property which is owned, rented, or leased by the CAFO owner or operator.

xii. The Discharger shall not knowingly contribute to the improper disposal of manure hauled off-site. The manure hauled off the dairy property shall be recorded on manure manifest forms and properly applied or disposed of to ensure that the water quality is not adversely affected in the area.

xiii. Solid waste from the separator shall be stored in a confined area to prevent nuisance conditions, storm water run-on and run-off, and infiltration of liquid into groundwater.

xiv. The solid waste storage area shall be lined with or underlain by soils which contain at least 10 percent clay and not more than 10 percent gravel, or artificial materials of equivalent impermeability.

xv. The solid waste storage area shall be completely enclosed with a ramp entrance, to contain any liquid and a 25-year, 24-hour storm water.

xvi. The enclosures shall be maintained to prevent erosion, collapse, rodent or gopher holes, and excessive vegetation growth.

b. *Take appropriate steps to properly manage mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities. Mortality management includes, but is not limited to the following:*

i. All dead animals must be removed from the property and taken to a rendering plant for disposal.

c. *Take appropriate steps to ensure that clean water is diverted, as appropriate, from the production area that include, but are not limited to the following:*

i. All surface drainage from outside the facility shall be diverted away from any manured areas unless such drainage is fully contained.

ii. Storm water diversions shall be constructed and maintained around the solid waste storage area.

d. *Take appropriate steps to prevent direct contact of confined animals with waters of the United States that include, but are not limited to the following:*

i. The Discharger shall ensure that animals are confined within corrals or other fenced areas to prevent animals from accessing Santa Ysabel Creek.

e. *Take appropriate steps to ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants.*

f. *Implement protocols for appropriate testing of manure, litter, process wastewater, and soil in accordance with 40 CFR 412.4 (c) [40 CFR 122.42(e)(1)(vii), that include, but are not limited to the following:*

i. Prior to transferring manure to other persons, the Discharger shall provide the recipient of the manure with the most current nutrient analysis *[40 CFR 122.42(e)(3)]*. Manure must be analyzed a minimum of once annually for nitrogen and phosphorous content.

ii. The Discharger must retain for five years records of the date, recipient name and address, and approximate amount of manure, litter or process wastewater transferred to another person.

g. *Maintain records on-site, for a period of five years, and submit them to the Regional Board upon request [40 CFR 412.37 (b)].*

2. Facility Management

The Discharger shall, at all times, properly operate and maintain all facilities and systems of waste disposal (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of this Order. Proper operations and maintenance include the routine inspection, maintenance, and repair of drainage channels, culverts, ponds, irrigation equipment and related wastewater or runoff collection structures or equipment to ensure that the proper capacity is maintained.

3. Flood Protection

All waste treatment, containment and disposal facilities shall be protected from inundation or washout by overflow from any stream channel during a 100-year peak stream flow.

4. Reopener Provisions

This Order may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following:

a. Violation of any terms or conditions of this Order;

b. Obtaining this Order by misrepresentation or failure to disclose fully all relevant facts;

c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

   The filing of a request by the discharger for modifications, revocation and reissuance, or termination of this Order, or a notification of planned change in or anticipated noncompliance with this Order does not stay any condition of this Order.

d. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in this Order, the Regional Board may institute proceedings under these regulations to modify or revoke and reissue the Order to conform to the toxic effluent standard or prohibition.

e. This Order may be reopened and modified, to incorporate in accordance with the provisions set forth in 40 CFR Parts 122 and 124, to include requirements for the implementation of the watershed management approach.

f. This Order may be reopened and modified, in accordance with the provisions set forth in 40 CFR Parts 122 and 124, to include new Minimum Levels (ML).

g. This Order may be reopened and modified to revise effluent limitations as a result of future Basin Plan Amendments, or the adoption of a total maximum daily load allocation (TMDL).

h. This Order may be reopened upon submission by the Discharger of adequate information, as determined by the Regional Board, to provide for dilution credits or a mixing zone, as may be appropriate.

i. This Order may be reopened and modified to revise the toxicity language once that language becomes standardized.

j. This Order may also be reopened and modified, revoked, and reissued or terminated in accordance with the provisions of 40 CFR sections 122.44, 122.62 to 122.64, 125.62, and 125.64. Causes for taking such actions include, but are

not limited to, failure to comply with any condition of this Order and permit, and endangerment to human health or the environment resulting from the permitted activity.

5. Special Studies, Technical Reports and Additional Monitoring Requirements

Core monitoring may include intake monitoring, effluent monitoring, receiving water monitoring, and groundwater monitoring. This Order includes core monitoring for groundwater. In addition to the core monitoring requirements, the Discharger may be required to conduct the following monitoring requirements:

a. Regional Watershed Monitoring

The Discharger shall participate and coordinate with state and local agencies and other dischargers in the San Diego Region in development and implementation of a regional monitoring program as directed by the Regional Board. The intent of a regional monitoring program is to maximize the efforts of all monitoring partners using a more cost-effective monitoring design and to best utilize the pooled resources of the region. During a coordinated sampling effort, the Discharger's monitoring program effort may be expanded to provide a regional assessment of the impact of discharges to the receiving waters.

b. Special Studies

Special studies are intended to be short-term and designed to address specific research or management issues that are not addressed by the routine core-monitoring program. The Discharger shall implement special studies as directed by this Regional Board.

B. Standard Provisions

1. The Discharger shall comply with all Federal Standard Provisions included in Attachment D of this Order.

2. The Discharger shall comply with the following Regional Water Board provisions:

a. Neither the treatment nor the discharge of waste shall create a pollution, contamination, or nuisance as defined by Section 13050 of the California Water Code (CWC).

c. The provisions of this Order are severable, and if any provision of this Order, or the application of any provision of this Order to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this Order, shall not be affected thereby.

d. Upon application by any affected person, or on its own motion, the Regional Board may review and revise this permit.

e. The discharger shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this Order, including such accelerated or additional monitoring as may be necessary to determine the nature and impact of the noncompliance.

f. The Porter-Cologne Water Quality Control Act provides for civil and criminal penalties comparable to, and in some cases greater than, those provided for under the CWA.

   Nothing in this Order shall be construed to protect the discharger from its liabilities under federal, state, or local laws. Except as provided for in 40 CFR 122.41(m) and (n), nothing in this Order shall be construed to relieve the discharger from civil or criminal penalties for noncompliance.

   Nothing in this Order shall be construed to preclude the institution of any legal action or relieve the discharger from any responsibilities, liabilities, or penalties to which the discharger is or may be subject to under Section 311 of the CWA.

   Nothing in this Order shall be construed to preclude institution of any legal action or relieve the discharger from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authoring preserved by Section 510 of the CWA.

g. Any noncompliance with this permit constitutes violation of the CWC and/or the CWA and is grounds for denial of an application for permit modification.

h. No discharge of waste into waters of the state, whether or not the discharge is made pursuant to Waste Discharge Requirements, shall create a vested right to continue the discharge. All discharges of waste into waters of the state are privileges, not rights.

i. After this permit expires, the terms and conditions of this permit are automatically continued pending issuance of a new permit if all requirements of the federal NPDES regulations on the continuation of expired permits are complied with.

j. Any application submitted by the Discharger for reissuance or modification of this permit shall satisfy all applicable requirements specified in federal regulations as well as any additional requirements for submittal of a Report of Waste Discharge specified in the CWC and the California Code of Regulations (CCR).

k. Except as provided for in 40 CFR 122.7, no information or documents submitted in accordance with or in application for this permit will be considered confidential and all such information and documents shall be available for review by the public at the office of the Regional Board.

l. The Discharger shall conduct appropriate analyses on any sample provided by U.S. EPA as part of the discharge monitoring quality assurance (DMQA) program. The results of such analyses shall be submitted to U.S. EPA's DMQA manager.

m. The discharger shall comply with any interim effluent limitations as established by addendum, enforcement action or revised Waste Discharge Requirements, which have been or may be adopted by this Regional Board.

n. A copy of this Order shall be maintained on-site at the facility, and shall be available to operating personnel at all times.

o. This Order shall become effective on July 1, 2007 provided the U.S. EPA Regional Administrator has no objection. If the Regional Administrator objects to its issuance, this Order shall not become effective until such objection is withdrawn.

p. **This Order expires on June 13, 2012**. If the discharger wishes to continue activity regulated by this Order after the expiration date of this Order, the discharger must file a full and complete Report of Waste Discharge in accordance with Title 23, California Code of Regulations and U.S. EPA Form 1 and Form 2B required by 40 Code of Federal Regulations 122, not later than 180 days in advance of the expiration date of this Order as application for issuance of new waste discharge requirements.

C. Monitoring and Reporting Program (MRP) Requirements

The Discharger shall comply with the MRP, and future revisions thereto, in Attachment E of this Order.

VII. COMPLIANCE DETERMINATION

Compliance with effluent limitations or discharge specifications shall be determined as follows:

A. If only one sample is collected during the time period associated with the effluent limitations (e.g., 30-day average or 6-month median), the single measurement shall be used to determine compliance with the effluent limitation for the entire time period.

B. All analytical data shall be reported uncensored with detection limits and quantitation limits identified. For any effluent limitation, compliance shall be determined using appropriate statistical methods to evaluate multiple samples. Sufficient sampling and analyses shall be conducted to determine compliance.

C. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this Order or the Monitoring and Reporting Program (Attachment E).

D. Minimum Levels (MLs), as defined by the SIP, represent the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method specified sample weights, volumes, and processing steps have been followed. The discharger shall select an analytical procedure for each pollutant for which the analytical procedure's corresponding Minimum Level (ML) is below the applicable effluent limitation. If the effluent limitation is below all the MLs identified for the pollutant in Appendix 4-1 of the SIP, the discharger shall select the lowest ML (and corresponding analytical method).

G. Dischargers shall be deemed out of compliance with an effluent limitation or discharge specification if the concentration of the constituent in the monitoring sample is greater than the effluent limitation or discharge specification and greater than or equal to the Minimum Level (ML).

ATTACHMENT A – DEFINITIONS

Arithmetic Mean (μ), also called the average, is the sum of measured values divided by the number of samples. For ambient water concentrations, the arithmetic mean is calculated as follows:

Arithmetic mean = $\mu = \Sigma x / n$ where: Σx is the sum of the measured ambient water concentrations, and n is the number of samples.

Average Monthly Effluent Limitation (AMEL): the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

Average Weekly Effluent Limitation (AWEL): the highest allowable average of daily discharges over a calendar week (Sunday through Saturday), calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

Bioaccumulative pollutants are those substances taken up by an organism from its surrounding medium through gill membranes, epithelial tissue, or from food and subsequently concentrated and retained in the body of the organism.

Carcinogenic pollutants are substances that are known to cause cancer in living organisms.

Coefficient of Variation (*CV*) is a measure of the data variability and is calculated as the estimated standard deviation divided by the arithmetic mean of the observed values.

Daily Discharge: Daily Discharge is defined as either: (1) the total mass of the constituent discharged over the calendar day (12:00 am through 11:59 pm) or any 24-hour period that reasonably represents a calendar day for purposes of sampling (as specified in the permit), for a constituent with limitations expressed in units of mass or; (2) the unweighted arithmetic mean measurement of the constituent over the day for a constituent with limitations expressed in other units of measurement (e.g., concentration).

The daily discharge may be determined by the analytical results of a composite sample taken over the course of one day (a calendar day or other 24-hour period defined as a day) or by the arithmetic mean of analytical results from one or more grab samples taken over the course of the day.

For composite sampling, if 1 day is defined as a 24-hour period other than a calendar day, the analytical result for the 24-hour period will be considered as the result for the calendar day in which the 24-hour period ends.

Detected, but Not Quantified (DNQ) are those sample results less than the RL, but greater than or equal to the laboratory's MDL.

Dilution Credit is the amount of dilution granted to a discharge in the calculation of a water quality-based effluent limitation, based on the allowance of a specified mixing zone. It is calculated from the dilution ratio or determined through conducting a mixing zone study or modeling of the discharge and receiving water.

Effluent Concentration Allowance (ECA) is a value derived from the water quality criterion/objective, dilution credit, and ambient background concentration that is used, in conjunction with the coefficient of variation for the effluent monitoring data, to calculate a long-term average (LTA) discharge concentration. The ECA has the same meaning as waste load allocation (WLA) as used in U.S. EPA guidance (Technical Support Document For Water Quality-based Toxics Control, March 1991, second printing, EPA/505/2-90-001).

Enclosed Bays means indentations along the coast that enclose an area of oceanic water within distinct headlands or harbor works. Enclosed bays include all bays where the narrowest distance between the headlands or outermost harbor works is less than 75 percent of the greatest dimension of the enclosed portion of the bay. Enclosed bays include, but are not limited to, Humboldt Bay, Bodega Harbor, Tomales Bay, Drake's Estero, San Francisco Bay, Morro Bay, Los Angeles-Long Beach Harbor, Upper and Lower Newport Bay, Mission Bay, and San Diego Bay. Enclosed bays do not include inland surface waters or ocean waters.

Estimated Chemical Concentration is the estimated chemical concentration that results from the confirmed detection of the substance by the analytical method below the ML value.

Estuaries means waters, including coastal lagoons, located at the mouths of streams that serve as areas of mixing for fresh and ocean waters. Coastal lagoons and mouths of streams that are temporarily separated from the ocean by sandbars shall be considered estuaries. Estuarine waters shall be considered to extend from a bay or the open ocean to a point upstream where there is no significant mixing of fresh water and seawater. Estuarine waters include~~d~~, but are not limited to, the Sacramento-San Joaquin Delta, as defined in Water Code section 12220, Suisun Bay, Carquinez Strait downstream to the Carquinez Bridge, and appropriate areas of the Smith, Mad, Eel, Noyo, Russian, Klamath, San Diego, and Otay rivers. Estuaries do not include inland surface waters or ocean waters.

Inland Surface Waters are all surface waters of the State that do not include the ocean, enclosed bays, or estuaries.

Instantaneous Maximum Effluent Limitation: the highest allowable value for any single grab sample or aliquot (i.e., each grab sample or aliquot is independently compared to the instantaneous maximum limitation).

Instantaneous Minimum Effluent Limitation: the lowest allowable value for any single grab sample or aliquot (i.e., each grab sample or aliquot is independently compared to the instantaneous minimum limitation).

Maximum Daily Effluent Limitation (MDEL) means the highest allowable daily discharge of a pollutant, over a calendar day (or 24-hour period). For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged

over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the arithmetic mean measurement of the pollutant over the day.

Median is the middle measurement in a set of data. The median of a set of data is found by first arranging the measurements in order of magnitude (either increasing or decreasing order). If the number of measurements (n) is odd, then the median = $X_{(n+1)/2}$. If n is even, then the median = $(X_{n/2} + X_{(n/2)+1})/2$ (i.e., the midpoint between the $n/2$ and $n/2+1$).

Method Detection Limit (MDL) is the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero, as defined in title 40 of the Code of Federal Regulations, Part 136, Attachment B, revised as of July 3, 1999.
Minimum Level (ML) is the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method specified sample weights, volumes, and processing steps have been followed.

Mixing Zone is a limited volume of receiving water that is allocated for mixing with a wastewater discharge where water quality criteria can be exceeded without causing adverse effects to the overall water body.

Not Detected (ND) are those sample results less than the laboratory's MDL.

Ocean Waters are the territorial marine waters of the State as defined by California law to the extent these waters are outside of enclosed bays, estuaries, and coastal lagoons. Discharges to ocean waters are regulated in accordance with the State Water Board's California Ocean Plan.

Persistent pollutants are substances for which degradation or decomposition in the environment is nonexistent or very slow.

Pollutant Minimization Program (PMP) means waste minimization and pollution prevention actions that include, but are not limited to, product substitution, waste stream recycling, alternative waste management methods, and education of the public and businesses. The goal of the PMP shall be to reduce all potential sources of a priority pollutant(s) through pollutant minimization (control) strategies, including pollution prevention measures as appropriate, to maintain the effluent concentration at or below the water quality-based effluent limitation. Pollution prevention measures may be particularly appropriate for persistent bioaccumulative priority pollutants where there is evidence that beneficial uses are being impacted. The Regional Water Board may consider cost effectiveness when establishing the requirements of a PMP. The completion and implementation of a Pollution Prevention Plan, if required pursuant to Water Code section 13263.3(d), shall be considered to fulfill the PMP requirements.

Pollution Prevention means any action that causes a net reduction in the use or generation of a hazardous substance or other pollutant that is discharged into water and includes, but is not limited to, input change, operational improvement, production process change, and product

reformulation (as defined in Water Code section 13263.3). Pollution prevention does not include actions that merely shift a pollutant in wastewater from one environmental medium to another environmental medium, unless clear environmental benefits of such an approach are identified to the satisfaction of the State or Regional Water Board.

Reporting Level (RL) is the ML (and its associated analytical method) chosen by the Discharger for reporting and compliance determination from the MLs included in this Order. The MLs included in this Order correspond to approved analytical methods for reporting a sample result that are selected by the Regional Water Board either from Appendix 4 of the SIP in accordance with section 2.4.2 of the SIP or established in accordance with section 2.4.3 of the SIP. The ML is based on the proper application of method-based analytical procedures for sample preparation and the absence of any matrix interferences. Other factors may be applied to the ML depending on the specific sample preparation steps employed. For example, the treatment typically applied in cases where there are matrix-effects is to dilute the sample or sample aliquot by a factor of ten. In such cases, this additional factor must be applied to the ML in the computation of the RL.

Satellite Collection System is the portion, if any, of a sanitary sewer system owned or operated by a different public agency than the agency that owns and operates the wastewater treatment facility that a sanitary sewer system is tributary to.

Source of Drinking Water is any water designated as municipal or domestic supply (MUN) in a Regional Water Board Basin Plan.

Standard Deviation (σ) is a measure of variability that is calculated as follows:

$$\sigma = (\sum[(x - \mu)^2]/(n - 1))^{0.5}$$

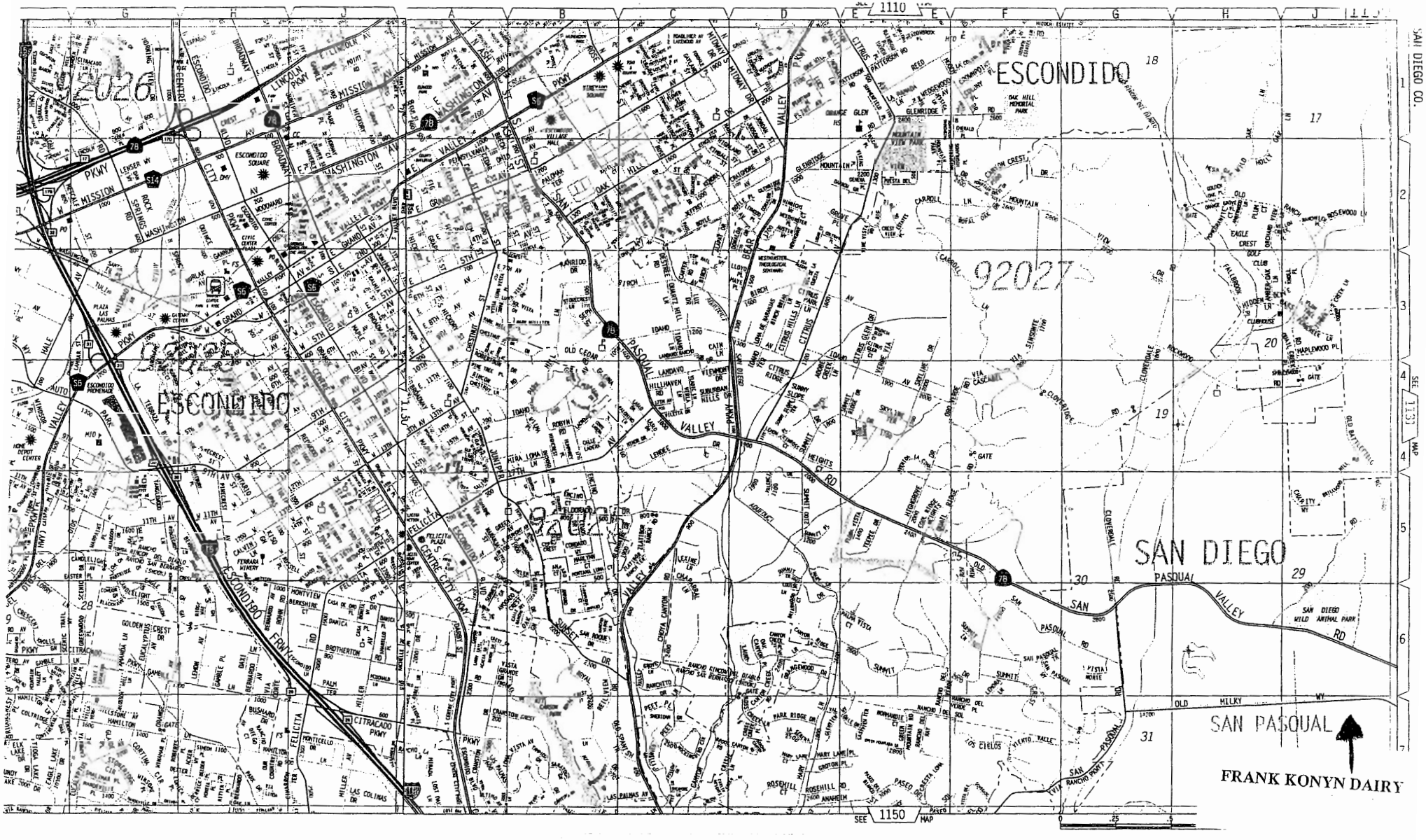
where:

x is the observed value;

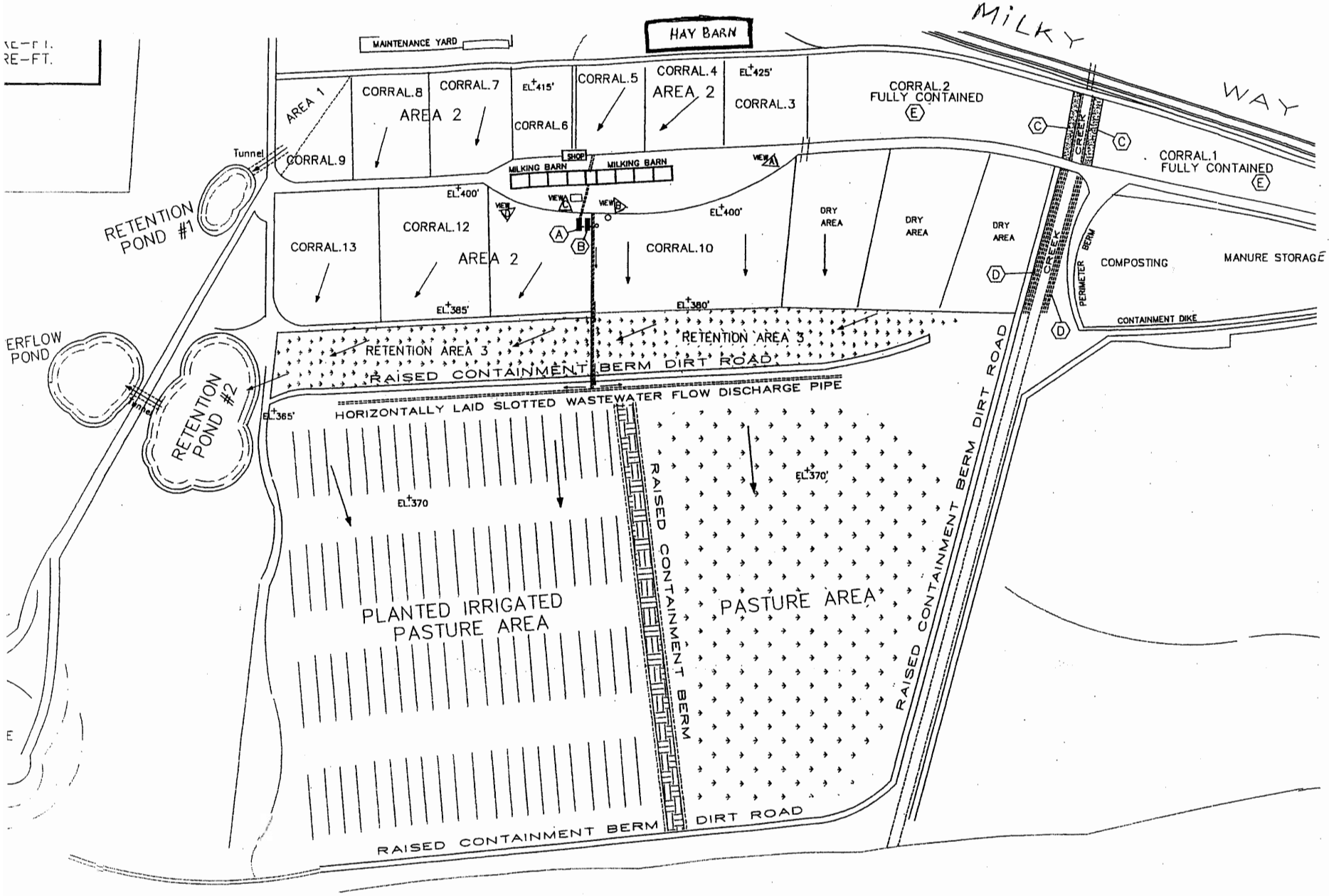
μ is the arithmetic mean of the observed values; and

n is the number of samples.

Toxicity Reduction Evaluation (TRE) is a study conducted in a step-wise process designed to identify the causative agents of effluent or ambient toxicity, isolate the sources of toxicity, evaluate the effectiveness of toxicity control options, and then confirm the reduction in toxicity. The first steps of the TRE consist of the collection of data relevant to the toxicity, including additional toxicity testing, and an evaluation of facility operations and maintenance practices, and best management practices. A Toxicity Identification Evaluation (TIE) may be required as part of the TRE, if appropriate. (A TIE is a set of procedures to identify the specific chemical(s) responsible for toxicity. These procedures are performed in three phases (characterization, identification, and confirmation) using aquatic organism toxicity tests.)



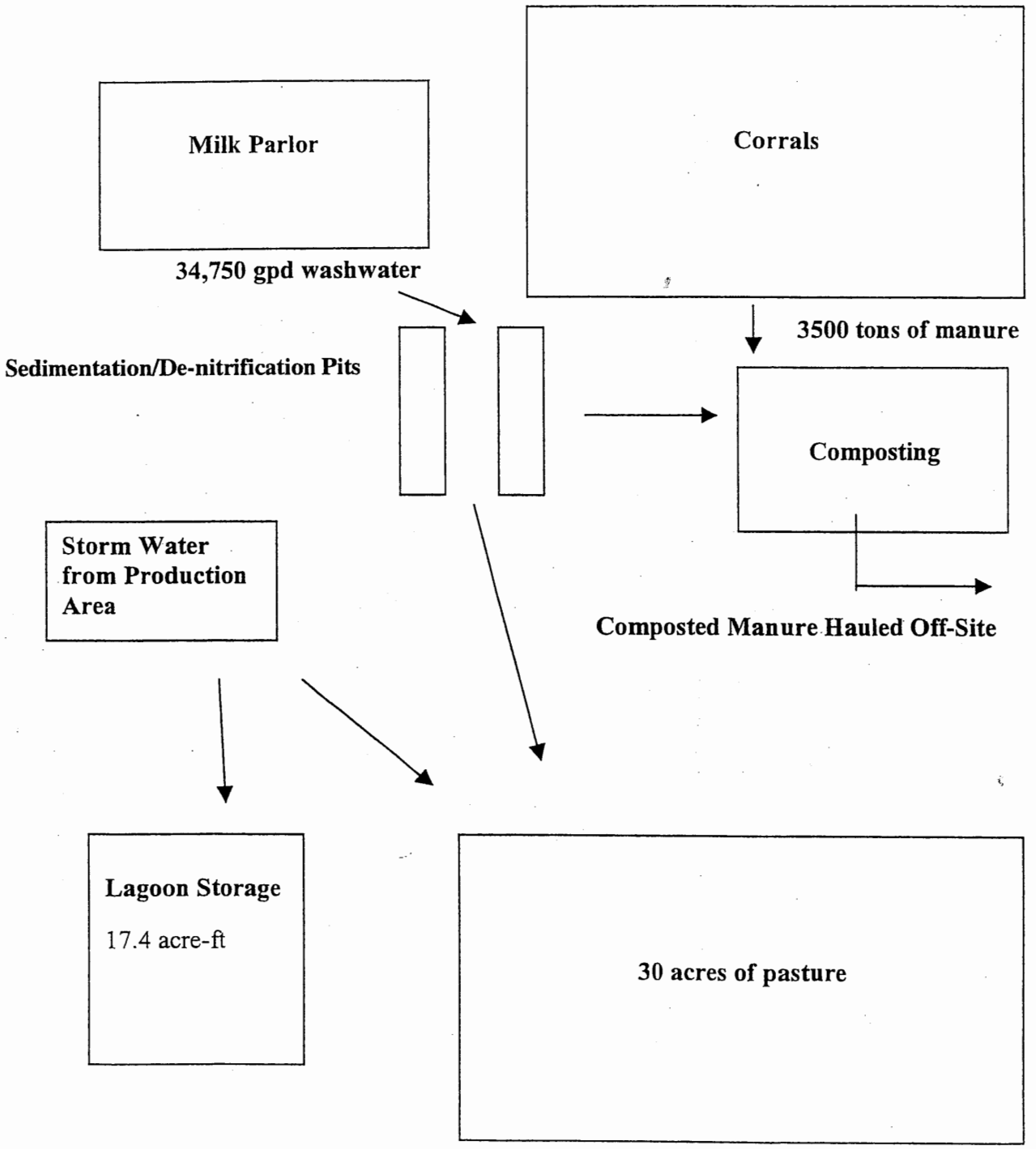
FRANK KONYN DAIRY
VICINITY MAP



FRANK KONYN DAIRY
FACILITY DIAGRAM

FRANK KONYN DAIRY

Wastewater Flow Schematic



ATTACHMENT D –STANDARD PROVISIONS

I. STANDARD PROVISIONS – PERMIT COMPLIANCE

A. Duty to Comply

1. The Discharger must comply with all of the conditions of this Order. Any noncompliance constitutes a violation of the Clean Water Act (CWA) and the California Water Code and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. (40 C.F.R. § 122.41(a).)

2. The Discharger shall comply with effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, even if this Order has not yet been modified to incorporate the requirement. (40 C.F.R. § 122.41(a)(1).)

B. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a Discharger in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Order. (40 C.F.R. § 122.41(c).)

C. Duty to Mitigate

The Discharger shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this Order that has a reasonable likelihood of adversely affecting human health or the environment. (40 C.F.R. § 122.41(d).)

D. Proper Operation and Maintenance

The Discharger shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of this Order. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems that are installed by a Discharger only when necessary to achieve compliance with the conditions of this Order. (40 C.F.R. § 122.41(e).)

E. Property Rights

1. This Order does not convey any property rights of any sort or any exclusive privileges. (40 C.F.R. § 122.41(g).)

2. The issuance of this Order does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations. (40 C.F.R. § 122.5(c).)

F. Inspection and Entry

The Discharger shall allow the Regional Water Board, State Water Board, United States Environmental Protection Agency (USEPA), and/or their authorized representatives (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents, as may be required by law, to (40 C.F.R. § 122.41(i); Wat. Code, § 13383):

1. Enter upon the Discharger's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this Order (40 C.F.R. § 122.41(i)(1));

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order (40 C.F.R. § 122.41(i)(2));

3. Inspect and photograph, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order (40 C.F.R. § 122.41(i)(3)); and

4. Sample or monitor, at reasonable times, for the purposes of assuring Order compliance or as otherwise authorized by the CWA or the Water Code, any substances or parameters at any location. (40 C.F.R. § 122.41(i)(4).)

G. Bypass

1. Definitions

   a. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. (40 C.F.R. § 122.41(m)(1)(i).)

   b. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities, which causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production. (40 C.F.R. § 122.41(m)(1)(ii).)

2. Bypass not exceeding limitations. The Discharger may allow any bypass to occur which does not cause exceedances of effluent limitations, but only if it is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions listed in Standard Provisions – Permit Compliance I.G.3, I.G.4, and I.G.5 below. (40 C.F.R. § 122.41(m)(2).)

3. Prohibition of bypass. Bypass is prohibited, and the Regional Water Board may take enforcement action against a Discharger for bypass, unless (40 C.F.R. § 122.41(m)(4)(i)):

   a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage (40 C.F.R. § 122.41(m)(4)(i)(A));

   b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance (40 C.F.R. § 122.41(m)(4)(i)(B)); and

   c. The Discharger submitted notice to the Regional Water Board as required under Standard Provisions – Permit Compliance I.G.5 below. (40 C.F.R. § 122.41(m)(4)(i)(C).)

4. The Regional Water Board may approve an anticipated bypass, after considering its adverse effects, if the Regional Water Board determines that it will meet the three conditions listed in Standard Provisions – Permit Compliance I.G.3 above. (40 C.F.R. § 122.41(m)(4)(ii).)

5. Notice

   a. Anticipated bypass. If the Discharger knows in advance of the need for a bypass, it shall submit a notice, if possible at least 10 days before the date of the bypass. (40 C.F.R. § 122.41(m)(3)(i).)

   b. Unanticipated bypass. The Discharger shall submit notice of an unanticipated bypass as required in Standard Provisions - Reporting V.E below (24-hour notice). (40 C.F.R. § 122.41(m)(3)(ii).)

H. Upset

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the Discharger. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. (40 C.F.R. § 122.41(n)(1).)

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of Standard Provisions – Permit Compliance I.H.2 below are met. No determination made during administrative review of claims that noncompliance was

caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review. (40 C.F.R. § 122.41(n)(2).).

2. Conditions necessary for a demonstration of upset. A Discharger who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that (40 C.F.R. § 122.41(n)(3)):

   a. An upset occurred and that the Discharger can identify the cause(s) of the upset (40 C.F.R. § 122.41(n)(3)(i));

   b. The permitted facility was, at the time, being properly operated (40 C.F.R. § 122.41(n)(3)(ii));

   c. The Discharger submitted notice of the upset as required in Standard Provisions – Reporting V.E.2.b below (24-hour notice) (40 C.F.R. § 122.41(n)(3)(iii)); and

   d. The Discharger complied with any remedial measures required under Standard Provisions – Permit Compliance I.C above. (40 C.F.R. § 122.41(n)(3)(iv).)

3. Burden of proof. In any enforcement proceeding, the Discharger seeking to establish the occurrence of an upset has the burden of proof. (40 C.F.R. § 122.41(n)(4).)

II. STANDARD PROVISIONS – PERMIT ACTION

A. General

This Order may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Discharger for modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any Order condition. (40 C.F.R. § 122.41(f).)

B. Duty to Reapply

If the Discharger wishes to continue an activity regulated by this Order after the expiration date of this Order, the Discharger must apply for and obtain a new permit. (40 C.F.R. § 122.41(b).)

C. Transfers

This Order is not transferable to any person except after notice to the Regional Water Board. The Regional Water Board may require modification or revocation and reissuance of the Order to change the name of the Discharger and incorporate such other requirements as may be necessary under the CWA and the Water Code. (40 C.F.R. § 122.41(l)(3); § 122.61.)

III. STANDARD PROVISIONS – MONITORING

A. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. (40 C.F.R. § 122.41(j)(1).)

B. Monitoring results must be conducted according to test procedures under Part 136 or, in the case of sludge use or disposal, approved under Part 136 unless otherwise specified in Part 503 unless other test procedures have been specified in this Order. (40 C.F.R. § 122.41(j)(4); § 122.44(i)(1)(iv).)

IV. STANDARD PROVISIONS – RECORDS

A. Except for records of monitoring information required by this Order related to the Discharger's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by Part 503), the Discharger shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this Order, and records of all data used to complete the application for this Order, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Regional Water Board Executive Officer at any time. (40 C.F.R. § 122.41(j)(2).)

B. Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements (40 C.F.R. § 122.41(j)(3)(i));

2. The individual(s) who performed the sampling or measurements (40 C.F.R. § 122.41(j)(3)(ii));

3. The date(s) analyses were performed (40 C.F.R. § 122.41(j)(3)(iii));

4. The individual(s) who performed the analyses (40 C.F.R. § 122.41(j)(3)(iv));

5. The analytical techniques or methods used (40 C.F.R. § 122.41(j)(3)(v)); and

6. The results of such analyses. (40 C.F.R. § 122.41(j)(3)(vi).)

C. Claims of confidentiality for the following information will be denied (40 C.F.R. § 122.7(b)):

1. The name and address of any permit applicant or Discharger (40 C.F.R. § 122.7(b)(1)); and

2. Permit applications and attachments, permits and effluent data. (40 C.F.R. § 122.7(b)(2).)

V. STANDARD PROVISIONS – REPORTING

A. Duty to Provide Information

The Discharger shall furnish to the Regional Water Board, State Water Board, or USEPA within a reasonable time, any information which the Regional Water Board, State Water Board, or USEPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order or to determine compliance with this Order. Upon request, the Discharger shall also furnish to the Regional Water Board, State Water Board, or USEPA copies of records required to be kept by this Order. (40 C.F.R. § 122.41(h); Wat. Code, § 13267.)

B. Signatory and Certification Requirements

1. All applications, reports, or information submitted to the Regional Water Board, State Water Board, and/or USEPA shall be signed and certified in accordance with Standard Provisions – Reporting V.B.2, V.B.3, V.B.4, and V.B.5 below. (40 C.F.R. § 122.41(k).)

2. All permit applications shall be signed by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. (40 C.F.R. § 122.22(a)(1).)

3. All reports required by this Order and other information requested by the Regional Water Board, State Water Board, or USEPA shall be signed by a person described in Standard Provisions – Reporting V.B.2 above, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

    a. The authorization is made in writing by a person described in Standard Provisions – Reporting V.B.2 above (40 C.F.R. § 122.22(b)(1));

    b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of

equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) (40 C.F.R. § 122.22(b)(2)); and

c. The written authorization is submitted to the Regional Water Board and State Water Board. (40 C.F.R. § 122.22(b)(3).)

4. If an authorization under Standard Provisions – Reporting V.B.3 above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Standard Provisions – Reporting V.B.3 above must be submitted to the Regional Water Board and State Water Board prior to or together with any reports, information, or applications, to be signed by an authorized representative. (40 C.F.R. § 122.22(c).)

5. Any person signing a document under Standard Provisions – Reporting V.B.2 or V.B.3 above shall make the following certification:

   "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations." (40 C.F.R. § 122.22(d).)

C. Monitoring Reports

1. Monitoring results shall be reported at the intervals specified in the Monitoring and Reporting Program (Attachment E) in this Order. (40 C.F.R. § 122.22(l)(4).)

2. Monitoring results must be reported on a Discharge Monitoring Report (DMR) form or forms provided or specified by the Regional Water Board or State Water Board for reporting results of monitoring of sludge use or disposal practices. (40 C.F.R. § 122.41(l)(4)(i).)

3. If the Discharger monitors any pollutant more frequently than required by this Order using test procedures approved under Part 136 or, in the case of sludge use or disposal, approved under Part 136 unless otherwise specified in Part 503, or as specified in this Order, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Regional Water Board. (40 C.F.R. § 122.41(l)(4)(ii).)

4. Calculations for all limitations, which require averaging of measurements, shall utilize an arithmetic mean unless otherwise specified in this Order. (40 C.F.R. § 122.41(l)(4)(iii).)

D. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this Order, shall be submitted no later than 14 days following each schedule date. (40 C.F.R. § 122.41(l)(5).)

E. Twenty-Four Hour Reporting

1. The Discharger shall report any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the Discharger becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the Discharger becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. (40 C.F.R. § 122.41(l)(6)(i).)

2. The following shall be included as information that must be reported within 24 hours under this paragraph (40 C.F.R. § 122.41(l)(6)(ii)):

   a. Any unanticipated bypass that exceeds any effluent limitation in this Order. (40 C.F.R. § 122.41(l)(6)(ii)(A).)

   b. Any upset that exceeds any effluent limitation in this Order. (40 C.F.R. § 122.41(l)(6)(ii)(B).)

3. The Regional Water Board may waive the above-required written report under this provision on a case-by-case basis if an oral report has been received within 24 hours. (40 C.F.R. § 122.41(l)(6)(iii).)

F. Planned Changes

The Discharger shall give notice to the Regional Water Board as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required under this provision only when (40 C.F.R. § 122.41(l)(1)):

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in section 122.29(b) (40 C.F.R. § 122.41(l)(1)(i)); or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this Order. (40 C.F.R. § 122.41(l)(1)(ii).)

3. The alteration or addition results in a significant change in the Discharger's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan. (40 C.F.R.§ 122.41(l)(1)(iii).)

G. Anticipated Noncompliance

The Discharger shall give advance notice to the Regional Water Board or State Water Board of any planned changes in the permitted facility or activity that may result in noncompliance with General Order requirements. (40 C.F.R. § 122.41(l)(2).)

H. Other Noncompliance

The Discharger shall report all instances of noncompliance not reported under Standard Provisions – Reporting V.C, V.D, and V.E above at the time monitoring reports are submitted. The reports shall contain the information listed in Standard Provision – Reporting V.E above. (40 C.F.R. § 122.41(l)(7).)

I. Other Information

When the Discharger becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Regional Water Board, State Water Board, or USEPA, the Discharger shall promptly submit such facts or information. (40 C.F.R. § 122.41(l)(8).)

VI. STANDARD PROVISIONS – ENFORCEMENT

A. The Regional Water Board is authorized to enforce the terms of this permit under several provisions of the Water Code, including, but not limited to, sections 13385, 13386, and 13387.

VII. ADDITIONAL PROVISIONS – NOTIFICATION LEVELS

A. Non-Municipal Facilities

Existing manufacturing, commercial, mining, and silvicultural Dischargers shall notify the Regional Water Board as soon as they know or have reason to believe (40 C.F.R. § 122.42(a)):

1. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in this Order, if that discharge will exceed the highest of the following "notification levels" (40 C.F.R. § 122.42(a)(1)):

    a. 100 micrograms per liter (µg/L) (40 C.F.R. § 122.42(a)(1)(i));

b. 200 µg/L for acrolein and acrylonitrile; 500 µg/L for 2,4-dinitrophenol and 2-methyl-4,6-dinitrophenol; and 1 milligram per liter (mg/L) for antimony (40 C.F.R. § 122.42(a)(1)(ii));

c. Five (5) times the maximum concentration value reported for that pollutant in the Report of Waste Discharge (40 C.F.R. § 122.42(a)(1)(iii)); or

d. The level established by the Regional Water Board in accordance with section 122.44(f). (40 C.F.R. § 122.42(a)(1)(iv).)

2. That any activity has occurred or will occur that would result in the discharge, on a non-routine or infrequent basis, of any toxic pollutant that is not limited in this Order, if that discharge will exceed the highest of the following "notification levels" (40 C.F.R. § 122.42(a)(2)):

a. 500 micrograms per liter (µg/L) (40 C.F.R. § 122.42(a)(2)(i));

b. 1 milligram per liter (mg/L) for antimony (40 C.F.R. § 122.42(a)(2)(ii));

c. Ten (10) times the maximum concentration value reported for that pollutant in the Report of Waste Discharge (40 C.F.R. § 122.42(a)(2)(iii)); or

d. The level established by the Regional Water Board in accordance with section 122.44(f). (40 C.F.R. § 122.42(a)(2)(iv).)

Attachment E – Monitoring and Reporting Program

Table of Contents

Attachment E – Monitoring and Reporting Program (MRP) 2
I. General Monitoring Provisions 2
II. Monitoring Locations 4
III. Influent Monitoring Requirements (Not Applicable) ..... **Error! Bookmark not defined.**
IV. Effluent Monitoring Requirements (Not applicable) ..... **Error! Bookmark not defined.**
V. Whole Effluent Toxicity Testing Requirements (Not applicable) ..... **Error! Bookmark not defined.**
VI. Land Discharge Monitoring Requirements (not applicable) ..... **Error! Bookmark not defined.**
VII. Reclamation Monitoring Requirements (not applicable) ..... **Error! Bookmark not defined.**
VIII. Receiving Water Monitoring Requirements 4
B. Monitoring Location 1 (Konyn Well) 4
IX. Other Monitoring Requirements 5
X. Reporting Requirements 6
A. General Monitoring and Reporting Requirements 6
B. Annual Report 7
C. Self Monitoring Reports 8
D. Additional Record Keeping Requirements Specific to CAFOs 9
E. Self Monitoring Form 10
F. Other Reports ..... **Error! Bookmark not defined.**
Monitoring and Reporting Form 11

LIST OF TABLES

Table 1. Groundwater Monitoring Stations 4
Table 2. Groundwater Monitoring Requirements 5
Table 3. Monitoring and Reporting Schedule 8
Table 4. Regional Board Address 9

ATTACHMENT E – MONITORING AND REPORTING PROGRAM (MRP)

The Code of Federal Regulations (CFR) at 40 CFR 122.48 requires that all NPDES permits specify monitoring and reporting requirements. CWC sections 13267 and 13383 authorize the Regional Water Quality Control Board to require technical and monitoring reports. This Monitoring and Reporting Program establishes monitoring and reporting requirements to implement the Federal and California regulations.

40 CFR 122.42(e)(4) establishes annual reporting requirements for CAFOs regarding current animal counts, estimated annual amount of wastes generated, manure handling, the land application of manure, wastewater irrigation, and the nutrient management plan (NMP). These monitoring requirements have been established in this Monitoring and Reporting Program (MRP).

40 CFR 122.42 (e)(3) establishes requirements relating to the transfer of manure or process wastewater to other persons. The Discharger must retain records of the date, recipient name and address, and the approximate amount of manure, or process wastewater transferred to another person. These monitoring requirements have been established in this MRP.

40 CFR 412.37 (a)(1) establishes requirements for visual inspections of the CAFO production area. These monitoring requirements have been established in Section IV.A. of this MRP.

40 CFR 412.37 (c) establishes recordkeeping requirements for the land application of manure. These monitoring requirements have been established in this MRP.

I. GENERAL MONITORING PROVISIONS

A. Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring locations specified below and, unless otherwise specified, before the monitored flow joins or is diluted by any other waste stream, body of water, or substance. Monitoring locations shall not be changed without notification to and the approval of this Regional Board.

B. Monitoring must be conducted according to United States Environmental Protection Agency (U.S. EPA) test procedures approved under Title 40, United States Code of Federal Regulations (CFR), Part 136, *Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act* as amended, unless other test procedures are specified in Order No. R9-2007-0053 and /or this MRP and/or this Regional Board.

C. A copy of the monitoring reports signed and certified as required by Reporting Requirement V.B. of Attachment D of Order No. R9-2007-0053, shall be submitted to the Regional Board at the address listed in Section V.C.6 of this Monitoring and Reporting Program.

D. The Discharger shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by Order No. R9-2007-0053 and this Monitoring and Reporting Program, records of all data used to complete the application for Order No. R9-2007-0053 and all other records specified in this Monitoring and Reporting Program. Records shall be maintained for a minimum of five years from the date of the sample, measurement, observation, report, or application. This period may be extended by request of this Regional Board by the U.S. EPA at any time.

E. All analyses shall be performed in a laboratory certified to perform such analyses by the California Department of Health Services to perform such analyses or a laboratory approved by this Regional Board.

F. Records of monitoring information shall include information required under Standard Provision, Attachment D, Section IV.

G. All monitoring instruments and devices used by the discharger to fulfill the prescribed monitoring program shall be properly maintained and calibrated as necessary to ensure their continued accuracy. All flow measurement devices shall be calibrated at least once per year to ensure continued accuracy of the devices.

H. Monitoring results shall be reported at intervals in a manner specified in Order No. R9-2007-0053 or in this Monitoring and Reporting Program.

I. This Monitoring and Reporting Program may be modified by this Regional Board, as appropriate.

II. MONITORING LOCATION

The Discharger shall establish the monitoring location listed in *Table 1. Groundwater Monitoring Stations* to demonstrate compliance with the effluent limitations, discharge specifications, and other requirements in this Order:

Table 1. Groundwater Monitoring Station

Well Monitoring Station	Monitoring Location Name	Monitoring Location Description
001	Konyn Well	**Konyn Well**

III. RECEIVING WATER MONITORING REQUIREMENTS

A. Ground Water Monitoring Requirements. To determine compliance with water quality objectives in the underlying aquifer, ground water monitoring must be conducted according to the following procedures unless this Regional Board approves alternative procedures:

1. The well must be pumped for a minimum of three volumes of the well casing before the sample is taken. If the well casing volume is not known, then three hundred gallons must be pumped before a sample is taken.

2. The grab sample must be collected in a container approved by the laboratory doing the analysis. The containers must be appropriate for collecting nitrate, total dissolved solids, sodium, magnesium and calcium samples.

3. The samples must be preserved in a container cooled to 4° Celsius.

4. The sample must be analyzed within 48-hours from the time the sample was taken.

5. The sample must be taken each year between September 1st and October 31st.

6. The ground water sample shall not be diluted by any other waste stream, body of water, or substance.

B. Monitoring Location 001 (Konyn Well)

1. The Discharger shall monitor the groundwater at 001 in accordance with *Table 2. Groundwater Monitoring Requirements.*

Table 2. Groundwater Monitoring Requirements

Parameter	Units	Sample Type	Minimum Sampling Frequency	Required Test Method
Total Dissolved Solids	mg/L	Grab	Annual	[1]
Nitrate as N	mg/L	Grab	Annual	[1]
Sodium	mg/L	Grab	Once per 5 years	[1]
Magnesium	mg/L	Grab	Once per 5 years	[1]
Calcium	mg/L	Grab	Once per 5 years	[1]
Sodium Adsorption Ratio (adjusted)	----	Calculated	Once per 5 years	Calculated

[1] As specified in 40 CFR 136.3

IV. OTHER MONITORING REQUIREMENTS

A. Visual Inspections

40 CFR 412.37 requires visual inspections of the CAFO production area. At a minimum, the following visual observations shall be made and recorded.

1. Daily inspections shall be conducted of all water lines, including drinking water and wastewater.

2. Weekly inspections shall be conducted of all storm water diversion devices, runoff diversion structures, and containment structures.

3. Weekly inspections shall be conducted of all manure and process wastewater impoundments. The inspection shall note the level in liquid impoundments as indicated by the required depth marker.

B. Manure Monitoring

Annually, the Discharger shall analyze manure for nutrient content (nitrogen and phosphorus) and submit the results in the annual report.

C. Regional Watershed Monitoring

The Discharger shall participate and coordinate with state and local agencies and other dischargers in the San Diego Region in development and implementation of a regional monitoring program as directed by the Regional Board. The intent of a regional monitoring program is to maximize the efforts of all monitoring partners using a more cost-effective monitoring design and to best utilize the pooled resources of the region.

D. Special Studies

Core monitoring may include intake monitoring, effluent monitoring, receiving water monitoring, and groundwater monitoring. This Order includes core monitoring for groundwater. In addition to core monitoring requirements, the Discharger may be required to conduct additional monitoring. Special studies are intended to be short-term and designed to address specific research or management issues that are not addressed by the routine core monitoring program. The Discharger shall implement special studies as directed by this Regional Board.

V. REPORTING REQUIREMENTS

A. General Monitoring and Reporting Requirements

1. The Discharger shall comply with all Standard Provisions related to monitoring, reporting, and recordkeeping and the general monitoring and reporting requirements below. In cases where the monitoring and reporting requirements contained within this section, and the Standard Provisions conflict, the more stringent of the two requirements apply.

2. Annually, the discharger shall evaluate the data collected pursuant to Monitoring and Reporting Program Attachment E, and determine if the data indicates that the discharge has caused or contributed to an exceedance of applicable water quality objectives or impairment of water quality needed for designated beneficial uses of the Las Lomas Muertas Hydrologic Subarea (905.32) of the San Pasqual Hydrologic Area (905.30) of the San Dieguito Hydrologic Unit (905.00).

3. The discharger shall file a new Report of Waste Discharge not less than 180 days prior to the following:

    a. Addition of any industrial waste to the discharge or the addition of a new process or product resulting in a change in the character of the wastes.

    b. Significant change in disposal method (e.g. change in the method of treatment which would significantly alter the nature of the waste).

    c. Significant change in disposal area (e.g. moving the discharge to a disposal area significantly removed from the original area, potentially causing different water quality or nuisance problems).

    d. Increase in flow beyond that specified in this Order.

    e. Other circumstances, which result in a material change in character, amount, or location or the waste discharge.

4. The discharger must notify this Regional Board, in writing, at least 30 days in advance of any proposed transfer of this facility to a new discharger. The notice must include a written agreement between the existing and new discharger containing a specific date for the transfer of this Order's responsibility and coverage between the current discharger and the new discharger. This agreement shall include an acknowledgment that the existing discharger is liable for violations up to the transfer date and that the new discharger is liable after the transfer date.

5. Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this Order shall be available for public inspection at the offices of the California Regional Water Quality Control Board, San Diego Region and the United States Environmental Protection Agency, Region IX. As required by the Clean Water Act, Reports of Waste Discharge, this Order, and effluent monitoring data shall not be considered confidential.

B. Annual Report

The Discharger shall submit an annual report containing the following:

1. All information specified in 40 CFR 122.42 (e)(4), including:

   a. The number of mature milking cows, dairy heifers, dry cows, and calves.

   b. Estimated amount of total manure and process wastewater generated by the facility in the calendar year.

   c. Estimated amount of total manure and process wastewater transferred to other persons by the facility in the calendar year.

   d. Summary of all manure and process wastewater discharges from the production area that have occurred in the calendar year, including date, time, and approximate volume.

   e. A statement indicating whether the current version of the facility's NMP is up-to-date and certified by a nutrient management planner or other authorized individual.

2. Ground water monitoring results, as specified in Part III.A. of this MRP.

3. Manure monitoring results, as specified in Section IV.B of this MRP.

Results of the reporting requirements above shall be summarized and submitted on the Self Monitoring Form, located in Section V.E. of this MRP. The correct completion and submittal of the Self Monitoring Form, with all specified attachments, shall satisfy the annual reporting requirements specified in this Section.

C. Self Monitoring Reports

1. The Discharger shall submit annual Self Monitoring Reports including the results of all required monitoring and monitoring conducted in addition to the minimum required monitoring using USEPA approved test methods or other test methods specified in this MRP. Annual reports shall be due on February 1st following each annual period.

2. Monitoring periods for all required monitoring shall commence according to *Table 3. Monitoring and Reporting Schedule.*

Table 3. Monitoring and Reporting Schedule

Sampling Frequency	Monitoring Period Starts On	Monitoring Period	Reporting Due with SMR on
Annual	January 1, 2007	January 1 – December 31	February 1
1/ 5 years	January 1, 2007	During the term of the permit	February 1, 2012

Note: The first annual report shall cover July 1, 2007 through December 31, 2007 and is due on February 1, 2008. Subsequent annual reports shall cover the entire calendar year and are due on February 1 of each year thereafter.

3. The Discharger shall report with each sample result the applicable Minimum Level (ML) and the laboratory current Method Detection Limit (MDL) as determined by the procedure in 40 CFR Part 136.

4. The Discharger shall submit data on a copy of the Monitoring and Reporting Form provided in Section V.E. of this Monitoring and Reporting Program. Additional data, and data required to be submitted as an attachment to the reporting form must be arranged in tabular form so that the specified information is readily discernible. The data shall be summarized in such a manner as to clearly illustrate whether the facility is operating in compliance with Waste Discharge Requirements.

6. The Discharger shall attach a cover letter to its Self Monitoring Report. The information contained in the cover letter shall clearly identify violations of the WDRs, discuss corrective actions taken or planned and the proposed time schedule of corrective actions. Identified violations should include a description of the requirement that was violated and a description of the violation. Monitoring results must be reported on forms approved by this Regional Board. Self Monitoring Reports shall be submitted to the addresses listed in *Table 4. Regional Board Address.*

Table 4. Regional Board Address

Submit monitoring reports to:
California Regional Water Quality Control Board San Diego Region 9174 Sky Park Court, Suite 100 San Diego, California 92123-4340 Attention: Southern Core Regulatory Unit

Notifications required to be provided to this Regional Board shall be made to:

Telephone – (858) 467-2952 or
Facsimile – (858) 571-6972

D. Additional Record Keeping Requirements Specific to CAFOs

40 CFR 122 and 412 establish record keeping requirements specific to CAFOs. The Discharger is not required to submit the following information to the Regional Board, however the Discharger must maintain these records on-site and available for review by a designated U.S. EPA or Regional Board representative.

1. As specified in 40 CFR 122.42 (e)(3), the Discharger shall retain the following records for the transfer of manure or process wastewater to other persons. These records must be maintained on-site for a minimum of 5 years:

    a. Date of transfer.

    b. Recipient's name (or company name).

    c. Recipient's address (or company address).

    d. The approximate quantity of manure, or process wastewater transferred.

2. As specified in 40 CFR 412.37 (b), the Discharger shall retain the following records for a minimum of 5 years:

    a. Records documenting the visual inspections specified in Section IV.A. of this MRP.

    b. Records documenting any actions taken to correct deficiencies found as a result of the visual inspections specified in Section IV.A. of this MRP.

    c. Records of mortalities management practices.

    d. Records documenting the current design of any manure storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity.

e. Records of the date, time, and estimated volume of any overflows that occurred at the facility.

E. Self Monitoring Form

As specified in section V.C.4 of this Monitoring and Reporting Program, the Discharger shall submit data to the Regional Board using a copy of the Monitoring and Reporting Form provided on the next seven pages of this document. Additional monitoring data should be submitted as an attachment to the Monitoring and Reporting Form.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
REGION 9, SAN DIEGO REGION
MONITORING AND REPORTING FORM
ORDER NO. R9-2007-0053
NPDES PERMIT NO. CA0109053

Annual Self Monitoring Report for January 1, _____ to December 31, _____ Due by February 1st of each year.

Date___/___/_____

Directions:

1. Respond to all questions. If a question does not pertain to your facility, write "Not Applicable" in the space provided.
2. Attach additional pages if necessary to further demonstrate compliance with waste discharge requirements or to answer any questions in greater detail.
3. Make copies of this form for annual reporting, identifying the monitoring period on the line at the tope of the page, and save the original as a master copy for future reporting.

Name and Address Changes:

Note any changes or corrections to the following:

1. Name of Facility: Frank Konyn Dairy
   Address: 15777 Old Milky Way
   Escondido, CA 92027
   Phone Number: (760) 746-6319

2. Name of Owner: Mr. Frank J. Konyn
   Address: 2165 Oro Verde
   Escondido, CA 92027
   Phone Number: (760) 746-6319

3. Facility Contact: Mr. Frank J. Konyn
   Phone Number: (760) 746-6319

Animal Counts: **January 1, _____ to December 31, _____**

Report the maximum number of animals during the year.

1. Milking cows _____
2. Heifers _____
3. Dry cows _____
4. Calves _____

Manure and Wastewater Disposal:

Report the total quantity of manure produced during the year and how the manure was disposed of during the year as of December 31st.

1. Total quantity of solid manure produced during the year: _____ cu. yds.
2. Total quantity of solid manure disposed on land owned or under the control of the dairy owner/operator: _____ cu. yds.

   Number of acres manure applied to: _____ acres

   Type of crop(s) grown: _____
3. Total quantity of solid manure sold or given away to public: _____ cu. yds.
4. Manure stockpiled on-site on December 31 (of this reporting period): _____ cu. yds.
5. Total volume of wastewater used for land irrigation: _____ ac.-ft.

   Number of acres irrigated with wastewater: _____ acres

   Type of crop(s) grown: _____

Waste Management Program: **January 1, _____ to December 31, _____**

The Discharger shall describe in detail any changes to the waste collection, management or disposal system during the past year. If physical changes have occurred, submit a map showing the new facilities. Include volumes, square feet, etc...

- ❑ No changes to the waste management facilities and operations occurred during the year, or
- ❑ The following changes have been made (attach additional sheets if necessary):

Ground Water Monitoring:

Complete the following and attach a copy of the laboratory's analysis sheet.

1. Was the groundwater monitoring conducted according to the procedures prescribed in Part III of the Monitoring and Reporting Program?
   - ❑ Yes
   - ❑ No, the procedures were modified as follows (Explain Why):
2. Fill in the appropriate sampling information (Sample must be taken between September 1 and October 31):

   Date sampled: _____
   Time sampled: _____
   Name of individual who performed sampling: _____
   Date analyses were performed: _____
3. Fill in the appropriate tables with the groundwater sampling data:

Sample Point 001 (Konyn Well)

Constituent	Sample Type	Minimum Sampling Frequency	Results	Units
Total Dissolved Solids	Grab	Annual		mg/L
Nitrate (N)	Grab	Annual		mg/L
Sodium	Grab	Once per 5 years		mg/L
Magnesium	Grab	Once per 5 years		mg/L
Calcium	Grab	Once per 5 years		mg/L
Sodium Adsorption Ration (adjusted)	Calculated	Once per 5 years		Units

Manure Monitoring:

Complete the following and attach a copy of the laboratory's analysis sheet(s).

1. Was the manure monitoring conducted according to the procedures prescribed in Section IV.B. of the Monitoring and Reporting Program?

   ❑ Yes

   ❑ No, please explain.

2. Fill in the appropriate sampling information:

   Date sampled: _____
   Time sampled: _____
   Name of individual who performed sampling: _____
   Date analyses were performed: _____

Soil Monitoring (required once over the life of the permit, must be submitted at least one year prior to the expiration date of the permit):

Complete the following and attach a copy of the laboratory's analysis sheet(s).

1. Was the soil monitoring conducted according to the procedures prescribed in Section IV.C. of the Monitoring and Reporting Program?

   ❑ Yes

   ❑ No, please explain.

2. Fill in the appropriate sampling information:

   Date sampled: _____
   Time sampled: _____
   Name of individual who performed sampling: _____
   Date analyses were performed: _____

Monitoring and Reporting Form Page 5 of 7

Compliance Statement:

The Discharger shall discuss the dairy's compliance with Order No. R9-2007-0053. Review compliance statements below and check the appropriate box. You should include any pertinent information and describe any additional management measures or corrective actions taken or planned to achieve full compliance with the waste discharge requirements.

Compliance Statement	Yes	No
Were all monitoring instruments and devices used to fulfill the monitoring program properly maintained and calibrated to ensure their continued accuracy? IF NO, PLEASE EXPLAIN.		
Were all discharges of wastes, including windblown spray and runoff of effluent applied for irrigation, to lands which have been specifically described to the Regional Board and for which valid waste discharge requirements are in force? If no, please explain.		
Did the waste water or waste solids disposal operation cause any unusual odors or other nuisances beyond the limits of the dairy property? If yes, please explain.		
Were all facilities and systems of waste disposal (and related appurtenances), which are installed to achieve compliance with the conditions of the Order properly operated and maintained? If no, please explain.		
Were manured areas maintained to prevent nuisance conditions and managed to minimize infiltration of water into underlying soils, If no, please explain.		
To the best of your knowledge, was manure hauled off the dairy property properly disposed of to ensure that the water quality is not adversely affected in the area?		
Was the application of manure and wastewater to the disposal fields controlled by the Discharger to comply with agronomic rates? If no, please explain.		
Was dry manure applied to cultivated croplands incorporated into the soil soon after application? If no, please explain.		
Were animals prevented from entering any surface water within the confined area? If no, please explain.		
Were water levels in the retention ponds sufficiently lowered by October 1st to provide adequate storage capacity prior to the beginning of the wet weather periods? If no, please explain.		
Is an applicable signed and certified NMP, as specified in Section VI of the Order, maintained on-site at the dairy? If no, please explain.		
Are the additional records keeping requirements for CAFOs, specified in Section V.D. of the monitoring and reporting program, being maintained as required? If no, please explain?		

Comments:

Additional Comments:

Certification Statement:

Pursuant to Section V.B. of Attachment D, this report must be signed and certified by the Discharger or a duly authorized representative of that person as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

_____ _____
Signed under Penalty of Perjury Date

_____
Print Name

Monitoring and Reporting Form Page 7 of 7

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
REGION 9, SAN DIEGO REGION

ATTACHMENT F

FACT SHEET

TENTATIVE ORDER NO. R9-2007-0053
NPDES PERMIT NO. CA0109053

TABLE OF CONTENTS

I. Permit Information 3
II. Facility Description 4
A. Description of Wastewater Treatment or Controls 5
B. Discharge Points and Receiving Waters 6
C. Summary of Existing Requirements and Self-Monitoring Report (SMR) Data 6
D. Summary of Report of Waste Discharge (RWD) 7
E. Review of NMP 7
F. Compliance Summary 8
III. Applicable Plans, Policies, and Regulations 8
A. Legal Authorities 8
B. California Code of Regulations 9
C. California Environmental Quality Act (CEQA) 9
D. State and Federal Regulations, Policies, and Plans 9
IV. Rationale For Effluent Limitations and Discharge Specifications 11
A. Discharge Prohibitions 11
B. Technology-Based Effluent Limitations 12
1. Applicable Technology-Based Effluent Limitations (TBELs) 12
C. Water Quality-Based Effluent Limitations (WQBEL) 12
1. Applicable Beneficial Uses and Water Quality Criteria and Objectives 12
2. Determining the Need for WQBEL 12
V. Rationale for Receiving Water Limitations 13
A. Surface Water 13
B. Groundwater 13
VI. Monitoring and Reporting Requirements 13
A. Receiving Water Monitoring 13
1. Surface Water (Not Applicable) 13
2. Groundwater 13
B. Other Monitoring Requirements (IF APPLICABLE) 14
VII. Rationale for Provisions 14
A. Special Provisions 14
1. Nutrient Management Plan (NMP) 14
2. Facility Management 15
3. Flood Protection 15
4. Re-Opener Provisions 15
5. Special Studies and Additional Monitoring Requirements 16
B. Standard Provisions 16
VIII. Public Participation 16
A. Notification of Interested Parties 16
B. Written Comments 17
C. Public Hearing 17
D. Waste Discharge Requirements Petitions 17
E. Information and Copying 18
F. Register of Interested Persons 18

G. Additional Information 18

LIST OF TABLES

Table 1. Facility Information. 4
Table 2. Groundwater Monitoring Wells 6
Table 3. Current Groundwater Monitoring Requirements 6
Table 4. Groundwater Data for Konyn Well 6
Table 5. Beneficial Uses. 11

Attachment F – Fact Sheet

As described in Section II of this Order, this Fact Sheet includes the specific legal requirements and detailed technical rationale that serve as the basis for the requirements of this Order.

I. PERMIT INFORMATION

Frank J. Konyn (hereinafter Discharger) is the owner and operator of Frank Konyn Dairy (hereinafter Discharger) a Large Concentrated Animal Feeding Operation (CAFO).

The facility is located on 100 acres in the NE ¼, of Section 32, T12S, R1W, SBB&M in the Las Lomas Muertas Subarea (905.32) of the San Pasqual Hydrologic Area (905.30) of the San Dieguito Hydrologic Unit (905.00). The closet waterbody is Lake Hodges, a domestic water supply reservoir located approximately 3.5 mile down-gradient of the facility. Domestic supply water from Lake Hodges is supplied to the San Dieguito Water District and to the Santa Fe Irrigation District. The facility is currently regulated under Order No. 2000-163, adopted on November 8, 2000 and expires/expired November 8, 2006.

Administrative information related to the facility is listed in *Table 1. Facility Information.*

Table 1. Facility Information

WDID	**9 000000 228**
File #	**08-0228**
Discharger	**Frank J. Konyn Dairy**
Name of Facility	**Frank Konyn Dairy**
Facility Address	**15777 Old Milky Way**
	Escondido, CA 92027
	San Diego County
Facility Contact, Title and Phone	**Frank J. Konyn, Owner/Operator, (760) 746-6319**
Authorized Person to Sign and Submit Reports	**Frank J. Konyn, Owner, (760) 746-6319**
Mailing Address	**Frank J. Konyn, 2165 Oro Verde, Escondido, CA 92027**
Billing Address	**Frank J. Konyn, 2165 Oro Verde, Escondido, CA 92027**
Type of Facility	**Large CAFO**
Classification	**Minor**
Threat to Water Quality	**2**
Complexity	**C**
Fee Code	**10**
Construction Requirements	**N**
Industry Class	**Standard Industrial Classification (SIC) 0241**
Ownership Type	**PRIV**
Funded	**N**
Pretreatment Program	**N**
Reclamation Requirements	**None**
Baseline Flow	**NA**
Design Flow	**NA**
Waste Type 1	**Non-Hazardous Wastewater**
Waste Type 2	**Non-Hazardous Solid Waste**
Watershed	**San Dieguito**
Waterbody	Section 32, T12S, R1W, SBB&M in the Las Lomas Muertas Subarea (905.32) of the San Pasqual Hydrologic Area (905.30) of the San Dieguito Hydrologic Unit (905.00)
Receiving Water Type	**Groundwater**
Hydrologic Unit	San Dieguito Hydrologic Unit (905.00)

The Discharger filed a report of waste discharge and submitted an application for renewal of its Waste Discharge Requirements (WDRs) and National Pollutant Discharge Elimination System (NPDES) permit on May 2, 2005. On November 15, 2005, the Discharger submitted a Nutrient Management Plan (NMP). A site visit was conducted on April 10, 2007, to observe operations and collect additional data to develop permit limitations and conditions.

II. FACILITY DESCRIPTION

Frank Konyn Dairy is operated as a Concentrated Animal Feeding Operation (CAFO). The facility is located on approximately 100 acres. The milking herd size during the last NPDES inspection

conducted on April 10, 2007 was approximately 695 head. The dairy maintains an additional 60 to 120 head of drystock (not currently milking), and approximately 250 to 500 head of youngstock (under five months), which will become milking cows. The current NPDES Permit limits the milking herd size to a maximum of 695 head. The facility representative stated that he does not believe the herd size will increase significantly in the near future. Further, the facility representative indicated that the number of head remains relatively constant throughout the calendar year.

40 CFR Part 122.23 defines a Large Concentrated Animal Feeding Operation (Large CAFO) as any animal feeding operations that has more than 700 mature dairy cows, whether milked or dry. The current number of milking cows (695), plus the number of dry cows (60 to 120) at the dairy classifies the dairy as a Large CAFO.

Well water (Well No. 1) is the water source for all industrial operations at the facility. Process wastewaters are generated from milking parlor operations and from feed lane flushing. No other wastewaters are produced on-site. The well is located at the east end of the dairy.

Cows are milked in the milking parlor twice a day. The discharger anticipates increasing milking to 3 times per day. The Discharger estimates that a maximum of 50 gallons of wastewater is produced per milking cow per day. The NMP estimates that approximately 50 gallons of wastewater is produced per milking cow per day. After milking, the cows are led back to the corrals and the milking parlor is washed down.

A. Description of Wastewater Treatment or Controls

Wastewater at the dairy is generated from washing of the milking cows and the cleaning operation in the milk barn. The dairy produces approximately 32,500 gallons of wastewater per day based on 50 gallons of wastewater produced per day per cow and an average population of 650 milking cows. The wash water is routed by gravity to two settling pits, which have been designed to remove solid materials from the milk barn wash water thereby reducing the nitrogen content of the wastewater stream. One settling pit is used while the other is cleaned out. The wash water flows by gravity to the first pit, which is used for sedimentation and removal of the solids, and de-nitrification or reduction of total nitrogen. The wash water effluent subsequently flows by gravity to the graded borders (planted irrigated pasture area). The planted irrigated pasture area is 30 acres. The total pasture area on the property is 40 acres.

After settling of the solids and reduction of nitrogen in the tanks, the wash water is directed to the graded borders located south of the dairy. The graded borders have been created to allow a uniform managed application of milk barn wash water to supply nutrients and water to Bermuda Grass crops.

To determine the manure uptake by the Bermuda grass in the irrigated planted area, a soil sample was collected. The soil sample was collected from the irrigated planted area where the de-sedimented and reduced nitrogen content wash water is applied. The analyzed sample was a representative mixture of 20 soil samples collected from the various spots throughout the irrigated area. The test result indicates that the pH, organic nitrogen, ammonia and salt concentration of the sampled area are within the normal range.

There are two wastewater/stormwater runoff retention ponds (#1 and #2) and one overflow pond that accepts water from retention pond #2 located at the west end of the facility. Wastewater and runoff from corrals travels across retention area 3 to retention pond #2. The combined total storage capacity of the retention ponds and overflow pond is approximately 764,620 ft^3. The

wastewater volume generated over 60 days of operation, as well as run off from the production area and manured areas during a 24-hour, 25-year storm event is calculated to be about 260,695 ft^3.

Hay is stored on concrete in a covered Hay Barn at the north end of the facility. Feed and additives are stored in covered bins at the north end of the faclity.

B. Discharge Points and Receiving Waters

Without an adequate NMP, wastewater and contaminated storm water runoff would discharge to Santa Ysabel Creek, a water of the U.S., which is tributary to Lake Hodges. Wastewater and contaminated storm water runoff would also have the potential to adversely impact groundwaters in the Las Lomas Muertas Subarea (905.32) of the San Pasqual Hydrologic Area (905.30), of the San Dieguito Hydrologic Unit (905.00).

C. Summary of Existing Requirements and Self-Monitoring Report (SMR) Data

The current Order (Order No. 2000-163), contains discharge specifications and facility design and operation specifications. No numerical effluent limitations are contained in the current Order.

The current Monitoring and Reporting Program (Order No. 2000-163), contains groundwater monitoring requirements for the one location listed in *Table 2. Groundwater Monitoring Well.*

Table 2. Groundwater Monitoring Well.

Station	Description
1	Konyn Well

Groundwater monitoring requirements and frequencies at the one monitoring location from the current Order are listed in *Table 3. Current Groundwater Monitoring Requirements.*

Table 3. Current Groundwater Monitoring Requirements.

Parameter	Unit	Frequency
Total Dissolved Solids	mg/L	Annual
Nitrate (N)	mg/L	Annual
Sodium	mg/L	Once per 5 years
Magnesium	mg/L	Once per 5 years
Calcium	mg/L	Once per 5 years
Sodium Adsorption Ration (Adjusted)	mg/L	Once per 5 years

Groundwater monitoring data collected from Konyn Well (Monitoring Station 1) and representative monitoring data from the term of the current Order are listed in *Table 4. Groundwater Data for Konyn Well.*

Table 4. Groundwater Data for Konyn Well.

Constituents (units)	Maximum Reported Value[1]	Water Quality Objectives-Groundwater
Total Dissolved Solids (mg/L)	1,430	1,000
Nitrate as N (mg/L)	3.6	----
Sodium (mg/L)	248	60 %

Magnesium (mg/L)	106	----
Calcium (mg/L)	191	----
Sodium Adsorption Ration (adjusted)	No data available	-----

[1] For a time period of two years (from Nov. 2004 to Nov. 2006)

Groundwater monitoring data from the one location showed that the maximum concentration of Total Dissolved Solids (TDS) has exceeded the 1,000 mg/L water quality objective established in the Basin Plan for the area.

D. Summary of Report of Waste Discharge (RWD)

The NPDES permit renewal application requests the renewal of an NPDES permit for a dairy farm with a maximum animal population of 695 milking cows, 120 dry cows, and 500 calves. The NPDES permit renewal application describes the waste management and water quality protection facilities at the Frank Konyn Dairy to include the following:

1. The dairy is permitted for 695 milking cows, 120 dry cows, and 500 calves. The facility utilizes a maximum of 50 gallons per day per milking cow for washing and cleaning purposes. The dairy produces approximately 32,500 gallons of wastewater per day based on 50 gallons of wastewater produced per day per cow based on a average population of 650 milking cows. The dairy also has two surface drainage storage retention ponds, one overflow pond, and one surface drainage retention area that have been used as shown to contain the wash water and storm water runoff. Two settling pits were constructed in the area to the south of the dairy barn. Dairy wash water flows by gravity to the settling pits (de-nitrification pits) where solids settle out and the water then flows by gravity to the graded borders (planted irrigated pasture area). The graded borders are used for the application of milk barn wash water for irrigation and nutrient uptake purposes.

The EPA 2003 CAFO rule [40 CFR 122.42(e)] requires that NPDES permits for all CAFO must include a requirement for the permittee to develop and implement an NMP to achieve effluent limitations and standards. The Discharger submitted a supplemental Nutrient Management Plan (NMP) to the Regional Board on November 15, 2005, prepared by Sierra Engineering.

E. Review of NMP

The U.S. EPA's Proposed Rule (Federal Register Vol. 71, No. 126) requires that the permitting authority 1) review the NMP prior to issuing an individual permit; 2) provide the public opportunity to review and comment on the NMP; and 3) incorporate terms of the NMP into the NPDES permit.

1. The Regional Board has reviewed the NMP for its completeness and sufficiency, and found that the NMP was prepared by a qualified person (Sierra Engineering); that the assumptions used, the calculations performed, and the management practices proposed are reasonable, practicable, and acceptable to this Regional Board. In addition, the Regional Board performed an independent calculation for storage capacity using more conservative assumptions (i.e. 50 gallons vs. 15 gallons wastewater per cow per day; 150 days vs. 60 days of storage duration, etc.), and found that the facility provides adequate storage capacity to contain all wastewater plus storm runoff from a 25-year, 24-hour storm event.

2. The Regional Board will fulfill the requirement of providing the public with an opportunity to review and comment on the NMP by incorporating terms of the NMP in the permit, by notifying the public through Regional Board's meeting agenda and newspaper publication, as well as mailing the draft permit to interested parties and posting it to the Regional Board's website. The public has been provided at least 30 days for review and commenting prior to the scheduled Regional Board meeting.

3. The Regional Board has incorporated the terms from the NMP into the NPDES permit under Section VI.1. According to the EPA 2003 CAFO rule, the NMP must, to the extent applicable, include BMPs and minimum elements established in 40 CFR 122.42(e)(1)(i)-(ix), to achieve compliance with the CAFO effluent limitations established in 40 CFR 142.31(a). The NMP described that wastewater and solid wastes will not be applied to cropland or pastureland within or outside of the property. Wastewater will be disposed of through evaporation which is in contrary with No. 6 above, and manure will be removed from the property for off site disposal. The permit is written based on, and reflects the Discharger's prescribed waste management practices in the NMP. If the Discharger wishes to use waste disposal methods other than those described in the NMP, the Discharger will need to submit an amended NMP to this Regional Board, and either a new or amended NPDES permit will need to be issued by this Regional Board.

   The Regional Board considered the minimum elements established in 40 CFR 122.42(e)(1)(i)-(ix), as well as State Board and Regional Board CAFO policies in establishing NMP requirements in Section VI.1.

F. Compliance Summary

The Regional Board has identified no major compliance issues with this Discharger.

III. APPLICABLE PLANS, POLICIES, AND REGULATIONS

The requirements contained in the tentative Order are based on the requirements and authorities described in this section.

A. Legal Authorities

This Order is issued pursuant to section 402 of the federal Clean Water Act (CWA) and implementing regulations adopted by the U.S. Environmental Protection Agency (USEPA) and Chapter 5.5, Division 7 of the California Water Code (CWC). It shall serve as a National Pollutant Discharge Elimination System (NPDES) permit for point source discharges from this facility to surface waters. This Order also serves as Waste Discharge Requirements pursuant to Article 4, Chapter 4 of the CWC.

Pursuant to the CWA, discharges from CAFOs are point sources and are subject to NPDES permitting requirements. 40 CFR of Federal Regulations (CFR) Parts 9, 122, 123, and 412 establish regulations and effluent limit guidelines for Concentrated Animal Feeding Operations. 40 CFR Part 122.23 defines a Large Concentrated Animal Feeding Operation (Large CAFO) as any animal feeding operations that has more than 700 mature dairy cows, whether milked or dry. The current number of milking cows (695), plus the number of dry cows (60 to 120) at the dairy

classifies the dairy as a Large CAFO. Once defined as a Large CAFO all of the waste generated by the operation is subject to the applicable requirements of 40 CFR Parts 122 and 412.

U.S. EPA's 2003 CAFO rule required all CAFOs to seek coverage under an NPDES permit. CAFO industry organizations and environmental groups filed petitions for judicial review of certain aspects of the 2003 CAFO rule. On February 28, 2005, the U.S. Court of Appeals for the Second Circuit ruled on these petitions and upheld most provisions of the 2003 rule but vacated and remanded others. In response to the court ruling, U.S. EPA issued a proposed rule on June 30, 2006 (Federal Register Vol. 71, No. 126), intends to make only those changes necessary to address the court's decision. First, EPA proposes to require only the owners and operators of those CAFOs that discharge or propose to discharge to seek coverage under a permit. Second, EPA proposes to require CAFOs seeking coverage under a permit to submit their nutrient management plan (NMP) with their application for an individual permit or notice of intent to be enrolled under a general permit. Permitting authorities would be required to review the plan and provide the public with an opportunity for meaningful public review and comment. Permitting authorities would also be required to incorporate terms of the NMP as NPDES permit conditions. Third, this action proposes to authorize permit writers, upon request by a CAFO, to establish best management, zero discharge effluent limitations when the facility demonstrates that it has designed an open containment system that will comply with the no discharge requirements. The proposed rule also responds to the court's remand orders regarding water-quality based effluent limitations (WQBELs) and pathogens.

The State of California adopted the Porter-Cologne Water Quality Control Act (Porter-Cologne Act) into the California Water Code, Division 7 with the most recent amendments becoming effective on January 1, 2005. The Porter-Cologne Water Quality Control Act (Porter-Cologne Act), establishes the State Water Resources Control Board (State Board), and the Regional Boards as the principle state agencies responsible for control of water quality. The Porter-Cologne Act empowers the Regional Boards to formulate and adopt, for all areas within the regions, a Water Quality Control Plan (Basin Plan) which designates beneficial uses and establishes water quality objectives. Further, the Porter-Cologne Act designates the Regional Boards with the authority to issue waste discharge requirements to regulate the discharge of waste to surface and ground waters of the state.

B. California Code of Regulations

Regulations governing discharges from CAFOs are contained in the Combined State Water Resources Control Board/California Integrated Waste Management Board AB 1220 Regulations, California Code of Regulations (CCR), which became effective on July 18, 1997. Division 2, Subdivision 1, Chapter 7, Subchapter 2, Article 1 of the CCR contains requirements for CAFOs.

C. California Environmental Quality Act (CEQA)

This action to adopt an NPDES permit is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21100, et seq.) in accordance with Section 13389 of the CWC.

D. State and Federal Regulations, Policies, and Plans

1. **Basin Plan.** The Regional Board adopted a *Water Quality Control Plan for the San Diego Basin (9)* [hereinafter Basin Plan] on September 8, 1994. The Basin Plan designates beneficial uses, establishes water quality objectives, and contains implementation

programs and policies to achieve those objectives for all waters addressed through the Basin Plan. Specifically, the Regional Board's dairy waste management policy (Resolution No. 87-71) is incorporated into the Basin Plan. One of the waste management measures limits the amount of manure application to 3 tons dry weight per acre per year for land disposal land, and 12 tons dry weight per acre per year for croplands. By not applying manure to cropland within the property, the Discharger is in compliance with Regional Board's dairy policy as incorporated in the Basin Plan. Beneficial uses applicable to ground waters(s) in the Domenigoni Subarea (902.35) of the Murrieta Hydrologic Area (902.30) of the Santa Margarita Hydrologic Unit (902.00) are listed in *Table 7. Beneficial Uses.*

Table 5. Beneficial Uses

Discharge Point	Receiving Water Name	Beneficial Use(s)
001	Santa Ysabel Creek	Existing: Municipal (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Industrial Process Supply (PROC); Non-contact Water Recreation (REC-2); Warm Fresh water Habitat (WARM); Wildlife Habitat (WILD); and Wildlife Habitat (RARE) Potential: Contact Water Recreation (REC-1)
	Ground waters(s) in the Las Lomas Muertas Subarea (905.32) of the San Pasqual Hydrologic Area (905.30) of the San Dieguito Hydrologic Unit (905.00)	Existing: Municipal (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND). Intermittent: None. Potential: None.

2. **Combined State Water Resources Control Board/California Integrated Waste Management Board AB 1220 Regulations** CCR Division 2, Subdivision 1, Chapter 7, Subchapter 2, Article 1, contains requirements for CAFOs. These requirements shall be implemented through Waste Discharge Requirements issued to a CAFO facility.

3. **U.S. EPA 2003 CAFO Rule** 40 CFR 122 establishes National Pollutant Discharge Elimination System (NPDES) Permit regulations; 40 CFR 122.42(e) establishes additional conditions applicable to concentrated animal feeding operations (CAFOs). 40 CFR 412 establishes Effluent Limitation Guidelines (ELGs) for CAFOs; 40 CFR 412.31 establishes technology-based effluent limitations for CAFOs.

4. **Anti-Degradation.** 40 CFR 131.12 requires that State water quality standards include an anti-degradation policy consistent with the Federal policy. The State Board established California's anti-degradation policy in State Board Resolution No. 68-16, which is deemed

to incorporate the requirements of the Federal anti-degradation policy. Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. The permitted discharge is consistent with the anti-degradation provision of 40 CFR 131.12 and State Board Resolution No. 68-16.

5. **Anti-Backsliding Requirements.** Sections 402(o)(2) and 303(d)(4) of the CWA and federal regulations at 40 CFR §122.44(l) prohibit backsliding in NPDES permits. These anti-backsliding provisions require effluent limitations in a reissued permit to be as stringent as those in the current permit, with some exceptions where limitations may be relaxed.

6. **Monitoring and Reporting Requirements.** Section 122.48 of 40 CFR requires all NPDES permits to specify requirements for recording and reporting monitoring results. Sections 13267 and 13383 of the CWC authorize the Boards to require technical and monitoring reports. The Monitoring and Reporting Program section establishes monitoring and reporting requirements to implement Federal and State requirements.

IV. RATIONALE FOR EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

The CWA requires point source discharges to control the amount of conventional, nonconventional, and toxic pollutants that are discharged into the waters of the United States. The control of the discharge of pollutants is established through effluent limitations and other requirements in NPDES permits. The CWA establishes two principal bases for effluent limitations. First, dischargers are required to meet, at a minimum, technology-based effluent limitations that reflect several levels of control that consider both technical factors as well as costs and economic impact. Second, they are required to meet more stringent WQBEL that are needed to protect applicable designated uses of the receiving water.

A. Discharge Prohibitions

The following discharge prohibitions have been established in Order No. R9-2007-0053 based on the provisions and requirements contained in the State and Federal regulations, policies and plans identified in Section III.D.

1. The discharger shall not cause pollution, contamination, or nuisance as those terms are defined in CWC Section 13050, as a result of the treatment, storage or discharge of wastes.

2. Dischargers of wastes, including windblown spray and runoff of effluent applied for irrigation, to lands which have not been specifically described to the Regional Board and for which valid waste discharge requirements are not in force are prohibited.

3. The dumping or deposition of waste in any manner that may permit it to be washed into waters of the United States is prohibited unless authorized by the Regional Board.

4. The wastewater or waste solids disposal operation shall not cause unusual odors or other nuisance beyond the limits of the dairy property.

5. The Discharger shall comply with the waste discharge prohibitions contained in the Basin Plan.

B. Technology-Based Effluent Limitations

1. Applicable Technology-Based Effluent Limitations (TBELs)

Technology-based effluent limits are intended to achieve a minimum level of treatment of pollutants for point source discharges. Effluent limitation guidelines and standards (ELGs) that apply to a CAFO are defined in 40 CFR Part 412.

40 CFR 412.31 establishes the following effluent limitations attainable by the application of the best practicable control technology currently available (BPT): whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the overflow may be discharged into U.S. waters.

As specified in 40 CFR section 122.42(e) and 412(c)(1), the discharger must develop and implement a Nutrient Management Plan (NMP). The NMP shall meet the minimum requirements contained within 40 CFR sections 122.42(e) and 412(c)(1) as summarized in Section VII.A.1. of this Fact Sheet.

C. Water Quality-Based Effluent Limitations (WQBEL)

Water quality-based effluent limitations (WQBELs) are one of two fundamental types of limitations imposed in NPDES permits. The other is technology-based limitations. The U.S. EPA 2003 CAFO rule (in the preamble) only addressed WQBELs to land application discharges. EPA determined that when land applications of manure, litter and process wastewater follow the site-specific NMP that ensure appropriate agricultural utilization of nutrients, the precipitation-related discharges qualify as agricultural stormwater and is excluded as "point source" [See CWA Section 502(14)]. Because the technology-based ELGs in the 2003 CAFO rule already prohibited all precipitation related discharges, and agricultural stormwater runoff is statutorily exempt from any effluent limitations, EPA did not promulgate any WQBELs in the 2003 CAFO rule. However, WQBELS can be included in permits as necessary with respect to non-precipitation-related land application and production area discharges. NPDES-authorized States can also include WQBELs as necessary under its own state regulatory authorities.

1. Applicable Beneficial Uses and Water Quality Criteria and Objectives

Applicable State WQBELs for surface water include the beneficial uses and numerical water quality objectives for the Santa Ysabel Creek in the San Dieguito River Watershed, as established in the Basin Plan, and summarized in Section III.D.1. of this Fact Sheet and Table 3-2 of the Basin Plan.

Similarly, Applicable State WQBELs for ground water include the beneficial uses and numerical water quality objectives for the Las Lomas Muertas Subarea (905.32) of the San Pasqual Hydrologic Area (905.30) of the San Dieguito Hydrologic Unit (905.00), as established in the Basin Plan, and summarized in Section III.D.1. of this Fact Sheet and Table 3-3 of the Basin Plan.

2. Determining the Need for WQBEL

No waste discharge to surface water is allowed unless from overflow during a 25-year, 24-hour storm event, therefore no surface water WQBEL is need.

Numerical WQBEL for groundwater is determined based on the water quality objectives established in the Basin Plan (Table 3-3) for the Las Lomas Muertas Subarea (905.32) of the San Pasqual Hydrologic Area (905.30) of the San Dieguito Hydrologic Unit (905.00). Waste discharge from CAFO operation including groundwater percolation from waste storage ponds and land application shall not cause concentration of TDS to exceed 1,000 mg/L more than 10% of the time during any one year period. Attachment E, Monitoring and Reporting Program establishes groundwater limitations and monitoring requirements.

V. RATIONALE FOR RECEIVING WATER LIMITATIONS

A. Surface Water

Table 3-2 of the Basin Plan establishes specific numerical water quality objectives for Santa Ysabel Creek surface water in the San Dieguito River Watershed that are protective of the applicable beneficial uses.

B. Groundwater

Table 3-3 of the Basin Plan establishes specific numerical water quality objectives for the Las Lomas Muertas Subarea (905.32) of the San Pasqual Hydrologic Area (905.30) of the San Dieguito Hydrologic Unit (905.00) that are protective of the applicable beneficial uses.

VI. MONITORING AND REPORTING REQUIREMENTS

Section 122.48 of 40 CFR requires all NPDES permits to specify recording and reporting of monitoring results. Sections 13267 and 13383 of the CWC authorize the boards to require technical and monitoring reports. The Monitoring and Reporting Program, Attachment E of this Order, establishes monitoring and reporting requirements to implement federal and state requirements. The following provides the rationale for the monitoring and reporting requirements contained in the Monitoring and Reporting Program for this facility.

A. Receiving Water Monitoring

1. Surface Water (Not Applicable)

Since during most times the Santa Ysabel Creek is dry and there will be no discharge of waste from the facility to the dry creek, receiving water monitoring is not applicable. In the event of a 25-year, 24-hour storm, waste discharge to surface water from overflow is allowed and may impact the beneficial uses of Santa Ysabel Creek surface water in the San Dieguito River Watershed. Inasmuch the Basin Plan describes that the water quality objectives shall not be exceeded more than 10% of the time during any one year period, receiving water monitoring is not needed unless a catastrophic or chronic storm event lasts more than 36 days.

2. Groundwater

Without adequate NMP and BMPs, groundwater quality could be impacted from waste discharges from CAFO operations including groundwater percolation from waste storage

ponds and land application. Attachment E, Monitoring and Reporting Program, establishes groundwater limitations and monitoring requirements.

B. Other Monitoring Requirements (IF APPLICABLE)

40 CFR 122.42(e)(4) establishes annual reporting requirements for CAFOs regarding current animal counts, manure handling, the land application of manure, wastewater irrigation, and the NMP. These monitoring requirements have been established in the Monitoring and Reporting Program in Attachment E of this Order.

40 CFR 122.42 (e)(3) establishes requirements relating to the transfer of manure or process wastewater to other persons. The Discharger must retain records of the date, recipient name and address, and the approximate amount of manure, or process wastewater transferred to another person. These monitoring requirements have been established in Section VI.1. Nutrient Management Plan, of this Order.

40 CFR 412.37 (a)(1) establishes requirements for visual inspections of the CAFO production area. These monitoring requirements have been established in the Monitoring and Reporting Program in Attachment E of this Order.

VII. RATIONALE FOR PROVISIONS

A. Special Provisions

1. Nutrient Management Plan (NMP)

The EPA 2003 CAFO rule [40 CFR 122.42(e)] requires that NPDES permits for all CAFO must include a requirement for the permittee to develop and implement an NMP to achieve effluent limitations and standards. At a minimum, the Nutrient Management Plan (NMP) must include best management practices and procedures necessary to implement applicable effluent limitations and standards. The NMP must, to the extent applicable, include the minimum elements established at 40 CFR 122.42(e)(1)(i)-(ix):

i. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities.

ii. Ensure proper management of mortalities (*i.e.*, dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities.

iii. Ensure that clean water is diverted, as appropriate, from the production area.

iv. Prevent direct contact of confined animals with waters of the United States.

v. Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants.

vi. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States.

vii. Identify protocols for appropriate testing of manure, litter, process wastewater, and soil in accordance with 40 CFR 412.4 (c).

viii. Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater as specified in 40 CFR 412.4 (c). The established protocols to handle, store, and apply manure or process wastewater shall at a minimum, be as stringent as the protocols specified in the NRCS's, "Conservation Practice Standard, Nutrient Management, Code 590."

ix. Identify specific records that will be maintained to document the implementation and management of the minimum elements described in paragraphs 3.a through 3.h of this section.

2. **Facility Management**

The Discharger shall, at all times, properly operate and maintain all facilities and systems of waste disposal (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of this Order. Proper operations and maintenance include the routine inspection, maintenance, and repair of drainage channels, culverts, ponds, irrigation equipment and related wastewater or runoff collection structures or equipment to ensure that the proper capacity is maintained.

3. **Flood Protection**

All waste treatment, containment and disposal facilities shall be protected from inundation or washout by overflow from any stream channel during 100-year peak stream flow.

4. **Re-Opener Provisions**

a. This Order may be re-opened to include effluent limitations for toxic constituents determined to be present in significant amounts in the discharge by the Regional Board.

b. This Order may be re-opened and modified, to incorporate in accordance with the provisions set forth in 40 CFR Parts 122 and 124, to include requirements for the implementation of the watershed management approach.

c. This Order may be re-opened and modified, in accordance with the provisions set forth in 40 CFR Parts 122 and 124, to include new minimum levels.

d. This Order may be re-opened and modified to revise effluent limitations as a result of future Basin Plan Amendments, such as an update of an objective for the ground water in the San Pasqual Hydrologic Area of the San Dieguito Hydrologic Unit.

e. This Order may be re-opened upon submission by the Discharger of adequate information, as determined by the Regional Board, to provide for dilution credits or a mixing zone, as may be appropriate.

f. This Order may be re-opened and modified to revise the toxicity language once that language becomes standardized.

g. This Order may also be re-opened and modified, revoked, and reissued or terminated in accordance with the provisions of 40 CFR sections 122.44, 122.62 to 122.64, 125.62, and 125.64. Causes for taking such actions include, but are not limited to, failure to comply with any condition of this Order and permit, and endangerment to human health or the environment resulting from the permitted activity.

5. **Special Studies and Additional Monitoring Requirements**

Core monitoring may include intake monitoring, effluent monitoring, receiving water monitoring, and groundwater monitoring. This Order includes core monitoring for influent and effluent. In addition to core monitoring requirements, the Discharger may be required to conducted the following monitoring requirements:

a. Regional Watershed Monitoring

The Discharger shall participate and coordinate with state and local agencies and other dischargers in the San Diego Region in development and implementation of a regional monitoring program as directed by the Regional Board. The intent of a regional monitoring program is to maximize the efforts of all monitoring partners using a more cost-effective monitoring design and to best utilize the pooled resources of the region. During a coordinated ocean sampling effort, the Discharger's monitoring program effort may be expanded to provide a regional assessment of the impact of discharges to the receiving water.

b. Special Studies

Special studies are intended to be short-term and designed to address specific research or management issues that are not addressed by the routine core-monitoring program. The Discharger shall implement special studies as directed by this Regional Board.

B. Standard Provisions

Federal Standard Provisions, which in accordance with 40 CFR 122.41and 122.42, apply to all NPDES discharges and must be included in every NPDES permit, are provided in Attachment D to the Order. Regional Board specific Standard Provisions are contained in Section VI.A.2. of the Order.

VIII. PUBLIC PARTICIPATION

The California Regional Water Quality Control Board, San Diego Region (Regional Board) is considering the issuance of waste discharge requirements (WDRs) that will serve as a National Pollutant Discharge Elimination System (NPDES) permit for the Frank Konyn Dairy. As an initial step in the WDR process, the Regional Board staff has developed tentative WDRs. The Regional Board encourages public participation in the WDR adoption process.

A. Notification of Interested Parties

The Regional Board has notified the permittee and interested agencies and persons of its intent to prescribe waste discharge requirements for the discharge and has provided them with an

opportunity to submit their written comments and recommendations. Notification was provided through the San Diego Union Tribune on May 7, 2007, and by letter mailed to the interested parties on May 8, 2007.

B. Written Comments

Interested persons are invited to submit written comments upon these draft waste discharge requirements. Comments should be submitted either in person or by mail, during business hours, to:

John H Robertus, Executive Officer
Attn: Southern Core Regulatory Unit
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92123

To ensure that the Regional Board has the opportunity to fully study and consider written material, comments regarding Order No. R9-2007-0053 should be received in the Regional Board's office no later than 5:00 p.m. on May 30, 2007. Written material submitted after 5:00 p.m. on June 6, 2007 will not be provided to the Regional Board members and will not be considered by the Regional Board. Oral comments will be received at the hearing on June 13, 2007.

C. Public Hearing

In accordance with 40 CFR 124.10, the Regional Board must issue a public notice whenever NPDES permits have been prepared, and that the tentative permits will be brought before the Regional Board at a public hearing. The public notice has been published in the San Dieego Union Tribune no less than 30 days prior to the scheduled public hearing. Order No. R9-2007-0053, will be considered by the Regional Board at a public hearing beginning at 9:00 a.m. on June 13, 2007. The location of this meeting is as follows:

Date: **June 13, 2007**
Time: **9:00 a.m.**
Location: **San Diego Regional Water Quality Control Board**
Regional Board Meeting Room
9174 Sky Park Court, Suite 100
San Diego, CA

Interested persons are invited to attend. At the public hearing, the Regional Water Board will hear testimony, if any, pertinent to the discharge, WDR, and permit. Oral testimony will be heard; however, for accuracy of the record, important testimony should be in writing.

Please be aware that dates and venues may change. Our web address is **http://www.waterboards.ca.gov/sandiego** where you can access the current agenda for changes in dates and locations.

D. Waste Discharge Requirements Petitions

Any aggrieved person may petition the State Water Resources Control Board to review the decision of the Regional Board regarding the final WDRs. The petition must be submitted within 30 days of the Regional Board's action to the following address:

State Water Resources Control Board
Office of Chief Counsel
P.O. Box 100, 1001 I Street
Sacramento, CA 95812

E. Information and Copying

The Report of Waste Discharge (RWD), related documents, tentative effluent limitations, special provisions, comments received, and other information are on file and may be inspected at the address above at any time between 8:30 a.m. and 4:45 p.m., Monday through Friday. Copying of documents may be arranged through the Regional Water Board by calling 858-467-2952.

An electronic copy of the Fact Sheet and Order can be accessed on the Regional Board website: http://www.waterboards.ca.gov/sandiego/.

F. Register of Interested Persons

Any person interested in being placed on the mailing list for information regarding the WDR and NPDES permit should contact the Regional Board, reference this facility, and provide a name, address, and phone number.

G. Additional Information

Requests for additional information or questions regarding this Order should be directed to Ms. Whitney Ghoram at (858) 467-2967 or by e-mail at WGhoram@waterboards.ca.gov