SUPPORTING DOCUMENT NO. 2
Item 7

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

TENTATIVE ORDER NO. R9-2004-0065
NPDES PERMIT NO. CA0109207

WASTE DISCHARGE REQUIREMENTS
FOR
VAN OMMERING DAIRY
SAN DIEGO COUNTY

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
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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. The Van Ommering Dairy discharges dairy wastewater to a retention pond. The dairy is regulated under Waste Discharge Requirements, Order No. 94-134, for the disposal of dairy waste from a mature milking cow herd size of 480. Order No. 94-134 prohibits discharges of solid waste or facility wastewater to surface waters.

2. The Van Ommering Dairy is located adjacent to the San Diego River in the NW1/4, of Section 10, T15S, R1E, SBB&M in the El Monte Hydrologic Subarea (907.15) of the Lower San Diego Hydrologic Area (907.10) of the San Diego Hydrologic Unit (907.00), at 14950 El Monte Road, Lakeside, California.

3. On November 12, 2002, Mr. Robert Van Ommering, owner and operator of the dairy, submitted a Report of Waste Discharge (RWD) for a National Pollutant Discharge Elimination System (NPDES) permit for the Van Ommering Dairy. Mr. Van Ommering requested an increase in herd size to 700 mature milking cows.

4. By letters, dated December 6, 2002 and June 13, 2003, this Regional Board deemed Mr. Van Ommerings NPDES application incomplete and requested additional information and clarifications. Mr. Van Ommering submitted part of the requested information on February 21, 2003 and the remaining information on February 25, 2004. On February 26, 2004, this Regional Board deemed Mr. Van Ommering's application complete.

5. A Large Concentrated Animal Feeding Operation (Large CAFO) is defined in 40 Code of Federal Regulations (CFR) Part 122.23 as any animal feeding operation that has more than 700 mature dairy cows, whether milked or dry. The proposed number of animals at the Van Ommering Dairy will classify the dairy as a Large CAFO. Pursuant to the Clean Water Act (CWA), all CAFOs are point sources and are subject to NPDES permitting requirements.

6. Regulations governing discharges from CAFOs are contained in Division 2, Title 27, of the Combined State Water Resources Control Board/California Integrated Waste

Management Board AB 1220 Regulations, which became effective on July 18, 1997. Chapter 7, Subchapter 2, Article 1, contains requirements for Confined Animal Facilities.

7. The *Comprehensive Water Quality Control Plan, San Diego Basin (9)* (Basin Plan) was adopted by this Regional Board on September 8, 1994 and approved by the State Board. Subsequent revisions to the Basin Plan have also been adopted by this Regional Board and approved by the State Board. The Basin Plan specifies beneficial uses and water quality objectives for surface and ground water in the region. This Order specifies requirements necessary to meet the water quality objectives and to protect the beneficial uses.

8. The Basin Plan identifies the following beneficial uses for surface waters of the El Monte Hydrologic Subarea (907.15):

   a. Municipal and Domestic Supply (potential)
   b. Industrial Service Supply
   c. Water Contact Recreation
   d. Non-Contact Water Recreation
   e. Warm Freshwater Habitat
   f. Cold Freshwater Habitat
   g. Wildlife Habitat
   h. Preservation of Rare and Endangered Species

9. The Basin Plan identifies the following beneficial uses for ground waters of the El Monte Hydrologic Subarea (907.15):

   a. Municipal and Domestic Supply
   b. Agricultural Supply
   c. Industrial Service Supply
   d. Industrial Process Supply (potential)

10. Pollutants associated with wastes from CAFOs include nutrients, organic matter, solids, pathogens, and heavy metals. Animal waste can also contain high concentrations of salts (including potassium and sodium). The application of manure or discharges of process wastewater to land may result in discharges of pollutants that can impact the quality of ground water and surface waters in the region.

11. The Clean Water Act (CWA) requires states to identify waters that do not meet water quality standards ("impaired" water bodies). States are required to compile this information in a list (303(d) list) and submit the 303(d) list to the United States Environmental Protection Agency (U.S. EPA) for review and approval. The area of the San Diego River in the vicinity of the Van Ommering dairy is not designated as an impaired water body but the lower San Diego River, Hydrologic Subarea 907.11, located downstream of the Van Ommering Dairy, is listed on the 303(d) list. Fecal coliform and

low dissolved oxygen concentrations impair the waters of the lower San Diego River. The 303(d) listing has a low TMDL priority, but a future TMDL may incorporate a load allocation for upstream dairy discharges and could specify an appropriate mitigation plan that may include provisions for offset or pollutant trading. This Order will be amended to include requirements necessary to implement adopted TMDLs.

12. Pursuant to 40 CFR 131.12 and State Board Resolution No. 68-16, *Statement of Policy With Respect to Maintaining High Quality of Waters in California* (collectively "Antidegradation Policies"), antidegradation analysis is not necessary since this Order is expected to protect existing beneficial uses. Water quality objectives and effluent limitations derived from the Basin Plan have been incorporated into the Order. The compliance with these limitations will ensure that water quality of the receiving water is maintained and protected and is not subject to degradation.

13. In accordance with Water Code Section 13389, the issuance of waste discharge requirements for this discharge are exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) in accordance with Section 15301, Chapter 3, Title 14, California Administrative Code.

14. This Regional Board, in establishing the requirements contained herein, considered factors including, but not limited to the following:

    a. The beneficial uses to be protected and the water quality objectives required to meet these beneficial uses;
    b. Past, present and probable future beneficial uses of water;
    c. Environmental characteristics of the receiving water under consideration, including the quality of those receiving waters;
    d. Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area;
    e. Economic considerations;
    f. The need for developing housing within the region;
    g. The need to prevent nuisance;
    h. The need to develop and use recycled water; and
    i. Other waste discharges.

    (California Water Code (CWC) § 13263 & 13241)

15. This Order shall be modified or revoked at any time if, on the basis of any data, this Regional Board determines that continued discharges may cause unreasonable degradation of the aquatic environment.

16. This Order does not preempt or supersede the authority of municipalities, flood control agencies, or other local agencies to further prohibit, restrict, or control discharges to sanitary sewer systems, storm drain systems, or other watercourses subject to their jurisdiction.

17. This Regional Board has notified interested parties of its intent to issue waste discharge requirements for Van Ommering Dairy and has provided them with an opportunity to submit their comments (CWC § 13378 & 13384).

18. This Regional Board, in a public meeting, heard and considered all comments pertaining to waste discharge requirements for discharges from Van Ommering Dairy (CWC § 13378 & 13384).

IT IS HEREBY ORDERED, that Mr. Robert Van Ommering (hereinafter discharger), in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, and the provisions of the Clean Water Act (CWA) and the regulations adopted thereunder, shall comply with the following requirements for wastes discharged from the Van Ommering Dairy:

A. PROHIBITIONS

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

3. Compliance with the waste discharge prohibitions contained in the Basin Plan and listed in *Attachment A* and *Attachment C* hereto is required as a condition of this Order.

4. The discharge of any radiological, chemical or biological warfare agent, or radioactive waste to waters of the United States is prohibited.

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

6. The discharge of waste to any surface water bodies, or tributary thereof, is prohibited unless a chronic[1] or catastrophic[2] rainfall causes overflow from a storage facility designed, constructed, and operated to hold process generated wastewater plus runoff from a 25- year, 24-hour storm event.

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[1] Chronic rainfall means a series of wet weather conditions which would not provide opportunity for dewatering of properly maintained waste retention structures [58 FR 7620]

[2] Catastrophic event is equivalent to a 25-year, 24-hour storm event, which could include tornadoes, hurricanes or other catastrophic conditions that would cause an overflow of the required retention structure.

7. The use of manure as a fertilizer in any area that may affect a ground water sub basin lacking assimilative capacity is prohibited unless a plan that mitigates the effects of that use on the underlying ground water sub basin is implemented with prior approval from this Regional Board.

8. The increase of the mature dairy animal population beyond 485 animals is prohibited unless the new animal facilities and waste treatment system, described in the Fact Sheet for tentative Order No. R9-2004-0065, *Facility Description 3.B, Proposed Improvements*, is completed. Before increasing the herd size the discharger has to comply with *Facility Design and Operation Requirements, C.17* of this Order.

9. The discharge of facility wastewater shall not exceed a volume that is attributable to a mature milking cow herd size of 485 cows until the requirements to increase herd size have been met. After all requirements have been met and the discharger has been notified by this Regional Board that an increase in herd size can be initiated, the discharge of wastewater from the facility shall not exceed a volume that is attributable to a mature milking cow herd size of 700 cows.

B. DISCHARGE SPECIFICATIONS

Tentative Order No. R9-2004-0065 prohibits the discharge of waste from the dairy to any surface water bodies and does not contain numeric effluent limitations.

C. FACILITY DESIGN AND OPERATION REQUIREMENTS

FACILITY MANAGEMENT

1. 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 operation 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.

2. The discharger shall develop and fully implement a Nutrient Management Plan (NMP) acceptable to this Regional Board. A registered professional engineer, or other qualified individual, shall develop the NMP in accordance with current guidelines established in 40 CFR Part 122.42 (see Fact Sheet, *Basis for Waste Discharge Requirements, 5.A*, and *Attachment B* of this Order). The NMP has to be submitted to this Regional Board within one year after the adoption of this Order.

MANURE MANAGEMENT

3. 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 prior to the beginning of the rainy season (October 1).

4. 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.

5. Manure applied to cultivated croplands shall be incorporated into the soil soon after application at an agronomic rate, where it will be utilized by the plants in growth rather than passing through the root zone. The NMP has to describe the site-specific conditions that control the amount of manure applied to the croplands.

6. Animals shall be prevented from entering any surface water within the confined area.

WASTEWATER MANAGEMENT

7. The volume of wastewater applied to fields or crop lands shall not exceed the hydraulic loading capacity of the soil. Discharges of facility wastewater to fields or crop lands shall not result in surface runoff from disposal fields and shall be managed to minimize percolation to ground water.

8. All surface drainage from outside the facility shall be diverted away from any manured areas unless such drainage is fully contained. Drainage from manured areas has to be diverted to the retention pond.

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

RETENTION POND(S)

10. Retention 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.

11. Retention ponds shall be designed, constructed and managed to contain (1) the runoff from corrals and other manured areas due to a 25-year, 24-hour storm (approximately 1.8 million gallons) and (2) all the wastewater generated during the period when land disposal by irrigation cannot be accomplished. The San Diego Region's *Staff Report, Dairy Farm Waste*, recommends a wastewater storage capacity of 60 days. The 60-day

storage capacity is needed to retain wastewater during periods when irrigation cannot be performed due to wet weather conditions and during periods of irrigation system maintenance and repair.

12. Water levels in the retention ponds shall be sufficiently lowered by October 1, of each year to provide adequate storage capacity prior to the beginning of the wet weather periods.

13. The retention pond shall be inspected on a weekly basis and all wastewater lines on a daily basis.

FLOOD PROTECTION

14. 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.

SURFACE DRAINAGE

15. This confined animal facility shall be designed, constructed and operated to retain all facility wastewater and all precipitation on, and drainage through, manured areas during a catastrophic rainfall event.

16. All precipitation and surface drainage outside of manured areas, including that collected from roofed areas, and runoff from tributary areas resulting from a storm of intensity equal to or less than 25-year, 24-hour storm shall be diverted away from manured areas unless such drainage is fully retained. This Regional Board may waive application of this requirement in specific instances where upstream land use changes have altered runoff patterns such that retention of flood flow is not feasible.

REQUIREMENT TO INCREASE HERD SIZE

17. The new animal facilities and waste treatment system shall be completely constructed and operable prior to increasing in milking cow herd size. The completed facilities shall have adequate capacity for handling waste produced by up to 700 milking cows. A report from a registered engineer certifying the adequacy of the animal facilities and waste treatment system to comply with this Order shall be submitted prior to increasing the milking cow herd size (see *Reporting Requirements D.1* of this Order). The registered engineer shall affix his signature and engineering license number to the report. An increase in herd size shall not be initiated until:

a. The certification report has been received by this Regional Board.

b. The discharger has notified this Regional Board that the new animal facilities and waste treatment system have been completed as specified in the certification report.

c. An inspection of the completed facilities has been made by staff of the Regional Board; and

d. The discharger has received notification from this Regional Board that the increase in herd size can be initiated.

D. STANDARD PROVISIONS

1. The discharger must comply with all conditions of this Order. Any Order noncompliance constitutes a violation of the Clean Water Act and the California Water Code and is grounds for enforcement action; for Order termination, revocation and reissuance, or modification; or for denial of a Report of Waste Discharge application.

2. The discharger shall comply with the *Standard Provisions* listed in *Attachment C* of this Order.

3. Neither the treatment nor the discharge of waste shall create a pollution, contamination, or nuisance, as defined in Section 13050 of the California Water Code.

4. 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 non-complying discharge.

5. 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 ownership, operation, animal population, or location of the facility; or
   d. 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 modification, 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.

6. This Order is not transferable to any person except after notice to this Regional Board pursuant to *Reporting Requirement E.5*.

7. In addition to any other grounds specified herein, this Order shall be modified or revoked at any time if, on the basis of any new data, this Regional Board determines that continued discharges may cause unreasonable degradation of the surface and ground waters.

8. The discharge shall not cause a violation of any applicable water quality standard for receiving waters adopted by this Regional Board or the State Water Resources Control Board as required by the Clean Water Act and regulations adopted thereunder. If more stringent applicable water quality standards are promulgated or approved pursuant to Section 303 of the Clean Water Act or amendments thereto, this Regional Board will revise and modify this Order in accordance with the more stringent standards.

9. This Order does not convey any property rights of any sort or any exclusive privileges. The requirements prescribed herein do not authorize the commission of any act causing injury to persons or property of another, nor protect the discharger from its liabilities under federal, state, or local laws, nor create a vested right for the discharger to continue its waste discharge.

10. The discharger shall allow this Regional Board, or an authorized representative, or any representative of the U.S. EPA upon the presentation of credentials and other documents as may be required by law, to:

    a. Enter upon the discharger's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Order;

    b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order;

    c. Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operation regulated or required under this Order; and

    d. Sample or monitor, at reasonable times, for the purposes of assuring compliance with this Order or as otherwise authorized by the Clean Water Act or California Water Code, any substances or parameters at any location.

11. In an enforcement action, it shall not be a defense for the discharger that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with this Order. Upon reduction, loss, or failure of the treatment facility, the discharger shall, to the extent necessary to maintain compliance with this Order, control production or all discharges, or both, until the facility is restored or an alternative method of treatment is provided. This provision applies, for example, when the primary source of power of the treatment facility fails, is reduced or is lost.

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

13. 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.

E. REPORTING REQUIREMENTS

1. A report from a registered engineer certifying the adequacy of the new animal facilities and waste treatment system to comply with this Order shall be submitted to this Regional Board as part of the requirements specified in *Facility Design and Operation Requirements C.17* to increasing the milking cow herd size. The registered engineer shall affix his signature and engineering license number to the report.

2. This Order expires on June 10, 2009. If the discharger wishes to continue an 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 EPA form 1 and 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.

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

    a. Significant change in disposal method (e.g., change in the method of treatment that would significantly alter the nature of the waste).

    b. 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).

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

d. Other circumstances that result in a material change in character, amount, or location of the waste discharge.

e. Any planned physical alterations or additions to the permitted facility.

4. The discharger shall give advance notice to this Regional Board of any planned changes in the permitted facility or activity that may result in noncompliance with the requirements of this Order.

5. The discharger must notify this Regional Board, in writing, at least 30 days in advance of any proposed transfer of this Order's responsibility and coverage 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.

6. The discharger shall report any noncompliance that may endanger health or the environment. Any information shall be provided orally to this Regional Board within 24 hours from the time the discharger becomes aware of the circumstances. The following occurrences must be reported to this Regional Board within 24 hours:

a. Any discharge of waste, including corral runoff, to waters of the United States;

b. Any discharges of waste from the retention pond(s) due to overflow;

c. Any violation of any prohibition of this Order.

The discharger shall submit to this Regional Board a written follow-up report within 5 days unless this Regional Board explicitly waives submission of the written report if the oral report has been received within 24 hours. The written report must contain the following items:

d. A description of the noncompliance and its cause;

e. 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

f. Steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

7. The discharger shall furnish to this Regional Board, within a reasonable time, any information which this Regional Board may request to determine whether cause exists for

modifying, revoking and reissuing, or terminating this Order, or to determine compliance with this Order. The discharger shall also furnish to this Regional Board, upon request, copies of records required to be kept by this Order.

8. When the discharger becomes aware of its failure to submit any relevant facts in a Report of Waste Discharge, or of submitting incorrect information in a Report of Waste Discharge, or in any report to this Regional Board, the discharger shall promptly submit such facts or information.

9. All applications, reports, or information submitted to this Regional Board shall be signed and certified as follows:

   a. All Reports of Waste Discharge shall be signed by a general partner or the proprietor, respectively.

   b. All reports required by this Order, and other information requested by this Regional Board shall be signed by a person described in *paragraph a* of this reporting requirement, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

      (1) The authorization is made in writing by a person described in paragraph a. of this reporting requirement;

      (2) 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.); and,

      (3) The written authorization is submitted to this Regional Board.

   c. If an authorization under *paragraph b* of this reporting requirement 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 *paragraph b* of this reporting requirement must be submitted to this Regional Board prior to or together with any reports, information, or applications to be signed by an authorized representative.

   d. Any person signing a document under *paragraph a* or *b* of this reporting requirement 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.

10. 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 U.S. EPA, Region IX. As required by the Clean Water Act, Reports of Waste Discharge, this Order, and effluent data shall not be considered confidential.

11. a. Reports required to be submitted to this Regional Board shall be sent to:

California Regional Water Quality Control Board
San Diego Region
Attn: Industrial Compliance Unit
9174 Sky Park Court, Suite 100
San Diego, California 92123-4340

Notifications required to be provided to this Regional Board shall be made to:
Telephone -- (858) 467-2952 or
Facsimile -- (858) 571-6972

b. Reports required to be submitted to U.S. EPA shall be sent to:

U.S. Environmental Protection Agency
Region IX
Compliance Office (WTR-7)
75 Hawthorne Street
San Francisco, California 94105

F. NOTIFICATIONS

1. California Water Code Section 13263(g) states:

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

2. This Order shall become effective ten days after the date of its adoption 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.

3. This Order expires on June 10, 2009. However, this Order will continue in force and effect until superseded by a new Order or rescinded.

4. 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 Clean Water Act (CWA). (CWC §13385, 13387)

5. 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.

6. 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.

7. 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.

I, John H. Robertus, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region on June 10, 2004.

Tentative

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JOHN H. ROBERTUS
Executive Officer

ATTACHMENT A

1994 WATER QUALITY CONTROL PLAN FOR THE SAN DIEGO BASIN WASTE DISCHARGE PROHIBITIONS

California Water Code Section 13243 provides that a Regional Board, in a water quality control plan, may specify certain conditions or areas where the discharge of waste, or certain types of waste is not permitted. The following discharge prohibitions are applicable to any person, as defined by Section 13050(c) of the California Water Code, who is a citizen, domiciliary, or political agency or entity of California whose activities in California could affect the quality of waters of the State within the boundaries of the San Diego Region.

1. The discharge of waste to waters of the State in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in California Water Code Section 13050, is prohibited.

2. The discharge of waste to land, except as authorized by waste discharge requirements or the terms described in California Water Code Section 13264 is prohibited.

3. Discharges of recycled water to lakes or reservoirs used for municipal water supply or to inland surface water tributaries thereto are prohibited, unless this Regional Board issues a NPDES permit authorizing such a discharge; the proposed discharge has been approved by the State Department of Health Services and the operating agency of the impacted reservoir; and the discharger has an approved fail-safe long-term disposal alternative.

4. The discharge of waste to inland surface waters, except in cases where the quality of the discharge complies with applicable receiving water quality objectives, is prohibited. Allowances for dilution may be made at the discretion of the Regional Board. Consideration would include streamflow data, the degree of treatment provided and safety measures to ensure reliability of facility performance.

5. The discharge of waste in a manner causing flow, ponding, or surfacing on lands not owned or under the control of the discharger is prohibited, unless the discharge is authorized by the Regional Board.

6. The dumping, deposition, or discharge of waste directly into waters of the State, or adjacent to such waters in any manner which may permit its being transported into the waters, is prohibited unless authorized by the Regional Board.

7. Any discharge to a storm water conveyance system that is not composed entirely of "storm water" is prohibited unless authorized by the Regional Board. [The federal regulations, 40 CFR 122.26(b)(13), define storm water as storm water runoff, snow melt runoff, and surface runoff and drainage. 40 CFR 122.26(b)(2) defines an illicit discharge as any discharge to a storm water conveyance system that is not composed entirely of storm water except discharges pursuant to a NPDES permit and discharges resulting from

fire fighting activities.] [Part 122.26 amended at 56 FR 56553, November 5, 1991; 57 FR 11412, April 2, 1992].

8. The unauthorized discharge of treated or untreated sewage to waters of the State or to a storm water conveyance system is prohibited.

9. The discharge of industrial wastes to conventional septic tank/subsurface disposal systems, except as authorized by the terms described in California Water Code Section 13264, is prohibited.

10. The discharge of radioactive wastes amenable to alternative methods of disposal into the waters of the State is prohibited.

11. The discharge of any radiological, chemical, or biological warfare agent into waters of the State is prohibited.

12. The discharge of waste into a natural or excavated site below historic water levels is prohibited unless the discharge is authorized by the Regional Board.

13. The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the State or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited.

14. The discharge of treated or untreated sewage from vessels to Mission Bay, Oceanside Harbor, Dana Point Harbor, or other small boat harbors is prohibited.

15. The discharge of untreated sewage from vessels to San Diego Bay is prohibited.

16. The discharge of treated sewage from vessels to portions of San Diego Bay that are less than 30 feet deep at mean lower low water (MLLW) is prohibited.

17. The discharge of treated sewage from vessels, which do not have a properly functioning U. S. Coast Guard certified Type I or Type II marine sanitation device, to portions of San Diego Bay that are greater than 30 feet deep at MLLW is prohibited.

ATTACHMENT B

REQUIREMENTS FOR A NUTRIENT MANAGEMENT PLAN

The Nutrient Management Plan (NMP) must be prepared by a registered professional engineer in the State of California or another qualified individual. The requirements of Order No. R9-2004-0065, *Facility Design and Operation Requirements, C,* shall be incorporated into the NMP.

A. SITE PLAN

The site plan shall include the following:

1. Address and/or legal description of the property.

2. Name, address, and telephone number of the owner and operator of the property.

3. Total gross acreage of the property, showing property boundaries and all existing and proposed facilities, including buildings, storage areas, berms/levees, holding ponds, pumping facilities, culverts, drainage easements, disposal areas, cropland (whether farmed by the owner/operator or another party), etc. The site plan must include the overall dimensions, contours, a vicinity map, north arrow, and the date the site plan was prepared. The site plan shall be drawn on a standard blue print format using an appropriate scale that shows sufficient details of all facilities.

4. The site plan shall show all facilities necessary for containment and management of on-site storm water runoff as well as the interception and conveyance of any off-site storm water runoff through the property.

5. The site plan shall show the size, elevation, and location of all facilities proposed for containment of process generated wastewater and storm water runoff on the property (berms/levees, holding ponds, upstream diversion structures, etc.). Cross section details of these facilities shall be presented.

6. A description of existing and proposed disposal areas or cropland designated to receive wastewater.

B. DESIGN CALCULATIONS

The design calculations shall include:

1. Present and proposed animal population (numbers of each: milk cows, dry cows, calves, heifers, etc.) and the volume of wash water generated.

2. Amount of storm water runoff resulting from a 24-hour, 25-year storm event.

3. Total amount of wastewater (wash water and storm water runoff) to be contained on the property (A 60-day holding period is considered adequate).

4. Dimensions and capacity of the holding ponds.

5. Percolation rates, if used.

C. CONSTRUCTION SPECIFICATIONS

Construction specifications shall include the construction materials and method of compaction utilized to build retention ponds, berms/levees, and other containment facilities.

D. OPERATION AND MANAGEMENT PLAN

The operations and maintenance plan shall include:

1. A holding pond management plan (including records of maximum pond capacity prior to winter storms, installation and readings of depth markers in liquid manure storage structures, periodic dredging, periodic inspections to monitor for holes/cracks or breaks).

2. A land application plan (including periodic rotation of wastewater to disposal areas or croplands, procedures and results of soil analyzed from land application fields for phosphorus every five years, periodic inspections of land application equipment).

3. A maintenance plan for berms/levees and other containment facilities, including a proposed rodent control plan (periodic inspections to monitor for holes/cracks or breaks, etc.)

4. A manure management plan (including manure manifests and information about the nutrient content of the manure transferred to another person).

ATTACHMENT C

STANDARD PROVISIONS

1. The following sections of 40 CFR are incorporated into this permit by reference:

   a. 122.5 *Effect of a permit*
   b. 122.21 *Application for a permit*
   c. 122.22 *Signatories to permit applications and reports*
   d. 122.41 *Conditions applicable to all permits*
   e. 122.61 *Transfer of permits*
   f. 122.62 *Modification or revocation of permits*
   g. 122.63 *Minor modifications of permits*
   h. 122.64 *Termination of permits*

2. *Review and revision of permit*: Upon application by any affected person, or on its own motion, the Regional Board may review and revise this permit. [CWC §13263(e)]

3. *Termination or modification of permit*: This permit may be terminated or modified for causes, including, but not limited to, all of the following:

   a. Violation of any condition contained in this permit.
   b. Obtaining this permit by misrepresentation, or failure to disclose fully all relevant facts.
   c. A change in any condition that requires either a temporary of permanent reduction or elimination of the permitted discharge. [CWC §13381]

4. *Material change*: Not less than 180 days prior to any material change in the character, location, volume, or amount of waste discharge, the discharger shall submit a technical report describing such changes. Such changes include but are not limited to the following:

   a. Addition of a major industrial waste discharge to a discharge of essentially domestic sewage, or the addition of a new process or product by an industrial facility resulting in a change in the character of the waste.
   b. Significant change in disposal method, e.g., change from land disposal to a direct discharge to water, or change in the method of treatment which would significantly alter the characteristics of the waste.
   c. Significant change in the disposal area, e.g., moving the discharge to another drainage area, to a different water body, or 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 the waste discharge requirements.
   e. Increase in area or depth to be used for solid waste disposal beyond that specified in the waste discharge requirements. [CWC 13372, 13376, 13264, 23 CCR 2210]

f. Any substantial change in the amount or characteristics of pollutants used, handled, stored, or generated.
g. Any new discharge of pollutants or new potential pollutant source.
h. Other circumstances which could result in a material change in the character, amount, or location of discharges. [CWC 13372, 13264,23 CCR 2210]

5. *Transfers*: When this permit is transferred to a new owner or operator, such requirements as may be necessary under the California Water Code may be incorporated into this permit.

6. *Conditions not stayed*: The filing of a request by the Discharger for modification, 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.

7. *Monitoring and Reporting Program*: The Discharger shall conduct monitoring and submit reports in accordance with *Monitoring and Reporting Program (MRP) No. R9-2004-0065*. Monitoring results shall be reported at the intervals specified in *MRP No. R9-2004-0065*. [CWC 13267 & 13383, 23 CCR 2230, 40 CFR 122.43(a), 122.44(l)(4), 122.48]

8. *Availability*: A copy of this Order shall be kept at a readily accessible location at the facility and shall be available to on-site personnel at all times.

9. *Duty to minimize or correct adverse impacts*: 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.

10. *Responsibilities, liabilities, legal action, penalties*: 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 Clean Water Act (CWA). [CWC §13385, 13387]

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

11. *Noncompliance*: Any noncompliance with this permit constitutes violation of the California Water Code and is grounds for denial of an application for permit modification. [40 CFR 122.41 (a)]

12. *Discharge is a privilege*: 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. [CWC §13263(g)]

13. *Permittee*: For the purposes of this permit, the term "permittee" used in parts of 40 CFR incorporated into this permit by reference and/or applicable to this permit shall have the same meaning as the term "discharger" used elsewhere in this permit.

14. *Effective date*: This Order shall become effective ten days after the date of its adoption 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.

15. *Expiration*: This Order expires June 10, 2009. [40 CFR 122.43, 122.44(h), 122.46]

16. *Continuation of expired permit*: 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. [40 CFR 122.6, 23 CCR 2235.4]

17. *Applications*: 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 California Water Code and the California Code of Regulations.

18. *Confidentiality*: 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.

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

20. *Discharge Monitoring Quality Assurance (DMQA) Program*: Then Discharger shall conduct appropriate analyses on any sample provided by U.S. EPA as part of the DMQA

program. The results of such analyses shall be submitted to U.S. EPA's DMQA manager. [SWRCB/U.S. EPA 106 MOA]

21. *Pollution, Contamination, Nuisance*: The handling, transport, treatment, or disposal of waste or the discharge of waste to waters of the state in a manner which causes or threatens to cause a condition of pollution, contamination, or nuisance, as those terms are defined in CWC 13050, is prohibited.

22. *Additional Reporting Requirements*: [40 CFR 122.42(a)] In addition to the reporting requirements under 40 CFR 122.41 (l), all existing manufacturing, commercial, mining, and silvicultural discharges must notify the Regional Board as soon as they know or have reason to believe:

    a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, of that discharge will exceed the highest of the following "notification levels:"

        i. One hundred micrograms per liter (100 μg/l);
        ii. Two hundred micrograms per liter (200 μg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 μg/l) for 2, 4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
        iii. The level established by the Regional Board in accordance with 40 CFR 122.44(f).

    b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels:"

        i. Five hundred micrograms per liter (500 μg/l)
        ii. One milligram per liter (1 mg/l) for antimony;
        iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7).
        iv. The level established by the Regional Board in accordance with 40 CFR 122.44(f).

23. *Report Submittal*: The discharger shall submit reports and provide notifications as required by this Order in accordance with the following:

    a. Reports required to be submitted to this Regional Board shall be sent to:

        Industrial Compliance Unit
        California Regional Water Quality Control Board
        San Diego Region
        9174 Sky Park Court, Suite 100
        San Diego, California 92123-4340

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

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

c. Reports required to be submitted to the U.S. EPA shall be sent to:

U.S. Environmental Protection Agency
Region IX
Compliance Office, WTR-7 (DMR)
75 Hawthorne Street
San Francisco, California 94105