



Inland Empire Waterkeeper  
*Advocacy • Education • Restoration • Enforcement*

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**Sent Via Electronic Mail:** [santaana@waterboards.ca.gov](mailto:santaana@waterboards.ca.gov)

Santa Ana Regional Water Quality Control Board  
Attn: Jawed Shami  
3737 Main Street, Suite 500  
Riverside, California 92501

**Re: Comments on General Waste Discharge Requirements for Concentrated Animal Feeding Operations (Dairy and Related Facilities) Within the Santa Ana Region, Order R8-2018-0001, NPDES No. CAG18001**

Dear Mr. Shami:

On behalf of Inland Empire Waterkeeper (“Waterkeeper”), please accept the following comment letter on the General Waste Discharge Requirements for Concentrated Animal Feeding Operations (Dairy and Related Facilities) Within the Santa Ana Region (“Dairy Permit”). Waterkeeper is a local non-profit organization whose mission is to protect and enhance the water quality of the Upper Santa Ana River watershed through programs of advocacy, education, research, restoration, and enforcement. We have over two thousand members who live and/or recreate in and around the Santa Ana River watershed.

Waterkeeper urges the Regional Water Quality Control Board, Santa Ana Region (“Regional Board”) to amend critically important portions of the Dairy Permit to better reflect current federal requirements and promote transparency. Consistent with our comments made in our comment letter dated December 18, 2017, in collaboration with the Environmental and Natural Resources Law Clinic at Vermont Law School, Waterkeeper recommends that the Regional Board revise the draft Dairy Permit to (1) require electronic reporting; and (2) increase visual monitoring.

We further recommend that the Regional Board consider the general recommendations made in our aforementioned comment letter regarding dairy permits adopted elsewhere in California. For example, the San Francisco Regional Board’s dairy permit requires dairies to monitor groundwater for nitrates and coliform bacteria, while surface waters are sampled for specific conductance, total ammonium nitrogen, unionized ammonia, pH and temperature. This additional data provides the Regional Board, and the public, with additional information in which to determine a dairy’s impact on local surface and groundwater. Reflecting on decisions made by Regional Boards elsewhere might improve the quality of our own permit and create a

more consistent regulatory framework for industry, in addition to providing the opportunity to build on innovative water quality developments.

I. THE REGIONAL BOARD MUST REQUIRE ELECTRONIC REPORTING DURING THIS DAIRY PERMIT'S TERM

The Dairy Permit's General Monitoring and Reporting Requirements/Self-Monitoring Reports section mandates that permittees submit hard copies of reports and notices to the Regional Board. Dairy Permit, Attachment B, Sec. X.A.2. Under that section, the permittee is required to submit "hard copy" reports and notices to the Regional Board until the State Water Resources Control Board or the Regional Board notifies the permittee to electronically file reports or notices required under the Dairy Permit. *Id.*

This requirement runs contrary to general conditions required to be included in all NPDES permits, and Concentrated Animal Feeding Operation ("CAFO")-specific NPDES permits. 40 C.F.R. 122.41(l). All NPDES permits must require electronic filing of monitoring reports as of December 21, 2016. 40 C.F.R. § 122.41(l)(4)(i). Bypass, non-compliance, and twenty-four hour reports must be electronically submitted starting December 21, 2020. 40 C.F.R. §§ 122.41(l)(4), 122.41(l)(6)(i), 122.41(l)(7), 122.41(m)(3). NPDES permits for CAFOs, such as the Dairy Permit, must require electronic submission of the minimum set of NPDES data for these permits by December 21, 2020. 40 C.F.R. §§ 127.11(a), 127.16(a). In this context, that minimum set is found in an Annual Program Report and includes a detailed description of the CAFO, including the type and number of animals; the amount of manure, litter and process wastewater; the total number of acres for land application covered by a nutrient management plan; the type and yield of crops; and other information. 40 C.F.R. §§ 122.11(a)(3), 122.42(e)(4). The federal requirement for electronic reporting is a known condition of all NPDES permits, including CAFO-specific NPDES permits. Such conditions are required to either be incorporated into an NPDES permit either expressly or by reference. 40 C.F.R. § 122.41.

The Regional Board must amend the Dairy Permit to require electronic reporting pursuant to the deadline found in federal law, if not sooner. California already maintains an electronic database that could be modified to allow electronic reporting for regional CAFO permittees. Efforts by the Regional Board were successful in modifying that database to allow for regional scrap metal permittees to electronically report. The Regional Board could, and should, require electronic reporting to begin as early as July 1, 2019, or at late as July 1, 2020. At minimum, the Dairy Permit should be revised to acknowledge the approaching federal electronic deadline and place permittee on notice of the significant change.

## II. THE REGIONAL BOARD MUST REVISE THE VISUAL MONITORING REPORT TO REFLECT FEDERAL REQUIREMENTS

The Dairy Permit must be revised to include daily inspections of CAFO facilities, in addition to the weekly visual updates included by the Regional Board. Each CAFO must implement visual inspections of the CAFO production area that, at a minimum, include:

- (i) weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the wastewater and manure storage and containment structure;
- (ii) daily inspection of water lines, including drinking water or cooling water lines;
- (iii) weekly inspections of the manure, litter, and process wastewater impoundments; the inspection will note the level in liquid impoundments as indicated by the depth marker in paragraph (a)(2) of this section.

40 C.F.R. § 412.37(a)(1)(i-iii). The Regional Board attempts to incorporate this update by reference in citing the general code section in the Effluent Limitation section of the Dairy Permit. Dairy Permit, Sec. II.B.1.d. That reference seeks to capture each of the three required visual inspection requirements and further references Attachment B of the Dairy Permit.

Attachment B does include a visual inspection checklist, entitled: “Form 1: CAFO Weekly Storm Water Management Structure Inspections Log Sheet,” which appears to be the Regional Board’s form to comply with these minimum visual inspection requirements. As the checklist’s name confirms, Form 1 does not comply with the daily water line inspection minimum requirement and must be revised to be consistent with 40 C.F.R. § 412.37(a)(1)(ii).

Additionally, Form 1’s instructions are too narrow to capture the scope of BMPs described in subsections listed above. Form 1 limits visual inspections to “weekly inspections of your process wastewater and storm water containment structures.” Federal regulations are much broader, and require visual inspections of “all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water,” as well as “manure, litter, and process wastewater impoundments.” 40 C.F.R. § 412.37(a)(1)(i), (iii). These requirements are much broader and include an array of BMPs present at CAFOs, but not required to be regularly inspected according to the form provided by the Regional Board. This must be revised to conform to the requirements of federal law.

## III. REVISE NUTRIENT MANAGEMENT PLAN TO CORRECT OMISSION

Nutrient management plans are particularly important to protect water quality as they constitute effluent limitations under the Clean Water Act as they affect the rates of discharge from a point source to navigable waters. *Sierra Club Mackinac Chapter v. Department of Environmental Quality*, 747 N.W.2d 321 (2008), appeal denied 766 N.W.2d 857. Effluent limits for discharges from land application areas require that the permittee: (1) develop and implement the BMPs laid out in 40

C.F.R. § 412.4 [nutrient management plan]; (2) maintain records specified in 40 C.F.R. § 412.37 [recordkeeping for land application areas]; and (3) the CAFO shall attain the limitations and requirements by February 27, 2009. 40 C.F.R. § 412.31(b). The clarity of the nutrient management plan requirements must be acknowledged and reflected in the terms of the Dairy Permit because of the enforceable nature of those plans.

The Dairy Permit's discussion of nutrient management plan requirements omits the need for the permittee to inspect land application equipment for leaks. Dairy Permit, Sec. IV.D. A CAFO operator must periodically inspect equipment used for land application of manure, litter, or process wastewater for leaks. 40 C.F.R. § 412.4(c)(4). That requirement should be in the body of the permit, inclusion in the Dairy Permit's attached Fact Sheets is insufficient for notice, clarity, and enforcement. Details are critically important in nutrient management plans, which is why the Regional Board must revise that section of the Dairy Permit to correct the omission.

In conclusion, Waterkeeper appreciates the opportunity to engage the Regional Board in a discussion of the Dairy Permit. We look forward to receive your written response to our comments and look forward to the adoption hearing. Please contact me directly at [colin@coastkeeper.org](mailto:colin@coastkeeper.org) or at 714-850-1965 to discuss any questions or comments in response to this letter.

Sincerely,



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Colin Kelly  
Senior Staff Attorney  
Inland Empire Waterkeeper