



# California Regional Water Quality Control Board

## San Diego Region



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9174 Sky Park Court, Suite 100, San Diego, California 92123-4353  
(858) 467-2952 • Fax (858) 571-6972  
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

October 21, 2009

**CERTIFIED MAIL- RETURN RECEIPT REQUESTED**  
7099 3400 0015 9997 1238

Frank J. Konyn  
15777 Old Milky Way  
Escondido, CA 92027

In reply refer to:  
**CRU: 9 000000228: KSchwall**

Dear Mr. Konyn:

**SUBJECT: TENTATIVE ORDER NO. R9-2009-0166; AN ORDER RESCINDING ORDER NO. 2000-163, NPDES NO. CA0109053, WASTE DISCHARGE REQUIREMENTS FOR FRANK J. KONYN, FRANK J. KONYN DAIRY, SAN DIEGO COUNTY**

The federal court of appeals recently made a ruling that dairy operations such as yours no longer need to be regulated under a National Pollutant Discharge Elimination System (NPDES) permit, which regulates discharges to surface waters. Your dairy is currently regulated under NPDES Order No. R9-2000-0163. Even though the dairy does not require an NPDES permit, wastes generated at your dairy still pose a threat to ground water quality. Thus, your NPDES permit Order No. R9-2000-0163 is being rescinded and the dairy will be regulated under General Order No. R9-2008-0130, *Waste Discharge Requirements for Existing Dairy Animal Feeding Operations in the San Diego Region* (copy enclosed).

Enclosed is a copy of Tentative Order No. R9-2009-0166 which if adopted by the Regional Board would rescind NPDES permit requirements for your dairy operation as contained in Order No. 2000-163, NPDES No. CA0109053 consistent with the recent court ruling. Regional Board staff plans to present Tentative Order No. R9-2009-0166 to the Regional Board for their consideration and adoption at their regularly scheduled meeting on November 18, 2009. This proposed action is based on our understanding that there is no discharge of pollutants to surface waters from your dairy operation

### BACKGROUND

In 2003, the United States Environmental Protection Agency (USEPA) published revisions to its Clean Water Act regulations governing waste discharges to surface waters from concentrated animal feeding operations (CAFOs). Pursuant to these regulations your dairy operation was classified as a concentrated animal feeding operation (CAFO) and you were required to apply for and comply with a National Pollutant Discharge Elimination System (NPDES) permit. The US Court of Appeals, Second Circuit recently issued a ruling providing that only a person who "discharges or

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proposes to discharge pollutants” to waters of the United States (i.e. surface waters) needs to apply for and comply with an NPDES permit. Our review of this ruling indicates that your dairy operation is no longer subject to the need for regulation under NPDES permit because we understand that there is no waste discharge to surface waters from your dairy operation.

## **WASTE DISCHARGE REQUIREMENTS**

Waste discharges associated with your dairy operation still have the potential to affect the quality of the waters (i.e. ground water) of the State. Pursuant to Division 7 of the California Water Code the Regional Board will be regulating the Frank J. Konyn Dairy under General Order No. R9-2008-0130, *Waste Discharge Requirements for Existing Dairy Animal Feeding Operations in the San Diego Region* (copy enclosed and available at

[http://www.waterboards.ca.gov/sandiego/board\\_decisions/adopted\\_orders/2008/r9\\_2008\\_0130.pdf](http://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2008/r9_2008_0130.pdf)). Your facility is automatically enrolled under this General Order upon rescission of your NPDES Permit. Please check Table 2 of Finding 6 of General Order R9-2008-0130 to ensure that the Maximum Milking Herd Size is correct. If the Maximum Milking Herd Size is not correct, please submit a new, complete application by submitting the form in Attachment B of General Order R9-2008-0130, a waste management plan, and a site map.

There are some significant advantages in transferring regulation of your dairy from NPDES permit to the general state waste discharge requirements (WDRs).

Advantages to obtaining WDRs include:

- A reduction in the number of applications you will need to submit. NPDES permits expire every 5 years and require reapplication and reissuance. Waste discharge requirements do not expire, but are periodically updated.
- Reduced monitoring requirements. The General WDRs require analysis of fewer constituents for the ground water samples.
- No comprehensive detailed nutrient management plan. USEPA, in 40 CFR 122.23, requires the implementation of a nutrient management plan when a dairy is regulated under an NPDES permit. The General WDRs do not require USEPA's nutrient management plan.

## **NOVEMBER 18, 2009 BOARD MEETING**

The November 18, 2009 Board meeting will begin promptly at 9:00 a.m. and will be held at the following location:

Water Quality Control Board  
Regional Board Meeting Room  
9174 Sky Park Court  
San Diego, California

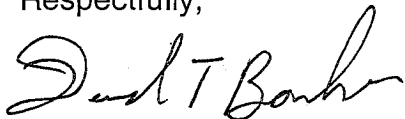
Please review and comment on the tentative order at your earliest convenience. It is recommended that written comments be submitted as soon as possible to enable staff to amend the tentative order, if necessary, and allow changes to the tentative order to be fully reviewed by the Regional Board and interested parties.

The public comment period will remain open until the Regional Board takes action on November 18, 2009. However, to ensure that the Regional Board has the opportunity to fully study and consider written material, comments should be received by the Regional Board no later than 5:00 p.m. on Tuesday, November 3, 2009. The final deadline for submittal of written comments, however, is Tuesday, **November 10, 2009**.

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 or comments, please contact Kristin Schwall at (858) 467-2345 or via email at [kschwall@waterboards.ca.gov](mailto:kschwall@waterboards.ca.gov).

Respectfully,



David T. Barker  
Supervising Engineer

DTB:bdk:ks

Enclosures: 1) General Order No. R9-2008-0130, *Waste Discharge Requirements for Existing Dairy Animal Feeding Operations in the San Diego Region*  
2) Tentative Order No. R9-2009-0166, *An Order Rescinding Order No. 2000-163, NPDES No. Ca0109053, Waste Discharge Requirements For Frank J. Konyon, Frank J. Konyon Dairy, San Diego County*

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

