

ITEM: 20

SUBJECT: Nevada County Sanitation District No. 1., Lake of the Pines Wastewater Treatment Plant, Nevada County

BOARD ACTION: *Consideration of an Administrative Civil Liability Order*

BACKGROUND: The Assistant Executive Officer has issued an Administrative Civil Liability (ACL) Complaint, pursuant to California Water Code (CWC) sections 13323 and 13385, to the Nevada County Sanitation District No. 1, Lake of the Pines Wastewater Treatment Plant, alleging that the facility has violated effluent limits contained in its Waste Discharge Requirements. The Complaint proposes that mandatory minimum penalties in the amount of \$129,000 be imposed pursuant to CWC sections 13385(h) and (i). The Discharger has requested a hearing before the Central Valley Water Board.

ISSUES The Nevada County Sanitation District No. 1 recently completed a \$22 million upgrade of its Lake of the Pines wastewater treatment plant, which is designed to bring the facility into compliance with its NPDES permit. In the process of preparing the ACL Complaint, prosecution staff consulted with the economist at the State Water Board to determine whether or not Lake of the Pines meets the definition of a “publicly owned treatment works serving a small community” pursuant to CWC section 13385(k)(2). If it did, then the CWC would allow the penalty be applied toward the compliance project. The economist found that the community does not meet the definition because the community’s median household income exceeds the California median household income. Although the District acknowledges that it does not meet the statutory criteria for a “publicly owned treatment works serving a small community”, it has requested that it be allowed to apply the penalty to its compliance project. Prosecution staff contends that the California Water Code does not give the Central Valley Board the discretion to approve this course of action.

RECOMMENDATION: Prosecution staff recommends that the Central Valley Water Board adopt a \$129,000 Administrative Civil Liability Order for Mandatory Minimum Penalties to the Nevada County Sanitation District No.1, Lake of the Pines Wastewater Treatment Plant. Consistent with the CWC, the Order requires that the \$129,000 be paid within 30 days of adoption.

Mgmt. Review _____
Legal Review ___ PEP ___

23/24 October 2008 Regional Water Board Meeting
11020 Sun Center Dr. #200
Rancho Cordova, CA 95670

PROSECUTION STAFF REPORT

ADMINISTRATIVE CIVIL LIABILITY ORDER
FOR
NEVADA COUNTY SANITATION DISTRICT NO. 1
LAKE OF THE PINES WASTEWATER TREATMENT PLANT
NEVADA COUNTY

INTRODUCTION

The Nevada County Sanitation District No. 1 (hereafter Discharger) is the owner and operator of the Lake of the Pines Wastewater Treatment Plant, which provides sewerage service to the community of Lake of the Pines in Nevada County. Treated wastewater is discharged to Magnolia Creek, tributary to the Bear River, a water of the United States.

On 26 May 1995, the Regional Water Board adopted WDRs Order 95-114 to regulate discharges of waste from the wastewater treatment plant. On 7 June 2002, the Regional Water Board adopted WDRs Order R5-2002-0095, which contained new requirements and rescinded WDRs Order 95-114. The Administrative Civil Liability addresses effluent limit violations of both Orders.

OVERVIEW OF MANDATORY MINIMUM PENALTY PROVISIONS

Because the Discharger is regulated under a NPDES permit, it is subject to mandatory minimum penalties (MMPs). The State Water Board's 19 February 2002 Enforcement Policy describes the main aspects of MMPs; staff have summarized the information and included it below.

As of 1 January 2000, mandatory penalty provisions have been required by California Water Code (CWC) section 13385(h) and (i) for specified violations of NPDES permits. For violations that are subject to those mandatory minimum penalties, the Regional Water Board must either assess the minimum penalty of \$3,000 per violation or may include a discretionary liability in addition to the minimum penalty.

Serious Violations

CWC section 13385(h) requires that a mandatory minimum penalty (MMP) of \$3,000 be assessed by the Regional Water Board for each serious violation. A serious violation is any waste discharge that exceeds the effluent limitation for a Group I pollutant by 40 percent or more, or a Group II pollutant by 20 percent or more. The listings for Group I and II pollutants are found in the State Water Board's Enforcement Policy, but generally Group I pollutants are conventional pollutants, and Group II pollutants are toxic pollutants.

As of 1 January 2004, the CWC was amended to add another category of serious violation. As of that date, serious violations include a failure to submit required discharge monitoring reports, if the reports are designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.

Non-Serious Violations

CWC section 13385(i) requires that a MMP of \$3,000 be assessed by the Regional Water Board for each non-serious violation. However, the first three non-serious violations are not counted in the penalty assessment. A non-serious violation occurs if the discharger does any of the following four or more times in any period of six consecutive months:

- (a) Exceeds WDR effluent limitations;
- (b) Fails to file a report of waste discharge pursuant to California Water Code section 13260;
- (c) Files an incomplete report of waste discharge pursuant to California Water Code section 13260; or
- (d) Exceeds a toxicity discharge limitation where the WDRs do not contain pollutant-specific effluent limitations for toxic pollutants.

The six-month time period is calculated as a “rolling” 180 days.

Exceptions

Exceptions to the imposition of mandatory minimum penalties are provided for violations that are caused by acts of war or by an unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character or by an intentional act of a third party. Such exceptions do not apply if the violation could have been prevented or avoided by the exercise of due care or foresight by the discharger. Such exceptions are fact specific and are evaluated on a case-by-case basis.

For the purpose of issuing MMPs, a single operational upset which leads to simultaneous violations of one or more pollutant parameters are treated as a single violation. EPA defines a “single operational upset” as “an exceptional incident which causes simultaneous, unintentional, unknowing (not the result of a knowing act or omission), temporary noncompliance with more than one effluent discharge pollutant parameter. Single operational upset does not include... noncompliance to the extent caused by improperly designed or inadequate treatment facilities.” The EPA Guidance further defines an “exceptional” incident as a “non-routine malfunctioning of an otherwise generally compliant facility.” Single operational upsets include such things as upset caused by a sudden violent storm, a bursting tank, or other exceptional event and may result in violations of multiple pollutant parameters. The Discharger has the burden of demonstrating that a single operational upset occurred.

There are also several limited exceptions to MMPs, mainly for discharges that are in compliance with a cease and desist order or time schedule order under narrowly specified conditions.

Small Communities with Financial Hardship

In lieu of assessing all or a portion of the MMPs against a publicly owned treatment works serving a small community with a financial hardship, a Regional Water Board may elect to require the publicly owned treatment works to spend an equivalent amount towards the

completion of a compliance project, if the State Water Board or a Regional Water Board finds all of the following:

- (a) The compliance project is designed to correct the violations within five years;
- (b) The compliance project is in accordance with the enforcement policy of the State Water Board, excluding any provision in the policy that is inconsistent with this section; and
- (c) The publicly owned treatment works has prepared a financing plan to complete the compliance project.

Regional Water Board staff relies on the economists at the State Water Board to determine whether a Discharger meets the definition of small community with a financial hardship. In general, a “publicly owned treatment works serving a small community” means a publicly owned treatment works serving a population of 10,000 persons or fewer, or a facility located in a rural county. “Financial hardship” is determined by considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works. If Regional Water Board staff believes that a Discharger might qualify as a small community with a financial hardship, or if a Discharger requests that such a determination be made, then we must follow the procedure recently developed by the State Water Board’s Office of Enforcement. In general, Regional Water Board staff transmits a request to the State Water Board to review the matter, and provide any information the Discharger has given us. State Water Board staff review all pertinent information, determine whether a Discharger qualifies, and then transmits a formal determination back to the Regional Water Board. It must be emphasized that the Regional Water Board does not have the in-house expertise to determine whether a Discharger qualifies as a small community with a financial hardship. We rely exclusively on State Water Board staff to do this, as required by the Office of Enforcement.

Supplemental Environmental Projects (SEPs)

In lieu of assessing all of the penalties, the Central Valley Regional Board may direct a portion of the penalty amount to be expended on a supplemental environmental project (SEP). A SEP is an environmentally beneficial project that would not be undertaken in the absence of an enforcement action, and is not used to fix the problems that resulted in the enforcement action. In general, no more than 50% of the penalty may be applied toward a SEP. The remainder of the penalty is paid to the State’s Cleanup and Abatement Account. The Enforcement Policy contains a listing of the numerous criteria a SEP must meet in order to be considered appropriate. A Discharger has the option of proposing an appropriate SEP to Central Valley Water Board staff.

ADMINISTRATIVE CIVIL LIABILITY

Mandatory Minimum Penalty

On 28 July 2008, the Assistant Executive Officer issued Administrative Civil Liability (ACL) Complaint R5-2008-0553 to the Discharger violations of Waste Discharge Requirements Order 95-114 and R5-2002-0095. The Complaint charged the Discharger with an administrative civil liability in the amount of \$129,000, which represented the sum of the statutory Mandatory Minimum Penalties for effluent limitation violations that occurred at the Lake of the Pines Wastewater Treatment Plant from 1 January 2000 through 31 March 2008. The penalties are for 53 violations of the effluent limitations, and include violations of limits for aluminum, ammonia, BOD, settleable solids, total coliform organisms, and total suspended solids. A copy of the ACL Complaint is included in this agenda package. Attachment A to the ACL Complaint lists the actual penalties.

The Discharger recently completed a \$22 million upgrade of its Lake of the Pines wastewater treatment plant, which is designed to bring the facility into compliance with its NPDES permit. The project included demolition of existing buildings and structures; influent pump station improvements; new screening and grit removal system; biological nutrient removal basins; submerged membrane bioreactors; onsite pump stations; ultraviolet disinfection system; membrane sludge thickening; aerobic digestion basins; centrifuge dewatering system; administration building; site work; yard piping; and emergency generator, electrical, instrumentation, and controls. The construction of this project is nearly completed with most items operational.

The Discharger has requested that the treatment plant upgrade be considered a compliance project, and that it be used to satisfy the financial penalty assessed in the Complaint. As described earlier, the CWC allows such a request if a small community with a financial hardship to complete a compliance project in lieu of paying mandatory minimum penalties.

During preparation of the ACL Complaint, Central Valley Water Board staff requested that the State Water Board's economist determine whether or not Lake of the Pines meets the definition of a "publicly owned treatment works serving a small community" pursuant to CWC section 13385(k)(2). The economist reviewed the five census blocks for Lake of the Pines community for the year 2000. The population of the five census blocks was 5,550, so the Discharger does meet the definition of a small community. However, the economist informed Central Valley Water Board staff that the Discharger does not meet the definition of "financial hardship" because the median household income exceeded 80% of the California median household income. The economist arrived at this decision as follows: for the year 2000, the Discharger's median household income (MHI) ranged from \$42,386 to \$56,750. The California MHI was \$47,492 for the same period, which means that 80% of the MHI is \$37,994. Therefore, the MHI for all of the census blocks within Lake of the Pines exceeds 80% of the California MHI. Therefore, This means the community does not have a financial hardship pursuant to the CWC, and the money expended on the compliance project cannot be used to offset the MMPs.

The Discharger's 26 August 2008 letter states that they understand that Lake of the Pines does not meet the definition of a small community with a financial hardship. However, the Discharger asks that there be some alternative to paying the mandatory minimum penalties. The specific requests, and staff's responses, are contained in the "Response to Comments" section below.

Statutory Maximum Penalty

The ACL Complaint was issued for the minimum penalties (\$3,000 per violation) that are required under statute. However, the CWC sections 13385(c) and (e) also allow for higher penalties to be considered and assessed. In summary, these two sections allow for a penalty of \$10,000 per day of violation, and a penalty of \$10 per gallon discharged above the first 1,000 gallons.

Central Valley Water Board staff has estimated the potential maximum civil liability pursuant to CWC section 13385(c)(1), by applying the \$10,000/day penalty for each of the 43 days that violations were reported. The maximum penalty pursuant to this code section is \$430,000. In addition, as discussed above, a second penalty of \$10 per gallon discharged over 1,000 gallons could be assessed for each day of violation. This penalty was not calculated, but would cause the maximum penalty to significantly exceed \$430,000. However, staff does not propose to assess a discretionary penalty (above the mandatory minimum) because the Discharger reasonably pursued funding and is constructing its new wastewater treatment plant.

RESPONSE TO COMMENTS

The Discharger submitted written comments in two separate letters, one from the Sanitation District and one from the District Board of Directors. The comment letters are found as Attachment A to this staff report. The comments are summarized below, and are followed by Central Valley Water Board staff's responses.

Nevada County Sanitation District No. 1 Comments:

1. *Nevada County requests "examination of the ...violations in light of the statute of limitations under the Federal Clean Water Act (five years- United States Code 28 USC 2464) and under the California Water Code (three years-California Code of Civil Procedure section 338(i)."*

The 5-year statute of limitations under the Clean Water Act applies to actions by the federal government.

The 3-year statute of limitations contained in the California Code of Civil Procedure, § 338 does not apply to this type of administrative proceeding. The Code section of which §338 is a part makes it clear that §338 applies only to time limits on the commencement of civil suits in the courts. §338 is a part of Chapter 1 of Title 2 of the Code of Civil Procedure, entitled "Of the Time of Commencing Civil Actions." The first section in Chapter 1 of Title 2 reads, in pertinent part, as follows: "**§312. General Limitations; Special Cases: Civil**

actions, without exception, can only be commenced within the periods prescribed in this title..."

It is clear from a mere reading of this language that Title 2 is intended to prescribe time periods for the bringing of civil law suits. This administrative complaint falls outside the scope of this section, and therefore it is appropriate that MMPs have been assessed from 1 January 2000 through 31 March 2008 for this particular Discharger. (See also *Bernd v. Eu* (1979) 100 Cal.App.3d 511, 161 Cal.Rptr. 58; *Rudolph v. Athletic Commission* (1960) 177 Cal.App.2d 1, 22, 1 Cal.Rptr. 898).

2. *Nevada County would like to discuss "a proposal for a Supplemental Environmental Project (SEP) in lieu of paying a portion of the... penalty, since the Lake of the Pines facility did not qualify for the financial hardship that would allow the MMPs to be applied to the compliance project recently completed". Five possible SEP proposals were suggested including:*
 - *Biosolids/green waste composting facility*
 - *Infiltration/inflow reduction in wastewater collection system*
 - *Replacement of sewer main creek crossing*
 - *Flow monitoring system for Magnolia Creek*
 - *Monitoring/sampling equipment for use on Magnolia Creek*

As described in the State Water Board's Enforcement Policy, "SEPs are projects that enhance the beneficial uses of the waters of the State, provide a benefit to the public at large, and that, at the time they are included in an ACL action, are not otherwise required of the discharger". SEPs must comply with the qualification and nexus criteria listed in the State Water Board's Enforcement Policy. One of these criteria is that a SEP may only consist of measures that go above and beyond any obligations of a discharger. For example, "sewage pump stations should have appropriate reliability features to minimize the occurrence of sewage spills in that particular collection system. The installation of these reliability features following a pump station spill would not qualify as an SEP." Although the Discharger did not submit detailed SEP proposals, Central Valley Water Board staff does not believe that the above listed SEP ideas adequately comply with the criteria. In addition, Central Valley Water Board staff was recently informed that the Discharger is no longer actively considering any SEP proposals for this ACL Order.

Nevada County Sanitation District No 1, Board of Directors Comments:

1. *"The proposed penalty of \$129,000, going back seven years would seem punitive. In fact, over the last seven years the District has shown a dedicated good faith effort to ensure that the Lake of the Pines plant reaches compliance with the State's effluent requirements... The most recent deadline to comply was extended to 30 April 2008. It would make more sense to change the time period for the violations to begin 1 May 2008."*

CWC sections 13385(h) and (i) clearly require the assessment of mandatory minimum penalties, and do not provide an alternative for staff to make a discretionary determination. While staff recognizes that the District has worked to comply with deadlines to upgrade the facility to meet new effluent limitations, nevertheless, certain effluent limit violations did occur. The Central Valley Water Board adopted both a Cease and Desist Order and a Time Schedule Order to extend the timelines to comply with certain effluent limitations, and the ACL Complaint incorporates the protection from mandatory minimum penalties provided by these two Orders.

2. *“Paying penalties diverts valuable and dwindling resources from making required improvements and threatens our ability to reach our shared goal of meeting clean water standards. In addition, the expense of the new plant, now at \$22 million, has forced the ratepayers to bear an increase in annual sewer charges from \$315 in 2003 to \$1185 or more per unit of sewer capacity. This is because the cost must be spread among only 1922 households in this small rural community. Although Lake of the Pines does not qualify as a “small community with a financial hardship” the increase in sewage fees of 276% in five years poses a significant financial impact on the ratepayers.*

Therefore, we request you reconsider the current penalties in favor of the following suggestions:

- *Allow the fines to be applied to the cost of the plant construction.*
- *Consider the proposals outlined in the attached letter from Nevada County Wastewater Operations Manager, Gordon Plantenga (discussed above).*
- *Change the time period of the violations to begin 1 May 2008.*
- *Work with our staff to reach an alternative solution.”*

In response to the first bullet asking that the fines to be applied to the cost of plant construction, staff has consulted with the State Water Board economist, who has determined that the Lake of the Pines service area does not meet the definition of a small community with a financial hardship because the median household income is too high. Therefore, this option cannot be allowed. The second bullet point refers to the proposal for a SEP, which has already been discussed. The third bullet point has also been discussed. In response to the fourth bullet point, Central Valley Water Board staff understand that sewage rates have increased significantly due to the construction of the new plant, but are bound under the California Water Code to move forward with an Administrative Civil Liability Order to recover the mandated mandatory minimum penalties. We are not aware of any “alternative solution” that would comply with the Water Code.

Recommendation

State Water Board staff has determined that the Lake of the Pines wastewater treatment plant does not meet the definition of a small community with a financial hardship. The Discharger does not dispute this fact. Therefore, the Discharger may not apply the mandatory minimum penalties towards its compliance project.

PROSECUTION STAFF REPORT
NEVADA COUNTY SANITATION DISTRICT NO. 1
LAKE OF THE PINES WASTEWATER TREATMENT PLANT
ADMINISTRATIVE CIVIL LIABILITY FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES

Prosecution staff recommends that the Central Valley Water Board adopt the ACL Order requiring the Nevada County Sanitation District No. 1, Lake of the Pines Wastewater Treatment Plant pay \$129,000 in mandatory minimum penalties. Consistent with the CWC, this amount would be due within 30 days of adoption of the Order.

Attachment A: 25 August 2008 comment letter from Nevada County Sanitation District No. 1 staff and 26 August 2008 comment letter from the Nevada County Sanitation District No. 1 Board of Directors

BLH/PHL/WSW: 2-Oct-08
23/24 October 2008 Regional Water Board meeting

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0553

MANDATORY PENALTY
IN THE MATTER OF

NEVADA COUNTY SANITATION DISTRICT NO. 1
LAKE OF THE PINES WASTEWATER TREATMENT PLANT
NEVADA COUNTY

This Complaint is issued to the Nevada County Sanitation District No. 1, Lake of the Pines, Wastewater Treatment Plant (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order No. 95-114 and R5-2002-0095 (NPDES No. CA0081612).

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Regional Water Board) finds the following:

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system, and provides sewerage service for the community of Lake of the Pines. Treated wastewater is discharged to Magnolia Creek, tributary to the Bear River, a water of the United States.
2. On 26 May 1995, the Regional Water Board adopted WDRs Order No. 95-114 to regulate discharges of waste from the wastewater treatment plant (WWTP). On 7 June 2002, the Regional Water Board adopted WDRs Order No. R5-2002-0095, which contained new requirements and rescinded WDRs Order No. 95-114.
3. On 7 June 2002, the Regional Water Board adopted Cease and Desist Order (CDO) No. R5-2002-0096, requiring the Discharger to cease discharging contrary to WDRs Order No. R5-2002-0095. The Regional Water Board adopted CDO No. R5-2002-0096 to allow the Discharger until 30 April 2007 to complete construction to comply with Effluent Limitations for aluminum, ammonia, nitrate plus nitrite, and nitrite.
4. On 22 June 2007, the Regional Water Board adopted TSO No. R5-2007-0072. This Order allows the Discharger until 1 April 2008 to comply with final effluent limitations, and includes interim effluent limitations for BOD, total suspended solids, and total coliform organisms. The interim effluent limitations remain in effect until 1 April 2008, or when the Discharger is able to come into compliance with the final effluent limitations, whichever is sooner. This Complaint considered the interim effluent limitations and the protection from Mandatory Minimum Penalties provided by CDO No. R5-2002-0096 and TSO No. R5-2007-0072.

5. CWC sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) states, "Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation."

CWC section 13385 (h)(2) states, "For the purposes of this section, a 'serious violation' means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more."

CWC section 13385(i)(1) states, "Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.*
- B) Fails to file a report pursuant to Section 13260.*
- C) Files an incomplete report pursuant to Section 13260.*
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants."*

6. CWC section 13323 states, in part:

"Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability."

7. WDRs Order No. 95-114 Effluent Limitations No. B.2. include, in part, the following effluent limitations: *"The discharge to Magnolia Creek of an effluent in excess of the following limits is prohibited."*

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Monthly Median</u>	<u>Daily Maximum</u>
BOD ¹	mg/L	15	20	--	30
	lbs/day ²	90	120	--	180
Total Suspended Solids	mg/L	15	20	--	40
	lbs/day ²	90	120	--	240
<u>Total Coliform Organisms</u>	MPN/100 mL	--	--	2.2	23

¹ 5-day, 20°C biochemical oxygen demand (BOD)

² Based upon a design treatment capacity of 0.72 mgd.

8. WDRs Order No. R5-2002-0095 Effluent Limitations B.1. include, in part the following effluent limitations: “*Effluent discharge to Magnolia Creek shall not exceed the following limitations:*”

<u>Constituents</u>	<u>Units</u>	<u>Average Monthly</u>	<u>Median Monthly</u>	<u>Average Weekly</u>	<u>Average Daily</u>	<u>Daily Maximum</u>
BOD ¹	mg/L	15 ²		20 ²	30 ²	
	lbs/day ³	90		120	180	
Total Suspended Solids	mg/L	15 ²		20 ²	40 ²	
	lbs/day ³	90		120	240	
Settleable Solids	mL/L	0.1	--	--	0.2	--
<u>Total Coliform Organisms</u>	MPN/100 mL	--	2.2	--	--	23

¹ 5-day, 20°C biochemical oxygen demand (BOD)

² To be ascertained by a 24-hour composite

³ Based upon a design treatment capacity of 0.72 mgd ($x \text{ mg/L} \times 8.345 \times 0.72 \text{ mgd} = y \text{ lbs/day}$)

<u>Constituents</u>	<u>Units</u>	<u>Average Monthly</u>	<u>Average 4-day</u>	<u>Average Daily</u>	<u>Average 1-Hour</u>
Ammonia (as N)	mg/L	Attachment B	--	--	Attachment C
	lbs/day ²	--	--	--	--
Aluminum	µg/L	--	87	--	750
	lbs/day ¹	--	0.522	--	4.5

¹ Based upon a design treatment capacity of 0.72 mgd ($x \text{ mg/L} \times 8.345 \times 0.72 \text{ mgd} = y \text{ lbs/day}$)

² The mass limit (lb/day) for ammonia shall be equal to the concentration limit (from Attachments) multiplied by the design flow of 0.72 mgd and the unit conversion factor of 8.345 (see footnote 1 for equation).

9. According to the Discharger’s self-monitoring reports, the Discharger committed thirty-one (31) serious Group I violations of the above effluent limitations contained in Order Nos. 95-114 and R5-2002-0095 during the period beginning 1 January 2000 and ending 31 March 2008. The violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels by more than 40 percent on

these occasions. The mandatory minimum penalty for this serious violation is **ninety-three thousand dollars (\$93,000)**.

10. According to the Discharger's self-monitoring reports, the Discharger committed twenty-two (22) non-serious violations of the above effluent limitations contained in Order Nos. 95-114 and R5-2002-0095 during the period beginning 1 January 2000 and ending 31 March 2008. Twelve (12) of the non-serious violations are subject to mandatory penalties under CWC section 13385(i)(1) because these violations were preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for these non-serious violations is **thirty-six thousand dollars (\$36,000)**.
11. The total amount of the mandatory penalties assessed for the cited effluent violations is **one hundred twenty-nine thousand dollars (\$129,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
12. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

NEVADA COUNTY SANITATION DISTRICT NO. 1, LAKE OF THE PINES WASTEWATER TREATMENT PLANT, IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **one hundred twenty-nine thousand dollars (\$129,000)**.
2. A hearing on this matter will be held at the Regional Water Board meeting scheduled on **23/24 October 2008**, unless the Discharger does either of the following **by 27 August 2008**:
 - a) *Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Regional Water Board, along with payment for the proposed civil liability of **one hundred and twenty-nine thousand dollars (\$129,000)**; or*
 - b) *Agrees to enter into settlement discussions with the Regional Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Regional Water Board.*
3. If a hearing on this matter is held, the Regional Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

JACK E. DEL CONTE, Assistant Executive Officer

28 July 2008

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0553
MANDATORY PENALTY
NEVADA COUNTY SANITATION DISTRICT NO. 1
LAKE OF THE PINES WASTEWATER TREATMENT PLANT
NEVADA COUNTY

-5-

Attachment A: Record of Violations
BLH: 07/28/08

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Nevada County Sanitation District No. 1, Lake of the Pines, Wastewater Treatment Plant (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0553 (hereinafter the "Complaint");
2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) within ninety (90) days of service of the Complaint; and
4. **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
 - a. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **one hundred and twenty-nine thousand dollars (\$129,000)** by check, which contains a reference to "ACL Complaint No. R5-2008-0553" and is made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Regional Water Board by **27 August 2008** or this matter will be placed on the Regional Water Board's agenda for adoption as initially proposed in the Complaint.
 - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Regional Water Board receive new information or comments during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Regional Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

5. **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time)** I certify that the Discharger will promptly engage the Regional Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is not waiving its right to a hearing on this matter. I understand that this waiver is a request to delay the hearing so the Discharger and Regional Water Board staff can discuss settlement. It does not constitute the Regional Water Board's agreement to delay the hearing. A hearing on the matter may be held before the Regional Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Regional Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0553

Nevada County Sanitation District No. 1
Lake of the Pines Wastewater Treatment Plant

RECORD OF VIOLATIONS (1 January 2000 – 31 March 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program Nos. 95-114 and R5-2002-0095)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Flow Rate*</u>	<u>Remarks</u>
1	21-Jan-00	BOD	lbs/day	120	128	Weekly	1.16	5
2	23-Jan-00	BOD	lbs/day	120	162	Weekly	1.19	5
3	31-Jan-00	BOD	lbs/day	90	145	Monthly	0.59	1
4	13-Feb-00	BOD	lbs/day	120	216	Weekly	1.45	5
5	15-Feb-00	TCO	MPN/100 mL	23	900	Daily		3
6	17-Feb-00	BOD	lbs/day	180	260	Daily	1.51	5
7	17-Feb-00	TCO	MPN/100 mL	23	500	Daily		3
8	23-Feb-00	TCO	MPN/100 mL	23	130	Daily		4
9	28-Feb-00	BOD	lbs/day	90	108	Monthly	1.08	5
10	27-Jan-01	TSS	mg/L	20	21	Weekly		3
11	27-Jan-01	TSS	lbs/day	120	179	Weekly	0.86	5
12	31-Jan-01	TSS	mg/L	15	19	Monthly		3
13	31-Jan-01	TSS	lbs/day	90	120	Monthly	0.2	3
14	31-Mar-02	BOD	mg/L	90	91	Monthly		3
15	28-Sep-02	TSS	mg/L	20	22	Weekly		3
16	30-Sep-02	TSS	mg/L	15	22	Monthly		1
17	11-Feb-03	TSS	lbs/day	240	817	Daily	1.19	5
18	11-Feb-03	TSS	mg/L	40	82	Daily		1
19	15-Feb-03	TSS	lbs/day	120	413	Weekly	1.31	5
20	15-Feb-03	TSS	mg/L	20	43	Weekly		1
21	28-Feb-03	TSS	lbs/day	90	279	Monthly	0.54	1
22	28-Feb-03	TSS	mg/L	15	28	Monthly		1
23	9-Mar-03	BOD	lbs/day	120	149	Weekly	1.26	5
24	13-Mar-03	BOD	lbs/day	180	269	Daily	1.15	5
25	10-May-03	SS	mL/L	0.2	0.3	Daily		1
26	31-May-03	SS	mL/L	0.1	0.2	Monthly		1
27	27-Oct-03	SS	mL/L	0.2	0.5	Daily		1
28	28-Oct-03	SS	mL/L	0.2	0.5	Daily		1
29	29-Oct-03	SS	mL/L	0.2	0.5	Daily		1
30	30-Oct-03	SS	mL/L	0.2	0.5	Daily		1
31	31-Oct-03	SS	mL/L	0.2	0.5	Daily		1
32	31-Oct-03	SS	mL/L	0.1	0.5	Monthly		1
33	31-Oct-03	TSS	mg/L	15	23	Monthly		1
34	1-Nov-03	TSS	mg/L	20	23	Weekly		4
35	16-Dec-03	TCO	MPN/100 mL	23	30	Daily		4
36	17-Dec-03	BOD	lbs/day	180	188	Daily	1.25	5
37	17-Dec-03	BOD	lbs/day	120	127	Weekly	0.97	5
38	17-Dec-03	TSS	lbs/day	120	175	Weekly	0.97	5
39	31-Dec-03	BOD	lbs/day	90	117	Monthly	1.1	5
40	31-Dec-03	BOD	lbs/day	120	179	Weekly	1.34	5
41	31-Dec-03	TSS	lbs/day	90	130	Monthly	1.1	5
42	31-Dec-03	TSS	lbs/day	120	129	Weekly	1.34	5
43	2-Jan-04	BOD	lbs/day	120	143	Weekly	1.34	5
44	9-Jan-04	SS	mL/L	0.2	0.3	Daily		1
45	31-Jan-04	BOD	lbs/day	90	96	Monthly	0.85	5

ATTACHMENT A
 ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0553
 MANDATORY PENALTY
 NEVADA COUNTY SANITATION DISTRICT NO. 1
 LAKE OF THE PINES WASTEWATER TREATMENT PLANT
 NEVADA COUNTY

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Flow Rate*</u>	<u>Remarks</u>
46	4-Feb-04	BOD	lbs/day	120	137	Weekly	1.3	5
47	4-Feb-04	TSS	lbs/day	120	170	Weekly	1.3	5
48	28-Feb-04	BOD	lbs/day	90	98	Monthly	1.21	5
49	17-Oct-04	TSS	lbs/day	120	125	Weekly	1.13	5
50	31-Oct-04	TSS	lbs/day	90	106	Monthly	0.79	5
51	31-Oct-04	TSS	mg/L	15	16	Monthly		3
52	31-Jan-06	BOD	lbs/day	90	101	Monthly	1.19	5
53	31-Jan-06	TSS	lbs/day	90	92	Monthly	1.19	5
54	1-Feb-06	BOD	lbs/day	180	269	Daily	1.33	5
55	3-Feb-06	BOD	lbs/day	180	269	Daily	1.31	5
56	3-Feb-06	BOD	lbs/day	120	269	Weekly	1.32	5
57	3-Feb-06	TSS	lbs/day	120	160	Weekly	1.32	5
58	8-Feb-06	BOD	lbs/day	180	269	Daily	0.57	1
59	10-Feb-06	BOD	lbs/day	120	269	Weekly	0.97	5
60	11-Feb-06	TSS	mg/L	20	25	Weekly		3
61	28-Feb-06	BOD	lbs/day	90	269	Monthly	1.16	5
62	28-Feb-06	BOD	mg/L	15	16	Monthly		3
63	28-Feb-06	TSS	mg/L	15	18	Monthly		4
64	28-Feb-06	TSS	lbs/day	90	146	Monthly	1.16	5
65	10-Mar-06	BOD	lbs/day	120	168	Weekly	1.43	5
66	15-Mar-06	BOD	lbs/day	180	200	Daily	1.41	5
67	16-Mar-06	BOD	lbs/day	180	246	Daily	1.41	5
68	17-Mar-06	BOD	lbs/day	120	223	Weekly	1.41	5
69	17-Mar-06	TSS	lbs/day	120	128	Weekly	1.41	5
70	22-Mar-06	BOD	lbs/day	180	314	Daily	1.39	5
71	24-Mar-06	BOD	mg/L	30	38	Daily		4
72	24-Mar-06	BOD	lbs/day	180	437	Daily	1.38	5
73	24-Mar-06	BOD	lbs/day	120	376	Weekly	1.39	5
74	25-Mar-06	BOD	mg/L	20	23	Weekly		4
75	28-Mar-06	BOD	lbs/day	180	296	Daily	1.36	5
76	31-Mar-06	BOD	lbs/day	180	367	Daily	1.42	5
77	31-Mar-06	BOD	mg/L	30	31	Daily		4
78	31-Mar-06	BOD	lbs/day	90	240	Monthly	1.41	5
79	31-Mar-06	BOD	mg/L	15	19	Monthly		4
80	31-Mar-06	BOD	lbs/day	120	332	Weekly	1.42	5
81	31-Mar-06	BOD	mg/L	20	29	Weekly		1
82	31-Mar-06	TSS	lbs/day	90	96	Monthly	1.41	5
83	1-Apr-06	BOD	mg/L	20	25	Weekly		4
84	5-Apr-06	BOD	mg/L	30	33	Daily		4
85	5-Apr-06	BOD	lbs/day	180	269	Daily	1.46	5
86	6-Apr-06	BOD	lbs/day	180	269	Daily	1.43	5
87	6-Apr-06	BOD	lbs/day	120	269	Weekly	1.42	5
88	13-Apr-06	BOD	lbs/day	180	269	Daily	1.44	5
89	14-Apr-06	BOD	lbs/day	180	307	Daily	1.42	5
90	14-Apr-06	BOD	mg/L	19	26	Weekly		4

ATTACHMENT A
 ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0553
 MANDATORY PENALTY
 NEVADA COUNTY SANITATION DISTRICT NO. 1
 LAKE OF THE PINES WASTEWATER TREATMENT PLANT
 NEVADA COUNTY

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Flow Rate*</u>	<u>Remarks</u>
91	14-Apr-06	BOD	lbs/day	120	288	Weekly	1.43	5
92	20-Apr-06	BOD	lbs/day	180	269	Daily	1.35	5
93	21-Apr-06	BOD	lbs/day	180	269	Daily	1.36	5
94	21-Apr-06	BOD	lbs/day	120	269	Weekly	1.38	5
95	30-Apr-06	BOD	mg/L	15	22	Monthly		1
96	30-Apr-06	BOD	lbs/day	90	247	Monthly	1.38	5
97	3-Feb-07	BOD	lbs/day	180	269	Daily	1.3	5
98	3-Feb-07	BOD	lbs/day	120	269	Weekly	1.3	5
99	4-Feb-07	BOD	lbs/day	120	269	Weekly	1.35	5
100	7-Feb-07	BOD	lbs/day	180	269	Daily	1.33	5
101	8-Feb-07	BOD	lbs/day	180	269	Daily	1.38	5
102	11-Feb-07	BOD	lbs/day	120	203	Weekly	1.36	5
103	15-Feb-07	BOD	lbs/day	180	269	Daily	1.31	5
104	18-Feb-07	BOD	lbs/day	120	269	Weekly	1.24	5
105	21-Feb-07	BOD	lbs/day	180	269	Daily	1.31	5
106	23-Feb-07	BOD	lbs/day	180	269	Daily	1.25	5
107	28-Feb-07	BOD	lbs/day	90	224	Monthly	1.31	5
108	19-Dec-07	Aluminum	lbs/day	0.52	2.8	4-day	0.86	5
109	19-Dec-07	Aluminum	µg/L	87	432	4-day		1
110	30-Dec-07	Ammonia	lbs/day	35.5	80	Monthly	0.86	5
111	30-Dec-07	Ammonia	mg/L	5.91	8	Monthly		4
112	02-Jan-08	Aluminum	lbs/day	0.52	1.42	4-day	0.80	5
113	02-Jan-08	Aluminum	µg/L	87	214	4-day		1
114	09-Jan-08	Aluminum	lbs/day	0.522	4.98	4-day	1.05	5
115	09-Jan-08	Aluminum	µg/L	87	568	4-day		1
116	16-Jan-08	Aluminum	lbs/day	0.52	2.14	4-day	1.07	5
117	16-Jan-08	Aluminum	µg/L	87	240	4-day		1
118	22-Jan-08	Aluminum	lbs/day	0.52	1.40	4-day	1.06	5
119	22-Jan-08	Aluminum	µg/L	87	158	4-day		1

ATTACHMENT A
 ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0553
 MANDATORY PENALTY
 NEVADA COUNTY SANITATION DISTRICT NO. 1
 LAKE OF THE PINES WASTEWATER TREATMENT PLANT
 NEVADA COUNTY

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Flow Rate*</u>	<u>Remarks</u>
12								
0	29-Jan-08	Aluminum	lbs/day	0.52	1.47	4-day	0.82	5
12								
1	29-Jan-08	Aluminum	µg/L	87	215	4-day		1
12								
2	06-Feb-08	Aluminum	lbs/day	0.52	1.1	4-day	0.71	1
12								
3	06-Feb-08	Aluminum	µg/L	87	186	4-day		1
12								
4	13-Feb-08	Aluminum	lbs/day	0.52	1.2	4-day	0.79	5
12								
5	13-Feb-08	Aluminum	µg/L	87	175	4-day		1
12								
6	28-Feb-08	Aluminum	lbs/day	0.52	0.9	4-day	0.5	1
12								
7	28-Feb-08	Aluminum	µg/L	87	215	4-day		1
12								
8	29-Feb-08	Ammonia	lbs/day	37	93	Monthly	0.73	5
12								
9	29-Feb-08	Ammonia	mg/L	6.12	16	Monthly		1

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.
5. Mass rate limitation exceedances due only to wet weather not assessed MMPs as the permit limit is based on the dry weather design treatment capacity of 0.72 mgd.

<u>VIOLATIONS AS OF:</u>	<u>3/31/2008</u>
Group I Serious Violations:	31
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	10
Non-serious Violations Subject to MPs:	12
Mass Limit Violations Not Subject to MPs:	76
<u>Total Violations Subject to MPs:</u>	<u>43</u>

Mandatory Minimum Penalty = (31 Serious Violations + 12 Non-Serious Violations) x \$3,000 = \$129,000

*Arithmetic mean of all 1-day flow rates (in MGD) of effluent while discharging to surface waters. Values greater than 0.72 MGD are considered wet weather flows.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2008-xxxx

MANDATORY PENALTY
IN THE MATTER OF

NEVADA COUNTY SANITATION DISTRICT NO. 1
LAKE OF THE PINES WASTEWATER TREATMENT PLANT
NEVADA COUNTY

This Order is issued to the Nevada County Sanitation District No. 1, Lake of the Pines, Wastewater Treatment Plant (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability. This Order is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order No. 95-114 and R5-2002-0095 (NPDES No. CA0081612).

The Central Valley Regional Water Quality Control Board (Central Valley Water Board) finds the following:

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system, and provides sewerage service for the community of Lake of the Pines. Treated wastewater is discharged to Magnolia Creek, tributary to the Bear River, a water of the United States.
2. On 26 May 1995, the Central Valley Water Board adopted WDRs Order No. 95-114 to regulate discharges of waste from the wastewater treatment plant (WWTP). On 7 June 2002, the Central Valley Water Board adopted WDRs Order No. R5-2002-0095, which contained new requirements and rescinded WDRs Order No. 95-114.
3. On 7 June 2002, the Central Valley Water Board adopted Cease and Desist Order (CDO) No. R5-2002-0096, requiring the Discharger to cease discharging contrary to WDRs Order No. R5-2002-0095. The Central Valley Water Board adopted CDO No. R5-2002-0096 to allow the Discharger until 30 April 2007 to complete construction to comply with Effluent Limitations for aluminum, ammonia, nitrate plus nitrite, and nitrite.
4. On 22 June 2007, the Central Valley Water Board adopted TSO No. R5-2007-0072. This Order allows the Discharger until 1 April 2008 to comply with final effluent limitations, and includes interim effluent limitations for BOD, total suspended solids, and total coliform organisms. The interim effluent limitations remain in effect until 1 April 2008, or when the Discharger is able to come into compliance with the final effluent limitations, whichever is sooner. This Order considered the interim effluent limitations and the protection from Mandatory Minimum Penalties provided by CDO No. R5-2002-0096 and TSO No. R5-2007-0072.
5. CWC sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) states, *“Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.”*

CWC section 13385 (h)(2) states, *“For the purposes of this section, a ‘serious violation’ means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.”*

CWC section 13385(i)(1) states, *“Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:*

- A) Violates a waste discharge requirement effluent limitation.*
- B) Fails to file a report pursuant to Section 13260.*
- C) Files an incomplete report pursuant to Section 13260.*
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.”*

6. CWC section 13323 states, in part:

“Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.”

7. WDRs Order No. 95-114 Effluent Limitations No. B.2. include, in part, the following effluent limitations: *“The discharge to Magnolia Creek of an effluent in excess of the following limits is prohibited.”*

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2008-XXXX
MANDATORY PENALTY
NEVADA COUNTY SANITATION DISTRICT NO. 1
LAKE OF THE PINES WASTEWATER TREATMENT PLANT
NEVADA COUNTY

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Monthly Median</u>	<u>Daily Maximum</u>
BOD ¹	mg/L	15	20	--	30
	lbs/day ²	90	120	--	180
Total Suspended Solids	mg/L	15	20	--	40
	lbs/day ²	90	120	--	240
<u>Total Coliform Organisms</u>	MPN/100 mL	--	--	2.2	23

¹ 5-day, 20°C biochemical oxygen demand (BOD)

² Based upon a design treatment capacity of 0.72 mgd.

8. WDRs Order No. R5-2002-0095 Effluent Limitations B.1. include, in part the following effluent limitations: "*Effluent discharge to Magnolia Creek shall not exceed the following limitations:*"

<u>Constituents</u>	<u>Units</u>	<u>Average Monthly</u>	<u>Median Monthly</u>	<u>Average Weekly</u>	<u>Average Daily</u>	<u>Daily Maximum</u>
BOD ¹	mg/L	15 ²		20 ²	30 ²	
	lbs/day ³	90		120	180	
Total Suspended Solids	mg/L	15 ²		20 ²	40 ²	
	lbs/day ³	90		120	240	
Settleable Solids	mL/L	0.1	--	--	0.2	--
<u>Total Coliform Organisms</u>	MPN/100 mL	--	2.2	--	--	23

¹ 5-day, 20°C biochemical oxygen demand (BOD)

² To be ascertained by a 24-hour composite

³ Based upon a design treatment capacity of 0.72 mgd ($x \text{ mg/L} \times 8.345 \times 0.72 \text{ mgd} = y \text{ lbs/day}$)

<u>Constituents</u>	<u>Units</u>	<u>Average Monthly</u>	<u>Average 4-day</u>	<u>Average Daily</u>	<u>Average 1-Hour</u>
Ammonia (as N)	mg/L	Attachment B	--	--	Attachment C
	lbs/day ²	--	--	--	--
Aluminum	µg/L	--	87	--	750
	lbs/day ¹	--	0.522	--	4.5

¹ Based upon a design treatment capacity of 0.72 mgd ($x \text{ mg/L} \times 8.345 \times 0.72 \text{ mgd} = y \text{ lbs/day}$)

² The mass limit (lb/day) for ammonia shall be equal to the concentration limit (from Attachments) multiplied by the design flow of 0.72 mgd and the unit conversion factor of 8.345 (see footnote 1 for equation).

9. According to the Discharger's self-monitoring reports, the Discharger committed thirty-one (31) serious Group I violations of the above effluent limitations contained in Order Nos. 95-114 and R5-2002-0095 during the period beginning 1 January 2000 and ending 31 March 2008. The violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels by more than 40 percent on

these occasions. The mandatory minimum penalty for this serious violation is **ninety-three thousand dollars (\$93,000)**.

10. According to the Discharger's self-monitoring reports, the Discharger committed twenty-two (22) non-serious violations of the above effluent limitations contained in Order Nos. 95-114 and R5-2002-0095 during the period beginning 1 January 2000 and ending 31 March 2008. Twelve (12) of the non-serious violations are subject to mandatory penalties under CWC section 13385(i)(1) because these violations were preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for these non-serious violations is **thirty-six thousand dollars (\$36,000)**.
11. The total amount of the mandatory penalties assessed for the cited effluent violations is **one hundred twenty-nine thousand dollars (\$129,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Order.
12. On 28 July 2008, the Assistant Executive Officer issued ACL Complaint R5-2008-0553, assessing \$129,000 in mandatory minimum penalties against the Discharger. The Discharger did not pay the penalty and asked that the matter be heard before the Central Valley Water Board. The Discharger waived its right to a hearing within 90 days.
13. In lieu of issuing mandatory penalties, CWC sections 13385(c) and (e) provide requirements regarding the maximum penalty that can be issued for the violations. These sections state:

“(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 of 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) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons”

14. Central Valley Water Board staff has estimated the potential maximum civil liability pursuant to CWC section 13385(c)(1), by applying the \$10,000/day penalty for each of the 43 days that violations were reported. The maximum penalty pursuant to this code section is \$430,000. In addition, as discussed above, a second penalty of \$10 per gallon discharged over 1,000 gallons could be assessed for each day of violation. This penalty was not calculated, but would cause the maximum penalty to significantly exceed \$430,000. This Order does not propose to assess a discretionary penalty above the minimum required by CWC sections 13385(h) and (i), because the Discharger reasonably pursued funding and constructing its new wastewater treatment plant.
15. Issuance of this Administrative Civil Liability Order to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

16. Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this tentative Order becomes final, except that if the thirtieth day following the date that this tentative Order becomes final falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. This tentative Order is set to become final on 10 September 2008. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

IT IS HEREBY ORDERED THAT:

1. Administrative Civil Liability Complaint R5-2008-0553 is rescinded.
2. The Nevada County Sanitation District No. 1 shall be assessed an Administrative Civil Liability in the amount of **one hundred twenty-nine thousand dollars (\$129,000)** as follows:

Within 30 days of adoption of this Order, the Discharger shall pay one hundred twenty nine thousand dollars (\$129,000) by check made payable to the *State Water Pollution Cleanup and Abatement Account*. The check shall have written on it the number of this ACL Order.

I, Pamela C. Creedon, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the Central Valley Regional Water Quality Control Board, on _____.

PAMELA C. CREEDON, Executive Officer

Attachment A: Record of Violations

**Nevada County Sanitation District No. 1
Lake of the Pines Wastewater Treatment Plant
RECORD OF VIOLATIONS (1 January 2000 – 31 March 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program Nos. 95-114 and R5-2002-0095)**

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Flow Rate*</u>	<u>Remarks</u>
1	21-Jan-00	BOD	lbs/day	120	128	Weekly	1.16	5
2	23-Jan-00	BOD	lbs/day	120	162	Weekly	1.19	5
3	31-Jan-00	BOD	lbs/day	90	145	Monthly	0.59	1
4	13-Feb-00	BOD	lbs/day	120	216	Weekly	1.45	5

ATTACHMENT A
 ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2008-XXXX
 MANDATORY PENALTY
 NEVADA COUNTY SANITATION DISTRICT NO. 1
 LAKE OF THE PINES WASTEWATER TREATMENT PLANT
 NEVADA COUNTY

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Flow Rate*</u>	<u>Remarks</u>
5	15-Feb-00	TCO	MPN/100 mL	23	900	Daily		3
6	17-Feb-00	BOD	lbs/day	180	260	Daily	1.51	5
7	17-Feb-00	TCO	MPN/100 mL	23	500	Daily		3
8	23-Feb-00	TCO	MPN/100 mL	23	130	Daily		4
9	28-Feb-00	BOD	lbs/day	90	108	Monthly	1.08	5
10	27-Jan-01	TSS	mg/L	20	21	Weekly		3
11	27-Jan-01	TSS	lbs/day	120	179	Weekly	0.86	5
12	31-Jan-01	TSS	mg/L	15	19	Monthly		3
13	31-Jan-01	TSS	lbs/day	90	120	Monthly	0.2	3
14	31-Mar-02	BOD	mg/L	90	91	Monthly		3
15	28-Sep-02	TSS	mg/L	20	22	Weekly		3
16	30-Sep-02	TSS	mg/L	15	22	Monthly		1
17	11-Feb-03	TSS	lbs/day	240	817	Daily	1.19	5
18	11-Feb-03	TSS	mg/L	40	82	Daily		1
19	15-Feb-03	TSS	lbs/day	120	413	Weekly	1.31	5
20	15-Feb-03	TSS	mg/L	20	43	Weekly		1
21	28-Feb-03	TSS	lbs/day	90	279	Monthly	0.54	1
22	28-Feb-03	TSS	mg/L	15	28	Monthly		1
23	9-Mar-03	BOD	lbs/day	120	149	Weekly	1.26	5
24	13-Mar-03	BOD	lbs/day	180	269	Daily	1.15	5
25	10-May-03	SS	mL/L	0.2	0.3	Daily		1
26	31-May-03	SS	mL/L	0.1	0.2	Monthly		1
27	27-Oct-03	SS	mL/L	0.2	0.5	Daily		1
28	28-Oct-03	SS	mL/L	0.2	0.5	Daily		1
29	29-Oct-03	SS	mL/L	0.2	0.5	Daily		1
30	30-Oct-03	SS	mL/L	0.2	0.5	Daily		1
31	31-Oct-03	SS	mL/L	0.2	0.5	Daily		1
32	31-Oct-03	SS	mL/L	0.1	0.5	Monthly		1
33	31-Oct-03	TSS	mg/L	15	23	Monthly		1
34	1-Nov-03	TSS	mg/L	20	23	Weekly		4
35	16-Dec-03	TCO	MPN/100 mL	23	30	Daily		4
36	17-Dec-03	BOD	lbs/day	180	188	Daily	1.25	5
37	17-Dec-03	BOD	lbs/day	120	127	Weekly	0.97	5
38	17-Dec-03	TSS	lbs/day	120	175	Weekly	0.97	5
39	31-Dec-03	BOD	lbs/day	90	117	Monthly	1.1	5
40	31-Dec-03	BOD	lbs/day	120	179	Weekly	1.34	5
41	31-Dec-03	TSS	lbs/day	90	130	Monthly	1.1	5
42	31-Dec-03	TSS	lbs/day	120	129	Weekly	1.34	5
43	2-Jan-04	BOD	lbs/day	120	143	Weekly	1.34	5
44	9-Jan-04	SS	mL/L	0.2	0.3	Daily		1
45	31-Jan-04	BOD	lbs/day	90	96	Monthly	0.85	5
46	4-Feb-04	BOD	lbs/day	120	137	Weekly	1.3	5
47	4-Feb-04	TSS	lbs/day	120	170	Weekly	1.3	5
48	28-Feb-04	BOD	lbs/day	90	98	Monthly	1.21	5
49	17-Oct-04	TSS	lbs/day	120	125	Weekly	1.13	5

ATTACHMENT A
 ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2008-XXXX
 MANDATORY PENALTY
 NEVADA COUNTY SANITATION DISTRICT NO. 1
 LAKE OF THE PINES WASTEWATER TREATMENT PLANT
 NEVADA COUNTY

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Flow Rate*</u>	<u>Remarks</u>
50	31-Oct-04	TSS	lbs/day	90	106	Monthly	0.79	5
51	31-Oct-04	TSS	mg/L	15	16	Monthly		3
52	31-Jan-06	BOD	lbs/day	90	101	Monthly	1.19	5
53	31-Jan-06	TSS	lbs/day	90	92	Monthly	1.19	5
54	1-Feb-06	BOD	lbs/day	180	269	Daily	1.33	5
55	3-Feb-06	BOD	lbs/day	180	269	Daily	1.31	5
56	3-Feb-06	BOD	lbs/day	120	269	Weekly	1.32	5
57	3-Feb-06	TSS	lbs/day	120	160	Weekly	1.32	5
58	8-Feb-06	BOD	lbs/day	180	269	Daily	0.57	1
59	10-Feb-06	BOD	lbs/day	120	269	Weekly	0.97	5
60	11-Feb-06	TSS	mg/L	20	25	Weekly		3
61	28-Feb-06	BOD	lbs/day	90	269	Monthly	1.16	5
62	28-Feb-06	BOD	mg/L	15	16	Monthly		3
63	28-Feb-06	TSS	mg/L	15	18	Monthly		4
64	28-Feb-06	TSS	lbs/day	90	146	Monthly	1.16	5
65	10-Mar-06	BOD	lbs/day	120	168	Weekly	1.43	5
66	15-Mar-06	BOD	lbs/day	180	200	Daily	1.41	5
67	16-Mar-06	BOD	lbs/day	180	246	Daily	1.41	5
68	17-Mar-06	BOD	lbs/day	120	223	Weekly	1.41	5
69	17-Mar-06	TSS	lbs/day	120	128	Weekly	1.41	5
70	22-Mar-06	BOD	lbs/day	180	314	Daily	1.39	5
71	24-Mar-06	BOD	mg/L	30	38	Daily		4
72	24-Mar-06	BOD	lbs/day	180	437	Daily	1.38	5
73	24-Mar-06	BOD	lbs/day	120	376	Weekly	1.39	5
74	25-Mar-06	BOD	mg/L	20	23	Weekly		4
75	28-Mar-06	BOD	lbs/day	180	296	Daily	1.36	5
76	31-Mar-06	BOD	lbs/day	180	367	Daily	1.42	5
77	31-Mar-06	BOD	mg/L	30	31	Daily		4
78	31-Mar-06	BOD	lbs/day	90	240	Monthly	1.41	5
79	31-Mar-06	BOD	mg/L	15	19	Monthly		4
80	31-Mar-06	BOD	lbs/day	120	332	Weekly	1.42	5
81	31-Mar-06	BOD	mg/L	20	29	Weekly		1
82	31-Mar-06	TSS	lbs/day	90	96	Monthly	1.41	5
83	1-Apr-06	BOD	mg/L	20	25	Weekly		4
84	5-Apr-06	BOD	mg/L	30	33	Daily		4
85	5-Apr-06	BOD	lbs/day	180	269	Daily	1.46	5
86	6-Apr-06	BOD	lbs/day	180	269	Daily	1.43	5
87	6-Apr-06	BOD	lbs/day	120	269	Weekly	1.42	5
88	13-Apr-06	BOD	lbs/day	180	269	Daily	1.44	5
89	14-Apr-06	BOD	lbs/day	180	307	Daily	1.42	5
90	14-Apr-06	BOD	mg/L	19	26	Weekly		4
91	14-Apr-06	BOD	lbs/day	120	288	Weekly	1.43	5
92	20-Apr-06	BOD	lbs/day	180	269	Daily	1.35	5
93	21-Apr-06	BOD	lbs/day	180	269	Daily	1.36	5
94	21-Apr-06	BOD	lbs/day	120	269	Weekly	1.38	5

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 NEVADA COUNTY SANITATION DISTRICT NO. 1
 LAKE OF THE PINES WASTEWATER TREATMENT PLANT
 NEVADA COUNTY

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Flow Rate*</u>	<u>Remarks</u>
95	30-Apr-06	BOD	mg/L	15	22	Monthly		1
96	30-Apr-06	BOD	lbs/day	90	247	Monthly	1.38	5
97	3-Feb-07	BOD	lbs/day	180	269	Daily	1.3	5
98	3-Feb-07	BOD	lbs/day	120	269	Weekly	1.3	5
99	4-Feb-07	BOD	lbs/day	120	269	Weekly	1.35	5
100	7-Feb-07	BOD	lbs/day	180	269	Daily	1.33	5
101	8-Feb-07	BOD	lbs/day	180	269	Daily	1.38	5
102	11-Feb-07	BOD	lbs/day	120	203	Weekly	1.36	5
103	15-Feb-07	BOD	lbs/day	180	269	Daily	1.31	5
104	18-Feb-07	BOD	lbs/day	120	269	Weekly	1.24	5
105	21-Feb-07	BOD	lbs/day	180	269	Daily	1.31	5
106	23-Feb-07	BOD	lbs/day	180	269	Daily	1.25	5
107	28-Feb-07	BOD	lbs/day	90	224	Monthly	1.31	5
108	19-Dec-07	Aluminum	lbs/day	0.52	2.8	4-day	0.86	5
109	19-Dec-07	Aluminum	µg/L	87	432	4-day		1
110	30-Dec-07	Ammonia	lbs/day	35.5	80	Monthly	0.86	5
111	30-Dec-07	Ammonia	mg/L	5.91	8	Monthly		4
112	02-Jan-08	Aluminum	lbs/day	0.52	1.42	4-day	0.80	5
113	02-Jan-08	Aluminum	µg/L	87	214	4-day		1
114	09-Jan-08	Aluminum	lbs/day	0.522	4.98	4-day	1.05	5
115	09-Jan-08	Aluminum	µg/L	87	568	4-day		1
116	16-Jan-08	Aluminum	lbs/day	0.52	2.14	4-day	1.07	5
117	16-Jan-08	Aluminum	µg/L	87	240	4-day		1
118	22-Jan-08	Aluminum	lbs/day	0.52	1.40	4-day	1.06	5
119	22-Jan-08	Aluminum	µg/L	87	158	4-day		1
120	29-Jan-08	Aluminum	lbs/day	0.52	1.47	4-day	0.82	5
121	29-Jan-08	Aluminum	µg/L	87	215	4-day		1

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 MANDATORY PENALTY
 NEVADA COUNTY SANITATION DISTRICT NO. 1
 LAKE OF THE PINES WASTEWATER TREATMENT PLANT
 NEVADA COUNTY

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Flow Rate*</u>	<u>Remarks</u>
12								
2	06-Feb-08	Aluminum	lbs/day	0.52	1.1	4-day	0.71	1
12								
3	06-Feb-08	Aluminum	µg/L	87	186	4-day		1
12								
4	13-Feb-08	Aluminum	lbs/day	0.52	1.2	4-day	0.79	5
12								
5	13-Feb-08	Aluminum	µg/L	87	175	4-day		1
12								
6	28-Feb-08	Aluminum	lbs/day	0.52	0.9	4-day	0.5	1
12								
7	28-Feb-08	Aluminum	µg/L	87	215	4-day		1
12								
8	29-Feb-08	Ammonia	lbs/day	37	93	Monthly	0.73	5
12								
9	29-Feb-08	Ammonia	mg/L	6.12	16	Monthly		1

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.
5. Mass rate limitation exceedances due only to wet weather not assessed MMPs as the permit limit is based on the dry weather design treatment capacity of 0.72 mgd.

<u>VIOLATIONS AS OF:</u>	<u>3/31/2008</u>
Group I Serious Violations:	31
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	10
Non-serious Violations Subject to MPs:	12
Mass Limit Violations Not Subject to MPs:	76
<u>Total Violations Subject to MPs:</u>	<u>43</u>

Mandatory Minimum Penalty = (31 Serious Violations + 12 Non-Serious Violations) x \$3,000 = \$129,000

*Arithmetic mean of all 1-day flow rates (in MGD) of effluent while discharging to surface waters. Values greater than 0.72 MGD are considered wet weather flows.

NOTICE OF PUBLIC HEARING
TO CONSIDER ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
NO. R5-2008-0553
ISSUED TO
NEVADA COUNTY SANITATION DISTRICT NO. 1
LAKE OF THE PINES WASTEWATER TREATMENT PLANT
NEVADA COUNTY

**NOTICE IS HEREBY GIVEN THAT A HEARING WILL BE HELD
BEFORE THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
CENTRAL VALLEY REGION (REGIONAL BOARD)
ON 23/24 OCTOBER 2008**

Background

The Assistant Executive Officer has issued an Administrative Civil Liability (ACL) Complaint, pursuant to California Water Code (CWC) sections 13323 and 13385, to the Nevada County Sanitation District, Lake of the Pines Wastewater Treatment Plant (Discharger) alleging that it has violated provisions of Waste Discharge Requirements (WDRs) Order No. 95-114 and R5-2002-0095 (NPDES No. CA0081612). The Complaint proposes that mandatory minimum penalties in the amount of \$129,000 be imposed as authorized by CWC section 13385(h) and (i). Unless the Discharger pays the proposed liability, a hearing will be held before the Regional Board during its meeting of 23/24 October 2008.

Purpose of Hearing

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the Regional Board will consider whether to adopt the proposed assessment, modify it or reject it. If it adopts an assessment, then the Regional Board will issue an Administrative Civil Liability Order.

The public hearing on 23/24 October 2008 will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in our Board meeting agenda. The meeting will be held at:

Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the Regional Board's web page at:

http://www.waterboards.ca.gov/centralvalley/board_info/meetings/

Hearing Procedures

A copy of the procedures governing an adjudicatory hearing before the RWQCB may be found at Title 23 of the California Code of Regulations, § 648 et seq., and is available at <http://www.swrcb.ca.gov> or upon request. Except as provided in Title 23 of the California Code of Regulations (CCR), § 648(b), Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not apply to adjudicatory hearings before the RWQCB. This Notice provides additional requirements and deadlines related to the proceeding. THIS NOTICE MAY BE AMENDED BY THE ADVISORY STAFF AS NECESSARY. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participation

Participants in this proceeding are designated as either “parties” or “interested persons.” Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Board, staff or others, at the discretion of the Regional Board.

The following participants are hereby designated as parties in this proceeding:

- (1) Regional Board Enforcement Staff
- (2) Nevada County Sanitation District No. 1, referred to as the Discharger

Contacts

Advisory Staff:

Lori T. Okun, Senior Staff Counsel
State Water Resources Control Board Office of Chief Counsel
1001 I Street
Sacramento, CA 95814
(916) 341-5165
fax (916) 341-5199
lokun@waterboards.ca.gov

Pamela Creedon, Executive Officer
Ken Landau, Assistant Executive Officer
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114
(916) 464-4726

fax (916) 464-4758
pcreedon@waterboards.ca.gov
klandau@waterboards.ca.gov

Enforcement Staff:

Mr. Jack DelConte, Assistant Executive Officer
Ms. Wendy Wyels, Environmental Program Manager I
Ms. Patricia Leary, Sr. WRC Engineer
Mr. Barry Hilton, WRC Engineer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

The primary contact for the Enforcement staff is Wendy Wyels
(916) 464-4835
fax (916) 464-4681
wwyels@waterboards.ca.gov

Discharger:

Mr. Ted Owens, Chairman, Board of Directors
Mr. Mark Miller, Nevada County Sanitation District No. 1
Mr. Gordon Plantenga, Wastewater Operations Manager
950 Maidu Avenue, Suite 290
Nevada City, CA 95959-8617
(530) 265-1411

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Board (Enforcement Staff) have been separated from those who will provide advice to the Regional Board (Advisory Staff). Members of the Advisory Staff are: Pamela Creedon, Executive Officer; Ken Landau Assistant Executive Officer; and Lori T. Okun, Senior Staff Counsel. Members of the Enforcement Staff are: Jack DelConte, Assistant Executive Officer; Wendy Wyels, Environmental Program Manager I; Patricia Leary, Sr. WRC Engineer; and Barry Hilton, WRC Engineer.

This Notice has been issued by the Advisory Staff based on a draft proposed by the Enforcement Staff.

Patrick Pulupa, staff counsel for the Regional Water Board, will be advising the Enforcement Staff for this agenda item. Mr. Pulupa regularly advises the Board on legal issues unrelated to this case, but has had no communications with the Board members

regarding this case. Objections to his participation must be submitted to Lori Okun in writing or by email, by **noon on 16 October 2008**, or they will be waived.

Ex Parte Communications

The designated parties and interested persons are prohibited from engaging in *ex parte* communications regarding this matter with members of the Advisory Staff or members of the Regional Board. An *ex parte* contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint/Order between a member of a designated party or interested party on the one hand, and a Regional Board member or an Advisory Staff member on the other hand, unless the communication is copied to all other designated and interested parties or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted. Communications among the designated and interested parties themselves are not *ex parte* contacts.

Requesting Designated Party Status

Persons other than the Discharger or the Enforcement Staff who wish to participate in the hearing as a designated party may request party status by submitting a request in writing (with copies to the designated parties) to Lori Okun. The request must be received no later than **noon on 10 October 2008**. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. The parties will be notified in writing prior to the hearing whether the request has been granted or denied.

Hearing Procedures

To ensure that all participants have an opportunity to participate in the hearing, the time limits delineated in the attached hearing procedures shall apply. Each interested person shall have up to three minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Additional time may be approved at the discretion of the hearing officer upon a showing that additional time is necessary. Parties should submit any requests for additional time to Lori Okun before the hearing. Additional information regarding the order of presentation is included in the attached Hearing Procedure, Agenda Item #__.

Written Evidence, Testimony, Exhibits and Policy Statements

The period for submitting written comments to the Regional Water Board, as announced in the 28 July 2008 cover letter that accompanied the Administrative Civil Liability Complaint, closed on 27 August 2008. The prosecution team submitted a Staff Report,

proposed Order and draft Buff Sheet for the 23/24 October meeting. No further written comments or evidence will be accepted unless a party demonstrates good cause for the late submission and that no person, including the Regional Water Board, will be prejudiced by the late submission. A demonstration of good cause shall include the reasons the materials could not have been submitted earlier. Requests for late submissions will be decided by the Chair.

In accordance with Title 23, CCR, Section 684.4, the Regional Water Board endeavors to avoid surprise testimony or evidence. Power Point and other computer assisted visual presentations may be, but are not required to be, submitted prior to the hearing. Instructions for submittal of Power Point or other electronic materials are included in the Agenda for the 23/24 October 2008 Board meeting. Any witness providing written testimony shall appear at the hearing and affirm that the written testimony is true and correct.

Interested persons may submit one (1) copy of non-evidentiary policy statements by the close of the hearing.

Procedural Objections

Any objections to this notice or the hearing procedures must be stated at the beginning of the hearing, before staff testimony. Objections that are not made at or before that time will be waived. Parties are encouraged to submit procedural objections to Lori Okun in writing before the hearing. However, except as stated above under "Separation of Functions," parties are not required to submit objections in advance.

Evidentiary Documents and File

The Complaint, related evidentiary documents, and comments received are on file and may be inspected or copied at the Regional Board office at:

11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

Many of these documents are also posted on-line at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/

Although the web page is updated regularly, to assure access to the latest information, you may contact Wendy Wyels at (916) 464-4835.

Auxiliary Aids and Services

The hearing facilities will be accessible to persons with disabilities. Individuals requiring special accommodations are requested to contact Ms. Kiran Lanfranchi-Rizzardi at (916) 464-4839 at least five working days prior to the meeting. TTY users may contact the California Relay Service at 1-800-735-2929 or voice line at 1-800-735-2922.

Questions

Questions concerning this proceeding may be addressed to Lori Okun at (916) 341-5165.

- original signed by -

Kenneth D. Landau, Assistant Executive Officer

3 October

Attachment: Hearing Procedures

ATTACHMENT A



NEVADA COUNTY SANITATION DISTRICT NO. 1

950 MAIDU AVENUE, SUITE 290, NEVADA CITY, CA 95959-8617
(530) 265-1411 FAX (530) 265-9849 <http://new.mynevadacounty.com>

Steven L. DeCamp
Deputy District Administrator

Mark Miller
Director of Sanitation

August 25, 2008

File: 300.1742 004
"Certified Mail"

Barry Hilton, Engineer
California Regional Water Quality Control Board - Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

SUBJECT: Response to Administrative Civil Liability Complaint No. R5-2008-0553 for Lake of the Pines Wastewater Treatment Plant, NPDES No. CA0081612

Dear Mr. Hilton:

The Nevada County Sanitation District No. 1, Lake of the Pines, Zone 2, (NCS D1LOP) has received the Administrative Civil Liability Complaint (ACLC) No. R5-2008-0553 for the Lake of the Pines Wastewater Treatment Plant dated July 28, 2008, from the California Regional Water Quality Control Board - Central Valley Region (RWQCB) (copy enclosed).

The NCS D1LOP appreciates the consideration shown by the RWQCB in the reduction of the administrative civil liability amount from \$132,000 as originally shown in the Draft Record of Violations, down to \$129,000 for the period of January 1, 2000, through March 31, 2008, as shown in the Revised Record of Violations.

- NCS D1LOP requests examination of the remaining violations in light of the statute of limitations under the Federal Clean Water Act (five years – United States Code 28 U.S.C. 2462) and under the California Water Code (three years – California Code of Civil Procedure Section 338 (i)). Copies of both of these references are enclosed. If changes are deemed appropriate under the law, NCS D1LOP requests that those changes be reflected in a further Revised Record of Violations.
- After the RWQCB completes its evaluation of the NCS D1LOP comments contained herein regarding the reduction of the ACLC amount, the NCS D1LOP has scheduled a meeting on September 22, 2008 with the RWQCB staff to discuss a proposal for a Supplemental Environmental Project in lieu of paying a portion of the reduced penalty amount since the NCS D1LOP did not qualify for the financial hardship that would allow the MMPs to be applied to the compliance project that NCS D1LOP recently completed to achieve compliance with Waste Discharge Requirement Order No. R5-2002-0095. NCS D1LOP spent approximately \$22 million on the completion of this compliance project with the annual sewer service charge per residential customer increasing from \$315 to \$1,185.

ATTACHMENT A

- The following is a list of possible Supplemental Environmental Projects (SEPs) for your consideration prior to our requested meeting:
 - Biosolids/green waste composting facility
 - Infiltration/inflow reduction in wastewater collection system
 - Replacement of sewer main creek crossing
 - Flow monitoring system for Magnolia Creek
 - Monitoring/sampling equipment for use on Magnolia Creek

Some of the above may be feasibility studies instead of constructed projects due to cost constraints. Your comments on this listing and/or our meeting on September 22nd to discuss the above would help NCS D1LOP determine which of the above project or projects it would propose in lieu of paying a portion of the reduced penalty amount. We understand from discussion with you that reclaimed water or a solar power project would not meet the SEP criteria. As such, we have not included them in our list of possible SEPs. We also understand that you will provide comments on this listing prior to the meeting. Based on your comments we will provide more details on the possible projects that you have identified that may meet the SEP criteria prior to our meeting.

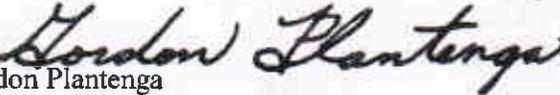
Also enclosed is the signed Waiver with Box 5 checked, which waives the 90 day hearing requirement, but does not require payment at the current time, and allows entering into discussions with the RWQCB staff regarding the violations and possible supplemental environmental project in lieu of full payment of the reduced penalty amount. A hearing may still be held if these discussions do not result in a satisfactory resolution of this matter.

Thank you for your consideration in this matter.

If you have any questions, please feel free to contact me at (530) 265-7103.

Sincerely,

MARK MILLER
Nevada County Sanitation District No. 1


Gordon Plantenga
Wastewater Operations Manager

GP:ms

Enclosures

cc: Nevada County Sanitation District No. 1 Board of Directors
Sanitation District Advisory Committee
District Administrator, Richard Haffey
County Counsel, Attention: Rob Shulman
Kennedy/Jenks, Attention: Ken Shuey and Gary Carlton
RBI, Attention: Michael Bryan
RWQCB, Sacramento, Attention: Pamela Creedon, Ken Landau, Patricia Leary, and Dianna Messina
RWQCB, Redding, Attention: Jim Pedri and Dennis Wilson

ATTACHMENT A

WAIVER OF 90-DAY HEARING REQUIREMENT FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Nevada County Sanitation District No. 1, Lake of the Pines, Wastewater Treatment Plant (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0553 (hereinafter the "Complaint");
2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) within ninety (90) days of service of the Complaint; and
4. (**Check here if the Discharger will waive the hearing requirement and will pay the fine**)
 - a. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **one hundred and twenty-nine thousand dollars (\$129,000)** by check, which contains a reference to "ACL Complaint No. R5-2008-0553" and is made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Regional Water Board by **27 August 2008** or this matter will be placed on the Regional Water Board's agenda for adoption as initially proposed in the Complaint.
 - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Regional Water Board receive new information or comments during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Regional Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

5. (**Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time**) I certify that the Discharger will promptly engage the Regional Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is not waiving its right to a hearing on this matter. I understand that this waiver is a request to delay the hearing so the Discharger and Regional Water Board staff can discuss settlement. It does not constitute the Regional Water Board's agreement to delay the hearing. A hearing on the matter may be held before the Regional Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Regional Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

Richard A. Haffey CEO

(Print Name and Title)
Richard A. Haffey

(Signature)
8/12/08

(Date)



California Regional Water Quality Control Board

Central Valley Region

Karl E. Longley, ScD, PE, Chair



Arnold Schwarzenegger
Governor

Linda S. Adams
Secretary for
Environmental
Protection

Sacramento Main Office
11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>

RECEIVED
JUL 29 2008
CDA/DPW/DOS

28 July 2008

CERTIFIED MAIL
7007 2560 0001 7472 1773

Mr. Nick Zaninovich
Nevada County Department of Transportation and Sanitation
950 Maidu Avenue
Nevada City, CA 95959

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0553 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, NEVADA COUNTY SANITATION DISTRICT NO. 1, LAKE OF THE PINES WASTEWATER TREATMENT PLANT, NEVADA COUNTY

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code (CWC) section 13385, for violations of Waste Discharge Requirements (WDRs) Order Nos. 95-114 and R5-2002-0095 (NPDES No. CA0081612) by the Lake of the Pines Wastewater Treatment Plant (Discharger). The Complaint charges the Discharger with civil liability in the amount of **one hundred twenty-nine thousand dollars (\$129,000)**, for Mandatory Minimum Penalties for effluent limitation violations which occurred from 1 January 2000 through 31 March 2008.

On 16 November 2007, Regional Water Board staff sent the Discharger a draft Record of Violations (ROV) for the period of 1 January 2000 through 31 July 2007. On 26 June 2008, the Discharger was sent an updated ROV that extended the period of review through 30 April 2008. On 9 July 2008, the Discharger provided comments. This Complaint incorporates the Discharger's commentary noting one duplicate violation, and reduces the violation count by one.

The 16 November 2007 ROV noted that Regional Water Board staff believed Lake of the Pines to be a small community with a financial hardship. On 18 July 2008, Regional Water Board staff requested that State Water Board economic staff evaluate Lake of the Pines for compliance with the criteria for a small community with a financial hardship. One of the necessary criteria is that the median household income must be below 80% of the median household income for the State of California. State Water Board staff utilized information from the 2000 U.S. census to determine that Lake of the Pines is not a small community with a financial hardship because the median household income exceeds the California median household income. Therefore, this ACL Complaint does not allow the assessed penalty to be applied to a compliance project.

California Environmental Protection Agency

ATTACHMENT A

Pursuant to CWC section 13323, the Discharger may:

- Pay the assessed civil liability and waive its right to a hearing before the Regional Water Board by signing the enclosed waiver (checking off the box next to item #4) and submitting it to this office by **27 August 2008**, along with payment for the full amount;
- Agree to enter into settlement discussions with the Regional Water Board and request that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and submitting it to this office by **27 August 2008**; or
- Contest the Complaint and/or enter into settlement discussions with the Regional Water Board without signing the enclosed waiver.

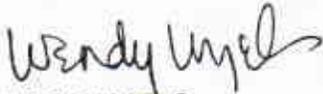
If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations in the Complaint. This settlement will be considered final pending a 30-day period, starting from the date of this Complaint, during which time interested parties may comment on this action by submitting information to this office, attention Barry Hilton. Should the Regional Water Board receive new information or comments during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint.

If the Regional Water Board does not receive a waiver and a check for the full amount within 30 days of the date of this Complaint (**by 27 August 2008**), then a hearing will be scheduled for the **23/24 October 2008** Regional Water Board meeting in Rancho Cordova. Specific notice about this hearing and its procedures will be provided under separate cover.

Any comments or evidence concerning the enclosed Complaint must be submitted to this office, attention Barry Hilton, **no later than 5 p.m. on 27 August 2008**. This includes material submitted by the discharger to be considered at a hearing and material submitted by interested parties, including members of the public, who wish to comment on the proposed settlement. If the Regional Water Board does not hold a hearing on the matter, and the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement. Written materials received after **5 p.m. on 27 August 2008** will not be accepted and will not be incorporated into the administrative record if doing so would prejudice any party.

ATTACHMENT A

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Barry Hilton at (916) 464-4762 or Patricia Leary at (916) 445-4623.



WENDY WYELS

Environmental Program Manager
Compliance and Enforcement Section

Enclosure: ACLC No. R5-2008-0553

cc w/encl: Ms. Pamela Creedon, Executive Officer
Dan Radulescu, CVRWQCB, Rancho Cordova
Mr. Kenneth Greenberg, USEPA, Region 9, San Francisco
Mr. Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Mr. Reed Sato, Office of Enforcement, SWRCB, Sacramento
Ms. Lori Okun, Office of Chief Counsel, SWRCB, Sacramento
Ms. Emel Wadhvani, Office of Chief Counsel, SWRCB, Sacramento
Ms. Carol Oz, Department of Fish and Game, Region 2, Rancho Cordova
Nevada County Department of Environmental Health, Nevada City
Mr. Bill Jennings, California Sport Fishing Protection Alliance, Stockton

ATTACHMENT A

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0553

MANDATORY PENALTY IN THE MATTER OF

NEVADA COUNTY SANITATION DISTRICT NO. 1 LAKE OF THE PINES WASTEWATER TREATMENT PLANT NEVADA COUNTY

This Complaint is issued to the Nevada County Sanitation District No. 1, Lake of the Pines, Wastewater Treatment Plant (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order No. 95-114 and R5-2002-0095 (NPDES No. CA0081612).

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Regional Water Board) finds the following:

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system, and provides sewerage service for the community of Lake of the Pines. Treated wastewater is discharged to Magnolia Creek, tributary to the Bear River, a water of the United States.
2. On 26 May 1995, the Regional Water Board adopted WDRs Order No. 95-114 to regulate discharges of waste from the wastewater treatment plant (WWTP). On 7 June 2002, the Regional Water Board adopted WDRs Order No. R5-2002-0095, which contained new requirements and rescinded WDRs Order No. 95-114.
3. On 7 June 2002, the Regional Water Board adopted Cease and Desist Order (CDO) No. R5-2002-0096, requiring the Discharger to cease discharging contrary to WDRs Order No. R5-2002-0095. The Regional Water Board adopted CDO No. R5-2002-0096 to allow the Discharger until 30 April 2007 to complete construction to comply with Effluent Limitations for aluminum, ammonia, nitrate plus nitrite, and nitrite.
4. On 22 June 2007, the Regional Water Board adopted TSO No. R5-2007-0072. This Order allows the Discharger until 1 April 2008 to comply with final effluent limitations, and includes interim effluent limitations for BOD, total suspended solids, and total coliform organisms. The interim effluent limitations remain in effect until 1 April 2008, or when the Discharger is able to come into compliance with the final effluent limitations, whichever is sooner. This Complaint considered the interim effluent limitations and the protection from Mandatory Minimum Penalties provided by CDO No. R5-2002-0096 and TSO No. R5-2007-0072.

5. CWC sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) states, "Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation."

CWC section 13385 (h)(2) states, "For the purposes of this section, a 'serious violation' means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more."

CWC section 13385(i)(1) states, "Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants."

6. CWC section 13323 states, in part:

"Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability."

7. WDRs Order No. 95-114 Effluent Limitations No. B.2. include, in part, the following effluent limitations: "The discharge to Magnolia Creek of an effluent in excess of the following limits is prohibited:"

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Monthly Median</u>	<u>Daily Maximum</u>
BOD ¹	mg/L	15	20	--	30
	lbs/day ²	90	120	--	180
Total Suspended Solids	mg/L	15	20	--	40
	lbs/day ²	90	120	--	240
<u>Total Coliform Organisms</u>	MPN/100 mL	--	--	2.2	23

¹ 5-day, 20°C biochemical oxygen demand (BOD)

² Based upon a design treatment capacity of 0.72 mgd.

8. WDRs Order No. R5-2002-0095 Effluent Limitations B.1. include, in part the following effluent limitations: "Effluent discharge to Magnolia Creek shall not exceed the following limitations."

<u>Constituents</u>	<u>Units</u>	<u>Average Monthly</u>	<u>Median Monthly</u>	<u>Average Weekly</u>	<u>Average Daily</u>	<u>Daily Maximum</u>
BOD ¹	mg/L	15 ²		20 ²	30 ²	
	lbs/day ³	90		120	180	
Total Suspended Solids	mg/L	15 ²		20 ²	40 ²	
	lbs/day ³	90		120	240	
Settleable Solids	mL/L	0.1	--	--	0.2	--
<u>Total Coliform Organisms</u>	MPN/100 mL	--	2.2	--	--	23

¹ 5-day, 20°C biochemical oxygen demand (BOD)

² To be ascertained by a 24-hour composite

³ Based upon a design treatment capacity of 0.72 mgd ($x \text{ mg/L} \times 8.345 \times 0.72 \text{ mgd} = y \text{ lbs/day}$)

<u>Constituents</u>	<u>Units</u>	<u>Average Monthly</u>	<u>Average 4-day</u>	<u>Average Daily</u>	<u>Average 1-Hour</u>
Ammonia (as N)	mg/L	Attachment B	--	--	Attachment C
	lbs/day ²	--	--	--	--
Aluminum	µg/L	--	87	--	750
	lbs/day ¹	--	0.522	--	4.5

¹ Based upon a design treatment capacity of 0.72 mgd ($x \text{ mg/L} \times 8.345 \times 0.72 \text{ mgd} = y \text{ lbs/day}$)

² The mass limit (lb/day) for ammonia shall be equal to the concentration limit (from Attachments) multiplied by the design flow of 0.72 mgd and the unit conversion factor of 8.345 (see footnote 1 for equation).

9. According to the Discharger's self-monitoring reports, the Discharger committed thirty-one (31) serious Group I violations of the above effluent limitations contained in Order Nos. 95-114 and R5-2002-0095 during the period beginning 1 January 2000 and ending 31 March 2008. The violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels by more than 40 percent on these occasions. The mandatory minimum penalty for this serious violation is **ninety-three thousand dollars (\$93,000)**.

10. According to the Discharger's self-monitoring reports, the Discharger committed twenty-two (22) non-serious violations of the above effluent limitations contained in Order Nos. 95-114 and R5-2002-0095 during the period beginning 1 January 2000 and ending 31 March 2008. Twelve (12) of the non-serious violations are subject to mandatory penalties under CWC section 13385(i)(1) because these violations were preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for these non-serious violations is **thirty-six thousand dollars (\$36,000)**.
11. The total amount of the mandatory penalties assessed for the cited effluent violations is **one hundred twenty-nine thousand dollars (\$129,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
12. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

NEVADA COUNTY SANITATION DISTRICT NO. 1, LAKE OF THE PINES WASTEWATER TREATMENT PLANT, IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **one hundred twenty-nine thousand dollars (\$129,000)**.
2. A hearing on this matter will be held at the Regional Water Board meeting scheduled on **23/24 October 2008**, unless the Discharger does either of the following by **27 August 2008**:
 - a) *Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Regional Water Board, along with payment for the proposed civil liability of one hundred and twenty-nine thousand dollars (\$129,000); or*
 - b) *Agrees to enter into settlement discussions with the Regional Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Regional Water Board.*
3. If a hearing on this matter is held, the Regional Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.



JACK E. DEL CONTE, Assistant Executive Officer

28 July 2008

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0553
ATTACHMENT A

Nevada County Sanitation District No. 1
Lake of the Pines Wastewater Treatment Plant
RECORD OF VIOLATIONS (1 January 2000 – 31 March 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program Nos. 95-114 and R5-2002-0095)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Flow Rate*</u>	<u>Remarks</u>
1	21-Jan-00	BOD	lbs/day	120	128	Weekly	1.16	5
2	23-Jan-00	BOD	lbs/day	120	162	Weekly	1.19	5
3	31-Jan-00	BOD	lbs/day	90	145	Monthly	0.59	1
4	13-Feb-00	BOD	lbs/day	120	216	Weekly	1.45	5
5	15-Feb-00	TCO	MPN/100 mL	23	900	Daily		3
6	17-Feb-00	BOD	lbs/day	180	260	Daily	1.51	5
7	17-Feb-00	TCO	MPN/100 mL	23	500	Daily		3
8	23-Feb-00	TCO	MPN/100 mL	23	130	Daily		4
9	28-Feb-00	BOD	lbs/day	90	108	Monthly	1.08	5
10	27-Jan-01	TSS	mg/L	20	21	Weekly		3
11	27-Jan-01	TSS	lbs/day	120	179	Weekly	0.86	5
12	31-Jan-01	TSS	mg/L	15	19	Monthly		3
13	31-Jan-01	TSS	lbs/day	90	120	Monthly	0.2	3
14	31-Mar-02	BOD	mg/L	90	91	Monthly		3
15	28-Sep-02	TSS	mg/L	20	22	Weekly		3
16	30-Sep-02	TSS	mg/L	15	22	Monthly		1
17	11-Feb-03	TSS	lbs/day	240	817	Daily	1.19	5
18	11-Feb-03	TSS	mg/L	40	82	Daily		1
19	15-Feb-03	TSS	lbs/day	120	413	Weekly	1.31	5
20	15-Feb-03	TSS	mg/L	20	43	Weekly		1
21	28-Feb-03	TSS	lbs/day	90	279	Monthly	0.54	1
22	28-Feb-03	TSS	mg/L	15	28	Monthly		1
23	9-Mar-03	BOD	lbs/day	120	149	Weekly	1.26	5
24	13-Mar-03	BOD	lbs/day	180	269	Daily	1.15	5
25	10-May-03	SS	mL/L	0.2	0.3	Daily		1
26	31-May-03	SS	mL/L	0.1	0.2	Monthly		1
27	27-Oct-03	SS	mL/L	0.2	0.5	Daily		1
28	28-Oct-03	SS	mL/L	0.2	0.5	Daily		1
29	29-Oct-03	SS	mL/L	0.2	0.5	Daily		1
30	30-Oct-03	SS	mL/L	0.2	0.5	Daily		1
31	31-Oct-03	SS	mL/L	0.2	0.5	Daily		1
32	31-Oct-03	SS	mL/L	0.1	0.5	Monthly		1
33	31-Oct-03	TSS	mg/L	15	23	Monthly		1
34	1-Nov-03	TSS	mg/L	20	23	Weekly		4
35	16-Dec-03	TCO	MPN/100 mL	23	30	Daily		4
36	17-Dec-03	BOD	lbs/day	180	188	Daily	1.25	5
37	17-Dec-03	BOD	lbs/day	120	127	Weekly	0.97	5
38	17-Dec-03	TSS	lbs/day	120	175	Weekly	0.97	5
39	31-Dec-03	BOD	lbs/day	90	117	Monthly	1.1	5
40	31-Dec-03	BOD	lbs/day	120	179	Weekly	1.34	5
41	31-Dec-03	TSS	lbs/day	90	130	Monthly	1.1	5
42	31-Dec-03	TSS	lbs/day	120	129	Weekly	1.34	5
43	2-Jan-04	BOD	lbs/day	120	143	Weekly	1.34	5
44	9-Jan-04	SS	mL/L	0.2	0.3	Daily		1
45	31-Jan-04	BOD	lbs/day	90	96	Monthly	0.85	5
46	4-Feb-04	BOD	lbs/day	120	137	Weekly	1.3	5

ATTACHMENT A
 ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0553
 MANDATORY PENALTY
 NEVADA COUNTY SANITATION DISTRICT NO. 1
 LAKE OF THE PINES WASTEWATER TREATMENT PLANT
 NEVADA COUNTY

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Flow Rate*</u>	<u>Remarks</u>
47	4-Feb-04	TSS	lbs/day	120	170	Weekly	1.3	5
48	28-Feb-04	BOD	lbs/day	90	98	Monthly	1.21	5
49	17-Oct-04	TSS	lbs/day	120	125	Weekly	1.13	5
50	31-Oct-04	TSS	lbs/day	90	106	Monthly	0.79	5
51	31-Oct-04	TSS	mg/L	15	16	Monthly		3
52	31-Jan-06	BOD	lbs/day	90	101	Monthly	1.19	5
53	31-Jan-06	TSS	lbs/day	90	92	Monthly	1.19	5
54	1-Feb-06	BOD	lbs/day	180	269	Daily	1.33	5
55	3-Feb-06	BOD	lbs/day	180	269	Daily	1.31	5
56	3-Feb-06	BOD	lbs/day	120	269	Weekly	1.32	5
57	3-Feb-06	TSS	lbs/day	120	160	Weekly	1.32	5
58	8-Feb-06	BOD	lbs/day	180	269	Daily	0.57	1
59	10-Feb-06	BOD	lbs/day	120	269	Weekly	0.97	5
60	11-Feb-06	TSS	mg/L	20	25	Weekly		3
61	28-Feb-06	BOD	lbs/day	90	269	Monthly	1.16	5
62	28-Feb-06	BOD	mg/L	15	16	Monthly		3
63	28-Feb-06	TSS	mg/L	15	18	Monthly		4
64	28-Feb-06	TSS	lbs/day	90	146	Monthly	1.16	5
65	10-Mar-06	BOD	lbs/day	120	168	Weekly	1.43	5
66	15-Mar-06	BOD	lbs/day	180	200	Daily	1.41	5
67	16-Mar-06	BOD	lbs/day	180	246	Daily	1.41	5
68	17-Mar-06	BOD	lbs/day	120	223	Weekly	1.41	5
69	17-Mar-06	TSS	lbs/day	120	128	Weekly	1.41	5
70	22-Mar-06	BOD	lbs/day	180	314	Daily	1.39	5
71	24-Mar-06	BOD	mg/L	30	38	Daily		4
72	24-Mar-06	BOD	lbs/day	180	437	Daily	1.38	5
73	24-Mar-06	BOD	lbs/day	120	376	Weekly	1.39	5
74	25-Mar-06	BOD	mg/L	20	23	Weekly		4
75	28-Mar-06	BOD	lbs/day	180	296	Daily	1.36	5
76	31-Mar-06	BOD	lbs/day	180	367	Daily	1.42	5
77	31-Mar-06	BOD	mg/L	30	31	Daily		4
78	31-Mar-06	BOD	lbs/day	90	240	Monthly	1.41	5
79	31-Mar-06	BOD	mg/L	15	19	Monthly		4
80	31-Mar-06	BOD	lbs/day	120	332	Weekly	1.42	5
81	31-Mar-06	BOD	mg/L	20	29	Weekly		1
82	31-Mar-06	TSS	lbs/day	90	96	Monthly	1.41	5
83	1-Apr-06	BOD	mg/L	20	25	Weekly		4
84	5-Apr-06	BOD	mg/L	30	33	Daily		4
85	5-Apr-06	BOD	lbs/day	180	269	Daily	1.46	5
86	6-Apr-06	BOD	lbs/day	180	269	Daily	1.43	5
87	6-Apr-06	BOD	lbs/day	120	269	Weekly	1.42	5
88	13-Apr-06	BOD	lbs/day	180	269	Daily	1.44	5
89	14-Apr-06	BOD	lbs/day	180	307	Daily	1.42	5
90	14-Apr-06	BOD	mg/L	19	26	Weekly		4
91	14-Apr-06	BOD	lbs/day	120	288	Weekly	1.43	5

ATTACHMENT A
 ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0553
 MANDATORY PENALTY
 NEVADA COUNTY SANITATION DISTRICT NO. 1
 LAKE OF THE PINES WASTEWATER TREATMENT PLANT
 NEVADA COUNTY

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Flow Rate*</u>	<u>Remarks</u>
92	20-Apr-06	BOD	lbs/day	180	269	Daily	1.35	5
93	21-Apr-06	BOD	lbs/day	180	269	Daily	1.36	5
94	21-Apr-06	BOD	lbs/day	120	269	Weekly	1.38	5
95	30-Apr-06	BOD	mg/L	15	22	Monthly		1
96	30-Apr-06	BOD	lbs/day	90	247	Monthly	1.38	5
97	3-Feb-07	BOD	lbs/day	180	269	Daily	1.3	5
98	3-Feb-07	BOD	lbs/day	120	269	Weekly	1.3	5
99	4-Feb-07	BOD	lbs/day	120	269	Weekly	1.35	5
100	7-Feb-07	BOD	lbs/day	180	269	Daily	1.33	5
101	8-Feb-07	BOD	lbs/day	180	269	Daily	1.38	5
102	11-Feb-07	BOD	lbs/day	120	203	Weekly	1.36	5
103	15-Feb-07	BOD	lbs/day	180	269	Daily	1.31	5
104	18-Feb-07	BOD	lbs/day	120	269	Weekly	1.24	5
105	21-Feb-07	BOD	lbs/day	180	269	Daily	1.31	5
106	23-Feb-07	BOD	lbs/day	180	269	Daily	1.25	5
107	28-Feb-07	BOD	lbs/day	90	224	Monthly	1.31	5
108	19-Dec-07	Aluminum	lbs/day	0.52	2.8	4-day	0.86	5
109	19-Dec-07	Aluminum	µg/L	87	432	4-day		1
110	30-Dec-07	Ammonia	lbs/day	35.5	60	Monthly	0.86	5
111	30-Dec-07	Ammonia	mg/L	5.91	8	Monthly		4
112	02-Jan-08	Aluminum	lbs/day	0.52	1.42	4-day	0.80	5
113	02-Jan-08	Aluminum	µg/L	87	214	4-day		1
114	09-Jan-08	Aluminum	lbs/day	0.522	4.98	4-day	1.05	5
115	09-Jan-08	Aluminum	µg/L	87	568	4-day		1
116	16-Jan-08	Aluminum	lbs/day	0.52	2.14	4-day	1.07	5
117	16-Jan-08	Aluminum	µg/L	87	240	4-day		1
118	22-Jan-08	Aluminum	lbs/day	0.52	1.40	4-day	1.06	5
119	22-Jan-08	Aluminum	µg/L	87	158	4-day		1
120	29-Jan-08	Aluminum	lbs/day	0.52	1.47	4-day	0.82	5
121	29-Jan-08	Aluminum	µg/L	87	215	4-day		1
122	06-Feb-08	Aluminum	lbs/day	0.52	1.1	4-day	0.71	1
123	06-Feb-08	Aluminum	µg/L	87	186	4-day		1
124	13-Feb-08	Aluminum	lbs/day	0.52	1.2	4-day	0.79	5
125	13-Feb-08	Aluminum	µg/L	87	175	4-day		1
126	28-Feb-08	Aluminum	lbs/day	0.52	0.9	4-day	0.5	1
127	28-Feb-08	Aluminum	µg/L	87	215	4-day		1
128	29-Feb-08	Ammonia	lbs/day	37	93	Monthly	0.73	5
129	29-Feb-08	Ammonia	mg/L	6.12	16	Monthly		1

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.
5. Mass rate limitation exceedances due only to wet weather not assessed MMPs as the permit limit is based on the dry weather design treatment capacity of 0.72 mgd.

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0553
MANDATORY PENALTY
NEVADA COUNTY SANITATION DISTRICT NO. 1
LAKE OF THE PINES WASTEWATER TREATMENT PLANT
NEVADA COUNTY

<u>VIOLATIONS AS OF:</u>	<u>3/31/2008</u>
Group I Serious Violations:	31
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	10
Non-serious Violations Subject to MPs:	12
Mass Limit Violations Not Subject to MPs:	76
<u>Total Violations Subject to MPs:</u>	<u>43</u>

Mandatory Minimum Penalty = (31 Serious Violations + 12 Non-Serious Violations) x \$3,000 = \$129,000

*Arithmetic mean of all 1-day flow rates (in MGD) of effluent while discharging to surface waters. Values greater than 0.72 MGD are considered wet weather flows.

ATTACHMENT A

WAIS Document Retrieval

Page 1 of 1

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[Laws in effect as of January 3, 2006]
[CITE: 28USC2462]

TITLE 28--JUDICIARY AND JUDICIAL PROCEDURE

PART VI--PARTICULAR PROCEEDINGS

CHAPTER 163--FINES, PENALTIES AND FORFEITURES

~~Sec. 2462. Time for commencing proceedings~~

Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found with the United States in order that proper service may be made thereon.

(June 25, 1948, ch. 646, 62 Stat. 974.)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., Sec. 791 (R.S. Sec. 1047).
Changes were made in phraseology.

CODE OF CIVIL PROCEDURE

SECTION 335-349.4

335. The periods prescribed for the commencement of actions other than for the recovery of real property, are as follows:

335.1. Within two years: An action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another.

336. Within five years:

(a) An action for mesne profits of real property.

(b) An action for violation of a restriction, as defined in Section 784 of the Civil Code. The period prescribed in this subdivision runs from the time the person seeking to enforce the restriction discovered or, through the exercise of reasonable diligence, should have discovered the violation. A failure to commence an action for violation of a restriction within the period prescribed in this subdivision does not waive the right to commence an action for any other violation of the restriction and does not, in itself, create an implication that the restriction is abandoned, obsolete, or otherwise unenforceable. This subdivision shall not bar commencement of an action for violation of a restriction before January 1, 2001, and until January 1, 2001, any other applicable statutory or common law limitation shall continue to apply to that action.

336a. Within six years. 1. An action upon any bonds, notes or debentures issued by any corporation or pursuant to permit of the Commissioner of Corporations, or upon any coupons issued with such bonds, notes or debentures, if such bonds, notes or debentures shall have been issued to or held by the public.

2. An action upon any mortgage, trust deed or other agreement pursuant to which such bonds, notes or debentures were issued. Nothing in this section shall apply to bonds or other evidences of indebtedness of a public district or corporation.

ATTACHMENT A

337. Within four years: 1. An action upon any contract, obligation or liability founded upon an instrument in writing, except as provided in Section 336a of this code; provided, that the time within which any action for a money judgment for the balance due upon an obligation for the payment of which a deed of trust or mortgage with power of sale upon real property or any interest therein was given as security, following the exercise of the power of sale in such deed of trust or mortgage, may be brought shall not extend beyond three months after the time of sale under such deed of trust or mortgage.

2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

3. An action based upon the rescission of a contract in writing. The time begins to run from the date upon which the facts that entitle the aggrieved party to rescind occurred. Where the ground for rescission is fraud or mistake, the time does not begin to run until the discovery by the aggrieved party of the facts constituting the fraud or mistake. Where the ground for rescission is misrepresentation under Section 359 of the Insurance Code, the time does not begin to run until the representation becomes false.

337a. The term "book account" means a detailed statement which constitutes the principal record of one or more transactions between a debtor and a creditor arising out of a contract or some fiduciary relation, and shows the debits and credits in connection therewith, and against whom and in favor of whom entries are made, is entered in the regular course of business as conducted by such creditor or fiduciary, and is kept in a reasonably permanent form and manner and is (1) in a bound book, or (2) on a sheet or sheets fastened in a book or to backing but detachable therefrom, or (3) on a card or cards of a permanent character, or is kept in any other reasonably permanent form and manner.

337.1. (a) Except as otherwise provided in this section, no action

ATTACHMENT A

CA Codes (ccp:335-349.4)

shall be brought to recover damages from any person performing or furnishing the design, specifications, surveying, planning, supervision or observation of construction or construction of an improvement to real property more than four years after the substantial completion of such improvement for any of the following:

- (1) Any patent deficiency in the design, specifications, surveying, planning, supervision or observation of construction or construction of an improvement to, or survey of, real property;
 - (2) Injury to property, real or personal, arising out of any such patent deficiency; or
 - (3) Injury to the person or for wrongful death arising out of any such patent deficiency.
- (b) If, by reason of such patent deficiency, an injury to property or the person or an injury causing wrongful death occurs during the fourth year after such substantial completion, an action in tort to recover damages for such an injury or wrongful death may be brought within one year after the date on which such injury occurred, irrespective of the date of death, but in no event may such an action be brought more than five years after the substantial completion of construction of such improvement.
- (c) Nothing in this section shall be construed as extending the period prescribed by the laws of this state for the bringing of any action.
- (d) The limitation prescribed by this section shall not be asserted by way of defense by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement at the time any deficiency in such an improvement constitutes the proximate cause of the injury or death for which it is proposed to bring an action.
- (e) As used in this section, "patent deficiency" means a deficiency which is apparent by reasonable inspection.
- (f) Subdivisions (a) and (b) shall not apply to any owner-occupied single-unit residence.

337.15. (a) No action may be brought to recover damages from any person, or the surety of a person, who develops real property or performs or furnishes the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to real property more than 10 years after the substantial completion of the development or improvement for any of the following:

- (1) Any latent deficiency in the design, specification, surveying, planning, supervision, or observation of construction or

ATTACHMENT A

CA Codes (ccp:335-349.4)

Page 4 of 26

construction of an improvement to, or survey of, real property.

(2) Injury to property, real or personal, arising out of any such latent deficiency.

(b) As used in this section, "latent deficiency" means a deficiency which is not apparent by reasonable inspection.

(c) As used in this section, "action" includes an action for indemnity brought against a person arising out of that person's performance or furnishing of services or materials referred to in this section, except that a cross-complaint for indemnity may be filed pursuant to subdivision (b) of Section 428.10 in an action which has been brought within the time period set forth in subdivision (a) of this section.

(d) Nothing in this section shall be construed as extending the period prescribed by the laws of this state for bringing any action.

(e) The limitation prescribed by this section shall not be asserted by way of defense by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement, at the time any deficiency in the improvement constitutes the proximate cause for which it is proposed to bring an action.

(f) This section shall not apply to actions based on willful misconduct or fraudulent concealment.

(g) The 10-year period specified in subdivision (a) shall commence upon substantial completion of the improvement, but not later than the date of one of the following, whichever first occurs:

- (1) The date of final inspection by the applicable public agency.
- (2) The date of recordation of a valid notice of completion.
- (3) The date of use or occupation of the improvement.
- (4) One year after termination or cessation of work on the improvement.

The date of substantial completion shall relate specifically to the performance or furnishing design, specifications, surveying, planning, supervision, testing, observation of construction or construction services by each profession or trade rendering services to the improvement.

337.2. Where a lease of real property is in writing, no action shall be brought under Section 1951.2 of the Civil Code more than four years after the breach of the lease and abandonment of the property, or more than four years after the termination of the right of the lessee to possession of the property, whichever is the earlier time.

337.5. Within 10 years:

1. An action upon any bonds or coupons issued by the State of California.

2. An action upon any general obligation bonds or coupons, not secured in whole or in part by a lien on real property, issued by any county, city and county, municipal corporation, district (including school districts), or other political subdivision of the State of California.

3. An action upon a judgment or decree of any court of the United States or of any state within the United States.

337.6. Notwithstanding the provisions of Section 337.5 of this code actions may be brought on bonds or coupons as set forth in subsection 2 of said section, against which the statute of limitations ran on or after August 27, 1937; provided, such actions are brought on or before June 30, 1959. Upon presentation for payment they shall be registered and payment shall not be made thereon until the next fiscal year following presentation unless available funds are sufficient to first pay obligations which are due or will become due from the same fund during the fiscal year of presentation and during the next succeeding six months. Interest shall not be paid on bonds or coupons registered for the purpose of this section.

~~338. Within three years:~~

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for trespass upon or injury to real property.

(c) An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property. The cause of action in the case of theft, as defined in Section 484 of the Penal Code, of any article of historical, interpretive, scientific, or artistic significance is not deemed to have accrued until the discovery of the whereabouts of the article by the aggrieved party, his or her agent, or the law enforcement agency that originally investigated the theft.

(d) An action for relief on the ground of fraud or mistake. The cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the

fraud or mistake.

(e) An action upon a bond of a public official except any cause of action based on fraud or embezzlement is not deemed to have accrued until the discovery, by the aggrieved party or his or her agent, of the facts constituting the cause of action upon the bond.

(f) (1) An action against a notary public on his or her bond or in his or her official capacity except that any cause of action based on malfeasance or misfeasance is not deemed to have accrued until discovery, by the aggrieved party or his or her agent, of the facts constituting the cause of action.

(2) Notwithstanding paragraph (1), an action based on malfeasance or misfeasance shall be commenced within one year from discovery, by the aggrieved party or his or her agent, of the facts constituting the cause of action or within three years from the performance of the notarial act giving rise to the action, whichever is later.

(3) Notwithstanding paragraph (1), an action against a notary public on his or her bond or in his or her official capacity shall be commenced within six years.

(g) An action for slander of title to real property.

(h) An action commenced under Section 17536 of the Business and Professions Code. The cause of action in that case shall not be deemed to have accrued until the discovery by the aggrieved party, the Attorney General, the district attorney, the county counsel, the city prosecutor, or the city attorney of the facts constituting grounds for commencing the action.

(i) An action commenced under the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code). The cause of action in that case shall not be deemed to have accrued until the discovery by the State Water Resources Control Board or a regional water quality control board of the facts constituting grounds for commencing actions under their jurisdiction.

(j) An action to recover for physical damage to private property under Section 19 of Article I of the California Constitution.

(k) An action commenced under Division 26 (commencing with Section 39000) of the Health and Safety Code. These causes of action shall not be deemed to have accrued until the discovery by the State Air Resources Board or by a district, as defined in Section 39025 of the Health and Safety Code, of the facts constituting grounds for commencing the action under its jurisdiction.

(l) An action commenced under Section 1603.1, 1615, or 5650.1 of the Fish and Game Code. These causes of action shall not be deemed to have accrued until discovery by the agency bringing the action of the facts constituting the grounds for commencing the action.

(m) An action challenging the validity of the levy upon a parcel

HEARING PROCEDURE

**Administrative Civil Liabilities against
Nevada County Sanitation District No. 1
Lake of the Pines Wastewater Treatment Facility
Nevada County**

This is the time and place for a public hearing to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the Regional Board will consider whether to adopt the proposed assessment, modify it or reject it. If it adopts an assessment the Regional Board will issue an Administrative Civil Liability Order.

This hearing will be conducted in accordance with the Meeting Procedures published with the meeting agenda and with the applicable Notice of Public Hearing.

The Regional Board will be advised by Pamela Creedon, Executive Officer of the Regional Board, Ken Landau, Assistant Executive Officer, and Lori Okun, Senior Staff Counsel for the Regional Board. The Regional Board's Enforcement Team is comprised of: Jack DelConte, Assistant Executive Officer; Wendy Wyels, Environmental Program Manager I; Patricia Leary, Sr. WRC Engineer; and Barry Hilton, WRC Engineer. Patrick Pulupa, Staff Counsel, will represent the Enforcement Staff at the Regional Board hearing. The Board Members, the EO, and Lori Okun have not engaged in any substantive conversations regarding the issues involved in this proceeding with the Enforcement Team or its representative. Pamela Creedon conducts general oversight over the staff's enforcement activities, but has not exercised any authority or discretion over the Enforcement

HEARING PROCEDURE

Team with respect to this matter. Lori Okun is normally assigned to supervise Patrick Pulupa, however, she is not acting as his supervisor for this proceeding. Patrick Pulupa is currently advising the Regional Board in other, unrelated matters, but neither he nor the Enforcement Team will be advising the Regional Board in this matter. The Enforcement Team is considered a party for the purposes of this proceeding.

At this time evidence should be introduced on the following issues:

- 1. Whether Nevada County Sanitation District No. 1 violated provisions of Waste Discharge Requirements (WDRs) Order No. 95-114 and R5-2002-0095 (NPDES No. CA0081612), and;**
- 2. Whether the Board should order the Nevada County Sanitation District No. 1 to pay an Administrative Civil Liability penalty totaling \$129,000, or some other amount, for the violations, or whether the Board should take some alternate action.**

All persons expecting to testify, please stand at this time, raise your right hand and take the following oath:

**"Do you swear the testimony you are about to give is the truth?"
If so, answer "I do."**

Designated parties are as follows:

HEARING PROCEDURE

- **Regional Board Enforcement staff**
- **Nevada County Sanitation District No. 1**

The Designated Parties are subject to cross-examination.

The Regional Board staff and Nevada County Sanitation District No. 1 will each be allowed a total of 25 minutes during this hearing for direct testimony, rebuttal testimony, cross-examination of other designated parties, a closing statement, and any other presentation to the Board. The Parties may use their time as they choose. The Chair may modify these procedures and time allocations as needed and upon request. The timer will be adjusted to show the time remaining for the party speaking. At the discretion of the Chair, the timer may be stopped for procedural discussions, questions from Board members, or other causes.

All other parties are interested persons, and shall limit their testimony to three (3) minutes.

A timer will be used.

The order of this hearing is as follows:

- 1. Testimony by Regional Board staff followed by cross-examination of Regional Board staff**
- 2. Testimony by Nevada County Sanitation District No. 1, followed by cross-examination of Nevada County Sanitation District No. 1**
- 3. Comments by interested persons**
- 4. Rebuttal Testimony and Closing Statement by Nevada County Sanitation District No. 1**

