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California Regional Water Quality Control Board San Diego Region



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November 23, 2009

Robert Van Ommering
14950 El Monte Road
Lakeside, CA 92040

In reply refer to:
270175: KSchwall
WDID 9 000000196

Dear Mr. Van Ommering:

**SUBJECT: ADOPTION OF ORDER NO. R9-2009-0165; AN ORDER RESCINDING
ORDER NO. R9-2004-0065, NPDES NO. CA0109207, WASTE
DISCHARGE REQUIREMENTS FOR VAN OMMERING DAIRY, SAN
DIEGO COUNTY**

Enclosed is a copy of Order No. R9-2009-0165, adopted by the Regional Board on November 18, 2009, which rescinded NPDES permit requirements for your dairy operation as contained in Order No. R9-2004-0065, NPDES No. CA0109207 consistent with the recent court ruling. The Van Ommering Dairy is now regulated under General Order No. R9-2008-0130, *Waste Discharge Requirements for Existing Dairy Animal Feeding Operations in the San Diego Region* (General Order). Your facility was automatically enrolled under this General Order upon rescission of your NPDES Permit. A copy of the General Order was sent to you by letter dated October 21, 2009. Please review the requirements including monitoring and reporting requirements to ensure full compliance.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence, please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

If you have any questions about the rescission order, please contact Kristin Schwall at (858) 467-2345 or via e-mail at kschwall@waterboards.ca.gov. If you have questions about the new General Order, please contact Cathryn Henning at (858) 636-3161 or via e-mail at chenning@waterboards.ca.gov.

Respectfully,

David T. Barker
Supervising Engineer

California Environmental Protection Agency

Order No. R9-2009-0165
Van Ommering Dairy

-2-

November 23, 2009

DTB:bdk:ks

Enclosures: Order No. R9-2009-00165

cc:

Kate Rao, USEPA Region 9 (via email)
Dave Smith, USEPA Region 9 (via e-mail)

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

ORDER NO. R9-2009-0165

**AN ORDER RESCINDING ORDER NO. R9-2004-0065, NPDES NO. CA0109207
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:

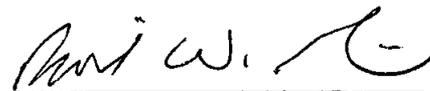
1. On June 10, 2004, the Regional Board adopted *Order No. R9-2004-0065, NPDES No. CA0109207, Waste Discharge Requirements for Van Ommering Dairy, San Diego County*. Order No. R9-2004-0065 established requirements for the discharge of wastewater, not to exceed a volume that is attributable to a mature milking cow herd of 700 cows, to retention ponds.
2. Van Ommering Dairy (Facility) is identified as a medium concentrated animal feeding operations (Medium CAFO) pursuant to 40 CFR 122.23. An animal feeding operation (AFO) is defined as a lot or facility where: (1) animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in a 12-month period; and (2) where crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility. An AFO is defined or designated as a CAFO based on the number of animals at the facility and/or whether the facility discharges to waters of the United States.
3. In February 2003, the United States Environmental Protection Agency (USEPA) revised the effluent limitations and permitting regulations for CAFOs. The 2003 rule eliminated the exemption for operations that discharge only in a large 25-year, 24-hour storm event, and added requirements for land application areas under the control of the CAFO (68 FR 7176). The 2003 CAFO rule required any CAFO with a potential to discharge manure, litter, or process wastewater to waters of the U.S. to apply for an NPDES permit.
4. The 2008 final CAFO Regulations (adopted in November 2008) revised portions of the 2003 CAFO regulations to address the Second Circuit court's decision in *Waterkeeper Alliance et al. v. EPA*. The final rule includes two key changes that address the *Waterkeeper* court decision. First, it revises the requirement for all CAFOs to apply for NPDES permits

and instead requires only those CAFOs that discharge or propose to discharge to waters of the United States (surface waters) to apply for an NPDES permit. Second, the rule adds new requirements relating to Nutrient Management Plans for permitted CAFOs.

5. USEPA has made revisions to 40 CFR 122.23(g), which required CAFO's to maintain permit coverage if they had a potential to discharge. Section 122.23(g), as revised, excludes CAFOs that will not discharge or propose to discharge upon expiration of the permit from the requirement to reapply 180 days in advance of permit expiration. A "No Potential to Discharge to Surface Water Determination Request" has been submitted to the Regional Board for the Van Ommering Dairy on October 8, 2008.
6. The discharge of waste from the above mentioned facility has the potential to cause or contribute to exceedances of applicable water quality objectives of groundwaters and as such, will automatically be regulated under General Order No. R9-2008-0130, *Waste Discharge Requirements for Existing Dairy Animal Feeding Operations in the San Diego Region*.
7. The Regional Board has notified all known interested parties of its intent to rescind Order No. R9-2004-0065.
8. The Regional Board, in a public hearing, heard and considered all comments pertaining to the rescission of Order No. R9-2004-0065.
9. This action to rescind an NPDES permit is exempt from the provisions of CEQA, Public Resources Code sections 21100-21177 pursuant to California Water Code section 13389.

IT IS HEREBY ORDERED that Order No. R9-2004-0065 is rescinded.

I, David W. Gibson, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Board, San Diego Region, on November 18, 2009.



DAVID W. GIBSON
Executive Officer