

ITEM: 7

SUBJECT: Johnnie L. Fagundes, Bruce A. Fagundes, John L. Fagundes, and John L. Fagundes Sr. Revocable Trust, Fagundes Agribusiness Dairy, Kings County

BOARD ACTION: Consideration of an Administrative Civil Liability Order

BACKGROUND: Johnnie L. Fagundes, Bruce A. Fagundes, John L. Fagundes, and John L. Fagundes Sr. Revocable Trust (Discharger) own and operate the Fagundes Agribusiness Dairy (Dairy) in Kings County. The Dairy is regulated by Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order), which was adopted in May 2007. The General Order contains reporting requirements for dairies regulated by the General Order, including timely submission of technical reports. The reports are required to document that the dairies are operating in compliance with the General Order and are not unreasonably affecting groundwater and/or surface water quality. The Discharger failed to submit the following technical reports by the respective due dates: 1) an Annual Report for the calendar year 2009, due by 1 July 2010; 2) a Waste Management Plan, due by 1 July 2010; and 3) a groundwater monitoring well installation and sampling plan, due by 1 September 2010. Central Valley Water Board staff issued notices of violation to the Discharger for failure to submit these required reports. To date, the Discharger has not submitted the reports.

ISSUES: On 5 May 2011, the Executive Officer issued Administrative Civil Liability (ACL) Complaint R5-2011-0558 pursuant to California Water Code (CWC) section 13268, proposing that the Discharger be assessed monetary penalties in the amount of \$15,300 for failure to submit the technical reports. The ACL Complaint provided the opportunity for the Discharger to reduce the full amount of the assessed monetary penalty by \$2,000 for each of the missing reports that is submitted by 20 June 2011, in an effort to stimulate compliance.

The ACL Complaint was accompanied by Hearing Procedures which describe the process that must be followed if the matter proceeds to a hearing. The Discharger did not submit a signed form to waive its right to a hearing within 90 days after being served with the ACL Complaint by the 6 June deadline provided in the Hearing Procedures. The Discharger did not submit any evidence that it wishes the Board to consider or any policy statements by the 13 June 2011 deadline provided in the Hearing Procedures.

RECOMMENDATION: Prosecution Team recommends that the Central Valley Water Board adopt the Administrative Civil Liability Order as proposed.

Mgmt. Review _____
Legal Review _____
14 July 2011
1685 E. Street
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