

ITEM: 10

SUBJECT: David Albers, Vintage Dairy, Fresno County

BOARD ACTION: Consideration of an Administrative Civil Liability Order

BACKGROUND: David Albers (Discharger) owns and operates the Vintage Dairy (Dairy) in Fresno 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 2008, due by 1 July 2009; 2) an Annual Report for the calendar year 2009, due by 1 July 2010; and 3) a Waste Management Plan, due by 1 July 2010. Central Valley Water Board staff issued notices of violation to the Discharger for failure to submit these required reports.

ISSUES: On 17 March 2010, the Executive Officer issued Conditional Early Settlement Offer R5-2009-0585-M (Offer) to the Discharger. The Offer provided the Discharger with an opportunity to settle the violation associated with failure to submit the 2008 Annual Report through an expedited settlement process. The Offer provided the Discharger the option of accepting the conditions of the Offer by waiving the right to a hearing before the Central Valley Water Board, submitting the past-due 2008 Annual Report, and paying a penalty in the amount of two thousand dollars (\$2,000), by 31 March 2010. If the Discharger accepted the Offer, the Central Valley Water Board would consider the identified violation resolved. On 30 March 2010, the Discharger submitted the signed acceptance of the Offer and waiver of right to a hearing. On 13 April 2010, the Discharger submitted the \$2,000 penalty. However, the Discharger did not submit the required 2008 Annual Report with

appurtenant components. The Discharger therefore did not meet all the conditions of the Offer.

On 5 May 2011, the Executive Officer issued Administrative Civil Liability (ACL) Complaint R5-2011-0542 pursuant to California Water Code (CWC) section 13268, proposing that the Discharger be assessed monetary penalties in the amount of \$19,800 for failure to submit the technical reports. The ACL Complaint was accompanied by Hearing Procedures which describe the process that must be followed if the matter proceeds to a hearing.

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. To date, the Discharger has not submitted the reports.

On 3 June 2011, Central Valley Water Board staff received a signed form to waive the Discharger's right to a hearing within 90 days in order to enter in settlement negotiations. The Discharger has submitted evidence in anticipation of hearing, but has not engaged the Prosecution Team in settlement discussion.

The Discharger submitted evidence that it wishes the Board to consider 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
Fresno, CA 93706