

California Regional Water Quality Control Board
Santa Ana Region

April 19, 2001

ITEM: 23

SUBJECT: Proposed Revision to Cease and Desist Order No. 99-65 for Dairies and Related Facilities

DISCUSSION:

On August 20, 1999, the Board adopted Order No. 99-11, NPDES No. CAG018001, General Waste Discharge Requirements for Concentrated Animal Feeding Operations (Dairies and Related Facilities) Within the Santa Ana Region. In part, Order No. 99-11 required all concentrated animal feeding operations (CAFOs) to develop and fully implement an Engineered Waste Management Plan (EWMP). On August 20, 1999, the Board also adopted Cease and Desist Order (CDO) No. 99-65. Order No. 99-65 included an Attachment "A", listing 38 CAFOs that were required to comply forthwith with the requirement to develop and implement an EWMP. Attachment "A" included CAFOs that had previously been requested to develop and implement an EWMP. Since the remaining CAFOs in the Region had not been requested to develop and implement an EWMP, CDO No. 99-65 required those CAFOs that were not included in Attachment "A" to develop and implement an EWMP in accordance with a time schedule to be adopted by the Board at a later date.

On October 7, 1999, the Board held a public hearing to consider adoption of an amendment to CDO No. 99-65. This amendment would have provided a time schedule for the development and implementation of EWMPs for those CAFOs not included in Attachment "A". A time schedule for complying with the requirement for developing and implementing EWMPs was appropriate because of the limited number of experienced consultants available to prepare EWMPs and the limited amount of resources available for Board staff to review the EWMPs. It was proposed to phase the requirement for the development and implementation of the EWMPs over a three-year period. The proposed time schedule divided the CAFOs that were not included in Attachment "A" into three groups. The first group (Attachment "B") was to submit a draft EWMP by June 1, 2000, the second group (Attachment "C") by June 1, 2001, and the third group (Attachment "D") by June 1, 2002. However, the amendment to CDO No. 99-65 was not adopted at the October 7, 1999 meeting because the Board did not have a minimum of five members able to vote on the item, the minimum required by law to vote on a cease and desist order. Due to the significant number of vacancies that existed on the Board, and not knowing when additional Board members would be appointed, the Board requested the State Water Resources Control Board to take the matter up on its own motion, as authorized by Water Code Section 13320. The State Board amended CDO No. 99-65 on February 2, 2000.

In accordance with amended CDO No. 99-65, 58 CAFOs listed on Attachment "B" were required to submit their draft EWMP by June 1, 2000. However, at present, only 23 of

these EWMPs have been submitted. There are several reasons why 35 of the facilities listed in Attachment "B" have not yet submitted EWMPs. First, time was needed for individual CAFO operators to contact available engineers and negotiate contracts. Most of the EWMPs are being prepared primarily by only four different consultants, Nolte Engineers, Associated Engineers, Michael J. Fox, P.E., and the National Resource Conservation Service. Some of the consultants had limited experience preparing EWMPs for CAFOs in this Region, and none of them ever needed to prepare so many EWMPs at one time. As a result, the consultants had to go through an adjustment period to begin preparing so many EWMPs. Also, after preparation of the EWMPs began, it became evident that it was taking a lot longer to prepare the EWMPs than the consultants, or Board staff, initially anticipated.

Another factor that contributed to delays in preparing EWMPs involves the Board's Guidelines for the Development of EWMPs. The two-page Guidelines that were included in Order No. 99-11 were developed in the late 1980s. These Guidelines were inadequate because they were too general in nature, and did not contain sufficient criteria to comply with the wastewater containment requirements in Order No. 99-11. It is for this reason that the staff report included with Order No. 99-11 stated that the Guidelines would be revised "in the near future." Board staff distributed draft revised Guidelines for technical peer review in July 2000. The last written comments provided by the peer reviewers were received in October 2000. The revised Guidelines were then issued by the Executive Officer on February 5, 2001. This created delays because some of the consultants began preparing EWMPs in early 2000 using the old Guidelines, and then had to go back and revise those EWMPs to comply with the new Guidelines.

In addition to the delays that have occurred in submitting the draft EWMPs, Board staff has not been able to review all the submitted draft EWMPs as quickly as anticipated. Including the 23 EWMPs that were submitted by CAFOs listed on Attachment "B", a total of 52 EWMPs have actually been submitted by all the CAFOs in the Region. Of the total 52 EWMPs that have been submitted, 40 have been reviewed, and staff is working with the engineers who developed these plans to resolve our concerns. The primary factor why Board staff has not been able to review all the EWMPs that have been submitted has been a lack of staff resources. When Order No. 99-11 and CDO No. 99-65 were adopted, the Board did not have a Dairy Section, and had only two staff assigned full time to the dairy regulatory program. However, it was known that additional resources were being made available to add more staff to the dairy regulatory program to address the significant work load that would be required to address the additional requirements included in Order No. 99-11. Since late 1999, a new Dairy Section has been established, and there are now seven staff assigned full time to the Board's dairy regulatory program. Significant progress is now being made in reviewing the EWMPs. Also, during the 2000-2001 winter, new staff spent a significant amount of time conducting wet weather inspections and gaining experience in dairy waste issues, which is necessary to provide effective evaluations of EWMPs. Staff, of course, has also spent a considerable amount of time addressing the other necessary tasks associated with the Board's dairy regulatory program (permitting, required NPDES inspections, manure application issues, complaint investigations, enforcement, etc.)

Our review of the first wave of EWMPs has shown that two significant issues need to be addressed. First, the Guidelines provide general guidance, and Board staff has met with each consultant, and is continuing to work closely each consultant, to address many general and specific issues associated with preparation of the EWMPs, to assure that

the EWMPs that are submitted are as consistent as possible with the Board's expectations. Also, in reviewing the initial EWMPs, Board staff is attempting to assure that the comments that are provided are as consistent as possible, both with respect to the different formats and manner in which each consultant prepares their EWMPs, and from facility to facility, to assure that different CAFOs are not held to different standards.

As a result, the consultants are currently not prepared to submit the approximately 60 EWMPs (Attachment "C") that are due by June 1, 2001, and Board staff is currently not prepared to provide a timely review of those EWMPs. Board staff believes that the CAFOs listed in Attachment "B" have demonstrated a willingness to have their EWMPs prepared, but many have not yet been prepared for the reasons noted above. Board staff has received confirmation that all of the CAFOs listed on Attachment "B" have contacted a consultant to have their EWMP prepared, with the exception of 6 CAFOs that have requested an extension based on the criteria included in amended CDO No. 99-65.

Board staff proposes to prepare an item for the Board's consideration at the June 1, 2001 Board meeting, that extends the time schedule included in CDO No. 99-65 for the submittal of EWMPs. It appears appropriate to push back the time schedule for CAFOs listed in Attachments "C" and "D" since the consultants and Board staff are still addressing the EWMPs for Attachment "A" facilities that were due forthwith, and Attachment "B" facilities that were due on June 1, 2000. It also appears appropriate to allow more time for submittal of EWMPs that were prepared under the old Guidelines and that need to be revised to comply with the new Guidelines. The revised submittal dates that will be proposed will be based on discussions that Board staff will initiate with parties that have an interest regarding this issue, Board staff's expected time frame for reviewing the previously submitted EWMPs, and direction from the Board.