

Central Valley Regional Water Quality Control Board
30 March 2012 Board Meeting

**Prosecution Team's
Response to Comments**

Consideration of Modifying Cease and Desist Order R5-2011-0019
for the
City of Lone Waste Water Treatment Plant
Amador County

The following are Central Valley Regional Water Quality Control Board (Central Valley Water Board) Prosecution Team's responses to comments submitted by the City of Lone regarding the Board's Reconsideration of the deadlines in Cease and Desist Order R5-2011-0019. The comment deadline was 2 March 2012 for Designated Parties and Interested Persons.

Timely comments were received from the following Parties:

- City of Lone

This response first describes the violations at the City of Lone's wastewater treatment plant and previous enforcement orders, and then responds to the City's request to extend the schedule to submit a Report of Waste Discharge and to construct the upgraded treatment plant.

Background Information

The City of Lone (the "City") owns and operates a wastewater treatment facility (WWTF) that provides secondary treatment and effluent disposal via a system of ponds. The facility is regulated under Waste Discharge Requirements (WDRs) Order 95-125 and Cease and Desist Order (CDO) R5-2011-0019. The WWTF is adjacent to Sutter Creek, with the closest pond approximately 100 feet from the creek. The WWTF consists of seven treatment and disposal ponds. Wastewater is treated to secondary levels in the first four ponds, and then disposed of by percolation and evaporation in Ponds 5, 6, and 7.

The City also operates a tertiary treatment plant near the secondary plant. The tertiary plant treats wastewater from the ARSA (Amador Regional Sanitation Authority) system, which is disposed of on the Castle Oaks Golf Course. The tertiary plant is not the subject of this Hearing or the 2011 CDO; however, the City's 2012 compliance proposal (discussed below) incorporates use of the tertiary plant to achieve compliance at the secondary plant.

Current violations

There are four main reoccurring compliance issues at this facility:

1. Studies by Board staff and the City have confirmed that wastewater seeps from the ponds into Sutter Creek, which constitutes an unpermitted discharge that violates the Clean Water Act.
2. Groundwater monitoring shows that the discharge of wastewater has polluted the groundwater underneath and downgradient of the facility. The main constituents of

concern are iron and manganese. The background monitoring well contains iron at an average of 14 ug/l, while the downgradient wells contain iron at average of 3,600 ug/l. The secondary Maximum Contaminant Level for iron is 300 ug/l. A similar situation exists for manganese. The background well contains an average of 8 ug/l of manganese, while the downgradient well has an average of 5,800 ug/l as compared to the secondary maximum contaminant level of 50. This groundwater pollution is a violation of the WDRs.

3. Wastewater disposal Pond 7 was constructed in the early 2000's. The City did not submit a Report of Waste Discharge (RWD) prior to the construction or use of this pond, which is considered a violation of WDRs Order 95-125 and the Water Code. Despite enforcement orders from the Board, the City has still not submitted an adequate RWD that would allow the pond to be permitted. However, the City continues to use Pond 7 for wastewater disposal.
4. At times of the year, the shallow groundwater is close to ground surface in the vicinity of the wastewater treatment plant. Board staff has received complaints of surfacing effluent in the vicinity of Pond 7. The City's 2010 models showed that the facility expansion proposed at that time would cause the local water table to rise as much as two feet, and would result in seasonal surfacing of wastewater at the southern end of the wastewater treatment facility. Surfacing wastewater would be a violation of WDRs Order 95-125.

Basis for 2003 CDO

When Board staff learned about the construction of Pond 7 during an inspection in 2001, the City was instructed to submit a RWD and to not dispose of any wastewater into the pond until the Board had revised WDRs Order 95-125. However, the RWD was not submitted and the pond was put into use, in violation of the WDRs.

Subsequently, on 9 October 2001, the Executive Officer issued a Water Code section 13267 Order for technical reports, which required that the City install monitoring wells and submit a complete RWD by 15 April 2002. The City installed the monitoring wells but did not submit an RWD.

Lack of Compliance with 2003 CDO

In 2003, the Board adopted CDO R5-2003-0108, which was intended to bring the facility into compliance with the WDRs, by forcing the City to complete technical studies, submit technical reports, and submit the delinquent RWD. This CDO addressed the underlying compliance issues at that time: groundwater degradation due to the disposal of wastewater, seepage of wastewater into Sutter Creek, and the construction and use of an unpermitted disposal pond.

The CDO required that the City complete its Wastewater Master Plan by November 2004 and then submit a RWD within 60 days of staff's approval of the Master Plan. The City submitted a Master Plan in November 2004, but then informed staff that it was only preliminary. In 2009, the City submitted a draft Master Plan. A final Master Plan was submitted in March 2010, over

five years delinquent. However, the Master Plan still did not comply with the 2003 CDO because it did not demonstrate that the proposed facility improvements would prevent wastewater seepage into Sutter Creek, and it did not include measures to prevent continued groundwater degradation.

The City submitted its first RWD in November 2005, and submitted revisions in 2006, March 2010, and September 2010. However, the RWD submittals did not address the underlying compliance issues, and therefore did not comply with the CDO. Water Board staff reviewed the 2005 submittal and stated that the RWD was incomplete because the analysis of potential impacts to Sutter Creek and groundwater quality were insufficient, the proposed treatment ponds did not meet the best practical treatment and control measure standard, and the water balance calculations were inadequate for the proposed flow.

The City then submitted a March 2010 RWD, which proposed to increase the treatment and disposal capacity, to replace the existing secondary treatment facility with a tertiary treatment and UV disinfection system, to close the four existing treatment ponds, and to construct a fourth percolation disposal pond (referred to as Pond 8).

Board staff reviewed the March 2010 RWD and found that it did not address the continuing violations (polluted groundwater, wastewater seepage into the creek, and surfacing groundwater). In a letter dated 28 June 2010, Water Board staff stated that the March 2010 RWD was incomplete due to the potential for leakage from Pond 7 into adjacent ditches, surfacing of effluent adjacent to the proposed Pond 8, and wastewater seepage from Ponds 5 and 6 to Sutter Creek. In addition, staff stated that the RWD did not demonstrate that the changes would result in any groundwater improvements. Staff's letter provided a list of additional information that was required to be submitted. The City did not submit the information, and Water Board staff issued a Notice of Violation on 17 August 2010 because the RWD was still incomplete, in violation of the 2003 CDO.

The City submitted a revised RWD in September 2010, which included a report with the results of a groundwater flow model for the proposed expansion and facility. The report concluded that surfacing of groundwater may occur seasonally near the southern edge of proposed disposal Pond 8. Staff had some questions regarding the model, and requested additional information.

On 5 October 2010, the Discharger submitted the results of a second numeric groundwater model for the planned expansion. This model included extraction of groundwater along the southern edge of the percolation ponds in order to control surfacing groundwater, and disposal of the extracted groundwater in the percolation ponds. Although the report stated that the Discharger could mitigate surfacing groundwater by pumping groundwater to the percolation ponds, the RWD's capacity analysis did not account for the additional influent flows, and the seepage to the creek was not addressed. The September 2010 RWD did not propose a system that would mitigate the continuing violations of the WDRs. On 5 November 2010, staff again informed the Discharger that the September 2010 RWD was incomplete, and the City remained in violation of the 2003 CDO.

Basis for 2011 CDO

In early 2011, the Prosecution Team evaluated whether it would be more appropriate to propose an Administrative Civil Liability Complaint for failure to comply with the CDO or to propose a new CDO with new timelines. The City has been in violation of its WDRs since 2001 and never complied with its 2003 CDO because it has been unable to commit to a course of action to prevent groundwater pollution, wastewater seepage to Sutter Creek, and surfacing of wastewater. In addition, the City continued to discharge wastewater to an unpermitted pond in violation of WDRs Order 95-125.

If an ACL Complaint had been issued, the maximum penalty could have easily exceeded \$11 million. However the City asked for one more chance to comply, and proposed new timelines. The Prosecution Team determined that the timelines were reasonable, and that the goal of the enforcement action was to compel the City to upgrade its treatment plant to address the four main issues. Therefore, the Prosecution Team proposed that the Board issue a new CDO at its April 2011 meeting.

During the April 2011 hearing, the then Vice-Chair Longley asked why staff was allowing the City more time, rather than issuing an ACL Complaint. Prosecution Staff told the the Board that an ACL Complaint would be prepared if the City failed to comply with the proposed CDO. The City Manager and a City Council member addressed the Board and committed to comply with the proposed Order. The Board then adopted the CDO in order to give the City one last time extension to correct the longstanding compliance issues. The CDO currently requires that the City submit a Seepage Discharge Compliance Plan by 30 January 2012, a Report of Waste Discharge by 30 May 2012, and document that the wastewater treatment plant improvements have been completed by October 2013.

Ione's Actions After Adoption of the 2011 CDO

After the 2011 CDO was issued, the City Council terminated the contract with the City Manager and hired an Interim City Manager. The City Council has also hired a new City Attorney and a new engineering consultant to complete the Seepage Discharge Compliance Plan. These new parties decided that the former consultant's proposal was too expensive, and subsequently developed and submitted a new concept.

The City submitted a Seepage Discharge Compliance Plan (SDCP) on time. As required by the CDO, the Plan contains a conceptual design to address seepage to Sutter Creek, groundwater pollution, surfacing wastewater, and capacity.

Staff has reviewed the SCDP, and believes that the City may have outlined a mechanism to bring the treatment plant into compliance with the WDRs and CDO. In summary, the City proposes to fill in some portion of Ponds 5 and 6 to prevent seepage to Sutter Creek. Groundwater pollution will be abated by enhancing the secondary treatment train using the existing four treatment ponds. The City believes that the more highly-oxidized wastewater will prevent iron and manganese dissolution and movement to the groundwater. However, if groundwater improvements are not seen after two years, then the City will send the secondary wastewater to the City's tertiary treatment plant for additional treatment, after which it will be

returned to the secondary plant for disposal in the existing percolation ponds. The City also believes that there may be sludge in Ponds 5-7 which is contributing to the groundwater pollution, and has proposed to clean out these ponds.

Board staff, in conducting a formal review of the City's SCDP proposal (dated 16 February 2012), required that the City provide an addendum to the plan by 16 March 2012 and required that the City provide some additional information in the RWD. Among other items, staff requested that the City test Ponds 5-7 to confirm whether or not sludge is present, describe how it will determine the area of Ponds 5 and 6 to fill in to prevent seepage of wastewater to the creek, discuss how it will prevent wastewater from surfacing, address whether or not there is actual capacity at the tertiary treatment plant to treat the water from the secondary plant, and provide an updated schedule to show that it will comply with the CDO requirement to submit the Report of Waste Discharge by 30 May 2012. The SCDP addendum was submitted on 28 February 2012 by the consultant who no longer works for the City. This consultant stated that, at times, there would not be enough capacity at the tertiary treatment plant to treat all of the secondary wastewater, and that another - yet to be hired - consultant would address Board staff's concerns and prepare a new schedule to complete the RWD.

In late January 2012, Board staff became aware that progress towards complying with the 2011 CDO had come to a halt. At recent City Council meetings, two agenda items were not approved, which would directly impact the City's compliance with the CDO timeline. First, an extension of the wastewater engineering consultant's contract to prepare the RWD and to continue as the project manager was not approved, and secondly, a contract to prepare a preliminary design report and to seek funding through the State Revolving Fund process was not approved. In addition, the ratepayers stated at the public meetings that they did not want to pay for engineering consultants, and decided that they would form a "citizen's committee" to design the wastewater plant. Further, on 10 February 2012, Board staff was informed¹ that the consultant had withdrawn its proposal to develop a RWD and provide project management services. Currently, the City does not have any personnel that are qualified to complete the technical work required under the 2011 CDO or to submit funding proposals.

During the Public Forum portion of the Board's February 2012 meeting, several lone residents addressed the Board and expressed their concerns about wastewater issues and the CDO. The Board asked that the Prosecution Team bring the matter back for discussion. Rather than notice the item as an information item for the Board, the Prosecution Team noticed the matter as hearing where the Board could reconsider the timelines in the 2011 CDO. The public was invited to provide comments. The only comments that were received during the comment period were submitted by the City of Lone.

Issue No. 1: Time Extension for Submittal of a Report of Waste Discharge

Background: Item 4.a of Cease and Desist Order R5-2011-0019 requires that the City submit a RWD by 30 May 2012.

¹ Letter to Jeff Butzlaff from RBI dated 9 February 2012.

Comment No. 1: The City requests a six-month extension from 30 May 2012 to 30 November 2012 for submittal of a RWD, which would allow time to retain a new consultant, prepare a RWD, and to garner public support for a Proposition 218 process to raise its rates.² This extension is requested due to developments within the City Council and with the public's perception of the project. Recently, the City's progress has been delayed due a recall election and the discovery of a deficit in the City's budget. The recall campaign made it difficult to conduct routine business during the recall process, which resulted in failure to approve an extension to the consultant's contract. The financial issues impacted the City Council's relationship with Lone's ratepayers, and undermined trust in the municipal government. The City Council is currently working to regain the public trust through a series of community forums and workshops. In addition, several Lone residents will be added to the Wastewater Committee to restore confidence in the City Council's decisions.

Prosecution Team Response: The 2011 CDO was adopted to bring the City into compliance with the WDRs. As described in the *Background Information*, above, the Board has issued a Water Code section 13267 Order for technical reports, a 2003 CDO, and a 2011 CDO. The Board has allowed the City more than 11 years to conduct studies, work with its residents, and determine the best way to upgrade its treatment plant to address the main issues: groundwater pollution, wastewater seepage to Sutter Creek, and surfacing of wastewater. Given Board staff's concerns about the SCDP, the recent events within the City, and lack of a consultant to address the SCDP issues and complete the RWD, the City has not provided the Prosecution Team with any evidence that it will comply with an extended deadline to submit a RWD that complies with the 2011 CDO. The Prosecution Team does not recommend that the Board approve a time extension for the submittal of the RWD.

Issue No. 2: Time Extension for Final Project Certification Report

Background: Item 4.c of CDO R5-2011-0019 requires that the City submit a technical report by 30 October 2012, which must certify that (1) the wastewater treatment plant improvement project has been completed, (2) the facility does not discharge to Sutter Creek in violation of the Clean Water Act, and (3) any groundwater degradation that occurs due to treatment and disposal of wastewater is consistent with State Water Board Resolution 68-16.

Comment No. 2: The City requests a seven-month extension from 31 October 2013 to 30 May 2014 for submittal of a certification report. This extension would allow sufficient time to retain a design consultant, design the improvements, prepare and implement a sludge sampling plan in order to confirm the pond conditions, obtain financing through the State Revolving Fund Program, construct the improvements, and prepare the certification report.

² Lone's 7,400 residents currently pay a monthly rate of \$40.70 for wastewater service. These fees are below the average wastewater fee in Amador County of \$61/month and are comparable to the statewide average of fee of \$30 per month for facilities that serve a population of 1,000 to 9,999 residents. Data taken from the Wastewater User Charge Survey Report, F.Y. 2007-2008, published May 2008 by State Water Resources Control Board (www.waterboards.ca.gov/publications_forms/publications/general/).

Prosecution Team response: The CDO was adopted in order to bring the facility into compliance with the WDRs. The CDO requires a design for facility improvements required to achieve compliance with the WDRs and provide sufficient treatment, storage and disposal capacity through 2020. Any delay in the completion of facility improvements will also delay compliance with the WDRs and CDO, and will result in continued water quality impacts. These impacts have been occurring for over 11 years, and it is beyond time for the City to commit to improvements to its wastewater treatment plant. As discussed above, there is no indication at this time that the City would be able to comply with an extended deadline. The Prosecution Team does not recommend that the Board approve a time extension for completion of the facility improvements.

Issue No. 3: Alternative Time Extension

Background: Item 4.a and 4.c of Cease and Desist Order R5-2011-0019 requires that the City submit a RWD by 30 May 2012 and a certification completion report by 30 October 2013, respectively.

Comment No. : As an alternative to a time extension for both the RWD and the certification completion report, the City requests an extension to the RWD deadline only, as it may be possible to expedite construction to work to make up for the lost time between the RWD and design phase. Therefore, as an alternative, the City requests only an extension for submittal of the RWD, which would be a six-month extension from 30 May 2012 to 30 November 2012. The certification report for completion of improvements would remain as 30 October 2013.

Prosecution Team Response: Currently, the CDO allows 18 months between the submittal of the RWD and submittal of the certification of completion report, which includes time for the City to acquire funding for the project, submit the RWD, finalize the design, and construct the project. During this period, Board staff will review and comment on the RWD, and then prepare updated WDRs for the Board's consideration. Deleting six months between submittal of the RWD and the completion report may be an unrealistic aspiration. In addition, a delay in submittal of the RWD will just delay the Board's determination of whether or not the City intends to comply with the CDO. A delay of six months for submittal of the RWD will, in all likelihood, delay the treatment plant improvements beyond 2013. The Prosecution Team does not recommend that the proposed alternative time extension.