

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF MARCH 19, 2004

Prepared on February 25, 2004

ITEM: 10

SUBJECT: ADMINISTRATIVE CIVIL LIABILITY NO. R3-2004-0019 – WILLIAM FURTADO DAIRY; WASTE DISCHARGE REQUIREMENTS ORDER NO. 86-01

KEY INFORMATION

Location: 7955 Ferguson Road, Gilroy, Santa Clara County
Type of Discharge: Dairy washwater and storm water
Design Flow: unknown
Permitted Flow: 34,000 gallons per day
Average Flow: unknown
Type of Treatment: Settling ponds
Disposal Method: Evaporation, Percolation, and Irrigation of on-site fields
Existing Orders: Waste Discharge Requirements Order No. 86-01

SUMMARY

The Regional Board Executive Officer issued an Administrative Liability Complaint to William Furtado, owner of William Furtado Dairy, in the amount of five thousand dollars (\$5,000) for failure to submit a complete Report of Waste Discharge pursuant to California Water Code Section 13260.

DISCUSSION

Background

On March 14, 1986, the Regional Board issued Waste Discharge Requirements Order No. 86-01 to William Furtado to regulate discharges from William Furtado Dairy, located at 7955 Ferguson Road in Gilroy, Santa Clara County.

Findings in the 1986 Order specify that up to 34,000 gallons per day of wash water and a variable amount of runoff are discharged at this facility. Wash water is generated from cleaning animal confinement areas. The Order findings indicate a portion of the wash water in ponds is

recycled for use in cleaning animal confinement areas. Ultimate disposal includes percolation and spray irrigation of adjacent fields.

Records indicate the dairy was not operational from August 31, 1986 to at least December 16, 1992.

The existing Order is over seventeen years old; Regional Board staff needs a complete Report of Waste Discharge (ROWD) to update the facility's waste discharge requirements and monitoring program. Typically Regional Board staff revise waste discharge requirements every five, ten, or fifteen years, depending on discharge threat to water quality and facility complexity.

Compliance History

In 1986 a complaint was received from a neighbor less than half a mile from William Furtado Dairy. In response to the complaint, Regional Board staff sampled groundwater from the neighbor's onsite well. Laboratory analysis indicated nitrate levels in the well were 137.5 milligrams per liter (as nitrate). A letter to the well owner cautioned about high-nitrate water. The letter also mentioned staff

planned to learn more about possible groundwater impacts from William Furtado Dairy's discharge by reviewing discharger monitoring data.

Monitoring and Reporting Program No. 86-01 includes effluent, receiving water (groundwater), and facility monitoring requirements. However, despite frequent verbal reminders, Failure-to-Submit letters, and Notices of Violation, only one monitoring report has been received since the Order was adopted in 1986. The table below compares reported wastewater (disposal pond) quality (from the September 2000 Discharger self-monitoring report) to Basin Plan groundwater objectives (for Pajaro River Sub-Basin Llagas Creek Sub-Area) and Order 86-01 discharge limitations.

Table A
Comparison of Facility Wastewater to
Groundwater Objectives and Discharge Limits

Constituent	Waste Water ¹	GW Obj. ²	Discharge Limit	Units
Chloride	590	20	-	mg/L
pH	7.94	-	6.5-8.4	-
Sodium	301	20	-	mg/L
Total Dissolved Solids	5665	300	-	mg/L
Nitrate-Nitrogen	1	-	-	mg/L (as N)
Total Nitrogen	-	5	-	mg/L (as N)

¹September 2000 Discharger self-monitoring report

²Basin Plan Groundwater Objectives for Pajaro River Sub-basin, Llagas Creek Sub-area

Monitoring and Reporting Program 86-01 required installation of one up-gradient groundwater monitoring well and one down-gradient monitoring well by June 1, 1986. As previously mentioned the facility was not operational from August 1986 to December 1992. However, the wells should have been installed after the dairy resumed operations. The September 2000 Discharger self-monitoring report also contained analytical results for two wells identified as well #1 and well #2. The submitted report lacked sufficient documentation to indicate whether the monitoring wells were appropriately placed or constructed. No additional well documentation data were provided upon staff request. Subsequently, it is assumed the requested monitoring wells were not installed.

In June 2000 and February 2001, Regional Board staff observed that cows had access to the creek channel adjacent to the dairy, and that there were animal footprints in the creek. Discharge Specification B.7 of Order No. 86-01 prohibits animals from entering surface waters. After receiving a Notice of Violation, the Discharger reported the cows no longer had access to the creek. Other problems noted during the February 2001 inspection included a large pile of empty 'onion puree' containers near the creek, and a deceased cow decomposing along an access road. Future inspections confirmed there was no longer animal access to the creek, and that the containers and deceased cow had been removed.

Enforcement Order Contents

Violations presented in the Complaint include failure to submit a complete Report of Waste Discharge.

On July 19, 2000, Regional Board staff requested a complete ROWD due by September 11, 2000. An incomplete ROWD of insufficient technical quality was received on October 12, 2000. On November 6, 2000, Regional Board staff notified the Discharger that the ROWD was incomplete and asked for a complete ROWD. The Discharger did not respond. Regional Board staff subsequently requested a complete ROWD on February 5, 2001, April 16, 2002, and February 20, 2003. See Table B for a summary of ROWD requests and Discharger submittals.

Table B
ROWD Requests and Discharger Submittals

	Date of RB Request	ROWD Due By	Discharger Submittal	Date of Discharger Submittal
1	7/19/00	9/11/00	Incomplete ROWD	10/12/00
2	11/6/00	12/15/00	None	-
3	2/5/01	3/20/01	None	-
4	4/16/02	5/16/02	None	-
5	2/20/03	4/19/03	None	-

On February 6, 2003, Regional Board staff inspected William Furtado Dairy and discussed the Discharger's failure to submit a complete ROWD as required in previous correspondence. The Discharger said he had problems finding a consultant to prepare a complete ROWD. Regional Board staff suggested using an electronic phone book, however, the Discharger said he did not have internet access. Regional Board staff offered to mail him a list of consultants.

On February 20, 2003, the Regional Board Executive Officer sent a Notice of Violation addressed to the Discharger via certified mail. Manuel Furtado, the owner's contact person, signed receipt on March 6, 2003. Enclosed was a list of consultants in or near Gilroy, obtained from an electronic phone book. The Notice of Violation required the Discharger to submit a complete ROWD. The Notice of Violation specified that if a complete ROWD was not received by April 19, 2003, the Discharger could be subject to formal enforcement action.

On multiple occasions in April 2003, a consultant contacted Regional Board staff to ask questions regarding the February 20, 2003 Notice of Violation. The consultant indicated he had been hired by the Discharger to comply with our requirements, including submittal of a complete ROWD.

On September 23, 2003, Regional Board staff left a telephone message for the Discharger's contact person, Manuel Furtado, regarding the ROWD, however the Discharger's Mr. Furtado did not return staff's phone call.

On October 7, 2003, Regional Board staff spoke with the Discharger's consultant. The consultant said he had not been able to contact the Discharger to obtain information needed to prepare a complete ROWD and other required reports. The consultant returned the Discharger's deposit.

To date, the Discharger has not submitted a complete ROWD or other ROWD information (other than the October 12, 2000 incomplete ROWD of insufficient technical quality).

Complaint

Administrative Civil Liability Complaint No. R3-2004-0019 was issued to the Discharger via certified mail/receipt notification on January 12, 2004. The Complaint was received by Manuel Furtado on January 14, 2004. However, staff has not been contacted by the Discharger regarding the complaint as of the date of this report preparation.

Liability

As presented in the Complaint, staff considered the following in determining the recommended liability:

- Nature, circumstances, extent, and gravity of the violation,
- Discharge susceptibility to cleanup or abatement and discharge toxicity,
- Ability to pay and effect on ability to continue business,
- Violation history,
- Voluntary cleanup efforts,
- Degree of culpability,
- Economic benefit or savings, and
- Other matters as justice may require.

Since the violation is a reporting violation (less serious than other violations covered by the liability statute), liability less than the maximum is warranted. Staff costs were calculated to total three thousand dollars (\$3,000).

California Water Code Section 13261(b)(1) allows the Regional Board to impose civil liability for a violation of Water Code Section 13260(a)(1) in an amount not to exceed one thousand dollars (\$1,000) per day the violation occurs. The total maximum liability was calculated in the Complaint for the 248 days between the final Report of Waste Discharger due date of April 19, 2003 and the original date of the subject Complaint preparation of December 22, 2003. Therefore, the total maximum liability the Regional Board may assess for the Discharger's failure to submit a complete Report of Waste Discharge pursuant to Water Code Section 13260 is two hundred forty-eight thousand dollars (\$248,000).

RECOMMENDATION

Regional Board staff recommends the Discharger be assessed liability in the amount of five thousand dollars (\$5,000).

ATTACHMENTS

1. Administrative Civil Liability Complaint No. R3-2004-0019
2. Administrative Civil Liability Order No. R3-2004-0019

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