

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER NO. R5-2009-0014

CEASE AND DESIST ORDER
REQUIRING
THE CITY OF MARYSVILLE
WASTEWATER TREATMENT FACILITY
YUBA COUNTY

TO CEASE AND DESIST
FROM DISCHARGING CONTRARY TO REQUIREMENTS

The California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) finds that:

1. The City of Marysville (hereafter Discharger) owns and operates a wastewater treatment facility (WWTF) in Marysville, Yuba County.
2. The WWTF is regulated by Waste Discharge Requirements (WDRs) Order No. 5-01-071, which was adopted by the Regional Water Board on 16 March 2001.
3. The WWTF serves the City of Marysville and surrounding areas. The WWTF consists of secondary treatment followed by disposal to percolation/evaporation ponds. The facility also has a Tertiary Treatment Unit (TTU) that is designed to treat wastewater to tertiary standards, followed by irrigation of soccer fields.
4. WDRs Order No. 5-01-071 limits influent flows to 1.7 mgd as an average daily dry weather flow, prohibits the discharge of waste to surface waters, imposes limits on the degree of groundwater degradation that the discharge may cause, and requires the Discharger to design, construct, operate, and maintain the facility such that inundation or washout due to flood and/or storm with a 100 year annual return period does not occur. Discharges to from wastewater treatment ponds at the facility to the Feather River are also prohibited by section 301 of the Clean Water Act.
5. Cease and Desist Order (CDO) No. R5-2004-0072, adopted by the Regional Water Board on 4 June 2004, provided the Discharger with a time schedule to make facility improvements and prepare a Feasibility Study and Master Plan Report describing how the wastewater storage and disposal area will be protected from flooding caused by storm events with a 100 year annual return period. The Discharger submitted the Feasibility Study and Master Plan Report on 27 June 2007.
6. Cease and Desist Order No. R5-2008-0110, which was adopted by the Regional Water Board on 31 July 2008, provided the Discharger with a time schedule to implement the City's selected compliance alternative, regionalization of wastewater collection, treatment and disposal systems with Linda County Water District (CWD).

2008 Cease and Desist Order

7. CDO R5-2008-0110, in part, required the Discharger to submit:
 - a. A *Compliance Workplan* describing the interagency regionalization with Linda CWD by 31 January 2009.
 - b. A signed *Interagency Agreement* with Linda CWD by 1 March 2009.
 - c. A funding plan and implementation time schedule by 1 April 2009.
 - d. A *Facilities Design Report* detailing modifications to be made to the Marysville and Linda CWD treatment facilities to implement the regionalization project.
 - e. A *CEQA Report* certifying submittal of a CEQA application to the Lead Agency by 1 August 2009.
 - f. By 1 March 2010 the Discharger shall ensure that a Report of Waste Discharge is submitted that includes the City of Marysville within its scope.
 - g. A *Pond Closure Workplan* for wastewater ponds subject to washout or inundation due to a "100-year" flood by 1 April 2011.
 - h. A *Facility Construction Completion Report* by 1 December 2013
 - i. A *Pond Closure Report* within 120 days of commencing discharge to Linda CWD facilities.
9. By letter dated 24 November 2008, the City of Marysville, and the County of Yuba jointly submitted a letter requesting a 12 month extension of the time schedule in CDO No. R5-2008-0110 to allow time for additional consideration of regionalization of wastewater treatment systems in Yuba County.
10. A number of wastewater systems in Yuba County are considering treatment system upgrades to address water quality and/or expansion issues. There has been recent interest by parties within the County to study regionalization of these facilities, which could provide water quality and public health protection at a lower overall cost, more reliable treatment facilities, and increased opportunity for reclamation of highly-treated wastewaters. The technical and institutional studies and decisions necessary to determine if regionalization is feasible and how it would work, and then to implement a regionalized system takes considerable time. Efforts to regionalize the Marysville and Linda CWD systems will take resources away from the larger regionalization study, and could result in a solution for Marysville and Linda CWD that is not compatible with a broader regionalization effort.
11. An extension of the CDO time schedule for resolution of the water quality threat from Marysville wastewater ponds being inundated by Feather River floodwaters might result in an overall better regionalized wastewater system than if Marysville and Linda CWD

continued to plan on a more limited regionalized system. Whether a actual discharge of pollutants to the Feather River will occur during the additional year added to the CDO time schedule depends on whether a major flood event on the Feather River occurs during the additional year, which is not known.

12. Additional time should be allowed for evaluation of a broader regionalization plan than is possible with the remaining time available under CDO R5-2008-0110. Whether or not the additional time will result in a broader regionalization project than originally proposed between the City of Marysville and Linda CWD is not known at this time. If a broader regionalization alternative is feasible, the Regional Water Board may adjust the time schedule contained in this CDO to accommodate the regionalization project.

Regulatory Considerations

13. As a result of the events and activities described in this Order, the Regional Water Board finds that the Discharger has discharged, and has the potential to discharge, waste in violation of WDRs No. 5-01-071.
14. It is appropriate to amend the existing compliance schedule for the Discharger to complete facility improvements necessary to bring the facility into compliance with WDRs Order No. 5-01-071, but allowing time for study of expanded regionalization opportunities in the area.
15. Because the Discharger anticipates using the existing percolation/evaporation ponds until past 2013, it is appropriate to require the Discharger to minimize the amount of wastewater stored in the percolation/evaporation ponds during potential flood events, thereby reducing the threat to water quality. This Order does not modify the existing requirement for the Discharger to use its Tertiary Treatment Unit to the extent feasible during periods of potential flooding.
16. The Regional Water Board's Water Quality Control Plan for the Sacramento and San Joaquin River Basins (Basin Plan) designates beneficial uses, includes water quality objectives to protect the beneficial uses, and includes implementation plans to implement the water quality objectives.
17. Surface water drainage is to the Feather River and the Yuba River. The beneficial uses of the Feather River and Yuba River, as stated in the Basin Plan, are municipal and domestic supply; agricultural supply; water contact recreation; noncontact water recreation; warm freshwater habitat, cold freshwater habitat; migration of aquatic organisms; spawning, reproduction, and/or early development; and wildlife habitat.
18. The beneficial uses of underlying groundwater, as stated in the Basin Plan, are municipal and domestic water supply, agricultural supply, industrial service supply, and industrial process supply.
19. CWC section 13301 states, in part: *"When a regional board finds that a discharge of waste is taking place or threatening to take place in violation of the requirements or discharge*

prohibitions prescribed by the regional board or the state board, the board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the board, or (c) in the event of a threatened violation, take appropriate remedial or preventive action.”

20. CWC section 13267(b) states: *“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.”*
21. The required technical reports are necessary to assure compliance with WDRs Order No. 5-01-071 and this Order, and to assure protection of public health and safety. The Discharger owns and operates the facility that discharges the waste subject to this Order.
22. This Order and the prior CDOs do not “concern the discharge of wastes that are hazardous materials” within the meaning of Government Code section 65962.5. Discharges of untreated or partially treated waste to the Feather River, when they occur, are not at hazardous levels. A “hazardous material” is “any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment...” (Health & Safety Code, § 25501, subd. (o).) Discharges from the ponds occur only during extreme flood events, when there is significant flow in the Feather River to dilute the waste to less than hazardous levels
23. This Order does not require or authorize any new construction, but merely extends due dates in the existing CDO, which, in turn, was intended to bring the discharger into compliance with WDRs Order No. 5-01-071. In addition, this Order includes a new requirement for a *Feasibility Study*, which is not a “project” under the California Environmental Quality Act (CEQA) because it will not cause a direct or indirect physical change in the environment. The Regional Water Board cannot determine at this point what upgrade or regionalization project the Discharger will eventually select, or even what projects the Discharger might consider. Any CEQA “projects” will be subject to CEQA review by the appropriate lead agencies prior to construction. In addition to the fact that any such potential projects are beyond the scope of this Order, CEQA review of speculative projects is not required.
24. This Order does not authorize pond discharges that violate the WDRs or the Clean Water Act. This Order enforces preexisting requirements to improve the quality of ongoing

discharges that are part of the CEQA "baseline"; and includes interim effluent limitations to ensure that discharges do not increase above the CEQA baseline. This Order does not modify any compliance dates or other requirements of the WDRs.

25. For the reasons stated in Findings 22-24, this Order (i) is exempt from CEQA pursuant to California Code of Regulations, title 14, section 15061(b)(3); (ii) is not a permit for a development project as defined by Government Code sections 65927, 65928 and 65931; and (iii) is not subject to the "Cortese List" exception in Government Code section 65962.5 to the CEQA categorical exemptions. The issuance of this Order is an enforcement action by a regulatory agency and is also exempt from the provisions of CEQA, pursuant to California Code of Regulations, title 14, sections 15307, 15308, 15321(a)(2). The issuance of this Order is for an existing facility and authorizes negligible or no expansion of use, and is also exempt from the provisions of CEQA, pursuant to California Code of Regulations, title 14, section 15301.
26. On 5 February 2009, in Rancho Cordova, California, after due notice to the Discharger and all other affected persons, the Regional Water Board conducted a public hearing at which evidence was received to consider a Cease and Desist Order.
27. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, section 2050. The petition must be received by the State Board, Office of Chief Counsel, P. O. Box 100 Sacramento, 95812 within 30 days of the date of this order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

IT IS HEREBY ORDERED that Cease and Desist Order No. R5-2008-0110 is rescinded and that, pursuant to CWC sections 13301 and 13267, the City of Marysville, its agents, successors, and assigns, shall in accordance with the following tasks and time schedule, implement the following measures and identify and implement all improvements required to ensure long-term compliance with WDRs No. 5-01-071 or any superceding permits or orders issued by the Regional Water Board.

Any person signing a document submitted under this Order shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

1. The Discharger shall comply with all aspects of WDRs Order No. 5-01-071, except for Provision F.9, which states: *"In accordance with Discharge Specification B.9, the Discharger shall implement the approved alternate project which will achieve compliance by*

1 April 2006.” This Provision refers to protecting the facility and all wastewater disposal areas from a flood with a 100-year return frequency. The Discharger shall instead comply with the time schedule contained in this Order.

2. By **1 September 2009**, the Discharger shall submit a *Feasibility Study* evaluating the feasibility of wastewater regionalization alternatives that would include the City of Marysville and allow for full compliance with WDRs Order No. 5-01-071.
3. By **31 January 2010**, the Discharger shall submit a *Compliance Work Plan*. The work plan shall describe the details of the interagency regionalization agreement either between the City of Marysville and the Linda County Water District (CWD) or with other agencies planning an alternative regionalization project.
4. By **1 March 2010**, the Discharger shall submit a signed *Interagency Agreement* between the City of Marysville and the regionalization partner agencies. The Interagency Agreement shall describe the roles and responsibilities of the City of Marysville and the other agency(ies) necessary to develop a regional wastewater treatment facility capable of serving all involved communities.
5. By **1 April 2010**, the Discharger shall submit a detailed funding plan and implementation schedule for all modifications necessary for the City of Marysville WWTF to send wastewater to either the Linda CWD wastewater treatment plant or other regional wastewater treatment facility.
6. By **1 July 2010**, the Discharger shall submit a complete *Facilities Design Report* describing all modifications that will be made to the City of Marysville WWTF and other involved wastewater treatment facilities. The report shall contain a time schedule for all modifications.
7. By **1 August 2010**, the Discharger shall submit a *CEQA Report*. The Report shall certify that the Discharger has submitted a CEQA application to the lead agency for review.
8. By **1 March 2011**, the Discharger shall ensure that a Report of Waste Discharge is submitted that includes the City of Marysville within its scope.
9. By **1 April 2012**, the Discharger shall submit a *Pond Closure Workplan* for all wastewater storage and disposal ponds, which are not protected from inundation or wash out due to flood and/or storm inundation with a 100 year annual return. At a minimum the workplan shall include sludge removal and disposal, soils characterization, closure options, and grading plans (if applicable).
10. By **1 December 2014**, the Discharger shall submit a *Facility Construction Completion Report*. The report must certify that all construction and necessary modifications have been made to the Marysville WWTF and any other involved facilities, such that the City of Marysville is in compliance with WDRs Order No. 5-01-071. Additionally, the report shall certify that the facility is enrolled under the Sanitary Sewer Overflow Program General Order, administered by the State Water Resources Control Board.

11. **Within 120 days** of the City of Marysville commencing the discharge of wastewater to the LCWTP, the Discharger shall submit a *Pond Closure Report*, that certifies that all wastewater storage and disposal ponds, which are not protected from inundation or wash out due to flood and/or storm inundation with a 100 year annual return have been decommissioned and closed in accordance with the previously approved *Pond Closure Workplan*.
12. **Until the wastewater ponds are decommissioned and closed**, the Discharger shall minimize the threat to water quality from potential flood events by maximizing the use of the wastewater ponds on the south side of the Yuba River during months of potential flooding (December through May). During this period, the Discharger shall consistently maintain approximately four feet of freeboard in the higher elevation southern ponds. The lower elevation northern ponds may be used if southern ponds are in danger of exceeding four feet of freeboard. During periods of potential flooding, all wastewater shall be discharged to the southern ponds, up to the limit of two feet of freeboard. Additionally, the Discharger shall minimize the amount of wastewater stored in the wastewater ponds by producing and using tertiary treated wastewater for irrigation of 11 acres soccer fields from 1 May through 30 September each year and to the maximum extent feasible during predicted flood events.
13. The Discharger shall submit *Quarterly Project Status Reports*. The quarterly reports shall describe all work completed during the quarter in response to this Cease and Desist Order. Additionally, the quarterly reports shall clearly state the days and amounts of tertiary treated water produced and applied to the soccer fields. Quarterly project status reports shall be submitted on the first day of the second month following the end of the quarterly (e.g., the Fourth Quarter 2008 report is due by 1 February 2009) and may be combined with the quarterly monitoring reports required by WDRs Order No. 5-01-071. Additionally, the Discharger's December through May monthly monitoring reports required per MRP No. 5-01-071 shall include the following additional information: weekly pond freeboard levels, weekly observation of berm conditions, and weekly volume of wastewater discharged to the southern ponds versus the northern ponds.

All technical reports required herein that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geologic sciences, shall be prepared by or under the direction of persons registered to practice in California pursuant to California Business and Professions Code, sections 6735, 7835, and 7835.1. As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.

If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement or the enforcement unit of the Regional Water Board may issue a complaint for administrative civil liability.

Pursuant to CWC section 13350, administrative civil liability may be assessed at \$5,000 per violation for each day in which any violation occurs. The Regional Water Board specifically reserves the right to take any enforcement actions authorized by law.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 5 February 2009.

Original Signed By

PAMELA C. CREEDON, Executive Officer