California Regional Water Quality Control Board
North Coast Region

ORDER NO. R1-2005-0087
AMENDING CEASE AND DESIST ORDER NO. R1-2003-0049

REQUIRING THE CITY OF FERNDALE WASTEWATER TREATMENT FACILITY TO CEASE AND DESIST FROM DISCHARGING OR THREATENING TO DISCHARGE EFFLUENT IN VIOLATION OF WASTE DISCHARGE REQUIREMENTS
ORDER NO. R1-2000-92
ID No. 1B83136OHUM

Humboldt County

The Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), finds that:

1. The City of Ferndale (hereinafter Permittee) owns and operates a municipal wastewater treatment facility (WWTF) located near Ferndale, California adjacent to Francis Creek near its confluence with the Salt River, a tributary of the Eel River. The WWTF provides secondary treatment and consists of a gravity collection system, seven-acre aerated oxidation pond, settling basin, chlorine contact basin, and dechlorination system. Design flow is 1.0 million gallons per day (mgd); average dry weather flow is approximately 0.32 mgd; and peak weather flows reach approximately 3.7 mgd.

2. The WWTF is regulated by Waste Discharge Requirements Order No. R1-2000-92, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0022721, WDID No. 1B83136OHUM, adopted by the Regional Water Board on November 29, 2000.

3. Pursuant to provisions of the Water Quality Control Plan for the North Coast Basin (Basin Plan), **A. DISCHARGE PROHIBITION** 6 of Order No. R1-2000-92 restricts the discharge of effluent to the Eel River and its tributaries from October 1 to May 14 each year to no greater than one percent of the receiving water flow. Effluent discharge to the Eel River and its tributaries is prohibited from May 15 through September 30.

4. Francis Creek is a tributary of Salt River, and Salt River is a tributary of the Eel River. Wastewater flow volumes from the City's WWTF typically exceed one percent of the receiving water flow during the winter months, which is a violation of Order No. R1-2000-92.

5. The Permittee has an agreement with a neighboring property owner to irrigate seven parcels of pastureland with the treated wastewater effluent during summer months. The recycling of treated wastewater effluent on pastureland during summer months is in compliance with Order No. R1-2000-92.

6. On May 15, 2003, the Regional Water Board adopted Cease and Desist Order No. R1-2003-0049 for violations and threatened violations of **A. DISCHARGE PROHIBITION** 2 and 6 of Order No. R1-2000-0092. Order No. R1-2003-0049 did not impose a connection restriction to the WWTF, but established time schedules for tasks associated with development of an alternative to violations of the 100:1 dilution requirement in

Order No. R1-2000-0092. Order No. R1-2003-0049 required full compliance with Order No. R1-2000-0092 by February 1, 2005.

7. Order No. R1-2000-92 **C. RECEIVING WATER LIMITATIONS** 1 designates receiving water limitations for dissolved oxygen. WWTF discharges must not cause the dissolved oxygen concentrations in the receiving water to be depressed below 7.0 mg/l ever or depressed below 10.0 mg/l more than 50 percent of the time.

8. During the past winter season 2004-2005 WWTF discharges depressed the dissolved oxygen concentrations in Francis Creek below 7.0 mg/l more than 25 percent of the time and cause receiving water concentrations to be depressed below 10.0 mg/l greater than 95 percent of the time.

9. On July 14, 2005, the Regional Water Board's Executive Officer issued a California Water Code Section 13267 Order to the Discharger requiring submittal of technical reports. The Order requires that the Discharger submit by September 1, 2005, to the Executive Officer, a technical report describing a short-term plan to prevent WWTF effluent from depressing receiving water concentrations of dissolved oxygen below limitations set forth in Order No. R1-2000-92.

10. Terms in Order No. R1-2000-92 that are being violated or threaten to be violated are:

A. DISCHARGE PROHIBITIONS

2. Creation of a pollution, contamination, or nuisance, as defined by Section 13050 of the California Water Code (CWC), is prohibited. [Health and Safety Code, Section 5411]

6. During the period of October 1 though May 14, discharges of wastewater shall not exceed one percent of the combined flows of Francis Creek and the Salt River. For purposes of this Permit, the combined flow shall be that flow of Francis Creek and Salt River measured at the confluence.

C. RECEIVING WATER LIMITATIONS

1. The waste discharge shall not cause the dissolved oxygen concentrations of the receiving waters to be depressed below 7.0 mg/l. Additionally, the discharge shall not cause the dissolved oxygen content of the receiving water to fall below 10.0 mg/l more than 50 percent of the time, or below 7.5 mg/l more than 10 percent of the time. In the event that the receiving waters are determined to have dissolved oxygen concentration of less than 7.0 mg/l, the discharge shall not depress the dissolved oxygen concentration below the existing level.

11. On December 11, 2003 in compliance with Task A of Order R1-2003-0049. The corrective action report indicated that the City intended to upgrade your wastewater treatment facility (WWTF) by constructing Sequencing Batch Reactors (SBR) combined with surge storage, an equalization chamber, and a facultative sludge pond. These upgrades were to produce consistent high quality effluent, thereby supporting a request for exception to the 100:1 dilution requirement for wintertime effluent discharges.

12. On July 26, 2004, the City submitted the *Wastewater Treatment Corrective Action Report Addendum* (CARA) as well as an *Application for Wastewater Discharge Dilution Reduction, City of Ferndale (Revision 1)* (AWDDR). Both the CARA and the AWDDR specifically addressed construction of SBR.

13. On January 31, 2005, the Discharger submitted a written report of progress, required by Task B of Order R1-2003-0049, which relayed actions taken to achieve compliance with National Pollution Discharge Elimination System Permit (NPDES), Waste Discharge Requirements Order R1- 2000-92 (Order R1- 2000-92). The January progress report indicated that the City's officially adopted project remains application for 1:1 dilution exception for discharges into Francis Creek in conjunction with construction of SBR to treat wastewater.

14. The January 31 correspondence and a written follow-up request from the Discharger propose changes to the Order R1-2003-0049 compliance schedule in order to revisit the wetlands alternative. The compliance schedule changes requested in the January 31 document, would delay compliance with Task C of Order R1-2003-0049 for up to three years from the original deadline.

15. Existing Order No. R1-2003-0049 contains a time schedule to complete and implement, by February 1, 2005, a long-term plan for wintertime discharge dilution violations of Order R1-2000-0092. Compliance was not achieved by the final compliance date. It is appropriate to modify Order No. R1-2003-0046 to provide strict milestone deadlines to ensure timely progress and compliance with Order R1-2000-0092.

16. Section 13301 of the Porter Cologne Water Quality Control Act states in part:

    "In the event of an existing or threatened violation of waste discharge requirements in the operation of a community sewer system, cease and desist orders may restrict or prohibit the volume, type, or concentration of waste that might be added to that system by dischargers who did not discharge into the system prior to the issuance of cease and desist order."

    Title 23, California Code of Regulations, Section 2244(b) states:

    "Prohibitions or appropriate restrictions on additional discharges should be included in a cease and desist order if the further addition in volume, type, or concentration of waste entering the sewer system would cause and increase in violation of waste discharge requirements or increase the likelihood of violation of requirements."

    Discharge of treated wastewater from Ferndale's WWTF results in reductions of dissolved oxygen concentrations in Francis Creek in violation of Waste Discharge Requirements. Increased waste flow will further hinder the discharger's ability to comply with Waste Discharge Requirements. Therefore, the discharger is in violation of Waste Discharge Requirements, and additional flow of wastes will further hinder the discharger's ability to comply with Waste Discharge Requirements.

17. Pursuant to Water Code Section 13389 and Title 14, California Code of Regulations, Section 15321, this is an enforcement action for violations and threatened violations of waste discharge requirements and for the protection of the environment and as such is exempt from the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.).

18. On October 12, 2005, after due notice to the Permittee and all other affected persons, the Regional Water Board conducted a public hearing and received evidence regarding this cease and desist order.

IT IS HEREBY ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTIONS 13243, 13300 AND 13301 THAT Cease and Desist Order No. R1-2003-0049 is amended to read:

1. The Permittee shall cease and desist from discharging and threatening to discharge waste in violation of the terms of Order No. R1-2000-92 (NPDES Permit No. CA0022721) described in Finding No.10 above by implementing the following time schedule:

Task A	By **November 1, 2005,** comply with Receiving Water Limitations required in Waste Discharge Requirements by implementing short-term solution to increase dissolved oxygen concentrations.
Task B	By **December 31, 2005**, submit a detailed analysis of the selected long-term effluent disposal alternative. The report shall include a request for any Basin Plan exceptions, as appropriate, as well as detail progress regarding land acquisition, permitting, financing, and construction of the selected alternative.
Task C	By **June 1, 2006**, submit documentation that the land necessary for the long-term effluent disposal project has been acquired or a long-term lease is secured.
Task D	By **August 1, 2006**, complete the California Environmental Quality Act (CEQA) process.
Task E	By **September 15, 2006,** submit 10% design plans and specifications for construction of the effluent disposal project.
Task F	By **November 1, 2006**, secure funding for the long-term effluent disposal project. Provide the Regional Water Board with documentation regarding the funding source(s).
Task G	By **February 1, 2007,** submit 50% design plans and specifications for construction of the effluent disposal project.
Task H	By **April 1, 2007,** submit final design plans and specifications for construction of the effluent disposal project.

Task I By **November 1, 2007**, acquire all necessary permits, including Waste Discharge Requirements from the Regional Water Board.

Task J By **August 31, 2008**, complete construction of the effluent disposal project.

Task K By **October 1, 2008**, attain full compliance with Waste Discharge Requirements by completing the implementation of long-term plans for treated effluent disposal during the wintertime season.

2. The addition of new flows of wastewater to the wastewater treatment facility (after October 4, 2004) from new residential, commercial, industrial, and/or governmental connections is prohibited until such time that it can be demonstrated to the satisfaction of the Regional Water Board that more connections will not result in additional violations of terms of Order No. R1-2000-58 described in Finding No. 4 above. [Title 23, California Code of Regulations, Section 2244]

   New or existing connections, whose increase of flows of wastewater are offset by a reduction of discharges of wastewater of 2:1 to the collection system are not considered to be additional flows prohibited by the Order through October 1, 2008. The demonstration of off set shall be supported with technical information to the satisfaction of the Executive Officer.

   Structures with building permits (or substitute final construction approval documents) already issued at the time of the public notice of the cease and desist hearing November 29, 2004 are excluded from this prohibition. [Title 23, California Code of Regulations, Section 2244.1(a)]

   Those structures that do not require a "building permit" or are exempted from the permitting process shall be exempted from this prohibition if construction has commenced. [Title 23, California Code of Regulations, Section 2244.1(a)]

   The following are excluded from the prohibition:

   a. Discharges from existing dwellings not connected to the sewer system which have methods of waste disposal which are causing more severe water quality problems than those caused by the community sewer system. [Title 23, California Code of Regulations, Section 2244.1(b)(1)]

   b. Discharges, which, by reason of special circumstances, if not allowed to connect to the community sewer system would result in extreme public hardship or a public health hazard. This is not intended to mean that economic loss to a community as a whole or to a public agency or private person within the community is by itself cause for not prohibiting additional connections because such a loss is a rule rather than the exception and cannot outweigh the need to prevent an increase in water quality impairment which is the basic reason for the prohibition. [Title 23, California Code of Regulations, Section 2244.1(b)(2)]

3. If, in the opinion of the Executive Officer, the discharger fails to comply with the provisions of this Order, the Executive Officer may apply to the Attorney General for judicial enforcement or issue a complaint for Administrative Civil Liability.

CERTIFICATION

I, Catherine E. Kuhlman, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on October 12, 2005.

_____

Catherine E. Kuhlman
Executive Officer