

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

CEASE AND DESIST ORDER R5-2017-0039  
REQUIRING  
JAMES G. AND AMELIA M. SWEENEY  
SWEENEY DAIRY  
TULARE COUNTY

TO COMPLY WITH REQUIRED REPORTS AND PRACTICES PRESCRIBED  
IN GENERAL ORDER R5-2013-0122

The California Regional Water Quality Control Board, Central Valley Region, (Central Valley Water Board) finds that:

1. The Central Valley Water Board adopted the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order), on 3 October 2013. The Reissued General Order replaces the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (2007 General Order) and accompanying Monitoring and Reporting Program (MRP). The Reissued General Order and accompanying MRP contain management and reporting requirements for dairies regulated by the Reissued General Order.
2. James G. and Amelia M. Sweeney (Discharger) own and operate the Sweeney Dairy (Dairy), located at 30712 Road 170, Visalia, California, County of Tulare. The Dairy is located approximately 2.8 miles east-northeast of the City of Visalia, and is located in an area used for permanent plantings (orchards), field crops, and rural residences. The Kaweah River extends along the northern boundary of the Dairy cropland where Dairy wastewater is reported by Mr. Sweeney to be applied. The Dairy is within one quarter mile of an area identified as a Groundwater Protection Area (GPA) by the California Department of Pesticide Regulation (DPR). Correspondence from Mr. Sweeney submitted in August 2010 indicates that a dairy has operated at the property for 80 years (i.e., since 1930).
3. California Department of Water Resources (DWR) well system database indicates first encountered groundwater at depths ranging from approximately 15 to 55 feet below ground surface at a DWR monitoring well located approximately 1,900 feet northwest of the Dairy. DWR groundwater elevation maps indicate a groundwater flow direction to the west-southwest in the vicinity of the Dairy (towards the City of Visalia). The close proximity of the Kaweah River is likely to influence groundwater conditions underlying the Dairy.
4. The United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Soil Survey for Tulare County, Western Part, identifies soils at the primary wastewater pond, the northern and western portions of the production area, and much of the land application area north of the production area as Grangeville sandy loam.<sup>1</sup> Soils at the southeast portion of the Dairy production area and the remaining land application areas are identified as Nord fine sandy loam. The soil types at the Dairy are described as very deep soils, having moderate to moderately rapid permeability. Notes provided in the soil description for the Grangeville sandy loam soils state "Dairy waste lagoons may not be suitable because of the risk of groundwater pollution" and "Moderately rapidly permeable soil layers can speed the leaching of nutrients, primarily nitrates, and certain pesticides into the ground water." The age of the dairy and predominant soil types at the property, as well as the lack of information indicating otherwise, suggest that the wastewater ponds at the Dairy were not constructed consistent with the minimum retention pond design requirements of the California Code of Regulations, title 27, section

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<sup>1</sup> United States Department of Agriculture, Natural Resources Conservation Service, Soil Survey of Tulare County, California, Western Part, issued 2003. Grangeville sandy loam, soil type 122, description provided on pages 62 and 63. Nord fine sandy loam, soil type 130, description provided on page 71.

22562, subdivision (d), and were not constructed in a manner intended to prevent or minimize wastewater infiltration.

5. According to the Water Well Drillers Report submitted for the Dairy, sediments encountered during the construction of the irrigation well at the Dairy consisted of sandy loam to a depth of 16 feet below ground surface (bgs) and alternating fine to coarse sands and clays to the bottom of the borehole. Medium to coarse sands and rocks (probably interpreted as gravel or larger sediments) were noted at depths beyond 48 feet bgs. According to the Water Well Drillers Report, a surface sanitary seal or other seal to protect against pollution was not provided for the irrigation well. Sediments encountered during the construction of the irrigation well and the absence of a well seal are factors that contribute to the potential for rapid transport of pollutants from the surface to groundwater.

### Inspection History

6. On 23 January 2013, Central Valley Water Board staff inspected the Dairy to assess compliance with the 2007 General Order and accompanying MRP. Several violations of the 2007 General Order and MRP were observed during the inspection process, including standing wastewater observed at the livestock corrals; lack of a depth marker at the wastewater storage pond; excessive vegetation in the wastewater storage pond; lack of backflow prevention at an irrigation well; lack of a Nutrient Management Plan (NMP); and lack of nutrient budget records<sup>2</sup>. Staff issued a Notice of Violation (NOV) on 3 May 2013 notifying the Discharger of these violations and requesting resolution of the violations by 18 June 2013. On 14 June 2013, the Discharger submitted a response to the 3 May 2013 NOV. The Discharger's response did not address the violations regarding a lack of a NMP and nutrient budget.
7. On 15 June 2016, Central Valley Water Board staff inspected the Dairy to assess compliance with the Reissued General Order and accompanying MRP. Several violations of the Reissued General Order and MRP were observed during the inspection process, including lack of a depth marker at the wastewater storage pond; excessive vegetation in the wastewater storage pond; lack of a NMP; and lack of nutrient budget records<sup>3</sup>. Staff issued a NOV on 12 August 2016 notifying the Discharger of these violations and requesting resolution of the violations by 23 September 2016. On 9 September 2016, the Discharger submitted a response to the 12 August 2016 NOV. The Discharger's response did not address the violations regarding a lack of a NMP and nutrient budget.

### VIOLATIONS OF THE 2013 REISSUED GENERAL ORDER

8. The Reissued General Order and accompanying MRP places restrictions on the discharge of wastes from dairy facilities that are intended to prevent pollution and nuisance conditions from occurring or persisting, consistent with the State Water Resources Control Board's Statement of Policy with Respect to Maintaining High Quality of Waters in California, Resolution 68-16, also known as the *State Anti-Degradation Policy*. The implementation of nutrient management plans, waste management plans,

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<sup>2</sup> Violations of the prohibitions, specifications, and provisions of the 2007 General Order noted during the staff inspection conducted on 23 January 2013 include General Specification B.16 for standing water in the livestock corrals and manure slurry at the end of the feed lanes; General Specification B.13 requiring a depth marker at the wastewater pond; General Specification B.11 for excessive vegetation along the sidewalls of the wastewater pond; Attachment B, Waste Management Plan for the Production Area, Section VI for failure to provide backflow prevention for a water supply well; the MRP, Record-Keeping Requirement B.1 for failure to prepare a nutrient management plan; and the MRP, Record-Keeping Requirements B.3.c and B.3.d for failure to document manure and wastewater applications.

<sup>3</sup> Violations of the of the prohibitions, specifications, and provisions of the Reissued General Order that were noted during the staff inspection conducted on 15 June 2016 include General Specification B.13 requiring a depth marker at the wastewater pond; General Specification B.11 for excessive vegetation along the sidewalls of the wastewater pond; Attachment B and the MRP, Record-Keeping Requirement B.1 for failure to prepare a nutrient management plan; and the MRP, Record-Keeping Requirements B.3.c and B.3.d for failure to document manure and wastewater applications.

enhanced management practices within the production area, and improved containment features for new and expanding dairy wastewater retention ponds will limit the amount of degradation that will occur under the Reissued General Order to prevent long-term impacts to beneficial uses. (Reissued General Order, Finding 27.)

9. The Reissued General Order and accompanying MRP require the submission of an Existing Conditions Report, a Waste Management Plan (WMP), and Annual Reports for each calendar year.

### **Waste Management Plan**

10. The Reissued General Order required regulated facilities to submit a Waste Management Plan (WMP), if one had not previously been submitted by 1 July 2010 under Order R5-2009-029. The WMP is required to have the following components: a retrofitting plan, with schedule, needed to improve storage capacity, flood protection, or design of the production area; maps of the production area and land application area; a wastewater storage capacity evaluation; a flood protection evaluation; a production area design/construction evaluation; and documentation that there are no cross connections. The purpose of the WMP is to ensure that the production area of the Dairy is designed, constructed, operated and maintained so that dairy wastes generated at the Dairy are managed in compliance with the Reissued General Order in order to prevent adverse impacts to groundwater and surface water quality.
11. Submittal of the WMP is critical to determine whether the Dairy can operate in a manner consistent with the Reissued General Order and has procedures in place for implementing best practicable treatment or control (BPTC) methodologies. Engineering certifications provided to staff to demonstrate that the Dairy has adequate wastewater capacity during the rainy season and is adequately protected from flooding is consistent with title 27 of the California Code of Regulations and the Basin Plan. Implementation of the WMP operations and management plan for the production area and water supply well backflow provisions are considered to be BPTC.
12. Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) Panel 0955 of 2550, Map Number 06107C0955E, dated 6 June 2009, depicts a majority of the production area of the Dairy within Flood Zone AE, an area prone to flooding during a 100-year flood event. An evaluation of flood protection measures and/or a certification of completion for flood protection measures have not been submitted as required by the Reissued General Order, Attachment B, Waste Management Plan for the Production Area, Section III.
13. The Discharger has not submitted a WMP, a violation of the Reissued General Order.

### **Nutrient Management Plan**

14. Required Reports and Notices J.1.c of the Reissued General Order requires all dischargers who apply manure, bedding or process wastewater to land for nutrient recycling to develop and implement a Nutrient Management Plan (NMP) to control nutrient losses.
15. The purpose of the NMP is to budget and manage the nutrients applied to the land application area(s) considering all sources of nutrients, crop requirements, soil types, climate, and local conditions in order to prevent adverse impacts to surface water and groundwater quality. The NMP must take the site-specific conditions into consideration in identifying steps that will minimize nutrient movement through surface runoff or leaching past the root zone. (Reissued General Order, p. C-1) The Central Valley Water Board considers the implementation of an effective NMP to be BPTC for land application areas.
16. At a 23 January 2013 Board inspection and at a 15 June 2016 inspection, the Discharger was unable to provide staff a copy of its NMP. The Reissued General Order requires the Discharger to provide the NMP to the Board upon request. Following the 23 January 2013 and 15 June 2016 inspections, the

Board requested a copy of the NMP. The Discharger has not provided a NMP nor demonstrated that a NMP is being implemented, a violation of the Reissued General Order.

### **Annual Reports**

17. Annual Reports are required under the MRP, section C, Reporting Requirements. Each Annual Report must include a General Section that includes a summary of nutrient management at the dairy, a Groundwater Reporting Section that must describe all groundwater monitoring conducted over the course of the prior year, and a Storm Water Reporting section which must include storm water monitoring results.
18. Submittal of annual reports is critical for staff to determine whether specific compliance criteria for the Reissued General Order are being met, including mature cow herd sizes, nutrient application to removal ratios for crops grown at land application areas, for evaluating groundwater quality trends indicated by dairy water supply well monitoring results, and for tracking nutrient imports and exports from wastewater and solid manure. The annual reports also provide documentation that monitoring requirements of the MRP are being performed to demonstrate NMP implementation. Annual reports allow determination of whether the practices of the Dairy are preventing degradation of groundwater in a manner consistent with the Reissued General Order.
19. On 4 May 2012, the Executive Officer issued a Water Code section 13267 Order (13267 Order) directing the Discharger to implement additional groundwater monitoring at the Dairy. Specifically, the 13267 Order directed the Discharger to submit either: 1) written notification, by 25 May 2012, that the Discharger has joined a coalition group that will develop a representative groundwater monitoring program as an alternative to implementing an individual groundwater monitoring program at the Dairy; or, 2) an acceptable groundwater monitoring well installation and sampling plan (MWISP) to the Central Valley Water Board by 29 June 2012. These requirements were incorporated into Attachment A for the Reissued General Order's MRP.
20. Monitoring of first-encountered groundwater, either through an individual groundwater program or through the a Representative Monitoring Program, is necessary for compliance with the Reissued General Order to confirm that management practices being employed for the wastewater retention system, land application areas, and animal confinement areas are protective of groundwater quality.
21. The Discharger has not submitted an annual report for the years 2009, 2010, 2011, 2012, 2013, and 2014, in violation of the Reissued General Order.
22. Recent inspections demonstrate continuing violations of the Reissued General Order, including a lack of a NMP. Failure to develop and implement a NMP creates a threat of discharge of waste in violation of the Reissued General Order because there is no evidence that best management practices for nutrient application are being used to prevent degradation to groundwater.

### **PREVIOUS ENFORCEMENT**

23. On 13 October 2011, the Central Valley Water Board adopted Administrative Civil Liability Order (ACLO) R5-2011-0068 for the Discharger's failure to submit the 2009 Annual Report and a Waste Management Plan by the 1 July 2010 due date.
24. On 2 August 2012, the Central Valley Water Board adopted ACLO R5-2012-0070 for the Discharger's failure to submit the 2010 Annual Report by the 1 July 2011 due date.
25. On 25 July 2013, the Central Valley Water Board adopted ACLO R5-2013-0091 for the Discharger's failure to submit the 2011 Annual Report by the 1 July 2012 due date, and for failure to comply with the

13267 Order issued to the Discharger on 4 May 2012 directing the Discharger to implement the additional groundwater monitoring requirements as set out in Attachment A to the MRP at the Dairy.

26. On 9 October 2014, the Central Valley Water Board adopted ACLO R5-2014-0119 for the Discharger's failure to submit the 2012 Annual Report by the 1 July 2013 due date.
27. On 4 June 2015, the Central Valley Water Board adopted ACLO R5-2015-0065 for the Discharger's failure to submit the 2013 Annual Report by the 1 July 2014 due date.
28. On 18 August 2016, the Central Valley Water Board adopted ACLO R5-2016-0063 for the Discharger's failure to submit the 2014 Annual Report by the 1 July 2015 due date.

### **REGULATORY CONSIDERATIONS**

29. Water Code section 13301 states:

When a regional board finds that a discharge of waste is taking place or threatening to take place in violation of requirements or discharge prohibitions prescribed by the regional board or the state board, the board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the board, or (c) in the event of a threatened violation, take appropriate remedial or preventive action.

The Central Valley Water Board finds that a discharge of waste is taking place in violation of the requirements and discharge prohibitions of the Reissued General Order (Order R5-2013-0122), as described in the Findings of this Order. This Order requires the Discharger to take appropriate remedial action and to comply in accordance with the time schedule set forth below.

30. Water Code section 13267, subdivision (b) states, in part:

In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

The Discharger owns and operates the Sweeney Dairy which is subject to the Reissued General Order and this Cease and Desist Order. The technical and monitoring reports required by this Order are necessary to determine compliance with the requirements in Order R5-2013-0122 and with this Order to ensure prevention of further degradation to groundwater.

31. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).
32. After due notice to the Discharger and all other affected persons, the Central Valley Water Board conducted a public hearing at which evidence was received to consider this Cease and Desist Order

under Water Code section 13301 to establish a time schedule to achieve compliance with waste discharge requirements.

**IT IS HEREBY ORDERED** that, pursuant to sections 13301 and 13267 of the Water Code, James G. and Amelia M. Sweeney shall implement the following measures to comply with the Reissued General Order:

1. The Discharger shall comply with the following time schedule:
  - a. **By 1 July 2017**, submit a complete and adequate Nutrient Management Plan (NMP) prepared by a certified specialist, as defined in the Reissued General Order, to the Central Valley Water Board. The NMP must include the required elements specified in Attachment C of the Reissued General Order. The NMP must describe management practices that have been developed and are being implemented to control nutrient losses.
  - b. **By 1 August 2017**, submit one of the following:
    - i. A demonstration that the Discharger has joined the representative groundwater monitoring program as an alternative to implementing an individual groundwater monitoring program at the Dairy; or,
    - ii. An acceptable groundwater monitoring well installation and sampling plan (MWISP) completed in accordance with Attachment A of the MRP to the Board.

Should the Discharger opt to comply with the groundwater monitoring requirements of the Reissued General Order by opting to submit a MWISP, sampling of the installed wells must commence within six months of submitting the MWISP.
  - c. **By 1 September 2017**, submit a complete and adequate Waste Management Plan (WMP) for the production area of the Dairy, prepared in accordance with Attachment B of the Reissued General Order.
  - d. **By 1 October 2017**, submit a report documenting all monitoring activities conducted at the Dairy in accordance with the Reissued General Order's Monitoring and Reporting Program (MRP) between the effective date of this Order through the month of December 2016.
2. The Discharger shall forthwith commence compliance with the General Order's requirement to submit Annual Reports by 1 July of each year. If the Discharger is incapable of submitting a complete Annual Report on 1 July 2017 because inadequate data were collected during the prior calendar year, the Discharger shall submit an incomplete Annual Report, with an explanation for any deficiencies.
3. The Board has transitioned to a paperless office. Therefore, all technical reports required by this Order must be converted to a searchable pdf file and emailed to [centralvalleyfresno@waterboards.ca.gov](mailto:centralvalleyfresno@waterboards.ca.gov). The following information shall be included in the body of the email: Attention: Dale Essary, Confined Animals Unit. In addition, include the Discharger name, facility name, county, and CIWQS place ID (259783) in the body of the email.
4. In accordance with California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. All technical reports specified herein that contain workplans for investigations and studies, that describe the conduct of investigations and studies, or that contain technical conclusions and recommendations concerning engineering and geology shall be prepared by or under the direction of appropriately qualified

professional(s), even if not explicitly stated. Each technical report submitted by the Discharger shall bear the professional's signature and stamp.

5. Any person signing a document submitted under this Order shall make the following certification:

*"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."*

The Executive Officer may extend the deadlines contained in this Order if the Discharger demonstrates that circumstances beyond the Discharger's control have created delays, provided that the Discharger continues to undertake all appropriate measures to meet the deadlines. The Discharger shall make any deadline extension request in writing at least 30 days prior to the deadline. The Discharger must obtain written approval from the Assistant Executive Officer for any departure from the time schedule shown above. Failure to obtain written approval for any departures may result in enforcement action.

If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement, may issue a complaint for administrative civil liability, or may take other enforcement actions. Failure to comply with this Order or with the Reissued General Order may result in the assessment of Administrative Civil Liability of up to \$10,000 per violation, per day, depending on the violation, pursuant to the Water Code, including sections 13268, 13350 and 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

I, PAMELA C. CREEDON, Executive Office, do hereby certify the foregoing is a full, true, and correct copy of an Order issued by the California Regional Water Quality Control Board, Central Valley Region, on 7 April 2017.

*Original signed by:*

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PAMELA C. CREEDON, Executive Officer