

Water Discharge Permit for Dairies Invalidated Under State's Antidegradation Policy

In 2007, after decades of allowing most dairies in the Central Valley Region to operate without a water quality discharge permit, the Central Valley Regional Water Quality Control Board issued a general, region-wide permit regulating wastewater discharges from existing dairies. Environmental groups sued, claiming the permit's protections for groundwater were inadequate. The court of appeal agreed, finding the permit violated the state's "Antidegradation Policy," which seeks to protect high quality waters in the state. [*Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Board* \(Nov. 6, 2012\)](#).

The Antidegradation Policy (adopted by the State Board in 1968) applies whenever an activity discharges waste into "high quality water." The court found the groundwater affected by the dairies was high quality water, citing data in the Regional Board's administrative record showing that – at least for some constituents – groundwater quality in the area covered by the permit exceeds the governing water quality standards. The court also found evidence that activities at dairies discharge waste to groundwater, as precipitation or process wastewater comes into contact with manure and other materials and then filters through the ground into the aquifer.

While the permit prohibited groundwater degradation, the court concluded it lacked effective means to enforce this prohibition. The permit relied exclusively on groundwater monitoring, which the court found inadequate even to identify, let alone prevent, groundwater degradation. The permit provided for monitoring through existing domestic and agricultural supply wells, rather than wells specifically designed and situated to detect contamination. And while the Regional Board could require installation of monitoring wells, this requirement would take effect only *after* groundwater contamination reached levels that could threaten public health and safety. To make matters worse, the monitoring did not even cover many of the constituents of concern at dairies. As the court recognized, the Antidegradation Policy does allow the discharge of wastes to a high quality water when the permitting agency makes specified findings and imposes appropriate technological controls on the discharge. The court concluded the findings were deficient because they were based on the permit's prohibition against groundwater degradation, which the court had found ineffective. And while the Regional Board evaluated the feasibility of certain treatment technologies, the court found it did not go far enough in its investigation. The court therefore invalidated the permit and sent the matter back to the Regional Board. The case is important not only because it explains and applies the rules that apply under the state's longstanding Antidegradation Policy, but also because the court undertook a searching review of the scientific evidence and refused to defer to the Regional Board's expertise.

Blog series

California Land Use & Development Law Report

California Land Use & Development Law Report offers insights into legal issues relating to development and use of land and federal, state and local permitting and approval processes. [View posts by topic](#). [Subscribe ?](#)

[View the blog](#)