CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

June 1, 2001

ITEM: 14

SUBJECT: Administrative Civil Liability Complaint No. 01-62 – Michael Bidart, Owner of Loyola Dairy #1

SUMMARY

Michael Bidart, owner of Loyola Dairy #1 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 May 4, 2001, the Executive Officer issued Administrative Civil Liability Complaint (ACLC) No. 01-62 to Michael Bidart. The maximum liability that the Board could assess administratively under CWC Section 13385(c) for the discharges that were observed is $10,000 for each day of discharge plus $10 per gallon for each gallon in excess of 1,000 gallons that were discharged. Therefore, the maximum liability for this alleged violation would be $399,000. The assessment proposed in ACLC No. 01-62 is $20,000. The matter before the Board is whether to affirm, reject, or modify this assessment.

BACKGROUND

The Regional Board began issuing individual waste discharge requirements to all dairy facilities in the Region in 1972. In 1994, the Regional Board adopted a general NPDES permit for concentrated animal feeding operations, including dairies, within the Santa Ana Region (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 Regional 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 the milk 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 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 small 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

Regional Board records indicate that Michael Bidart has been operating Loyola Dairy #1 at 7975 Bickmore Avenue, Chino, since 1998. In a letter dated October 12, 2000, Board staff requested Michael Bidart to submit a Notice of Intent, and a filing fee, to obtain coverage under Order No. 99-11. However, because Board staff did not have documentation indicating that a Notice of Intent and filing fee was submitted, authorization to be covered under Order No. 99-11 was not issued. Therefore, waste discharge requirements were not in effect and Loyola Dairy #1 was not covered by Order No. 99-11 at the time the discharges noted below were observed. (However, on March 13, 2001, staff became aware that a filing fee was received on October 26, 2000, although there was no record that a Notice of Intent was submitted with the filing fee. On April 6, 2001, Michael Bidart submitted a Notice of Intent, and on May 17, 2001, Michael Bidart was issued authorization to discharge wastes in accordance with Order No. 99-11).

On June 26, 2000, Board staff observed breaks in a concrete curb adjacent to Grove Avenue, along the easterly perimeter of Loyola Dairy #1 where the facility's eastern corrals are located. These breaks represented a threatened discharge of corral runoff to Grove Avenue. Board staff also observed that corral manure had been pushed over the concrete curb, through the perimeter chain-link fence, and into the Grove Avenue drainage swale. On July 19, 2000, staff sent a letter to Michael Bidart requesting that the manure on Grove Avenue be removed, and that corrective action be taken to repair the concrete curb. Follow-up inspections on August 1, 3, and 7, 2000 found that the manure had not been removed, and that no corrective action had been taken to repair the breaks in the concrete curb. Board staff telephoned Michael Bidart on August 8, 2000, at which time he indicated that he had received the July 19, 2000 letter.

However, Michael Bidart stated that since the referenced perimeter fence line was identified as being along Walker Avenue (which does not border his facility), he disregarded the issue (Board staff had inadvertently noted Walker Avenue in the letter, instead of Grove Avenue). During the phone conversation, this issue was clarified and Michael Bidart referred staff to John Bidart to make the necessary repairs to correct the problem.

On August 9, 2000, Board staff met with John Bidart who agreed to make the repairs. On a follow-up inspection on August 21, 2000, staff observed that the manure that had been pushed over the concrete curb had been removed from the Grove Avenue drainage swale. However, the concrete curb had not been repaired. Additional follow-up spot inspections on October 4, 13, and 23, and November 3, 2000, found that all the repairs to the concrete curb had not been made.

On February 13, 2001, Board staff observed wastewater (storm water runoff mixed with manure) being discharged to Grove and Pine Avenues from five locations along the concrete curb. Two discharges were observed to be the result of breaks in the concrete curb. Three discharges were observed to be the result of the undermining of foundation soil beneath the concrete curb. It was estimated that a total of 80 gallons per minute (4,800 gallons per hour) were being discharged from the five locations. The discharges either flowed directly into Pine Avenue's roadside drainage ditch that is tributary to the Santa Ana River, a navigable water of the United States, or south along Grove Avenue and then to the Pine Avenue drainage ditch.

On February 15, 2001, Board staff met John Bidart at the facility. The discharges observed on February 13, 2001 were discussed, and John Bidart indicated that he had previously repaired the breaks in the concrete curb that were observed by Board staff during the June 26, 2000 inspection. He suggested that Board staff must have observed new breaks in the concrete curb on February 13, 2001. However, on February 15, 2001, Board staff determined that the locations of the two breaks in the concrete curb that were observed on February 13, 2001 were the same locations that were observed on June 26, 2000, and had not been repaired.

On February 23, 2001, Board staff again observed wastewater (corral runoff) being discharged to Pine Avenue from one of the same concrete curb break locations that had been observed on February 13, 2001. The discharge flowed into Pine Avenue's roadside drainage ditch, tributary to the Santa Ana River. It was estimated that the rate of discharge was 2 gpm.

Also on February 23, 2001, Board staff contacted Ramon, one of the milkmen at the facility, notified him of the discharge, and requested that he have Mr. Bidart contact Board staff as soon as possible regarding this discharge. Immediately after speaking with Ramon, a voice message was also left on John Bidart's phone describing the discharge and requesting a return call when the repairs were completed. Despite leaving these messages, Board staff did not receive a response from John Bidart. Board staff returned to the facility on March 1, 2001, for a follow-up inspection, and observed that the damaged areas of the concrete curb had finally been repaired.

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 match 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. 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 about 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.

A Board staff registered civil engineer prepared an analysis to estimate the volume of runoff that would have been discharged from the eastern corrals during the February 13 and February 23 rainfall events. The analysis was based on commonly applied methodology presented in the County of San Bernardino Hydrology Manual, August 1986 edition. The average 24-hour rainfalls of the dates of the observed discharges were considered in the discharge volume estimations.

Based upon 24-hour precipitation data gathered from five locations within the Chino Valley area, an average of 0.88 inches of rain fell on February 13, 2001. It was estimated that this amount of rainfall would have yielded 32,800 gallons of runoff from the eastern corrals. On February 23, an average of 0.31 inches of rain fell. It was estimated that this amount of rainfall would have yielded 6,100 gallons of runoff from the eastern corrals. Considering the inability of the concrete curb to contain manured runoff from the corrals, all of the runoff from these two days would have been discharged to Grove and Pine Avenues.

On March 23, 2001, the Executive Officer issued ACLC No. 01-47 to John Bidart for the discharges that occurred on February 13 and 23, 2001. The ACLC proposed that administrative civil liability be imposed on John Bidart in the amount of $20,000. However, Board staff was subsequently informed that John Bidart is an employee of the facility. As a result, ACLC No. 01-47 was withdrawn and ACLC No. 01-62 was issued to Michael Bidart, owner of Loyola Dairy #1, on May 4, 2001. ACLC No. 01-62 proposed that administrative civil liability be imposed on Michael Bidart in the amount of $20,000.

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 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 discharges that were observed on February 13 and February 23, 2001, is $399,000 ($20,000 for the two days of discharge and $379,000 for 37,900 gallons at $10 per gallon).

The discharges occurred on two separate days, February 13 and February 23, 2001. Storm water runoff resulting from precipitation that fell in the easterly corrals was allowed to discharge through an ineffective and poorly maintained concrete curb. The failure of the concrete curb to contain this storm water runoff mixed with manure, allowed pollutants contained in this runoff to be discharged to Grove and Pine Avenues, tributary to Reach 3 of the Santa Ana River, a navigable water of the United States.

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 Michael Bidart would be unable to pay the proposed assessment.

3. Any Prior History of Violations

During the three years that Michael Bidart has owned Loyola Dairy #1, the discharges noted above were the only violations that have been observed.

4. Degree of Culpability

Loyola Dairy #1 is entirely culpable for the discharges observed on February 13 and February 23, 2001. There is no evidence that off-site run-on was a factor in these discharges. The discharges that occurred were not the result of rainfall exceeding a 25-year, 24-hour storm. Instead, the discharges were the result of poorly maintained containment structures and negligence, and, therefore, could have been avoided. The discharges occurred despite Board staff making several contacts with representatives of the facility in writing, telephone conversations and on-site meetings, regarding the potential for discharges of wastewater from the eastern corrals due to the breaks in the concrete curb.

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

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." It is not likely that Michael Bidart received substantial economic benefit from the discharges observed on February 13 and February 23, 2001. However, reasonable preventive actions that could have been employed included repairing the concrete curb, placing a low berm along the easterly and southerly property boundaries, and pumping the accumulated wastewater from the corral into the wastewater disposal pond. 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. 01-62 proposed that administrative civil liability be imposed by the Board in the amount of $20,000.

RECOMMENDATION

Board staff recommends that the Board affirm the assessment proposed in Complaint No. 01-62. Further, staff recommends that the Board direct the Executive Officer to take appropriate steps to collect the assessment in the event that Michael Bidart, dba Loyola Dairy #1, fails to pay this assessment in a timely manner.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

IN THE MATTER OF:	)	
	)	**COMPLAINT NO. 01-62**
Michael Bidart	)	**FOR**
Owner of Loyola Dairy #1	)	**ADMINISTRATIVE CIVIL LIABILITY**
7975 Bickmore Ave.	)	
Chino, CA 91710	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Michael Bidart, owner of Loyola Dairy #1, 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 Michael Bidart waives the right to a hearing. Waiver procedures are specified on page 4 of the complaint. If the hearing in this matter is not waived, it will be held during the Board's regular meeting on June 1, 2001 at the City Council Chambers of Loma Linda at 25541 Barton Road, Loma Linda, 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 June 1, 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. Michael Bidart is alleged to have discharged pollutants (storm water runoff mixed with manure) to a location that is tributary to the Santa Ana River, a navigable water 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. This complaint is based on the following facts:

A. During an inspection of Loyola Dairy #1 on June 26, 2000, Board staff observed breaks in a concrete curb adjacent to the facility's eastern corrals. The breaks were located at the intersection of Pine and Grove Avenues and adjacent to Grove Avenue, approximately 80 feet north of the intersection. Over the course of the next two months, Board staff expressed concerns to Michael Bidart, the owner, and John Bidart, identified as the facility manager, both in writing and in on-site meetings, regarding the potential for discharges of wastewater from the eastern corrals due to these curb breaks.

B. On February 13, 2001, Board staff observed wastewater (storm water runoff mixed with manure) being discharged to Grove and Pine Avenues from five locations along the concrete curb. Two discharges were observed to be the result of breaks in the concrete curb. Three discharges were observed to be the result of the undermining of foundation soil beneath the concrete curb. It was estimated that a total of 80 gallons per minute (gpm) were being discharged from the five locations. The discharges either flowed directly into Pine Avenue's roadside drainage ditch that is tributary to the Santa Ana River, a navigable water of the United States, or south along Grove Avenue and then to the Pine Avenue drainage ditch.

C. Based upon the precipitation data gathered from five locations within the Chino Valley area, an average of 0.88 inches of rain fell on February 13, 2001. It was estimated that this amount of rainfall would yield 32,800 gallons of runoff from the eastern corrals. Considering the inability of the concrete curb to contain manured runoff from the corrals, all of this runoff would have been discharged to Grove and Pine Avenues.

D. On February 15, 2001, Board staff met at the facility with John Bidart. The discharges observed on February 13, 2001 were discussed, and John Bidart indicated that he had previously repaired the breaks in the concrete curb that were observed by Board staff during the June 26, 2000 inspection. He suggested that Board staff must have observed new breaks in the concrete curb on February 13, 2001. However, on February 15, 2001, Board staff determined that the locations of the two breaks in the concrete curb that were observed on February 13, 2001 were the same locations that were observed on June 26, 2000, and had not been repaired.

E. On February 23, 2001, Board staff again observed wastewater (storm water runoff mixed with manure) being discharged to Pine Avenue from one of the same concrete curb break locations that had been observed on February 13, 2001. The discharge flowed into Pine Avenue's roadside drainage ditch, tributary to the Santa Ana River. It was estimated that the rate of discharge was 2 gpm.

F. An average of 0.31 inches of rain fell on February 23, 2001. It was estimated that this amount of rainfall would yield 6,100 gallons of runoff from the eastern corrals. Considering the continued inability of the concrete curb to contain manured runoff from the eastern corrals, all of this runoff would have been discharged to Grove Avenue.

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

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 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 discharged. Therefore, the maximum liability that the Board could assess for the two days of discharge is $399,000 ($20,000 for the 2 days of discharge and $379,000 for 37,900 gallons at $10 per gallon).

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 administrative civil liability be imposed on Michael Bidart in the amount of $20,000.

WAIVER OF 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 ($20,000). Send the check and waiver to:

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

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

5/4/01
Date

G J Thibeault
Gerard J. Thibeault
Executive Officer

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

IN THE MATTER OF:	)	
	)	**COMPLAINT NO. 01-62**
Michael Bidart	)	**FOR**
Owner of Loyola Dairy #1	)	**ADMINISTRATIVE CIVIL LIABILITY**
7975 Bickmore Avenue	)	
Chino, CA 91710	)	

WAIVER OF HEARING

Michael Bidart, owner of Loyola Dairy #1, agrees to waive his right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to violations alleged in Complaint No. 01-62. Michael Bidart has enclosed a check or money order made payable to the State Water Resources Control Board in the amount of $20,000 in settlement of Complaint No. 01-62. Michael Bidart understands that he is giving up his right to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and amount of, the civil liability.

_____ _____

Date Michael Bidart