CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

IN THE MATTER OF:

John Schoneveld	**)**	
dba Bouma Dairy	**)**	**COMPLAINT NO. 01-49**
8731 Eucalyptus Avenue	**)**	**FOR**
Chino, CA 92710	**)**	**ADMINISTRATIVE CIVIL LIABILITY**

YOU ARE HEREBY GIVEN NOTICE THAT:

1. John Schoneveld, operator of Bouma Dairy, is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose civil liability pursuant to Section 13385 of the California Water Code (Water Code).

2. A hearing concerning this complaint will be held before the Board within 60 days of the date of issuance of this complaint, unless John Schoneveld waives the right to a hearing. Waiver procedures are specified on page 2 of this complaint. If the hearing in this matter is not waived, it will be held during the Board's regular meeting on April 19, 2001, at the Orange County Water District, 10500 Ellis Avenue, Fountain Valley, CA. The meeting begins at 9:00 a.m. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date.

3. If the April 19, 2001 hearing is held, the Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

4. John Schoneveld is alleged to have discharged pollutants (runoff mixed with manure) to a location that is tributary to navigable waters of the United States, in violation of Water Code Section 13376. Pursuant to Water Code Section 13385(a)(1), those who violate Water Code Section 13376 are liable civilly.

5 The complaint is based on the following facts:

   A) On February 13, 2001, at about 12:30 p.m., during a rainstorm, Board staff observed a discharge of pollutants (storm water runoff mixed with manure) from the dairy's easterly corral to Eucalyptus Avenue. Eucalyptus Avenue conveys storm runoff in a westerly direction, to where the storm runoff

ultimately discharges to the Santa Ana River, a navigable water of the United States.

B) Runoff from dairy corrals contains pollutants, including, in part, pathogens, nutrients (nitrogen and phosphorus), and dissolved solids (salts).

C) Board staff informed John Schoneveld of the discharge, where upon he stopped the discharge by constructing a loosely compacted soil berm along the corral fence line.

6. Section 13376 of the Water Code prohibits the discharge of pollutants to the navigable waters of the United States, except as authorized by waste discharge requirements. The discharge of pollutants noted above was not authorized by waste discharge requirements. As provided by Water Code Section 13385(c)(1), the Board can administratively assess a civil liability in an amount not to exceed $10,000 for each day in which the violation occurs. Therefore, the maximum liability for the one day of violation cited above which the Board could assess administratively is $10,000.

7. Water Code Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. Based upon consideration of those factors, it is proposed that an administrative civil liability be imposed on John Schoneveld in the amount of $10,000.

WAIVER OF THE HEARING

You may waive your right to a hearing. If you waive your right to a hearing, please sign the attached waiver and return it together with a check or money order made payable to the State Water Resources Control Board in the amount of the civil liability proposed in paragraph 7 above ($10,000). Send the check and waiver to:

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339

If you have any questions regarding this complaint, please contract Gerard J. Thibeault at (909) 782-3284, Steven D. Mayville at (909) 782-4992, or contact the Regional Board's staff counsel, Ted Cobb, at (916) 657-0406.

Date: 3-23-01

GJ Thibeault

Gerard J. Thibeault
Executive Officer

California Regional Water Quality Control Board
Santa Ana Region

April 19, 2001

ITEM: 20

SUBJECT: Administrative Civil Liability Complaint No. 01-49, John Schoneveld, dba Bouma Dairy

SUMMARY

John Schoneveld, dba Bouma Dairy, is alleged to have violated California Water Code (CWC) Section 13376, which prohibits the discharge of pollutants to the navigable waters of the United States, except as authorized by waste discharge requirements. On March 23, 2001, the Executive Officer issued Administrative Civil Liability Complaint (ACLC) No. 01-49 to John Schoneveld. The maximum liability that the Board could assess administratively under CWC Section 13385 (c) for the discharge that was observed on February 13, 2001 is $10,000, plus $10 per gallon for each gallon in excess of 1,000 gallons that were discharged. The assessment proposed in ACLC No. 01-49 is $10,000. The matter before the Board is whether to affirm, reject, or modify this assessment.

BACKGROUND

The Board began issuing individual waste discharge requirements to all dairy facilities in the Region in 1972. In 1994, the Board adopted a general NPDES permit for concentrated animal feeding operations (Order No. 94-7). Order No. 94-7 was adopted to streamline the permitting process for dairies, and to incorporate recent federal and state storm water regulations. Order No. 94-7 expired on March 1, 1999. Therefore, on August 20, 1999, the Board adopted General Waste Discharge Requirements for Concentrated Animal Feeding Operations (Dairies and Related Facilities) within the Santa Ana Region, NPDES No. CAG018001 (Order No. 99-11). Dairies previously enrolled under Order No. 94-7 were automatically enrolled in Order No. 99-11. Currently, there are approximately 300 dairy and related facilities in the Santa Ana Region.

Dairies generate both solid and liquid wastes. Manure is deposited in the corrals, where it accounts for about 90% of the manure generated by a dairy operation. The corrals are generally cleaned twice each year in order to maintain a healthy environment for the animals. All manure generated at dairies is removed and taken to composting operations or applied to the ground for agricultural use as a fertilizer, both within, and outside, the Region.

Liquid wastes consist of wash water that is generated at the milk barn and storm water runoff from manured areas. Milking cows are washed, before being milked, two or three times a day. Although the amount of wash water that is generated varies from dairy to dairy, a minimum of 50 gallons of water per day is usually generated for each milking cow. For example, a typical dairy of 800 milking cows will usually generate at least 40,000 gallons of wash water per day. Because a milking cow will spend approximately

10% of its day in the milk barn, the wash water will contain approximately 10% of the manure produced by a milking cow. Storm water runoff from manured areas includes runoff from corrals, stockpile areas, and disposal fields. Order No. 99-11 requires that all storm water runoff from manured areas be contained on property owned or controlled by the dairy. Storm water runoff from manured areas and dairy wash water are discharged to ponds or applied to fields for disposal by evaporation and percolation.

Unfortunately, due in some part to the relatively smaller land area of many dairies and the high concentration of dairies and dairy animals in the Chino Basin, discharges of wastewater from dairies occasionally occur during periods of rainfall. Sometimes, these discharges occur as a result of circumstances beyond the control of the dairy operator. Most discharges occur from containment structures as a result of burrowing animals (rodent holes). The rodent holes are usually not apparent until the facility's containment structures begin storing increasing amounts of wastewater during winter rains. Some dairies are also affected by the lack of flood control infrastructure in the Chino dairy area. Storm water from streets and drainage ditches can enter some facilities, resulting in flooding of wastewater ponds and disposal fields. Much of this storm water originates from developed areas to the north, and cannot be diverted by the dairies. The flooding that occurs sometimes creates a "domino effect" as dikes are broken or overtopped and dairies discharge onto adjacent, down gradient dairies, and overwhelm their neighbor's containment capacity, causing additional discharges. Dairies are not permitted to discharge wastewater to waters of the United States, except under certain conditions when a 25-year, 24-hour storm occurs. However, Board staff takes certain circumstances into consideration, such as those noted above, before recommending enforcement actions for dairy wastewater discharges that do occur. Enforcement actions are generally recommended when discharges occur due to negligence, failure to implement reasonable actions to prevent the discharges, or as a result of deliberate actions.

FINDINGS

John Schoneveld has been operating the Bouma Dairy at 8731 Eucalyptus Avenue, Chino, since at least 1990. Due to an oversight by Board staff, John Schoneveld was not granted authorization to discharge wastes under Order No. 99-11 when Order No. 99-11 was adopted. On March 27, 2001, the Executive Officer granted John Schoneveld authorization to discharge wastes under Order No. 99-11. Therefore, waste discharge requirements were not in effect for John Schoneveld at the time the discharge noted below was observed. This enforcement action is not related in any manner to the absence of a discharge authorization under Order No. 99-11.

On February 13, 2001, Board staff observed that storm water commingled with manure was being discharged from the Bouma Dairy's eastern corral to Eucalyptus Avenue. Board staff observed a dairy employee operating a tractor that was pulling a scraper in the corral. The corral contained a large volume of storm water that had pooled to a sufficient depth to flow out of the corral onto Eucalyptus Avenue through a gateway. The tractor was observed contributing to the discharge of the wastewater onto Eucalyptus Avenue by causing the wastewater to be pushed towards the gateway. A wave of wastewater discharged from the corral as the tractor moved through the corral. Each wave appeared to wash about 50 gallons of wastewater onto Eucalyptus Avenue. In addition, between the waves, an ongoing discharge of wastewater was occurring at an

estimated flow rate of about 60 gallons per minute (gpm). No dike or other containment controls were in place to prevent the discharge.

The discharge was observed to flow west on the south side of Eucalyptus Avenue. At the intersection of Eucalyptus and Grove Avenues, the discharge commingled with storm water runoff flowing south on Grove Avenue. The Grove Avenue drainage is tributary to the Santa Ana River, a water of the United States.

Mr. Schoneveld approached Board staff immediately upon staff's arrival at the site. Mr. Schoneveld stated that the driver of the tractor was scraping the corral for the purpose of pulling the pooled rainwater back into the dairy. However, it appeared to Board staff that the actions of the tractor were having the effect of pushing the wastewater onto Eucalyptus Avenue. Mr. Schoneveld agreed to construct a dike to stop the discharge, and that same day left a voicemail message with Board staff stating that the discharge had been stopped. A follow-up inspection on February 15, 2001 confirmed that a dike had been constructed and that no discharge was occurring.

Based upon precipitation data from several recording stations in the Chino area, it appears that at no time did the Chino area receive sufficient rainfall to equal or exceed a 25-year, 24-hour storm event (about 4.5 inches). Rainfall in February 2001 occurred in three storms that each lasted from 3 to 6 days. The storm that occurred during the four-day period from February 10 to February 14 resulted in about 4.1 inches of rain, with the highest average 24-hour rainfall of about 2.4 inches occurring on February 12. About 1.0 inch of rain occurred on February 13. A much smaller storm lasting from February 18 to February 20 delivered about 0.4 inches. The third storm event from February 23 to February 28 delivered about 2.7 inches of rain over the 5 days, with the highest average 24-hour rainfall being 0.9 inches.

Prior to February 12, the Chino area had received about 5.8 inches of rain for the season, almost all of which occurred during the month of January. The storm that began on February 10 was preceded by approximately 2 weeks of dry weather, and prior to January, there had been no appreciable rain since October.

DISCUSSION

CWC Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors are discussed below:

1. Nature, Circumstances, Extent and Gravity of the Violation

The discharges noted above were in the violation of CWC Section 13376. Section 13376 of the CWC prohibits the discharge of pollutants to the navigable waters of the United States, except as authorized by waste discharge requirements. The discharge of pollutants noted above was not authorized by waste discharge requirements, and would not have been authorized even in the event that waste discharge requirements had been issued for this dairy operation. Section 13385 (c) of the CWC provides that the Board may impose administrative civil liability for violation of Section 13376 in an amount that shall not exceed ten thousand dollars ($10,000) for each day in which the violation occurs, plus $10 per gallon for each gallon in excess of 1,000 gallons that were discharged. Therefore, the maximum amount of liability that the Board could assess

administratively under Section 13385(c) for the discharge that was observed on February 13 is $10,000, plus $600 per minute (60 gpm x $10 per gallon) for the duration of the discharge. The total duration of the discharge is unknown.

The discharge observed on February 13, 2001 appeared to have been at least the result of negligence, and to some extent, deliberate actions. Constructing and maintaining adequate storm and wastewater containment controls and properly supervising work occurring at the facility could have prevented the discharge.

The discharge was observed to be flowing at a rate of about 60 gpm. The discharge was to drainage courses that are tributary to Reach 3 of the Santa Ana River. The beneficial uses of Reach 3 of the Santa Ana River include, in part, water contact recreation, non-contact water recreation, groundwater recharge and warm freshwater habitat. Municipal wastewater that is discharged to Reach 3 of the Santa Ana River requires a high level of treatment to render the wastewater essentially free of organic matter and pathogens. Storm water runoff from corrals contains pollutants, including, in part, pathogens, nutrients (nitrogen and phosphorus), chemical oxygen demand, high turbidity, ammonia, and dissolved solids (salts). The pollutants in dairy wastewater can significantly impact the beneficial uses of the Santa Ana River and groundwater in Orange County.

2. Ability to Pay the Proposed Assessment

Board staff has no information to indicate that John Schoneveld would be unable to pay the proposed assessment.

3. Any Prior History of Violations

John Schoneveld has no history of violations at this facility.

4. Degree of Culpability

John Schoneveld is entirely culpable for the discharge observed on February 13, 2001. The manured runoff originated from his corral. The discharge could have been avoided if reasonable preventative measures had been taken. The discharge occurred as a result of not having containment structures in place to contain the discharge, and partially because of the actions of the tractor operator. Board staff found no evidence that storm water originating off-site was a factor in this discharge. Board staff observed no evidence of offsite run-on entering the Bouma Dairy. All drainage runoff from property north of Eucalyptus Avenue (upgradient of the Schoneveld facility) appeared to be entirely intercepted by the road and conveyed to the west.

Mr. Schoneveld's statement to Board staff regarding the intentions of the tractor operator indicated that he was aware of the drainage characteristics of the corral. It is therefore reasonable to presume that Mr. Schoneveld should also have been aware of the possibility or likelihood that discharges could occur from that area.

5. Economic Benefit or Savings, if any, Resulting from the Violation

It is not likely that John Schoneveld received substantial economic benefit from the discharge observed on February 13, 2001. Preventive actions that could have been employed include instructing the tractor driver to operate in a manner that would not contribute to the discharge, placing a low berm along Eucalyptus Avenue, pumping the wastewater from the corral, or regrading the corral to properly drain away from Eucalyptus Avenue. CWC Section 13385(e) states "At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation." The proposed administrative civil liability is likely at a level that recovers the economic benefits that were derived by failing to take appropriate actions to prevent the discharges.

Based on consideration of the above factors, ACLC No. 01-49 proposed that administrative civil liability be imposed by the Board in the amount of $10,000.

RECOMMENDATION

Board staff recommends that the Board affirm the assessment proposed in Administrative Civil Liability Complaint Order No. 01-49. Further, staff recommends that the Board direct the Executive Officer to take appropriate steps to collect the assessment in the event that John Schoneveld fails to pay the assessment in a timely manner.