CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
TENTATIVE

ORDER NO. R9-2009-0165

AN ORDER RESCINDING ORDER NO. R9-2004-0065, NPDES NO. CA0109207
WASTE DISCHARGE REQUIREMENTS
FOR VAN OMMERING DAIRY
SAN DIEGO COUNTY

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

1. On June 10, 2004, the Regional Board adopted *Order No. R9-2004-0065, NPDES No. CA0109207, Waste Discharge Requirements for Van Ommering Dairy, San Diego County.* Order No. R9-2004-0065 established requirements for the discharge of wastewater, not to exceed a volume that is attributable to a mature milking cow herd of 700 cows, to retention ponds.

2. Van Ommering Dairy (Facility) is identified as a medium concentrated animal feeding operations (Medium CAFO) pursuant to 40 CFR 122.23. An animal feeding operation (AFO) is defined as a lot or facility where: (1) animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in a 12-month period; and (2) where crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility. An AFO is defined or designated as a CAFO based on the number of animals at the facility and/or whether the facility discharges to waters of the United States.

3. In February 2003, the United States Environmental Protection Agency (USEPA) revised the effluent limitations and permitting regulations for CAFOs. The 2003 rule eliminated the exemption for operations that discharge only in a large 25-year, 24-hour storm event, and added requirements for land application areas under the control of the CAFO (68 FR 7176). The 2003 CAFO rule required any CAFO with a potential to discharge manure, litter, or process wastewater to waters of the U.S. to apply for an NPDES permit.

4. The 2008 final CAFO Regulations (adopted in November 2008) revised portions of the 2003 CAFO regulations to address the Second Circuit court's decision in *Waterkeeper Alliance et al. v. EPA*. The final rule includes two key changes that address the *Waterkeeper* court decision. First, it revises the requirement for all CAFOs to apply for NPDES permits

and instead requires only those CAFOs that discharge or propose to discharge to waters of the United States (surface waters) to apply for an NPDES permit. Second, the rule adds new requirements relating to Nutrient Management Plans for permitted CAFOs.

5. USEPA has made revisions to 40 CFR 122.23(g), which required CAFO's to maintain permit coverage if they had a potential to discharge. Section 122.23(g), as revised, excludes CAFOs that will not discharge or propose to discharge upon expiration of the permit from the requirement to reapply 180 days in advance of permit expiration. A "No Potential to Discharge to Surface Water Determination Request" has been submitted to the Regional Board for the Van Ommering Dairy on October 8, 2008.

6. The discharge of waste from the above mentioned facility has the potential to cause or contribute to exceedances of applicable water quality objectives of groundwaters and as such, will automatically be regulated under General Order No. R9-2008-0130, *Waste Discharge Requirements for Existing Dairy Animal Feeding Operations in the San Diego Region.*

7. The Regional Board has notified all known interested parties of its intent to rescind Order No. R9-2004-0065.

8. The Regional Board, in a public hearing, heard and considered all comments pertaining to the rescission of Order No. R9-2004-0065.

9. This action to rescind an NPDES permit is exempt from the provisions of CEQA, Public Resources Code sections 21100-21177 pursuant to California Water Code section 13389.

IT IS HEREBY ORDERED that Order No. R9-2004-0065 is rescinded.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Board, San Diego Region, on November 18, 2009.

TENTATIVE

JOHN H. ROBERTUS
Executive Officer