

STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL COAST REGION

STAFF REPORT FOR REGULAR MEETING OF OCTOBER 21, 2005

Prepared on September 26, 2005

ITEM NUMBER: 14

SUBJECT: COMPLIANCE DEADLINE EXTENSION REQUEST – WASTE DISCHARGE REQUIREMENTS ORDER NO. 00-020, CEASE AND DESIST ORDER NO. R3-2002-0105 & ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R3-2002-0097; CITY OF HOLLISTER, SAN BENITO COUNTY

KEY INFORMATION

Discharger: City of Hollister  
Location: 375 Fifth Street, Hollister, CA 95023, San Benito County  
Type of Discharge: Treated Domestic, Commercial and Tomato Cannery Wastewater (Undisinfected, facultative pond system with percolation/evaporation disposal)  
Design Capacity: Domestic Plant: 2.69 million gallons per day (MGD) domestic, commercial, and industrial wastewater  
Industrial Plant: 0.18 MGD domestic, commercial and industrial wastewater (canning season); 1.72 MGD domestic, commercial, and industrial wastewater and storm water (non-canning season); 3.5 MGD tomato cannery wastewater (canning season)  
Current Capacity: At or exceeding capacity for domestic, commercial, and industrial wastewater  
Existing Orders: Waste Discharge Requirements Order Nos. 87-47 (Domestic Plant) and 00-020 (Industrial Plant), Cleanup or Abatement Order No. R3-2002-0082, Cease and Desist Order No. R3-2002-0105 and Administrative Civil Liability Order No. R3-2002-0097

SUMMARY

The City of Hollister (hereafter Discharger) is requesting an extension of the October 15, 2005 compliance project deadline for the complete implementation of a Long-term Wastewater Management Program (LTWMP). In addition, the Discharger is requesting that the waste discharge requirements for the Industrial Wastewater Treatment Plant be revised to reflect the extension and extend the use of the Industrial Plant for the treatment and disposal of domestic wastewater.

Although the Discharger has generally (see following discussion) been in compliance with

specific deadlines for the development of a LTWMP, the Discharger is requesting an extension to November 2007 for implementation of the LTWMP. The Discharger, with the support of local agencies, is requesting an extension in order to develop and implement a phased wastewater reuse program. The extension is required to revise and update the LTWMP to incorporate implementation plans for activities identified in the Hollister Urban Area Water and Wastewater Master Plan in coordination with the Regional Recycled Water Project Facility Plan, conduct CEQA, procure additional land, finalize the treatment and disposal/reuse system designs, conduct bidding, and construct the facilities. The Discharger's extension request is provided as Attachment 1.

The following discussion provides background information regarding the required compliance activity and associated orders, the Discharger's compliance history, a synopsis of the Discharger's rationale for the request, and outlines administrative issues related to the Discharger's request and failure to meet the compliance deadline for full implementation of a LTWMP by October 15, 2005.

## BACKGROUND

The Discharger owns and operates two wastewater treatment facilities: the Domestic Wastewater Treatment Plant (Domestic Plant) and Industrial Wastewater Treatment Plant (Industrial Plant). The Domestic Plant treats municipal wastewater flows from residential, commercial, industrial, and institutional sources. The Industrial plant treats seasonal process water from a tomato cannery between mid-June and mid-October and a portion of the domestic wastewater diverted from the Domestic Plant. The Industrial Plant also receives storm water from limited residential areas.

Waste Discharge Requirements (WDR) Order No. 00-020 for the Industrial Plant (Attachment 2) was adopted by the Water Board on May 20, 2000, and revised on September 15, 2000. Provision no. 7 of the WDR requires the Discharger to develop and implement a LTWMP. Provision no. 7.iv requires the Discharger to fully implement all aspects of the LTWMP within five years of the adoption of the order. As a result of the differing adoption and revision dates of the WDR there has been some confusion regarding various due dates within the WDR that are based on the "adoption date" of the Order. However, in an August 20, 2002 letter to the Discharger, the Water Board clarified that all of the LTWMP compliance activity due dates within the WDR are based on the May 20, 2000 WDR adoption date and not the September 20, 2000 revision date.

Violations of WDR provisions for each facility occurred in 2002, including influent flow limitation exceedances, seepage of treated wastewater to the San Benito River channel, and failure of a disposal pond levee resulting in discharge of approximately 15 million gallons of

treated wastewater to the San Benito River channel. These violations, in conjunction with delays in developing a long-term solution to wastewater issues, resulted in the Water Board issuing two enforcement orders to the Discharger. On September 19, 2002, the Central Coast Water Board adopted Cease and Desist Order (CDO) No. R3-2002-0105 (Attachment 3) to institute a formal sewer connection ban and specify various milestones for the Discharger to meet in developing and implementing an effective LTWMP. Paragraph no. 9 of the CDO requires the Discharger to fully implement all aspects of the LTWMP by October 15, 2005. Per paragraph no. 9, this compliance project due date supercedes the May 20, 2005 due date established in the WDR.

On November 1, 2002, the Central Coast Water Board adopted Administrative Civil Liability (ACL) Order R3-2002-0097 (Attachment 4) for the May 6, 2002 release of 15-million gallons of treated, but not disinfected, wastewater from the Industrial Plant to the San Benito River channel. The ACL assessed the Discharger a civil liability of \$1,200,000 for the release, but suspended \$1,176,000 (\$1,200,000 minus Water Board staff costs of \$24,000) of the liability based on the Discharger's successful completion of various supplemental environmental and compliance projects, including specific compliance projects previously required by the CDO and WDR for completion of the LTWMP. Paragraph no. 3 (Suspended Liability) of the ACL suspends \$200,000 of the civil liability on the condition the Discharger fully implements, by October 15, 2005, all aspects of the LTWMP.

Discharge Specification B.1 of the WDR allowed the diversion of domestic wastewater and storm water to the Industrial Plant based on a phased schedule. Prohibition no. A.6 of the WDR prohibits the discharge or diversion of domestic wastewater to the Industrial Plant after June 30, 2005. Paragraph no. 9 of the CDO extended this sunset date to October 15, 2005. The phased schedule outlined in Discharge Specifications B.1 of the WDR allowed the diversion of domestic wastewater and storm water flows to the Industrial Plant of 0.34 MGD during the canning season and 1.72 MGD during the non-canning season.

## COMPLIANCE

The Discharger is in compliance with the WDR provisions with the exception of having a complete and up-to-date LTWMP and the submittal of a complete report of waste discharge (ROWD).

Following the issuance of WDR 00-020 the Discharger submitted a May 2002 administrative draft LTWMP pursuant to Provision 7.ii of the WDR. This document was deemed incomplete by Water Board staff and the Discharger later submitted a September 2002 LTWMP that was again deemed "not fully developed" in a November 14, 2002 Water Board letter to the Discharger. The Water Board provided additional guidance in a follow-up January 28, 2003 letter to the Discharger regarding a potential nitrate effluent limitation of 5 mg/L. The May and September 2002 drafts of the LTWMP were based on a treatment and disposal methodology that was determined to be inadequate to meet an effluent limitation for nitrate of 5 mg/L. Although the initial treatment system design was scrapped for the LTWMP, it was later used to modify the Domestic Plant to comply with the requirements for reduced suspended solids in the effluent pursuant to CDO paragraph nos. 5 and 6.

The Discharger also submitted an ROWD application package prior to the May 20, 2004 deadline pursuant to Provision 7.iii of the WDR and paragraph no. 8 of the CDO. However, as outlined in our October 27, 2004 ROWD response letter (Attachment 5) to the Discharger, the ROWD was incomplete with regard to wastewater disposal, salinity, and reclamation. The ROWD application package was incomplete in part due to the absence of a fully developed and up-to-date LTWMP as mentioned above.

The Discharger has complied with all provisions of the ACL Order to date, but is currently unable to complete implementation of the LTWMP by October 15, 2005, pursuant to paragraph no. 3 of the ACL. In addition, the Discharger is in compliance with all requirements of the CDO with the exception of paragraph nos. 8 and 9 pertaining to the May 20, 2004 submittal of a complete

ROWD and the October 15, 2005 implementation of the LTWMP, respectively.

## DISCUSSION

The Discharger attributes the failure to submit complete and up-to-date LTWMP and ROWD documents and its subsequent inability to fully implement a LTWMP by October 15, 2005, to changes in the scope of required treatment based on interim guidance from Water Board staff regarding nitrogen removal, the challenges of coordinating disposal of treated wastewater with regional water resources management, and the erroneous assumption that a reasonable engineering solution could be developed and implemented within the stringent time frames specified in the orders.

Although a LTWMP was submitted by the Discharger in 2002 per Provision 7.ii of the WDR, it was incomplete and significant changes have been made to the Discharger's overall treatment and disposal/reuse strategy since that time that have not been incorporated into an updated LTWMP. The dual-powered multi-cellular (DPMC) pond treatment system employed by the Discharger to meet reduced total suspended solids (TSS) effluent limits at the Domestic Plant per the CDO and ACL was scrapped as the long-term treatment system design in favor of a more advanced membrane bioreactor system (MBR). The MBR treatment system is a modular system that is able to effectively remove nitrogen and produce effluent suitable for reclamation purposes given additional improvements in potable water supply and wastewater quality are achieved through other controls with regard to salt loading. Design and contract documents for construction of the MBR treatment system are currently at 90%. The treatment system design is being held at 90% pending design of the disposal/reuse facilities and completion of CEQA requirements.

A complete LTWMP is pending collaborative efforts with the San Benito County Planning Department and San Benito County Water District to address issues regarding long-term planning for water supply and wastewater disposal and reuse within the county. Whereas the design of the treatment facilities has been relatively

straightforward, the selection of disposal and reuse alternatives for the treatment facility effluent involves more far-reaching regional water resources management issues that require a greater level of coordination and planning by the local agencies as a whole. The required level of coordination and planning between the Discharger and local agencies was only recently formalized towards the end of 2004.

Although the Discharger was consulting with various other local agencies and advancing the development of the LTWMP in a public forum, a cohesive working relationship with the other major stakeholders in San Benito County did not exist that would facilitate the collaborative advancement of the LTWMP within the scope of broader water resources management issues within the county prior to the end of 2002. However, a group identified as the "Inter-Governmental Meeting," consisting of members of the City Council, San Benito County Water District Board, and County Board of Supervisors, began meeting in late 2002 and provided consultation on the planning criteria for the City of Hollister's LTWMP adopted by the City Council on December 18, 2002. This group continued meeting throughout 2003 and 2004.

As a result of this growing coordination, the Discharger, San Benito County Water District, and San Benito County adopted a Statement of Intent in October 2004 for the development of a memorandum of understanding (MOU) for the development of a Hollister Urban Area Water and Wastewater Master Plan. These agencies later ratified a MOU for the development and implementation of the Hollister Urban Area Water and Wastewater Master Plan between December 7 and December 15, 2004. The MOU (Attachment 6) establishes the political framework and identifies specific programs and projects to achieve agreed-upon objectives for developing and implementing a comprehensive master plan for water supply and wastewater treatment and disposal for the Hollister Urban Area that is consistent with the general plans of San Benito County and the City of Hollister and the Groundwater Management Plan for the San Benito County portion of the Gilroy - Hollister Groundwater Basin. In addition, the MOU established the Governance Committee, formerly

the Inter-Governmental Meeting, to provide policy-level direction for the master plan. The Governance Committee consists of two elected officials from each agency and meets not less than quarterly to review the master plan status. The basic principles of the MOU are paraphrased in the Discharger's extension request. The three agencies also entered into Cooperative Agreement on June 6, 2005, to prepare a joint CEQA document for Long-term Wastewater Management Project and Reclaimed Water Project with the Discharger as lead agency and San Benito County and San Benito County Water District as responsible agencies. The Discharger briefly describes (see Attachment 1) planning and technical documents provided to the Water Board in support of the coordinated local agency efforts and necessary for implementation of the LTWMP.

The development and implementation of a LTWMP of the scope and complexity required for the City of Hollister is generally feasible within a five to ten-year project window given proper planning and readily available and easily implemented alternatives. Considerable time is required to evaluate potential alternatives; complete feasibility studies; prepare a conceptual design; conduct a project financial analysis; procure funds; develop, review, and adopt required environmental documents; complete design, bidding and construction documents; conduct project bidding; and complete construction and start up of the facilities. Difficulty in the implementation of any of these activities has the potential to extend the overall project time frame by several months to several years. Given the Discharger's historical failure in wastewater planning, rampant development in the community, and the current plants' inability to handle current wastewater flows, the stringent time frames established within the WDRs and enforcement orders were warranted to get the Discharger to upgrade its wastewater and disposal facilities to handle the current and projected wastewater flows as expeditiously as possible. Unfortunately, this time frame for the LTWMP did not prove feasible given the obstacles faced by the Discharger and local stakeholders in selecting and developing suitable alternatives for wastewater treatment, disposal and reuse as briefly discussed above and

as discussed in more detail within the Discharger's extension request.

Central Coast Water Board staff believes that the Discharger's failure to develop an updated LTWMP and implement it by October 15, 2005, is also attributable to two additional factors not specifically outlined in the extension request. First, although the Discharger was working with other local agencies prior to 2004, staff believes the working relationships between these agencies was tenuous at best due to historical political differences and the practice of operating independently of each other. The provided information as supported by the work conducted to date indicates that the local agencies have set aside their historical differences and are now working collaboratively on implementing a LTWMP in accordance with local planning documents that meets the needs of the community, and satisfies regulatory compliance. Second, for much of 2003 the Discharger was focusing its resources on complying with the various other short-term compliance activities required by the CDO and ACL. These activities included the construction of emergency wastewater storage basins by January 1, 2003, completion of an extensive hydrogeologic study by May 20, 2004, expansion and quarterly documentation of water conservation efforts, and completion of interim improvements to the Domestic Plant by August 1, 2003. The interim improvements to the Domestic Plant included the construction of new treatment plant headworks (influent lift station) with associated flow metering and odor control systems, and reconfiguration of the existing wastewater treatment pond system to facilitate improved solids removal as discussed previously. The new lift station will be incorporated into the LTWMP treatment system design, whereas the other interim improvements will be scrapped when the new treatment facility is built. Although the interim requirements provided immediate and necessary stopgap measures for the Discharger to adequately measure influent wastewater flows, mitigate nuisance conditions, and improve treatment and disposal performance at the Domestic Plant in the short-term, these activities also diverted limited resources away from implementing a complete and updated LTWMP.

The Discharger proposes a draft work plan within the extension request that tentatively outlines milestones for LTWMP implementation. The Discharger proposes to submit a revised LTWMP that incorporates a complete work plan and supporting technical data for treatment and the initial reuse phase by November 2005. As proposed by the Discharger in the extension request, the LTWMP will initially incorporate the existing MBR treatment system design with disposal via existing percolation facilities and reuse on forage and pasture land. The initial plan also incorporates expandable seasonal storage to maximize future reuse.

The Discharger and supporting stakeholders are conducting additional studies to develop other alternatives for blended and whole effluent wastewater reuse based on the evaluation and implementation of potable and wastewater quality improvements. Upon completion of the Hollister Urban Area Water and Wastewater Management Plan, the Discharger proposes to submit an amended LTWMP in March of 2007 that incorporates work plans for implementation of the Regional Recycled Water Facility Plan and for implementation of quality improvements for both potable water and wastewater that will increase the range of reuse alternatives for future implementation. As such, additional phasing of the LTWMP reuse plan will be based on additional master planning to fully integrate water and wastewater resources to address water quality issues for the basin and upon further development of an assured market for reuse beyond forage and pasture.

Construction of the treatment facility and initial reuse phase is tentatively scheduled for November 2007. This proposed completion date is subject to additional study as may be required as a result of concerns and mitigation measures identified during the CEQA process. Additional reuse phases as developed throughout the process discussed above will be proposed within the amended LTWMP and be incorporated into the WDRs for the new facility.

## ALTERNATIVES

Staff has identified seven primary alternatives arising from the Discharger's extension request and compliance history to date regarding implementation of the LTWMP. They include taking one or more of the following actions:

1. Grant the extension request and update the ACL to reflect a new compliance project due date for the complete implementation of the LTWMP.
2. Deny the extension request and collect \$200,000 from the Discharger for failure to implement the LTWMP fully by October 15, 2005 as required by paragraph no. 3 of the ACL. The Board could still amend the CDO and WDR to modify the dates prospectively, so that the Discharger would not incur additional liability.
3. Take enforcement action against the Discharger for failure to submit a complete LTWMP per the WDR.
4. Take enforcement action against the Discharger for failure to submit a complete ROWD per the WDR and CDO.
5. Update the CDO to maintain the sewer system connection ban and establish new milestones and associated due dates for completion of the LTWMP.
6. Update the WDR to reflect the LTWMP extension and/or allow the continued diversion of domestic wastewater and storm water to the Industrial Plant per the existing phased schedule.
7. Don't update the WDR and CDO and agree not to enforce the Discharger's failure to implement the compliance projects by the existing compliance activity due dates provided that the Discharger meets the proposed dates, but that failure to meet those dates would subject the discharger to potential penalties based on the original dates.

The final paragraph of the ACL states,

"The Regional Board retains its authority to amend the time schedules for any or all of the compliance projects and supplemental environmental projects if it determines

delays are due to circumstances beyond the Discharger's reasonable control."

Although additional factors within the control of the Discharger appear to have contributed to the Discharger's failure to implement a LTWMP by October 15, 2005, as discussed above, staff feels that the failure was primarily due to the lack of a sufficiently cooperative relationship with the other local agencies and that this factor was "beyond the Discharger's reasonable control." It is not reasonable to assume that the Discharger would have been able to develop and implement a successful LTWMP in the allotted time without the input and support of the agencies responsible for managing growth and water resources within the county. As such, the Discharger was dependent on these agencies to provide support and guidance on policy and technical issues associated with the LTWMP in a collaborative atmosphere since the inception of the project. As noted in the previous discussion staff believes that a collaborative atmosphere did not exist until just recently. This does not completely remove any blame from the Discharger or point to any one agency for the initial failure to work collaboratively on the LTWMP, but it should be noted that it took all three agencies to come to the table to work out any historical differences and to move forward on the project as a unified front. As evidenced by the advancements made on this project following the ratification of the MOU between the Discharger, County, and Water District, the collaboration of these agencies is essential for the project to advance to completion in a manner that addresses the policies and plans of these agencies and the long-term interests of the community. Therefore, staff feels that approval of the Discharger's request is warranted and appropriate under the constraints of the ACL language excerpted above. Staff does not take this interpretation lightly in the context of setting precedent for when other dischargers request extensions or exemptions for non-compliance based on similar arguments under different circumstances.

The Discharger's progress to date shows intent to complete the required activities in a manner that exceeds the initial expectations of the orders with regard to the level of treatment and consideration of water reuse activities. Furthermore, the

coordinated effort of the Discharger, San Benito County, and the San Benito County Water District to implement a LTWMP that incorporates water resources management within San Benito County to meet the long-term needs and interests of the community shows not only a commitment by the Discharger, but by the County as a whole. A County of San Benito Board of Supervisors September 6, 2005 letter in support of the Discharger's request is provided as Attachment 7. Approval of the extension request with updated compliance project due dates will help to facilitate the continued and coordinated efforts of the Discharger and local stakeholders to implement a successful LTWMP.

Given that additional treatment and disposal capacity has not been added to the Domestic Plant, the Discharger still requires a limited diversion of domestic wastewater to the Industrial Plant as previously allowed by the WDR to avoid overflows at the Domestic Plant. It is paramount that the Discharger be allowed to resume the diversion of wastewater to the Industrial Plant to maintain the percolation ponds at the Domestic Plant so as to not exceed the plant's wet season disposal capacity. In addition, the continuance of the sewer system connection ban per paragraph no. 1 of the CDO is still necessary and appropriate to protect against potential overflow conditions until such time as a new treatment and disposal facility with excess capacity is brought online. Notwithstanding additional enforcement for failure to fully implement a LTWMP by the specified date, the Discharger is committed to completing the specified compliance projects to have the sewer system connection ban lifted. The ongoing sewer system connection ban has serious financial implications for the City of Hollister as well as San Benito County with regard to retaining and attracting business and development interests within the county. Subsequently, the Discharger and other agencies are committed to the implementation of a LTWMP as expediently as possible.

## RECOMMENDATION

Central Coast Water Board staff recommends granting the Discharger's request to extend the ACL deadline for implementation of the LTWMP

and updating the WDRs with no additional enforcement action. In addition, staff recommends and proposes revising the CDO to reflect the extension request and establish new compliance dates while keeping the sewer system connection ban in place.

Staff's proposed changes to the ACL, WDR, and CDO documents are summarized as follows:

### Proposed changes to ACL:

1. Change the October 15, 2005 compliance date in paragraph no. 3 for LTWMP implementation to December 31, 2007.

### Proposed changes to WDR:

1. Change the sunset date in Prohibition A.6 (page 4) to December 31, 2007 to allow the continued diversion of domestic wastewater to the Industrial Plant.
2. Modify the first sentence in Provision D.7.ii as follows:  
By December 31, 2005 ~~Within two years of adoption of this Order~~, the Discharger shall submit for approval by the Executive Officer the long-term domestic and industrial wastewater management program.
3. Modify the language in Provision D.7.iii as follows:  
By March 31, 2007 ~~Within four years of adoption of this Order~~, the Discharger shall submit a complete Report of Waste Discharge for the long-term wastewater management program.
4. Modify the language in Provision D.7.iv as follows:  
By December 31, 2007 ~~Within five years of adoption of this Order~~, the Discharger shall fully implement all aspects of the long-term wastewater management program.

### Proposed changes to CDO:

1. Change the May 20, 2004 compliance date for ROWD submittal in paragraph no. 8 to December 31, 2006.
2. Change the October 15, 2005 compliance date in paragraph no. 9 for LTWMP implementation to December 31, 2007.

**PUBLIC COMMENT**

A September 7, 2005 letter from a Hollister resident apposed to granting the extension request is provided as Attachment 8.

Interested parties were notified of the proposed recommendations for comment on September 20, 2005. No responses were received as of the preparation date of this item.

**ATTACHMENTS**

1. July 21, 2005, City of Hollister, Administrative Civil Liability Order R3-2002-0097 Extension Request
2. Waste Discharge Requirements Order No. 00-020
3. Cease and Desist Order No. R3-2002-0105
4. Administrative Civil Liability Order No. R3-2002-0097
5. October 27, 2004, Central Coast Water Board letter to Clint Quilter (City of Hollister) re: Response to Report of Waste Discharge and Associated Engineering Documents.
6. December 13, 2004, Memorandum of Understanding, Hollister Urban Area Water and Wastewater Master Plan
7. September 6, 2005, County of San Benito Board of Supervisors letter
8. September 7, 2005, letter from Ken Price

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