

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ACL ORDER NO. R5-2005-0072

ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF  
LAKE BERRYESSA RESORT IMPROVEMENT DISTRICT  
NAPA COUNTY

This order for Administrative Civil Liability (hereafter Order) is issued to Lake Berryessa Resort Improvement District (hereafter Discharger) based on failure to comply with Section 13376 of the California Water Code (CWC). This Order is issued pursuant to CWC Section 13385, which authorizes the imposition of administrative civil liability.

The Central Valley Regional Water Quality Control Board (Regional Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. Waste Discharge Requirements (WDRs) Order No. 95-171, adopted by the Regional Board on 23 June 1995, prescribes requirements for the discharge of domestic wastewater from a treatment system owned and operated by Lake Berryessa Resort Improvement District (hereafter referred to as "Discharger").
2. The Discharger owns and operates the wastewater collection, treatment and disposal system that is permitted to treat up to 35,000 gallons per day of domestic wastewater and drinking water plant backwash water from the Lake Berryessa Estates development.
3. Wastewater flows via gravity to three lift stations where it is pumped to a 91,000-gallon aboveground holding tank and a 20,000-gallon overflow tank. From the tanks, the wastewater is pumped into two percolation/evaporation ponds, followed by gravity flow into five other evaporation/percolation ponds (two of which are not regulated by WDRs Order No. 95-171). The wastewater is not disinfected prior to discharge to the percolation/evaporation ponds.

**Previous Enforcement**

4. The Discharger has had a long history of sewage spills at this facility. On 28 December 1995, the Executive Officer issued Administrative Civil Liability (ACL) Complaint No. 95-516. The ACL Complaint was for a raw sewage spill to Putah Creek estimated at approximately 50,000 gallons and was in the amount of \$25,000. In addition to the monetary penalty, the Discharger was required, pursuant to CWC Section 13267, to submit a plan to complete improvements to the system to prevent future unauthorized discharges of wastewater. The ACL Complaint was withdrawn in January 1996 following submittal of a revised compliance schedule.
5. In April 1996, the Discharger submitted a report titled "*Capacity Study for the Wastewater Treatment and Disposal Facilities for Lake Berryessa Resort Improvement District.*" In summary, the report concluded that the infiltration/inflow (I/I) issues at the wastewater collection system are a serious problem and can overwhelm the system's storage and disposal capacity. The report included recommendations for studies to identify sources of I/I and to determine additional methods of wastewater disposal.

6. Cease and Desist (C&D) Order No. 96-233 was subsequently adopted by the Regional Board on 20 September 1996. The C&D Order reflects the Discharger's revised compliance schedule (the document upon which the withdrawal of the ACLC was based). The C&D required the Discharger to: begin an I/I study, establish a financial plan, select and design an upgrade to the wastewater facility, complete construction of the project, and submit quarterly progress reports. The final upgrade was to have been completed by 15 September 2001, and was to have resulted in compliance with the WDRs.
7. The Discharger has not complied with the C&D. The only items submitted were an I/I study plan and a five-year financial plan, which were submitted during 1996. The Discharger has not modified its wastewater treatment, storage, or disposal system such that it complies with its WDRs.

**Recent Violations of WDRs Order No. 95-171**

8. In February and March 1998, the Discharger experienced overflows of domestic wastewater from the storage ponds to surface water, which are a tributary to Lake Berryessa. The volume of spills are unknown, but were the result of inadequate capacity in the ponds.
9. In January 1999, a landslide ruptured the force main from the holding tank to the treatment pond system resulting in a discharge of approximately 50 gallons raw sewage to a tributary of Lake Berryessa.
10. From 6 March to 20 March 2000, Pond No. 5 spilled wastewater at a rate of approximately 20 gallons per minute to Stone Coral Creek (a tributary to Lake Berryessa), for an estimated total release of 432,000 gallons. On 8 May 2000, a Notice of Violation (NOV) was issued for the discharge.
11. On 19 February 2001, a force main coupling leaked within 30 feet of Putah Creek, releasing approximately 100 gallons of wastewater. The leak occurred in the pipeline, which followed the access road through the slide area from the holding tank to the treatment ponds.
12. On 2 and 3 January 2002, approximately 15,000 gallons of raw sewage overflowed from the holding tank near Putah Creek. Three days later, on 6 January 2002, approximately 3,000 gallons of raw sewage again spilled from the holding tank. According to the Discharger, no wastewater entered any surface waters from either spill. Both spills were a result of high I/I entering the collection system.
13. On 25 January 2002, staff conducted an inspection of the facility and noted a surface discharge from a spray application field into Stone Corral Creek, a tributary to Lake Berryessa. The WDRs do not authorize any discharge to a sprayfield. The Discharger indicated that the ponds were at capacity and were threatening to spill during rainfall events. Staff observed a large pump and hose that appeared to be used to remove water from Pond No. 4 to the swale adjacent to Stone Corral Creek. The record is not clear as to how many days this discharge took place or the number of gallons discharged.

14. On 18 February 2004, the Discharger was issued a NOV for a 300-gallon wastewater spill that occurred on 29 December 2003 from the holding tank. According to the Discharger, the spill remained on land and was the result of I/I from a large storm.
15. On 8 March 2004, between 20 and 30 gallons of raw sewage seeped from a manhole on to the street at Colt Court.
16. During a site inspection on 11 March 2004, staff observed abundant vegetation in and around Ponds Nos. 1 through 3, and a sprinkler irrigation system located next to Pond No. 7. The sprinkler system is not authorized in the WDRs. A NOV was issued on 8 April 2004.
17. On 14 February 2005, the Discharger was issued a NOV for a spill of domestic wastewater and water treatment plant backwash water from Pond No.5 to Stone Corral Creek. The spill began on 11 January 2005, and as of 28 February 2005 exceeded 2.3 million gallons. The spill is the result of inflow/infiltration problems in the collection system and the lack of capacity in the ponds, and is continuing as of the date of this Order.
18. To summarize, as of March 1998, the Discharger reported ten spills of domestic wastewater and backwash water. Five of these spills were to land and five were to surface waters.

### REGULATORY CONSIDERATIONS

19. Discharge Prohibition A.1 of Order No. 95-171 states: *“The direct discharge of wastes to surface waters or surface water drainage courses is prohibited.”*
20. Discharge Prohibition A.2 of Order No. 95-171 states: *“The bypass or overflow of untreated or partially treated waste is prohibited.”*
21. As described in the above Findings, the Discharger has violated WDRs Order No. 95-171, specifically, Discharge Prohibitions A.1 and A.2, by discharging wastes and effluent to surface waters or surface water drainage courses and by the bypass of untreated or partially treated effluent.
22. Section 301 of the Clean Water Act and Section 13376 of the CWC prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.
23. CWC Section 13376 states, in part: *“Any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States ... shall file a report of the discharge in compliance with the procedures set forth in Section 13260...”* and *“The discharge of pollutants...except as authorized by waste discharge requirements [NPDES permit] ...is prohibited.”*

24. The Discharger, by failing to file a report of waste discharge as set forth in CWC section 13260 and failing to obtain an NPDES permit prior to the discharges described in the above Findings, has violated CWC section 13376. WDRs Order No. 95-171 is not an NPDES permit.
25. CWC Section 13385 states, in part:  
*“(a) Any person who violates any of the following shall be liable civilly in accordance with subdivisions (b), (c), (d), (e), and (f):*
- (1) Section 13375 or 13376.*
- “(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both the following:*
- (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.*
- (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.”*
26. For discharging waste in violation of the WDRs and without obtaining an NPDES permit, the Regional Board may assess administrative civil liability based on CWC section 13385. The maximum administrative civil liability which can be imposed by the Regional Board under CWC Section 13385 is \$10,000 per day of discharge plus \$10 per gallon discharged in excess of 1,000 gallons. As stated in the Findings, over 2,778,450 gallons were discharged to surface waters over a period of 70 days. Of this, a total of 2,718,400 gallons were discharged in excess of 1,000 gallons per spill event. Therefore, the maximum administrative civil liability is \$700,000 (70 days times \$10,000 per day) plus \$27,184,000 (2,718,400 gallons minus 1,000 gallons per event times \$10 per gallon), for a total maximum liability of \$27,884,000.
27. CWC Section 13385(e) states:  
*“In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.”*
28. Pursuant to CWC Section 13385(e), the minimum administrative civil liability is equivalent to the economic benefit accrued by the Discharger in not implementing the management and/or physical improvements necessary to prevent the discharges. In general, the discharges are due to inflow/infiltration within the collection system and lack of storage and disposal capacity. It is

estimated that the Discharger has saved a minimum of \$393,000 in not taking actions to prevent the violations described in this Order.

29. The Regional Board determined with respect to factors in Finding No. 27 the following:

The nature of the violation is that the Discharger is fully aware of the spills but failed to either (a) make the necessary improvements to the wastewater collection system to prevent the spills or (b) take sufficient emergency action once the spills occurred. The Discharger is in violation of C&D Order No. 96-233 which requires that the wastewater treatment facilities be upgraded to achieve full compliance with the WDRs (in particular, the prohibition of discharges to surface waters). The improvements were to have been completed no later than 15 September 2001. The Discharger acknowledges that it has high amounts of inflow/infiltration into its system each winter, and in 1996 provided a plan to identify the sources of I/I. However, the Discharger has not finished the work and now states that it will extend until at least 2009. While the residents were taxed to pay for some improvements, those funds are not sufficient for the magnitude of repairs needed and the Discharger does not have plans to provide for any additional funds other than for routine operation and maintenance. The continuing discharge of waste into Stone Corral Creek is a violation of both the WDRs and the C&D.

The extent of the violation is that between February 1998 and 28 February 2005, the Discharger reported five spills to land and five spills to surface waters totaling over 2.7 million gallons. The most recent spill to surface waters began on 11 January 2005, and as of 28 February 2005 exceeded 2.3 million gallons. Although the most recent spill is continuing and as of 1 April has reached a total of over 4.1 million gallons, this ACL Complaint only covers the violations through 28 February 2005.

The gravity of the violation is that the Discharger's failure to fully upgrade its system has resulted in ten spills of wastewater to land and to surface waters. These discharges violate the WDRs, the C&D Order, the California Water Code, and the federal Clean Water Act. The Discharger has failed to prevent the discharge of waste to highly accessible surface waters and creeks. These waterways are tributary to Lake Berryessa, which has a high level of beneficial uses including domestic water supply (Solano Irrigation District), contact recreation, and non-contact recreation. Potential health risks from bacteria and viruses resulting from raw or inadequately treated wastewater are a serious concern for humans and wildlife habitat. In recognition of the domestic water use, recreational uses, and the lack of dilution in this water body, the Basin Plan prohibits "the direct discharge of municipal and industrial wastes" into Lake Berryessa.

With respect to the ability to pay, the Discharger has provided a 30 March 2005 Statement of Financial Conditions and states that although the audit report shows that the District has a cash balance of \$280,000, the District anticipates an operating deficit of \$100,000 and an outstanding loan balance of \$173,000. If the loan is paid in full this year and the operating deficiency is accurate, then the District will only have \$6,000 in cash reserves at the end of this fiscal year. Therefore, the Discharger states that it is unable to pay the proposed civil liability.

With respect to voluntary cleanup efforts, the Discharger has not taken any measures to stop the spills or perform any cleanup. Other Dischargers in this same situation have gone to great expense to prevent a discharge of domestic wastewater into surface waters by renting Baker tanks to store the wastewater, hiring pumper tanks to transport the wastewater to other permitted facilities, or renting enhanced evaporation units to reduce the volume of wastewater in the ponds during the summer months. This Discharger states that such efforts are impracticable at this site but staff disagree.

The Discharger has a long history of violations of its WDRs, C&D Order, the California Water Code, and the federal Clean Water Act, and was issued a \$25,000 ACL Complaint in December 1995 for a sewage spill to Putah Creek estimated at approximately 50,000 gallons. The ACL Complaint was withdrawn in January 1996 following submittal of a revised compliance schedule. This ACL Complaint covers the ten reported wastewater spills since that time, but does not cover other continuing violations (e.g. failure to submit technical reports, failure to complete groundwater monitoring, discharging waste in violation of the WDR flow limit).

The Discharger is fully culpable of the violations cited above because it has not made the improvements as required by the 1996 C&D Order to prevent the wastewater spills. The Discharger has also received three Notices of Violation for the recent spills. The Discharger is aware of the potential penalty for wastewater spills, as it was issued a \$25,000 ACL Complaint in 1995 for the discharge of raw sewage to Putah Creek.

The Discharger has received an economic savings by not making the necessary improvements to the collection system and the wastewater ponds as required by the 1996 C&D Order. Based on data provided by another Discharger, staff estimate that it would cost approximately \$1.3 million to fully assess and repair this system. In lieu of making permanent corrections, the Discharger could have tanked excess wastewater and/or hired a septic service to haul off the excess wastewater. It is estimated that the Discharger has saved at least \$393,000 by not tanking and hauling the waste for the discharge occurring between 11 January and 28 February 2005.

Staff has expended approximately 100 hours, or \$8,000 in staff costs, in generation of the ACL Complaint, including review of the files. It is estimated that staff will spend an additional 150 hours (an additional \$12,000) to prepare this ACL Order and to prepare for the Board hearing. Therefore, staff expect to expend 220 hours (\$20,000) to bring this matter to the Board.

30. A \$400,000 Administrative Civil Liability is appropriate based on the determinations in Findings Nos. 19 through 29.
31. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321 (a)(2), Title 14, of the California Code of Regulations.
32. Any person affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with Section 2050 through 2068,

Title 23, California Code of Regulations. The petition must be received by the State Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions are available at [http://www.swrcb.ca.gov/water\\_laws/cawtrcde/wqpetition\\_instr.html](http://www.swrcb.ca.gov/water_laws/cawtrcde/wqpetition_instr.html) and will also be provided upon request.

IT IS HEREBY ORDERED that the Regional Water Quality Control Board, Central Valley Region, imposes upon the Lake Berryessa Resort Improvement District an administrative civil liability in the amount of **\$400,000** in accordance with California Water Code Sections 13376 and 13385. Payment of \$400,000 shall be made within 30 days of the date of this Order, and shall be in the form of a certified check made payable to the *State Water Resources Control Board Cleanup and Abatement Account*. The check shall have written upon it the number of this Order.

I, THOMAS R. PINKOS, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 29 April 2005.

---

THOMAS R. PINKOS, Executive Officer

---

(Date)