



# California Regional Water Quality Control Board

## San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties

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(858) 467-2952 • Fax (858) 571-6972  
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

Supporting Document No. 1

September 23, 2008

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

**CERTIFIED MAIL- RETURN RECEIPT REQUESTED**  
7006 2760 0000 1615 6298

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

Dear Mr. Konyn:

**SUBJECT: TENTATIVE ORDER NO. R9-2008-0117; 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 appears to exempt your dairy operation from the need to be regulated under NPDES permit. Enclosed is a copy of Tentative Order No. R9-2008-0117 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 wishes to present Tentative Order No. R9-2008-0117 to the Regional Board for their consideration and adoption at their regularly scheduled meeting on November 12, 2008. 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 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 may no longer be 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.

*California Environmental Protection Agency*



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 considering regulating your dairy operation under state waste discharge requirements (WDRs) or a conditional waiver of WDRs as a separate action in the near future following the rescission of your NPDES permit, Order No. 2000-163, NPDES No. CA0109053. We will provide you with further details of the Board's plans in this regard under separate cover in the near future.

There are some significant advantages to you transferring regulation of your dairy from NPDES permit to state waste discharge requirements or waiver. 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 where waste discharge requirements do not expire), reduced monitoring requirements, and no comprehensive detailed nutrient management plan (as required by USEPA).

### **NO POTENTIAL TO DISCHARGE TO SURFACE WATERS CERTIFICATION FORM**

If you wish the Regional Board to consider rescission of your NPDES permit at the November 12, 2008 meeting you must first complete the enclosed *No Potential to Discharge to Surface Water Determination Request* form and submit it to the Regional Board for review. Your completion and submittal of this form will be used to confirm our understanding that there is no waste discharge to surface waters from your dairy operation. Please complete and submit the form to Michelle Mata, Water Resource Control Engineer at the letterhead address as soon as possible and no later than **October 29, 2008**.

### **NOVEMBER 12, 2008 BOARD MEETING**

The November 12, 2008 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. 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 October 22, 2008. The final deadline for submittal of written comments, however, is **October 29, 2008**. Per Regional Board direction, written material submitted to the Regional Board office after the submittal deadline date will not be provided to the

***California Environmental Protection Agency***

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September 23, 2008

Regional Board. Also, it is not likely that written material will be accepted by the Regional Board on the day of the meeting.

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 Michelle Mata at (858) 467-2981 or via email at [mmata@waterboards.ca.gov](mailto:mmata@waterboards.ca.gov).

Respectfully,



David T. Barker  
Supervising Engineer

DTB:bdk:mm

Enclosures: 1) *No Potential to Discharge to Surface Water Determination Request form*  
2) Tentative Order No. R9-2008-0117

cc:

Kate Rao, USEPA Region 9 (via email)

**NO POTENTIAL TO DISCHARGE TO SUFACE WATER DETERMINATION REQUEST**

**I. OWNER/OPERATOR INFORMATION**

A. CONTACT INFORMATION	B. FACILITY STATUS
Owner/or Operator Name: <u>Frank J. Konyn</u> Address <u>15777 Old Milky Way</u> City: <u>Escondido</u> State: <u>CA</u> Zip Code: <u>92027</u> Telephone: ( <u>760</u> ) <u>746-6319</u> Facsimile: ( <u>    </u> ) _____	Check one: 1. Existing Facility 2. Proposed Facility

**II. FACILITY INFORMATION**

A. GENERAL INFORMATION

Name: Frank J. Konyn Dairy Telephone: (      ) \_\_\_\_\_

Address: 15777 Old Milky Way Facsimile: (      ) \_\_\_\_\_

City: Escondido State: CA Zip Code: 92027

County: San Diego

1. Has this operation had a discharge of manure, litter, or process wastewater to waters of the United States in the past 5 years? No Yes
  2. Has there ever been a discharge at this operation? No Yes
- If yes, explain the circumstances of the discharge and the actions that have been taken to ensure that no future discharges will occur at this operation.
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

**B. ANIMALS IN CONFINEMENT**

Complete the following table to show the maximum number of each type of animal confined at any one time and the type of confinement structure used for each (e.g., open feedlot, under roof, etc.).

Type	No. of Animals	Type of Confinement
Mature Dairy Cows		
Dairy Heifers		
Other Cattle		
Swine		
Other: (specify) _____		

**NO POTENTIAL TO DISCHARGE TO SUFACE WATER DETERMINATION REQUEST**

**III. ADDITIONAL INFORMATION**

Provide a statement describing the conditions and/or practices at your dairy that eliminate the potential to discharge pollutants to surface waters of the United States. (Such information might include precipitation data and/or maps, soil conditions, soil maps, hydrologic conditions, distance to surface waters of the U.S., or site-specific management or waste treatment practices.) Attach additional sheets, if needed.

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Please identify all documentation provided with this No Potential to Discharge determination request.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**IV. CERTIFICATION**

I certify under penalty of law that this document and all attachments were prepared under my direct supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage this system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Submit to California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego , California, 92123-4340