

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made as of this 20th day of September 2004, by and among the parties Western United Dairymen and Alliance of Western Milk Producers, Inc (collectively "Plaintiffs"), on the one hand, and San Joaquin Valley Air Pollution Control District and David Crow (collectively "District") on the other. Plaintiff and District are referred to (collectively as the "Parties"), and (individually as a "Party"). This Agreement is made with reference to the following the facts:

RECITALS

A. WHEREAS, following the passage of SB 700 by the California State Legislature, District determined that it must require certain new and existing dairies to obtain certain permits for the construction, expansion or operation of such dairies ("Dairy Permitting Requirements");

B. WHEREAS, Plaintiffs assert that the District does not have the lawful authority and jurisdiction to impose the Dairy Permitting Requirements and that any permitting of dairy operations should be limited to the permitting authorized under Health & Safety Code § 40724.6; District disputes this contention and asserts it has full legal authority to impose Dairy Permitting Requirements;

C. WHEREAS, even if the District has the lawful authority to impose Dairy Permitting Requirements, pursuant to Health & Safety Code § 42301.16(c), the District is prohibited under existing major source thresholds from imposing Dairy Permitting Requirements on dairies that emit less than 12.5 tons of non-exempt volatile organic compounds ("VOCs") per year unless it conducts certain hearings and makes certain findings in accordance with that section;

D. WHEREAS, the District has not conducted the hearings and made the findings described in § 43201.16 (c) to impose Dairy Permitting Requirements on dairies which fall under the 12.5 ton threshold; and the District does not have any immediate plans to conduct such hearings;

E. WHEREAS, the District has decided that it will use, and has used, a previously existing emission factor to determine which dairies are above the 12.5 ton threshold; such emission factor is based on the assumption that each milking cow will emit 12.8 lbs. of VOCs each year (such emission factor will be hereinafter referred to as the Interim Emission Factor);

F. WHEREAS, Plaintiffs assert that the Interim Emission Factor is not a reliable or credible basis to estimate dairy emissions and is not based on the best available science; District disputes that assertion and contends use of the Interim Emission Factor is appropriate and in compliance with law;

G. WHEREAS, the Parties believe that the District's consideration of additional scientific and technical information, some of which is not now available, may result in a more accurate emission factor for dairies;

H. WHEREAS, the District has commenced the preparation of a proactive Dairy BACT Guidance in anticipation of issuing permits for new and expanding dairies;

I. WHEREAS, Plaintiffs assert that certain developing technologies, such as anaerobic digesters, should not be considered BACT for dairies at this time;

J. WHEREAS, the parties believe that a more accurate Dairy Emission Factor and the collection and evaluation of additional information regarding control technologies will be helpful in developing a final BACT Guidance document;

K. WHEREAS Plaintiffs have filed suit in Fresno County Superior Court, Dept. 72, *Western United Dairymen et al. v. San Joaquin Valley Air Pollution Control District, et al. Case No. 04CECG01596* alleging, inter alia, that the District has exceeded its lawful authority in issuing the Dairy Permitting Requirements and, even if it had such authority, that the District is unlawfully requiring permits for those below the 12.5 ton threshold by using the Interim Emission Factor (hereinafter the "Litigation"); District disputes Plaintiff's contentions and asserts it is correctly applying permitting requirements to dairies in accordance with law;

L. WHEREAS, Plaintiffs and District wish to end the Litigation and reach an amicable resolution of the disputes between them related to the Dairy Permitting Requirements and foster a constructive and collaborative process by which the scientific and technical issues relating to dairy permitting can be jointly addressed;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and representations herein, and for good and other valuable consideration, the Parties mutually agree as follows:

1. Definitions.

1.1 The term "dairies" means "confined animal facilities" as that term is defined in Health & Safety Code 39011.5(a) (1) in which cattle are kept and raised for purposes of commercial milk production and shall also include any source operation or article, machine, equipment or other contrivance, as those terms are used or defined by the District, that is associated, contained in or used by dairies.

1.2 The term "Dairy Emission Factor" means the method by which the District determines the actual non-exempt VOC emissions annually emitted from an existing dairy, and its individual units, or which will be emitted, as the result of the construction of a new dairy or

modification of an existing dairy.

1.3 "BACT" shall mean best available control technology as defined by District Rule 2201 and as determined by the District's BACT policy.

1.4 "Manure Lagoon" means any pond, lagoon, or other similar area for the collection, storage treatment or distribution of liquid manure.

1.5 "Existing Dairy" means any dairy for which construction was completed or commenced prior to January 1, 2004 and which is otherwise not subject to New Source Review as a New Dairy as described in Section 7.

1.6 "New Dairy" means any dairy for which construction was not commenced prior to January 1, 2004 and which is subject to New Source Review as described in Section 7.

2. Dismissal of Lawsuit.

2.1 Within ten (10) days of the execution of this Settlement Agreement, Plaintiffs will dismiss its lawsuit without prejudice and each of the Parties shall bear their own costs and attorneys fees.

3. Dairy Permitting Advisory Group

3.1 Immediately following the execution of this Settlement Agreement, the District's Air Pollution Control Officer ("APCO") will establish a Dairy Permitting Advisory Group ("DPAG") comprised of representatives from District, Plaintiffs, and others with expertise and interest in dairies and dairy air quality issues as may be nominated by Plaintiffs and/or the APCO as agreed by the Parties. The DPAG will work together in a collaborative manner as a clearinghouse for scientific and technical information pertaining to the permitting and regulation of dairies in San Joaquin Valley providing recommendations and advice to the APCO for use in permitting and regulating dairies within the District. The APCO may, from time to time, substitute members of the DPAG provided that Plaintiffs concur with any substitution of its nominees.

3.2 DPAG shall meet no less than once a month, or as agreed by the DPAG, with the goal of completing the matters covered by this Agreement as soon as practicable but in any event no later than December 31, 2005. DPAG shall allow all interested parties to provide meaningful input into the manner in which the District implements its dairy permitting program and may hold public meetings and workshops. The issues to be addressed by the DPAG include, but are not limited to, the development of a new Dairy Emission Factor, BACT requirements, and technical guidance as to when modifications at an existing dairy should trigger new source review. Meetings of the DPAG shall be open and public to the extent required by the Brown Act, California Government Code sections 54950 et seq.

4. Dairy Emission Factor.

4.1 The DPAG will work to provide the APCO with recommendations and advice for a more accurate Dairy Emission Factor than the current Interim Emission Factor. Several efforts to develop additional information on accurate and reliable Dairy Emission Factors are currently underway. Scientific studies of dairy air emissions are currently underway at U.C. Davis and Fresno State University. The preliminary results of those studies should be available for review within six to eight months. California Air Resources Board ("CARB") will be commencing its efforts to review dairy emission information, and develop a definition of Large Confined Animal Facilities, as required by SB 700. CARB's initial report is expected to be completed by March 2005 and must be adopted by July 1, 2005. The USDA has also convened a panel of experts to review available scientific information for purposes of creating an interim dairy VOC emission factor. This project is endorsed by U.S. EPA, and is scheduled to be completed by the end of 2004. The DPAG will evaluate the information developed in each of the foregoing projects in order to develop a means for determining the volume of VOC emissions from individual dairies, including the development of a Dairy Emission Factor or Dairy Emission Factors for the dairy facility as a whole and, and to the extent possible, for individual units that may be part of individual dairy operations, such as manure lagoons. The DPAG will issue a written report recommending a Dairy Emission Factor no later than April 15, 2005, such report will include a discussion of the scientific information considered and evaluated by the DPAG. The DPAG will meet with the APCO and deputy APCO to present the report and its findings. Thereafter, the APCO will adopt no later than July 1, 2005, the Dairy Emission Factor after considering the information and recommendations developed by the DPAG. The APCO reserves the right to adopt a Dairy Emission Factor other than that recommended by the Dairy Permitting Advisory Group if the APCO determines that the best available science shows that the Dairy Emission Factor is more accurate than recommended by the DPAG. Before adopting a Dairy Emission Factor, the APCO will conduct a public workshop or workshops to discuss and consider the available science and recommendations of the DPAG and any other science considered by the APCO. Upon the adoption of the Dairy Emission Factor, the APCO will promptly issue a report that explains the APCO's findings which support such adoption. The Dairy Emission Factor adopted will be used in implementing the District's Dairy permitting program including permitting threshold and BACT determinations.

4.2 Plaintiffs expressly reserve their right to challenge a new Dairy Emission Factor and nothing in this agreement shall preclude the Plaintiffs from communicating their objections and concerns to the District Governing Board in accordance with the Brown Act, requesting a hearing before the District Governing Board or seeking any other recourse permitted by law or under this Agreement.

4.3 The District will continue to use the Interim Emission Factor as an interim placeholder until a more accurate Dairy Emission Factor is adopted as provided above. The Interim Emission Factor will be used in the manner currently set forth on the District's website, including its emission calculator. Nothing herein, however, will prevent the District from

adopting another interim emission factor if the best available science indicates that such an emission factor should be adopted. However, neither the use of the Interim Emission Factor by the District as provided herein, the acquiescence in such use by Plaintiffs, or by the dairy industry, nor this Settlement Agreement, shall be used in any way to suggest or contend, in any forum, that the Interim Emission Factor has been accepted or is acceptable to the dairy industry or Plaintiffs. The District shall not communicate, directly or indirectly, that the Interim Emission Factor has been accepted or agreed upon in any way, other than as outlined in this agreement, by the regulated community.

4.4 Upon the adoption of the new Dairy Emission Factor, the District will use the new Dairy Emission Factor for purposes of determining the applicability of the 12.5-ton exemption threshold for all pending permit applications.

4.5 Existing, New and Expanding Dairies, that have already been permitted based on the Interim Emission Factor, but whose uncontrolled VOC emissions fall below the 12.5 ton threshold as a result of the new Dairy Emission Factor shall be notified by the District that under the new Dairy Emission Factor, they are no longer subject to the permitting requirements of the District and that their permits are no longer required and the conditions therein will no longer have any legal effect unless such Existing Dairy elects otherwise. ("Uncontrolled emissions" for purposes of this paragraph shall mean the actual emission of VOCs which could have occurred but for controls implemented by the dairy as a condition to its permit.) Such notice will be provided by the District within sixty (60) days of adoption of the new Dairy Emission Factor. Such dairy may elect to keep its permit by notifying the District of same within thirty (30) days of receiving the District's notice. Actual permit fees shall be refunded by the District to those who do not elect to keep the permit within ninety (90) days of the District's adoption of the new Dairy Emission Factor; however, all other regulatory compliance costs will be borne by the applicant. The District shall not be liable for any refunds for which a determination of permit exemption is made after , December 31, 2005. Any dairies required to obtain emission offsets will be relieved of their obligation to do so.

4.6 Expanding Dairies who are otherwise above the 12.5 ton threshold (uncontrolled emissions) with the new Dairy Emission Factor but whose expansion falls below the new source review trigger as set forth in Rule 2201 as a result of the new Dairy Emission Factor shall be notified by the District that under the new Dairy Emission Factor they are no longer subject to new source review requirements of the District for the expansion in question and no longer subject to any BACT imposed on such facility's permit for the expansion in question.

5. Development of Best Available Control Technology Guidance.

5.1 The Parties recognize that an accurate understanding of the quantity and source of potential or actual VOC emissions from new or expanding dairies is a critical element in any BACT determination, including the preparation of a proactive Dairy BACT Guidance document ("BACT Guidance"). The District will not promulgate in final form any proactive dairy BACT guidance document until the work described in Section 4 has been completed and a new Dairy

Emission Factor has been established. The DPAG will use the new Dairy Emission Factor to further develop and reevaluate the current draft BACT Guidance and make recommendations and provide advice to the APCO regarding a final BACT Guidance. Any new or additional information regarding the feasibility of technologies or practices for controlling emissions from new dairies will also be considered by the DPAG in making recommendations to the APCO regarding a final dairy BACT Guidance. Such recommendations may include recommendations for different BACT for new dairies versus expanding dairies. The APCO shall work with the DPAG, the regulated community and other interested parties in adopting a BACT Guidance after considering the foregoing information, including the Dairy Emission Factor and new or additional information developed regarding the costs, operating parameters and operational history of technologies for controlling emissions and the recommendations made by DPAG. The APCO or his authorized representative shall meet with the DPAG to discuss its findings and recommendations regarding the BACT Guidance. The APCO shall reserve the right to adopt a different BACT Guidance than recommended by DPAG if the APCO determines the best available scientific and technical information warrants different BACT determinations and such BACT determinations are in accordance with District policy, and state and federal law. The APCO will conduct at least one additional public workshop after the recommendations have been issued by the DPAG but before adopting the final BACT Guidance. If disagreement over the final BACT Guidance remains, Plaintiffs expressly reserve their right to challenge any BACT Guidance or determination and nothing in this agreement shall preclude the Plaintiffs from communicating their objections and concerns to the District Governing Board in accordance with the Brown Act, requesting a hearing before the District Governing Board or seeking any other recourse permitted by law or this Agreement.

5.2 Due to the development of additional information as provided above, the APCO will not make any achieved in practice determinations for individual dairy permits or for the dairy BACT Guidance until the final BACT Guidance has been adopted by the APCO as provided in 5.1.

5.3 To the extent any permit applications for New Dairies require individual BACT determinations before the completion of a final BACT Guidance as described above, the APCO will not require the immediate installation of a lagoon cover or digester as BACT, but may require that the applicant install an anaerobic treatment lagoon pursuant to the specifications set forth in U.S. Department of Agriculture-Natural Resources Conservation Service Field Office Technical Guide, Practice Standards No. 359. Nothing will prevent the District from allowing a permit applicant to install an anaerobic digester if it volunteers to do so. In the initial permit, the District may also require the applicant to later install a lagoon cover or digester after the date a final Dairy BACT Guidance is issued to the extent it is consistent with the District's BACT Guidance. However such requirement will be subject to the District's later determination, following the date the final Dairy BACT Guidance is issued, that the anaerobic digester will provide effective VOC control consistent with the assumptions contained in the initial permit. The permit assumptions will include the quantity of VOC emissions which the District expects will be controlled as a result of installing a digester, the Interim Emission Factor (unless another emission factor is adopted as provided above) and the VOC destruction rate. If the assumptions

prove to be inaccurate, the permit applicant will be relieved of any obligation to install a lagoon cover or digester however, the District may reopen the permit and make a new BACT determination as to the manure lagoon based on the final BACT Guidance.

6. Existing Dairies

6.1 Until the District conducts the rule-making required under Health & Safety Code § 40724.6 for the development of Best Available Retrofit Control Technology (BARCT) or any other control measures to be adopted under § 40724.6, permits for Existing Dairies will not require BARCT, conditions for the control of VOC emissions, or any other conditions relating to the control of air emissions other than those specific conditions under the prohibitory rules contained in Regulation IV and Regulation VIII which would otherwise be applicable to the Dairy, whether or not it obtains a permit.

7. New Source Review Trigger

7.1 Dairies where Construction Commenced Prior to January 1, 2004. All sources (including source operations, articles, equipment, machines, contrivances, buildings, structures, facilities, installations and any sources contained therein) contained within a permit unit for which construction commenced for any source included within the permit unit prior to January 1, 2004 shall be considered grandfathered and shall not be subject to New Source Review. The permit unit, and all sources within such permit unit, shall be deemed as having commenced construction if any of the following applies to any source within the permit unit: (1) Begun, or caused to begin, a continuous program of actual onsite construction of the source to be completed within a reasonable time; or (2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time. For purposes of this paragraph, a "permit unit" shall refer to any and all sources (including source operations, articles, equipment, machines, contrivances, buildings, structures, facilities, installations and any sources contained therein), contained within one of the following five categories of dairy operations: (1) Cow Housing and Feeding (2) Dairy Waste Treatment Lagoon (3) Milking Center (4) Dairy Manure Storage and (5) Dairy Manure Land Application. For example, all building, structures, articles, equipment, machines and operations relating to Cow Housing and Feeding will comprise one permit unit. There shall be no more than five (5) permit units at any one Dairy.

7.2 Modifications Commencing after January 1, 2004. Modifications commencing after January 1, 2004 necessitating a change in permit conditions may trigger NSR pursuant to Rule 2201. DPAG will work towards providing advice and recommendations to the APCO regarding how and when modifications at existing dairies, in which construction of modifications commenced after January 1, 2004, would trigger new source review, if at all, in a manner consistent with Rule 2201, and state and federal law.

8. Covenant not to Sue

8.1 Except for claims expressly reserved in this Agreement, Plaintiffs agree to not sue the District for any claims asserted in the Litigation. Notwithstanding the foregoing, nothing herein shall prevent Plaintiff from asserting the claims asserted in the Litigation if the District fails to comply with, or breaches, any material terms and conditions of this Agreement and/or the District cannot comply with the such terms and conditions for any reason whatsoever, whether within or outside of its control. . Nothing herein shall prevent Plaintiffs from intervening or filing cross-claims in any action filed by a third party nor shall this agreement be construed in a manner which limits any persons right to challenge permitting actions as provided in Health and Safety Code section 42302.1. The District shall not sue any person to enforce any requirement that is contrary to the terms of this Agreement. The District agrees that any applicable statute of limitations or other time related deadline or defense for the filing of any claims asserted in the Litigation shall be tolled for a period of one year from the date the Litigation is dismissed.

9. No Admission.

9.1 This Settlement Agreement is a compromise of disputed claims in an effort to develop a collaborative working arrangement between the District and Plaintiffs. Nothing herein shall be construed as an admission as to any legal position, claim, defense or other issue in the Litigation or otherwise related to the matters addressed herein.

10. Authority to Sign.

10.1 Each signatory of this Agreement expressly represents and warrants that he or she is authorized to act for and on behalf of each of the Parties for which he or she is executing this Agreement, as shown on the signature page herein. Each Party represents and warrants that it has the authority to enter into this Agreement, that it has performed all acts necessary to enter into this Agreement and that the Agreement is legally binding and enforceable against it.

11. Consultation With Attorney/.

11.1 By executing this Agreement, each signatory asserts that he or she has consulted with their respective attorneys who have described the legal effect of this Agreement prior to the execution of this Agreement.

12. Litigation Expenses.

12.1 As between them, each Party to this Agreement shall bear its own attorney's fees, investigation expenses, costs and the like in connection with Dispute and the Litigation and this Agreement.

13. Modifications.

13.1 This Agreement may be modified only by an agreement in writing signed by the Parties at the time of the modification.

14. Governing Law.

14.1 This Agreement shall be governed by and construed in accordance with the laws of the State of California. This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of California. Any action to enforce this Agreement shall be filed in the Superior Court for the County of Fresno. The language in all parts of this Agreement shall be in all cases construed as a whole according to its meaning and not strictly for or against any Party. In addition, each of the Parties has cooperated in the drafting and preparation of this Agreement and therefore agrees that any law, legal decision or rule of construction of contracts including, without limitation, Civil Code Section 1654, resolving ambiguities against the drafting Party shall be inapplicable to this Agreement.

15. Counterpart Signatures.

15.1 This Agreement may be executed in two or more counterparts, and shall become fully valid and binding upon all Parties hereto when the last of such signatures is affixed. Each of the counterparts shall be deemed to be an original and shall constitute one instrument.

15.2 The signature of any signatory may be executed through the use of a facsimile transmission. In such case, a facsimile signature on the appropriate lines of this Agreement shall be effective as if the original signature were affixed hereto.

16. Further Cooperation.

16.1 Each Party will and whenever and as often as it shall be requested to do so by one or more of the other Parties shall use best efforts to perform all acts as may be necessary or appropriate to carry out the intent and purposes of this Agreement.

17. Notice.

17.1 All notices required or permitted hereunder shall be in writing, and may be given by personal service; by certified or registered mail, return receipt requested; by national overnight courier service; or by facsimile to the person, address and telecopier number stated below. Notices and other communications shall be deemed received by the earlier of: (a) if personally delivered, the date of delivery to the address of the person to receive such notice, (b) if mailed, three (3) days after posting by the United States Post Office, (c) if sent by national overnight courier service, one (1) business day after delivery to such courier service, or (d) if given by facsimile, when sent and receipt is confirmed. Any notice, request, demand, direction or other communication by facsimile must be confirmed within twenty-four (24) hours by a letter

mailed or delivered in accordance with the foregoing.

18. Third Party Beneficiary

18.1 Dairies who are affected by the District's Dairy Permitting Requirements are intended to benefit from the performance of this Agreement and are third party beneficiaries.

19. Integration.

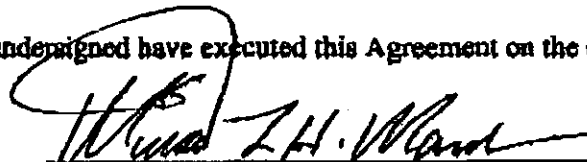
19.1 This Agreement contains the entire agreement between the Parties relating to the subject matter hereof and supersedes all prior discussions, negotiations, correspondence and drafts pertaining to the matters set forth herein. Any oral modifications or representations concerning this Agreement shall be of no force and effect.

20. Construction of Captions and Headings.

20.1 Captions or headings of the sections of this Agreement are for convenience and reference only. The words in the captions or headings in no way explain, modify, amplify, or interpret this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date subscribed next to their names.

Dated: September 16, 2004


Western United Dairymen
By: [Print Name] Michael L.H. Marsh
Its: CHIEF EXECUTIVE OFFICER

Dated: September __, 2004

Alliance of Western Milk Producers, Inc.
By: _____
Its: _____

Dated: September __, 2004

San Joaquin Valley Air Pollution Control District
By: _____
Its: _____

Dated: September __, 2004

David Crow
By: _____
Its: _____

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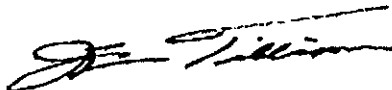
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Dated: September __, 2004

Western United Dairymen
By: [Print Name] _____
Its: _____

Dated: September 16, 2004


Alliance of Western Milk Producers, Inc.
By: James E. Tillison
Its: Exec. VP/CEO

Dated: September __, 2004

San Joaquin Valley Air Pollution Control District
By: _____
Its: _____

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Western United Dairymen
By: [Print Name] _____
Its: _____

Dated: September __, 2004

Alliance of Western Milk Producers, Inc.
By: _____
Its: _____

Dated: September __, 2004

Barbara Patrick

San Joaquin Valley Air Pollution Control District
By: *Barbara Patrick* _____
Its: *Chairman* _____

Dated: September __, 2004

David Crow
By: _____
Its: _____

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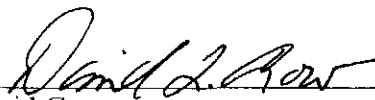
Dated: September __, 2004

Alliance of Western Milk Producers, Inc.
By: _____
Its: _____

Dated: September __, 2004

San Joaquin Valley Air Pollution Control District
By: _____
Its: _____

Dated: September 29 2004



David Crow
By: DAVID L. CROW
Its: APCO / Exec. Director