

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 9**

75 Hawthorne Street  
San Francisco, California 94105

IN THE MATTER OF:	)	Docket No. CWA 309(a)-08-038
	)	
<b>Mr. Jean Biscaichipy</b>	)	<b>Findings of Violation and</b>
Brothers Three Dairy	)	<b>Order for Compliance</b>
15133 Carpenter Avenue	)	
Chino, CA 91710	)	Proceedings under sections 308(a) and 309(a) of
	)	the Clean Water Act, as amended,
	)	33 U.S.C. §§ 1318(a) and 1319(a)

**FINDINGS OF VIOLATION  
AND  
ORDER FOR COMPLIANCE**

This Findings of Violation and Order For Compliance is issued pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) under sections 308(a) and 309(a) of the Clean Water Act, as amended (“Act”), 33 U.S.C. §§ 1318(a) and 1319(a). This authority has been duly delegated to the Director, Water Division, EPA Region 9. Notice of this action has been given to the State of California.

**FINDINGS OF VIOLATION**

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides that except as in compliance with certain specified sections of the Act, including section 402, "the discharge of any pollutant by any person shall be unlawful." Section 402 of the Act, 33 U.S.C. § 1342, provides for the issuance of National Pollutant Discharge Elimination System (NPDES) permits allowing for the discharge of various pollutants to waters of the United States. Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), authorizes the issuance of an order requiring compliance in response to the violation of a condition of an NPDES permit.

2. Mr. Jean Biscaichipy operates a dairy known as “Brothers Three Dairy”, at 15133 Carpenter Avenue, Chino, CA 91710. Brothers Three Dairy is a “concentrated animal feeding operation” as defined at 40 C.F.R. § 122.23, and a point source subject to the NPDES permit program.

3. Discharges from Brothers Three Dairy are governed by “General Waste Discharge Requirements for Concentrated Animal Feeding Operations (Dairies and Related Facilities) within the Santa Ana Region”, Order No. R8-2007-0001, NPDES No. CAG018001, adopted by the California Regional Water Quality Control Board, Santa Ana Region (“Regional Board”), in 2007.

4. Order No. R8-2007-0001, Provisions, VII C.3.a, provides that:

“The discharger shall design, construct and maintain containment structures to retain all wastewater within the facility, including all process wastewater and all precipitation on, and drainage through, manured areas resulting from rainfall up to and including a 25-year, 24-hour rainfall event.”

5. Order No. R8-2007-0001, Provisions, VII C.3.b, provides that:

“The discharger shall develop and fully implement an Engineered Waste Management Plan (EWMP) acceptable to the Executive Officer and prepared in accordance with the Guidelines for the Development of Engineered Waste Management Plans for Concentrated Animal Feeding Operations (Dairies and Related Facilities), February 2001, or any more recent version issued by the Executive Officer. All structures identified in the EWMP shall be designed by a registered professional engineer, or other qualified individual. .... Upon completion of construction of all structures identified in the EWMP, the discharger shall submit a certification from the engineer or other qualified individual who prepared the EWMP that all facilities have been constructed as specified in the EWMP.”

6. Order No. R8-2007-0001, Provisions, VII C.5.c, provides that:

“No containment structures shall be constructed of manure, and manure shall not be used to improve or raise existing containment structures.”

7. Order No. R8-2007-0001, Provisions, VII A.2.a, provides that:

“This order shall serve as a general NPDES permit pursuant to Section 402 of the Federal CWA or amendments thereto, which shall become effective upon its adoption provided the Regional Administrator of the USEPA has no objection. If the Regional Administrator objects to its issuance, the order shall not serve as a general NPDES permit until such objection is withdrawn.”

8. Order No. R8-2007-0001, Attachment A-Standard Provisions, I.C, provides that:

“The discharger shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this order that has a reasonable likelihood of adversely affecting human health or the environment [40 C.F.R. §122.41(d)].”

9. Order No. R8-2007-0001, Provisions, VII B, provides that:

“The discharger shall comply with the Monitoring and Reporting Program requirements and future revisions thereto, in Attachment B of this order.”

10. Order No. R8-2007-0001, Attachment B - Monitoring and Reporting Program, I.A., provides that:

“All monitoring data shall be maintained for at least five years and shall be made available to Regional Board, SWRCB, USEPA staff and/or their authorized representatives (including an authorized contractor acting as their representative), upon request.”

11. Order No. R8-2007-0001, Attachment B - Monitoring and Reporting Program, I.B, provides that:

“All containment structures, including, but not limited to, ponds, berms, and wastewater distribution lines, shall be inspected at least once each week during the entire year and at least once each 24-hour period during a storm event in which rainfall exceeds 0.5 inches in 24 hours.”

12. Order No. R8-2007-0001, Discharge Prohibitions, IV.F, provides that:

“The disposal of any mortality in any process wastewater system is prohibited. Mortalities shall be handled in such a way as to prevent the discharge of pollutants to waters of the state.”

13. On April 22, 2008, Brothers Three Dairy was inspected by EPA and Regional Board staff. Based upon that inspection and review of documents related to Brothers Three Dairy, EPA has determined that: (a) adequate containment structures had not been constructed and maintained to retain wastewater from the dairy’s corrals, pastures, and other manured areas; (b) an adequate EWMP had not been fully implemented; (c) proper monitoring had not been conducted and appropriate inspection reports of the facility had not been provided to the Regional Board; (d) proper notification had not been given to the state that mortalities are being properly disposed of to prevent discharge of pollutants to waters of the state; (e) reasonable steps had not been taken to minimize or prevent discharges as required by Order No. R8-2007-0001; and (f) appropriate containment material had not been used to construct the berms.

14. Based on the inspection and review of documents related to Brothers Three Dairy, EPA has determined that, on April 22, 2008, the following requirements of Order No. R8-2007-0001 were not met:

- o Provisions, VII B, related to compliance with the Monitoring and Reporting Program Requirements;
- o Provisions, VII C.3.a, related to construction and maintenance of containment structures;

- o Provisions, VII C.3.b, related to development and implementation of an EWMP;
- o Provisions, VII C.5.c, related to prohibition of the use of manure to construct new or raised containment structures;
- o Attachment B – Monitoring and Reporting Program, I.A, related to maintaining monitoring data records;
- o Attachment B – Monitoring and Reporting Program, I.B, related to weekly and daily inspections;
- o Attachment A – Standard Provisions, I.C, related to taking all reasonable steps to minimizing or preventing any discharge that may affect human health or the environment; and
- o Discharge Prohibitions, IV.F, related to disposal of mortality; animal mortalities were placed in Basin A.

15. By violating the conditions of the NPDES permit governing Brothers Three Dairy, Mr. Jean Biscaichipy has violated section 301(a) of the Act, 33 U.S.C. § 1311(a).

### **ORDER FOR COMPLIANCE**

Under section 308(a) of the Act, 33 U.S.C. § 1318(a), EPA may require reports and information from the owner or operator of a point source for purposes of determining compliance with the Act's requirements or carrying out the NPDES program. Under section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA may, upon finding a person in violation of specific sections of the Act, issue an administrative order for compliance. Based on the foregoing Findings and pursuant to sections 308(a) and 309(a) of the Act, EPA hereby orders Mr. Jean Biscaichipy to comply with sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a), 1342, and with the following requirements:

1. Immediately upon receipt of this Order, Mr. Jean Biscaichipy shall take all necessary measures to achieve consistent and continuous compliance with all terms and conditions of Order No.R8-2007-0001.

2. Within sixty days of receipt of this Order, Mr. Jean Biscaichipy shall provide to EPA and to the Regional Board:

- a. the most recent version of the Engineered Waste Management Plan (EWMP)

developed for the facility, including any modifications to the EWMP necessary to comply with Order No. R8-2007-0001 and this Order for Compliance;

- b. a report stating: (a) whether the submitted EWMP is being fully implemented, and, (b) if the EWMP is not being fully implemented, what additional actions Mr. Jean Biscaichipy proposes to implement the EWMP, and the schedule by which those actions will be completed;
- c. a report stating the completion date and estimated costs to construct containment structures sufficient to retain all wastewater within the facility, as required by Order No. R8-2007-0001, Provisions, VII.C.3a;
- d. the reporting log which the facility will use to record its inspection observations of the facility's waste holding and disposal areas as required by Order No. R8-2007-0001, Provisions, I.B;
- e. documentation showing proper disposal of mortalities in accordance with Order No. R8-2007-001, Discharge Prohibitions, IV.F;
- f. documentation showing the design, construction, and implementation plans to prevent potential offsite discharge of manure waste in accordance with Order No. R8-2007-0001;
- g. documentation showing the removal of any remaining manure material in containment structures; and
- h. any other information that Mr. Jean Biscaichipy wants EPA to consider.

3. EPA and/or the Regional Board may require Mr. Jean Biscaichipy to make modifications to the EWMP. Unless otherwise specified by EPA or the Regional Board, Mr. Jean Biscaichipy shall, within fifteen (15) days of receipt of comments from EPA or the Regional Board, incorporate the modifications into the EWMP and implement the modifications.

4. All submittals required under this Order shall include the following certification signed by Mr. Jean Biscaichipy:

I certify under the penalty of law that this document and all attachments were prepared under my direction or 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 the system, or those persons directly responsible for gathering the information, I certify that 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.

5. All submittals made pursuant to this Order shall be mailed to the following addresses:

Glenn Sakamoto  
U.S. Environmental Protection Agency  
CWA Compliance Office (WTR-7)  
75 Hawthorne Street  
San Francisco, CA 94105

Ed Kashak  
California Regional Water Quality Control Board,  
Santa Ana Region  
3737 Main St., Suite 500  
Riverside, CA 92501

6. This requirement of information is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is not a “collection of information” within the meaning of 44 U.S.C. § 3502(3). It is directed to fewer than ten persons and is an exempt investigation under 44 U.S.C. § 3518(c)(1) and 5 C.F.R. § 1320.4(a)(2).

7. EPA has promulgated regulations to protect the confidentiality of the business information it receives at 40 C.F.R. Part 2, Subpart B. A claim of business confidentiality may be asserted in the manner specified by 40 C.F.R. § 2.203(b) for all or part of the information requested. EPA will disclose business information covered by such a claim only as authorized under 40 C.F.R. Part 2, Subpart B. If no claim accompanies the business information at the time EPA receives it, EPA may make it available to the public without further notice. Respondent may not withhold from EPA any information on the grounds that it is confidential business information.

8. This Order does not in any way waive or modify Mr. Jean Biscaichipy’s responsibility and obligation to ascertain and comply with all applicable federal, state, tribal, or local laws, regulations, ordinances, permits or licenses.

9. Issuance of this Order shall not be deemed an election by EPA to forego any remedies available to it under the law, including without limitation any administrative, civil, or criminal action to seek penalties, fines, or other appropriate relief under the Act. EPA reserves all rights and remedies, legal and equitable, available to enforce any violation cited in this Order and to enforce this Order.

10. Section 309(a), (b), (d) and (g), of the Act, 33 U.S.C. § 1319(a), (b), (d) and (g), provides administrative and/or civil judicial relief for failure to comply with the Act. In addition, section 309(c) of the Act, 33U.S.C. §1319(c), provides criminal sanctions for negligent or knowing violations of the Act, and for knowingly making false statements.

11. This Order is not a permit under the Act, and does not waive or modify Respondent's obligations and responsibility to ascertain and comply with all applicable federal, state or local laws, regulations, ordinances, permits or licenses.

12. This Order shall become effective upon the date of receipt by Mr. Jean Biscaichipy.

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

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Alexis Strauss, Director  
Water Division  
U.S. Environmental Protection Agency  
Region IX