

**STAFF REPORT
CONSIDERATION OF CEASE AND DESIST ORDER AND
CONNECTION RESTRICTION**

**FOR
CITY OF LAKEPORT MUNICIPAL SEWER DISTRICT
WASTEWATER TREATMENT FACILITY
LAKE COUNTY**

Introduction

The City of Lakeport Municipal Sewer District (Discharger) owns and operates a wastewater treatment facility (WWTF) that serves the City of Lakeport, which is located on the southwestern shores of Clear Lake. The WWTF is regulated by Waste Discharge Requirements (WDRs) Order No. 98-207, which allows for the treatment of a monthly average dry weather flow of up to 1.05 million gallons per day (mgd) and a maximum daily discharge of up to 3.8 million gallons.

The wastewater is collected through a series of gravity sewers, lift stations, and force mains prior to entering the Wastewater Treatment Plant. The collection system consists of approximately 250,000 linear feet of sewer main and laterals and collects wastewater from approximately 5,150 residents. At the treatment plant, the wastewater enters a baffled pond system designed to treat 1.05 million gallons per day of raw sewage. The effluent is disinfected to secondary standards prior to being discharged to a 600 acre-foot storage reservoir (capacity at two feet of freeboard) and then to a land application area. The Discharger states that the discharge from the storage reservoir is used to irrigate approximately 242 acres of pasture and open areas, which is less than the 340 acres of land application area referenced in the WDRs.

Violations of the Waste Discharge Requirements

Regional Water Board staff's review of the case record shows that since adoption of WDRs Order No. 98-207 on 23 October 1998, the Discharger has reported 64 spills from the collection system and three spills from the treatment system. Of these spills, a total of 33 entered surface waters. A description of these spills is presented in Attachments A of the draft Cease and Desist Order (CDO). As a result of these spills, the Discharger received four Notices of Violations (NOVs), which are summarized in the draft CDO.

The largest and most significant of these spills was a discharge of partially treated wastewater estimated between 3.6 and 6.6 million gallons that entered Clear Lake over an 11 day period in April 2006. The Discharger based the estimated spill volume on approximately 15 to 25 percent of the total amount of wastewater (24 million gallons) that was discharged to the spray field during this period. The Discharger stated that the primary causes of the spill were from: (a) the flooding of approximately 20 uncapped private sewer

cleanouts at the Willow Point Recreational Vehicle Park area due to high lake levels, (b) the heavy rains that occurred during this period, (c) the inability to allow the land application area to dry prior to irrigation, and (d) the lack of available storage capacity during this period. In addition, the storm water runoff into the tailwater diversion ditch from the upslope areas contributed to the increased volumes to the storage reservoir. The subsequent NOV required the Discharger to submit a technical report and water balance prepared by a California Registered Engineer evaluating the wastewater treatment system's capacity. The technical report and water balance were received on 18 September 2006.

In addition to the collection system and treatment facility spills, Regional Water Board staff's review of the Discharger's monitoring reports indicates the following violations:

- Monthly self-monitoring reports show that the freeboard in the storage reservoir was less than two feet in April and May 2006. The Discharger also applied wastewater via spray irrigation to their land application areas during four days of rainfall that occurred in April 2006. This irrigation during precipitation events resulted in the discharge of wastewater to Clear Lake.
- Quarterly groundwater monitoring reports submitted between November 2004 and December 2006 show that the discharge appears to have degraded groundwater quality when comparing the upgradient background well to four downgradient monitoring wells. Concentrations of Total Dissolved Solids (TDS), boron, iron, manganese, magnesium, potassium, sodium, and chloride in the downgradient wells are higher than those in the upgradient background well and the groundwater limitations of the WDRs have been violated.

Water Balance Evaluation and Basis of Connection Restriction

The Discharger's 18 September 2006 water balance shows that there is adequate storage for an average dry weather flow (ADWF) of 0.57 mgd, which is significantly less than the currently-permitted ADWF of 1.05 mgd. The water balance is based on 100-year annual precipitation data, 600 acre-feet of storage with two feet of freeboard, a beginning storage volume in October of each year of 100 acre-feet or less, and applying wastewater to 242 acres of disposal area. The Discharger believes it still has capacity at its facility, because it calculates an ADWF of 0.48 mgd. However, this value is based on an average of seven years of data, and it is highly likely that growth has occurred in the city during that time.

Staff believe that it is more appropriate to calculate the current ADWF based on last year's data. The monthly monitoring reports show that from May through September 2006 the average dry weather flows ranged from 0.38 to 0.64 mgd with the month of May being the highest. May 2006 was included as in the average dry weather flow even though 0.4-inches of rainfall was recorded during that month. The data shows that rain fell during three days, in the amounts of 0.14, 0.23, and 0.06 inches. In staff's opinion, this volume of rainfall should cause a negligible to no increase in inflow/infiltration flows and therefore it is

appropriate to include May 2006 as a dry weather month. Staff compared the Discharger's water balance which showed the facility can contain 0.57 mgd ADWF versus the highest ADWF reported last year (0.64 mgd) and concluded that the facility is at or over capacity.

It is also appropriate to determine the total annual flow which the facility can handle in compliance with the WDRs. Discharge Specification No. B.11 is especially pertinent in this regard: "Treatment ponds and storage reservoirs shall have sufficient capacity to accommodate allowable wastewater flow, design seasonal precipitation, and ancillary inflow and infiltration during the nonirrigation season. Design seasonal precipitation shall be based on total annual precipitation using a return period of 100 years, distributed monthly in accordance with historical rainfall patterns. The effluent storage reservoir freeboard shall never be less than two (2.0) feet (measured vertically at the spillway) except during years equaling or exceeding the precipitation of a 100-year return period. .."

The draft Order contains two flow limits: an average dry weather flow, and an annual flow. The annual flow was based on the Discharger's water balance for a 0.57 mgd dry weather flow, and is simply the sum of the projected flows each month.

Because staff's analysis showed that the Discharger can not accommodate its current wastewater flows, it is appropriate to consider a connection restriction. Section 2244 of Title 23 of the California Code of Regulations describes the Regional Water Board's authority to issue a "restriction on additional discharges to community sewer systems" (i.e., a connection restriction). The purpose of a connection restriction is to prevent an increase in the violations of waste discharge requirements (or the likelihood of violations) and thereby prevent an increase in unreasonable water quality impairment.

As described in Title 23, the connection restriction applies to connections to the sewage collection system by individual households or businesses who did not have a building permit approved prior to the 18 January 2007 Public Hearing Notice, except under the following conditions:

- a. Projects for which building permits were issued prior to the 18 January 2007 Public Hearing Notice;
- b. Projects which normally do not require a building permit and for which construction commenced prior to the 18 January 2007 Public Hearing Notice;
- c. Projects which would eliminate discharges from existing dwellings which have failing systems whose threat to water quality or public health is greater than that of the existing collection system;
- d. Projects that would alleviate an extreme public hardship or public health problem.

Since the issuance of the draft CDO, the Discharger has questioned how the 0.64 mgd ADWF was determined, and whether there is still capacity at the facility. Staff has met with the Discharger and has had discussions with their Registered Engineer to fully understand the water balance. Water balances are based on many site-specific conditions, and it is

important to calibrate a water balance to the particular facility. A revised water balance was received on 23 February 2007 (the day this staff report was due), and it now shows that the facility can accommodate only 0.42 mgd ADWF. Staff will review this water balance and continue discussions with the Discharger's Registered Engineer to clarify the exact capacity of the system, and based on that, determine the need for a connection restriction. Staff will make the final recommendation regarding the flow limits of the CDO and the connection restriction during the Regional Board hearing.

Requirements of the Cease and Desist Order

The Cease and Desist Order addresses all known violations at the facility. Specific requirements are found in the "Hereby Ordered" section of the draft Order, and are summarized below. It is noted that the portion regarding the connection restriction has already been described.

General Issues

With the exception of Discharge Specification No. B.1 of WDRs Order No. 98-207 (pertaining to the dry weather inflow to the wastewater treatment plant). The draft Order requires the Discharger to immediately comply with all aspects of WDRs Order No. 98-207.

Effective immediately, the average monthly dry weather inflow to the wastewater treatment plant shall not exceed 0.64 mgd and the annual inflow (measured from October through September of each year) shall not exceed 912 acre-feet (approximately 298 million gallons). (Note that these values may be revised based on evaluation of the revised water balance).

The Discharger shall submit a technical report indicating that a flow meter has been installed to accurately measure the wastewater flows into the wastewater treatment facility, and then shall submit a *Flow Meter Calibration Report* that demonstrates that all flow meters used for determining compliance with the WDRs and the draft Order have been independently calibrated by a third party.

The volume of wastewater in the effluent storage reservoir shall be 100 acre-feet or less by 1 October of each year.

Short Term Storage and Disposal Capacity Improvements

The Discharger shall submit a *Short-Term Storage and Disposal Capacity Improvement Projects Revenue Plan* identifying the funding sources to implement the two improvement projects needed to address: (a) diversion of all surface water around the recapture basin, and (b) the 90-acre expansion of the spray irrigation disposal fields.

The Discharger shall submit and immediately implement a *Spill Contingency Plan* containing the interim measures necessary for preventing unauthorized discharges to

surface water and surface water drainage courses from the WWTF. The Spill Contingency Plan shall remain in effect until all improvements to the WWTF are completed.

The Discharger shall submit a *Staffing Analysis Report* for the wastewater treatment, storage and disposal system. The analysis shall include a review of current staffing levels, allocation of staff tasks, an analysis of whether current staff allocation is adequate, and if necessary, describe the shortfalls and make recommendations for future staffing needs. If the analysis indicates additional staff are necessary, then the report shall also include a *Staffing Contingency Plan* describing the steps the Discharger shall take in the short term and long term to assure that it has enough staff to perform the necessary operation and maintenance activities associated with the wastewater treatment, storage, and disposal system.

The Discharger shall complete the construction of two short-term improvements to increase the storage and disposal capacity, and shall submit a technical report documenting these improvements. The report shall contain a water balance to support the improvements.

Groundwater Evaluation

The Discharger shall submit a *Background Groundwater Quality Study and Degradation Assessment Report*. For each groundwater monitoring parameter/constituent identified in revised MRP No. 98-207, the report shall present a summary of all monitoring data and calculation of the concentration in background monitoring well(s).

The Discharger shall submit a *BPTC Evaluation Workplan* that sets forth the scope and schedule for a systematic and comprehensive technical evaluation of the waste constituent(s) to determine whether additional best practicable treatment and control is necessary to establish that BPTC has been applied and consequent groundwater degradation minimized.

The Discharger shall submit a *BPTC Evaluation Report* containing the results of the proposed study described in the *BPTC Evaluation Workplan*. The report shall recommend improvements to the WWTF that will result in compliance with the Groundwater Limitations of WDRs Order No. 98-207.

Sewer System Master Plan

The Discharger shall submit a *Sewer System Master Plan* prepared by a California Registered Engineer that describes the facility improvements needed to: (a) increase overall storage and disposal capacity as necessary to comply with a 100-year total annual precipitation event, (b) provide enough wastewater storage and disposal capacity for current flows, as well as growth projected over the next 15 years, (c) prevent sanitary sewer overflows, (d) comply with pond freeboard requirements in the WDRs, and (e) address I/I issues.

Revenue Plan

The Discharger shall submit a *Revenue Plan* for all work and improvements needed to provide adequate treatment, storage, and disposal capacity for existing and/or future expansion of the City of Lakeport's WWTF.

Report of Waste Discharge

The Discharger shall submit a *Report of Waste Discharge* (RWD) to allow WDRs to be revised to reflect the proposed upgrades identified in the Sewer System Master Plan.

Progress Reports

The Discharger must submit *Quarterly Compliance Status Reports* describing all work completed during the calendar quarter to comply with the CDO; and any new, modified, or renovated component of the collection, treatment, storage, and disposal system.

PUBLIC COMMENTS ON THE DRAFT CEASE AND DESIST ORDER

The draft Cease and Desist Order was transmitted for public review on 18 January 2007. Comments were received from the City of Lakeport Municipal Sewer District (Discharger), Morrison and Foerster LLC (a law firm representing Schellinger Homes), and Mark L. Ranft (an attorney representing Victorian Village Investments, Inc.). The comments were received within the specified comment period. Copies of the comment letters are provided as Attachment A to this staff report.

Discharger's Comments

Staff accommodated a number of the Discharger's requests for changes to the findings and the *"It is Hereby Ordered Section"* of the draft CDO and Connection Restriction. However, those items which were not addressed are discussed below. The issues regarding capacity and the connection restriction are discussed above, and are not re-printed here.

The Discharger states that the draft CDO and Connection Restriction contains a number of findings pertaining to wastewater spills that do not support the proposed connection restriction.

Staff is aware that with the exception of a 24 October 1998 spill (estimated at greater than 325,900 gallons) and the April 2006 spill (estimated between 3.6 and 6.6 million gallons), the remaining spills described in the draft CDO are not related to the connection restriction. However, because the wastewater spills are part of the case history and represent violations of the WDRs, they must be included in the draft CDO. These spills reflect issues with the collection system, which is something that the Discharger has acknowledged needs to be addressed.

The Discharger states that the information pertaining to future developments being proposed for the City of Lakeport as described in Finding No. 29 of the draft CDO and

Connection Restriction is not accurately described. The Discharger states that because the proposed 157-acre annexation project does not include a new housing development there is no additional wastewater. In addition, the Discharger states that the Lamson Field sewer project will result in 100 Residential Unit Equivalents (RUEs), however because there is an agreement with Lake County Sanitation District to service 100 RUEs in a portion of North Lakeport there will be no increase in capacity at the city's WWTF.

The information provided by the City of Lakeport Planning and Development Department regarding the Mitigated Negative Declaration for the Lamson Field Sewer project did not include a discussion regarding the 100 RUEs. However, based on other comments received, we are aware of an additional 190 units of development. Therefore, it is clear that additional development is ongoing in Lakeport. The purpose of this finding is to show that there is ongoing development in the City of Lakeport and that the lack of treatment plant capacity is a concern.

The Discharger states that they are proposing two projects to increase the capacity of the WWTF. The first project is to extend the current bypass channel to divert all of the surface water around the recapture basin. The second project is to the development of an additional 90 acres of land for spray irrigation and disposal purposes.

Staff understands that two additional projects are being considered to increase the disposal capacity and minimize storm water runoff to the storage reservoir. We agree that if these projects are implemented they would result in increased storage and disposal capacity. However, the increased capacity has not been documented in a calibrated water balance. We also understand that the Lakeport City Council has not yet allocated funding to construct these projects. The draft CDO states that the sewage connection restriction will remain in effect until removed by the Regional Water Board. The connection restriction can be removed upon finding that the violations of requirements that were the basis for imposing the restriction have ceased and consistent compliance with those requirements has been achieved. The draft CDO also allows the Regional Board to grant limited exemptions to the connection restriction (i.e., allow additional connections) if the Discharger shows that it has met certain conditions. It appears that these projects, when funded, may meet these conditions.

The Discharger requests that the draft CDO and Connection Restriction needs to be revised to give the Executive Officer the authority to rescind the connection restriction. In particular, Item Nos. 17, 18, 19, and 20 of the draft CDO and Connection Restriction should be revised to allow the connection restriction to be removed when the Discharger has completed the bypass channel for diverting the surface water and when the additional 90 acres of spray field is operational.

The Regional Water Board has previously delegated to the Executive Officer the authority to act on its behalf on all matters specified except those that the Board cannot delegate pursuant to California Water Code 13223(a). (Regional Board Resolution R5-2006-0023.)

Among those matters which may not be delegated to the Executive Officer are the issuance, modification and revocation of any cease and desist order. (CWC section 13223(a)). However, the Executive Officer may implement a cease and desist order as provided in the Regional Water Board Order.

The Discharger states that they can meet the requirements of Item No. 3 of the "It is Hereby Ordered Section" (regarding flow meter calibration) however there is no magnetic meter on the irrigation flow meter and it cannot be calibrated at this time.

Staff has revised the draft CDO to require a flow meter for measuring influent flows to the wastewater treatment facility and has provided additional time to calibrate all flow meters.

The Discharger requests that Item No. 5 of the "It is Hereby Ordered Section" (regarding the 1 June 2007 deadline of the Revenue Plan) be revised to a date sometime after the anticipated completion of the Sewer Master Plan in July 2008.

Staff has revised the draft CDO to include an item for all short-term work and improvements, which is due by 1 June 2007. In addition, staff recognizes that the long-term improvements require additional time. Therefore, an Interim Revenue Plan is due by 1 June 2007 and the final Revenue Plan is due by 1 September 2008, after completion of the Sewer Master Plan.

The Discharger requests that Item No. 8 of the "It is Hereby Ordered Section" (regarding the 1 October 2007 deadline to complete the improvements to increase storage and disposal capacity) be revised to allow for additional time.

Staff understands that the Discharger is proposing to construct a bypass channel for diverting the surface water away from the storage reservoir and adding an additional 90 acres of sprayfield. Staff is concerned about the storage and disposal capacity at the facility and therefore has allowed one month additional time to complete these tasks. The date in the draft CDO to complete these proposed improvements has been revised to 1 November 2007, which is the latest possible time for improvements prior to the winter 2007 rainy season. We understand that the City Council approved the projects in concept in February 2007.

The Discharger requests that Item No. 14 of the "It is Hereby Ordered Section" (regarding the submittal date of Report of Waste Discharge (RWD) be extended to a later date because the RWD will be based on information presented in the Master Sewer Plan which is should be completed by 1 July 2008.

The submittal date for the RWD in Item No. 14 has been revised to 1 April 2009.

The Discharger requests that Finding No. 22 (regarding the multiple wastewater spills) should be revised because the majority of the spills are related to blockages within the collection system.

As previously stated, the draft CDO addresses all issues (including the spill history) pertaining to the facility. Inflow/Infiltration is one of the issues addressed in the CDO.

Comments: Morrison and Foerster LLP representing Schellinger Homes

Morrison and Foerster LLP have requested designated party status for their client Schellinger Homes. Schellinger Homes is a developer of 95-unit single family residential project know as Parkside in Lakeport. At total buildout in approximately four years, they state that the project would add approximately 0.02 mgd to the City of Lakeport's wastewater system. They state that Regional Water Board staff inappropriately issued the draft connection restriction because a flow rate of 0.64 mgd exceeds the treatment plants capacity of 0.57 mgd. Based on this, they request that the draft order be rescinded.

Designated status is being granted for this party.

Schellinger's comments can be summarized as follows: (1) that a CDO can only prohibit connections which might constitute a menace to health or otherwise threaten to degrade the environment; (2) that the CDO fails to draw a connection between capacity and any unlawful discharge; (3) that the Order is not supported by substantial evidence; and (4) the CDO halts development in the community and constitutes an economic hardship on Schellinger.

Points 2 and 3 are dependant upon finalizing the water balanced, and will be discussed by staff during the Regional Board presentation.

The 1st point is in error. CWC 13301(c) provides in pertinent 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 the system by dischargers who did not discharge into the issuance of the cease and desist order." Schellinger's counsel's reliance on Morshead v. Cal. Reg'l Water Quality Control Board (1975) 45 Cal.App.3d 442 is misplaced. The Morshead decision in no way limits CDO restrictions to only those that constitute a menace to health or otherwise threaten to degrade the environment. Rather, the Morshead case simply found no constitutional right to connect to a sewer system if such connection might constitute a menace to health or otherwise threaten to degrade the environment. Prevention of water pollution is a legitimate government objective in furtherance of which police powers may be exercised. The proposed Order prohibiting further sewage connections (until the Discharger demonstrates that the violations of requirements which were the basis for imposing the restriction have ceased) is a

reasonable and valid exercise of the Regional Board's police power to protect the public's right to clean water and a better environment. (See Morshead v. Cal. Reg'l Water Quality Control Board, supra, Cal.App.3d at 449.)

Schellinger further argues that the CDO halts development in the community and constitutes an economic hardship on Schellinger. However, as provided in Title 23, CCR, section 2244.1(b)(2), economic loss to a community as a whole or to a private person is not by itself a reason to not impose connection restrictions/bans (" . . .This is not intended to mean that economic loss to a community as a whole or to any public agency or private person within the community is by itself cause for not prohibiting additional connections because such loss is the 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." (section 2244.1(b)(2).) The Morshead case similarly undercuts Schellinger's position insofar as the Court held that the Regional Board was entitled to exclude evidence of hardship. (Morshead v. Cal. Reg'l Water Quality Control Board, supra, Cal. App.3d, at 449.),

Comments: Mark L. Ranft, Attorney representing Victorian Village Investments, Inc.

Mark L. Ranft has requested designated party status for his client Victorian Village Investments, Inc. Victorian Village Investments, Inc. is the owner of several acres in the City of Lakeport that is potentially affected by the draft CDO and connection restriction. Victorian Village was formed in 2006 and is the successor in interest to Mr. and Mrs. William Irwin (also Mr. Ranft's clients), who acquired the property in December 2003. Mr. Ranft states Victorian Village Investments, Inc. plans to construct 95 single-family homes on the same property that was originally occupied by a former recreational vehicle park. Because these are existing allocated connections, they believe that the connection restriction does not apply to the project.

Designated status has been granted for this party.

Mr. Ranft's legal arguments can be summarized as follows: (1) CWC 13301 does not apply to dischargers who discharged into the system prior to issuance of the CDO; and (2) as for Title 23, CCR, section 2244 (Prohibitions or Restrictions on Additional Discharges to Community Sewer Systems), Victoria Village is not seeking new connections, but intends to use previously authorized connection restrictions, and apparently even fewer connections than used during the operation of the RV park.

CWC section 13301 authorizes restrictions/prohibitions against "dischargers who did not discharge into the system prior to the issuance of the cease and desist order." Victorian Village argues that it meets the definition of a prior/current discharger because when Victoria Village and its predecessor in interest acquired the property, there were already sewer connections in place, which have been used over the past three decades.

Title 23, CCR, section 2244(e) does not limit connection bans/restrictions to new connections. However, prohibitions or appropriate restrictions on additional discharges should be included in a CDO if the further addition in volume, type, or concentration of waste entering the sewer system would cause an increase in violation of WDRs or increase the likelihood of violation of requirements (Title 23, CCR, section 2244(b)). This appears to support Victorian Village's position. However, staff are unsure whether the RV park is currently discharging waste to the system or whether it has been vacant for some time. Staff will be further researching this issue. Staff will also be confirming Victorian Village's representations regarding whether additional connections are required for its proposed residential units. Staff will present a recommendation to the Regional Board during the hearing.

SUMMARY AND RECOMMENDATION

Staff recommends that the Regional Water Board adopt the Cease and Desist Order. Staff will provide a recommendation regarding the Connection Restriction at the Regional Board hearing.

Attachment A: Public Comment Letters (City of Lakeport, Morrison and Foerster LLP, and Mark L. Ranft)