CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0580

MANDATORY PENALTY
IN THE MATTER OF

PLANADA COMMUNITY SERVICES DISTRICT
WASTEWATER TREATMENT FACILITY
MERCED COUNTY

This Complaint is issued to the Planada Community Services District (Planada CSD) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL), 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) Orders 97-123 and R5-2005-0009 (NPDES No. CA0078950) at its Wastewater Treatment Facility (Facility or WWTF).

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

1. The Planada CSD (hereafter Discharger) owns and operates a wastewater collection, treatment, and disposal system and provides sewerage service for the community of Planada. Treated municipal wastewater is discharged to Miles Creek, a water of the United States and a tributary to the San Joaquin River, a water of the United States.

2. On 20 June 1997, the Central Valley Water Board issued WDRs Order 97-123 to regulate the Facility's discharge of treated wastewater to Miles Creek. On 27 January 2005, the Central Valley Water Board issued WDRs Order R5-2005-0009, which prescribed new requirements for the discharge and rescinded WDRs Order 97-123.

3. CWC section 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, in part:

> 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.

4. CWC section 13385.1(a)(1) states:

> For purposes of subdivision (h) of Section 13385, a "serious violation" also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.

5. CWC section 13323 states, in part, that:

> 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.

6. WDRs Order 97-123, Effluent Limitation B.1 prescribes, in part, the following limitations:

Constituent	Units	Monthly Average	Weekly Average	7-sample Median	Daily Maximum
5-day Biochemical Oxygen Demand (BOD_5)	mg/L	10	15		20
Total Suspended Solids (TSS)	mg/L	10	15		20
Total Coliform Organisms (TCO)	MPN/100 mL	---	---	2.2	23

7. WDRs Order 97-123, Effluent Limitation B.3, states, "The discharge shall not have a pH less than 6.5 nor greater that 8.5."

8. WDRs Order R5-2005-0009, Effluent Limitation B.2, states, "The discharge shall not have a pH less than 6.5 standard units nor greater than 8.5 standard units at any time."

9. WDRs Order R5-2005-0009, Effluent Limitation B.4, prescribes, in part, a limitation for average monthly effluent Conductivity @ 25°C (EC) of 700 µmhos/cm.

10. WDRs Order R5-2005-0009, Effluent Limitation B.5, prescribes interim and final effluent limitations for four California Toxic Rule (CTR) constituents, three of which are trihalomethane (THM) constituents, that are to be implemented in accordance with the conditions and final compliance dates set forth in Provision G.7. Effluent Limitation B.5.b prescribes, in part, the following interim CTR effluent limitations:

Constituent	Units	Average Monthly	Maximum Daily
Carbon Tetrachloride	µg/L	0.45	0.9
Chlorodibromo-methane	µg/L	1.6	2.1
Dichlorobromo-methane	µg/L	6	12

11. WDRs Order R5-2005-0009, Effluent Limitation B.6, prescribes interim and final effluent limitations for conventional pollutants and for bacteria that are to be implemented in accordance with the conditions and final compliance dates set forth in Provision G.8. Effluent Limitation B.6.b prescribes, in part, the following interim effluent limitations:

Constituent	Units	Monthly Average	Weekly Average	7-sample Median	Daily Maximum
BOD_5	mg/L	30	45		60
	lbs/day	133[1]	199[1]		265[1]
TSS	mg/L	30	45		60
	lbs/day	133[1]	199[1]		265[1]
TCO	MPN/100 mL	---	---	23	240

[1] Based upon a design flow of 0.53 million gallons per day

12. On 4 September 2008, Central Valley Water Board staff (staff) issued the Discharger a Notice of Violation and a draft Record of Violations identifying violations of WDRs Orders 97-123 and R5-2005-0009 that are subject to Mandatory Minimum Penalties (MMPs). The draft Record of Violations covers the period of 1 May 2004 through 30 June 2008. According to the Discharger's self-monitoring reports, the Discharger committed eight (8) serious violations of Group I Pollutant effluent limitations (each exceeding the prescribed effluent limitation by more than 40 percent) and five (5) serious violations of Group II Pollutant effluent limitations (each exceeding the prescribed effluent limitation by more than 20 percent) subject to MMPs pursuant to CWC section 13385(h)(1), and sixty nine (69) non-serious violations of effluent limitations, of which sixty six (66) are chronic violations subject to MMPs pursuant to CWC section 13385(i).

13. On 12 September 2008, the Discharger met with staff to discuss the 4 September 2008 Notice of Violation and draft Record of Violations. The Discharger acknowledged the violations identified in the Record of Violations, which is included as Attachment A to this

Complaint. During the meeting, the Discharger indicated its intent to implement and complete a compliance project that is designed to correct the violations within five years.

14. The total amount of the MMPs assessed for the violations cited in Attachment A is $246,000.

15. CWC section 13385 (k)(1) states, in part:

> In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works, if the state board or the regional 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 board, excluding any provision in the policy that is inconsistent with this section.
>
> (C) The publicly owned treatment works has prepared a financing plan to complete the compliance project.

16. CWC section 13385 (k)(2) states, in part:

> For the purposes of this subdivision, "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 rural county, with a financial hardship as determined by the state board after 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.

17. On 29 August 2008, staff requested State Water Resources Control Board (State Water Board) staff to evaluate the Discharger's eligibility for designation as a small community with a financial hardship.

18. On 2 September 2008, staff received a memorandum from the Executive Director of the State Water Board confirming that the Discharger's WWTF is a publicly owned treatment works serving a small community with a financial hardship within the meaning of CWC section 13385(k)(2). This memorandum is included as Attachment B to this Complaint.

19. On 23 June 2005, the Central Valley Water Board issued Administrative Civil Liability Order R5-2005-0076 based on findings of violations of WDRs Order 97-123. The MMPs totaled two hundred fifty-five thousand dollars ($255,000). Pursuant to CWC section 13385(k), the Central Valley Water Board suspended payment of the MMPs as the Discharger proposed to spend an equivalent amount towards completion within five years of an approved compliance project designed to correct the violations. When the full amount of the $255,000 is spent on the project, the penalties will be permanently suspended. Funds

spent pursuant to ACL Order R5-2005-0076 may not be used to satisfy the penalty assessed in this Complaint.

20. 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 (Public Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

PLANADA COMMUNITY SERVICES DISTRICT, WASTEWATER TREATMENT FACILITY, IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **two hundred forty-six thousand dollars ($246,000)**.

2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **5/6 February 2009**, unless the Discharger does either of the following **by 30 December 2008**:

   a) Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **two hundred forty-six thousand dollars ($246,000)**; or

   b) Agrees to enter into settlement discussions with the Central Valley 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 Central Valley Water Board along with a letter describing the issues to be discussed. This includes documentation that may be submitted to the Board under Finding 13, above.

3. If a hearing on this matter is held, the Central Valley 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.

_____
LOREN J. HARLOW, Assistant Executive Officer

_____

Attachment A: Record of Violations
Attachment B: State Water Board memorandum dated 2 September 2008 from Dorothy Rice to Loren J. Harlow

JKW: 11/17/08

planada_wwtf_aclc.doc
CIWQS Regulatory Measure 355342

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 Planada Community Services District (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0580 (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 (Central Valley 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 **two hundred forty-six thousand dollars ($246,000)** by check, which contains a reference to "ACL Complaint R5-2008-0580" made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **30 December 2008** or this matter will be placed on the Central Valley 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 Central Valley Water Board receive new information or comments during this comment period, the Central Valley 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 Central Valley 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. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)*** I certify that the Discharger will promptly engage the Central Valley 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. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley 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 Central Valley 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. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

_____
(Print Name and Title)

_____
(Signature)

_____
(Date)

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0580

PLANADA CSD WWTF
RECORD OF VIOLATIONS (1 May 2004 to 30 June 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program Nos. 97-123 and R5-2005-0009)

Violation ID[1]	Violation Date	Violation Type[2]	Violation Description[3]	MMP Type[4]
778957	5/07/04	OEV	5M; pH; 6.5-8.5; I; 8.8	CHRONIC[5]
258119	5/11/04	OEV	5M; pH; 6.5-8.5; I; 6.4	CHRONIC
258120	5/17/04	OEV	5M; pH; 6.5-8.5; I; 6.2	CHRONIC
778948	5/18/04	CAT1	5M; TSS; 45; mg/L; W; 64	SERIOUS
778947	5/25/04	CAT1	5M; BOD; 45; mg/L; W; 46	CHRONIC
778952	5/25/04	CAT1	5M; TSS; 45; mg/L; W; 72	SERIOUS
778954	5/31/04	CAT1	5M; TSS; 30; mg/L; M; 38.25	CHRONIC
778960	6/04/04	OEV	6M; pH; 6.5-8.5; I; 6.4	CHRONIC
778941	7/02/04	OEV	7M; pH; 6.5-8.5; I; 8.64	CHRONIC
266066	7/08/04	OEV	7M; TCO; 240; MPN/100 mL; D; 1600	CHRONIC
778968	7/08/04	OEV	7M; TCO; 240; MPN/100 mL; D; 900	CHRONIC
778943	7/16/04	OEV	7M; pH; 6.5-8.5; I; 8.7	CHRONIC
266065	7/23/04	OEV	7M; pH; 6.5-8.5; I; 9.1	CHRONIC
778963	7/27/04	OEV	7M; TCO; 23; MPN/100 mL; 7DM; 30	CHRONIC
266067	7/29/04	OEV	7M; TCO; 240; MPN/100 mL; D; 500	CHRONIC
778868	8/02/04	OEV	8M; pH; 6.5-8.5; I; 8.6	CHRONIC
778945	8/12/04	OEV	7M; pH; 6.5-8.5; I; 8.6	CHRONIC
255726	8/24/04	OEV	8M; TCO; 240; MPN/100 mL; D; 1600	CHRONIC
778940	8/26/04	OEV	8M; TCO; 23; MPN/100 mL; 7DM; 110	CHRONIC
267541	3/8/05	OEV	3M; TCO; 23; MPN/100 mL; 7DM; 30	EXEMPT
267542	3/10/05	OEV	3M; TCO; 23; MPN/100 mL; 7DM; 30	EXEMPT
267543	3/17/05	OEV	3M; TCO; 23; MPN/100 mL; 7DM; 30	EXEMPT
232472	3/29/05	OEV	3M; TCO; 23; MPN/100 mL; 7DM; 34	CHRONIC
269272	4/05/05	OEV	4M; TCO; 23; MPN/100 mL; 7DM; 30	CHRONIC
269280	4/05/05	OEV	4M; TCO; 240; MPN/100 mL; D; 900	CHRONIC
269273	4/07/05	OEV	4M; TCO; 23; MPN/100 mL; 7DM; 34	CHRONIC
269274	4/12/05	OEV	4M; TCO; 23; MPN/100 mL; 7DM; 80	CHRONIC
269281	4/12/05	OEV	4M; TCO; 240; MPN/100 mL; D; >1600	CHRONIC
269275	4/14/05	OEV	4M; TCO; 23; MPN/100 mL; 7DM; 80	CHRONIC
269283	4/14/05	OEV	4M; TCO; 240; MPN/100 mL; D; 300	CHRONIC
269284	4/21/05	OEV	4M; TCO; 240; MPN/100 mL; D; 500	CHRONIC

Violation ID[1]	Violation Date	Violation Type[2]	Violation Description[3]	MMP Type[4]
269276	4/21/05	OEV	4M; TCO; 23; MPN/100 mL; 7DM; 300	CHRONIC
269277	4/22/05	OEV	4M; TCO; 23; MPN/100 mL; 7DM; 300	CHRONIC
269285	4/22/05	OEV	4M; TCO; 240; MPN/100 mL; D; 300	CHRONIC
269278	4/26/05	OEV	4M; TCO; 23; MPN/100 mL; 7DM; 300	CHRONIC
269279	4/28/05	OEV	4M; TCO; 23; MPN/100 mL; 7DM; 300	CHRONIC
269286	4/30/05	CAT1	4M; TSS; 30; mg/L; M; 31	CHRONIC
778867	5/01/05	OEV	3M; TCO; 240; MPN/100 mL; D; 300	CHRONIC
778854	8/09/05	CAT2	3Q; Carbon Tetrachloride;0.45; µg/L; M; 1.1	SERIOUS
778857	8/09/05	CAT2	3Q; Carbon Tetrachloride; 0.9; µg/L; D; 1.1	SERIOUS
778861	8/31/05	CAT2	3Q; Bromodichloromethane; 6; µg/L; M; 12	SERIOUS
778864	10/04/05	CAT1	10M; TSS; 45; µg/L; W; 47	CHRONIC
778846	11/10/05	OEV	11M; TCO; 240; MPN/100 mL; D; 500	CHRONIC
778829	1/03/06	CAT1	1M; TSS; 60; mg/L: D; 65	CHRONIC
778833	1/03/06	CAT1	1M; TSS; 45; mg/L; W; 65	SERIOUS
778831	1/31/06	CAT1	1M; TSS; 30; mg/L: M; 34.8	CHRONIC
696670	4/18/06	CAT1	4M; BOD; 60; mg/L; D; 130	SERIOUS
778835	4/18/06	CAT1	4M; BOD; 45; mg/L; W ; 130	SERIOUS
778840	4/18/06	CAT1	4M; TSS; 45; mg/L; W; 59	CHRONIC
696668	4/25/06	OEV	2M; EC; 700; µmhos/cm; M; 820	CHRONIC
778842	4/25/06	CAT2	1Q; Carbon Tetrachloride; 0.45; µg/l; M; 0.58	SERIOUS
778837	4/30/06	CAT1	4M; BOD; 30; mg/L; M; 47.5	SERIOUS
696673	5/04/06	OEV	5M; TCO; 240; MPN/100 mL; D; 350	CHRONIC
778844	5/04/06	CAT1	5M; TSS; 45; mg/L; W; 52	CHRONIC
696674	6/27/06	OEV	6M; TCO; 240; MPN/100 mL; D; 900	CHRONIC
696677	8/22/06	OEV	8M; pH; 6.5-8.5; I; 6.39	CHRONIC
696681	8/30/06	OEV	8M; EC; 700; µmhos/cm; M; 768	CHRONIC
696682	9/30/06	OEV	9M; EC; 700; µmhos/cm; M; 749	CHRONIC
696683	10/31/06	OEV	10M; EC; 700; µmhos/cm; M; 729.4	CHRONIC
696684	11/30/06	OEV	11M; EC; 700; µmhos/cm; M;724.25	CHRONIC
778796	4/03/07	OEV	4M; TCO; 240; MPN/100 mL; D; 500	CHRONIC
778786	4/10/07	CAT1	4M; BOD; 45; mg/L; W; 50	CHRONIC
778788	4/10/07	CAT1	4M; TSS; 45; mg/L; W; 51	CHRONIC

Violation ID[1]	Violation Date	Violation Type[2]	Violation Description[3]	MMP Type[4]
696688	4/30/07	CAT1	4M; TSS; 30; mg/L: M; 34.75	CHRONIC
696686	4/30/07	CAT1	4M; BOD; 30; mg/L; M; 35.75	CHRONIC
696689	5/01/07	OEV	5M; EC; 700; µmhos/cm; M; 710	CHRONIC
696690	6/30/07	OEV	6M; EC; 700; µmhos/cm; M; 744	CHRONIC
696695	7/10/07	CAT2	2Q; Bromodichloromethane; 12; ug/l; D; 14	CHRONIC
696692	7/17/07	OEV	7M; EC; 700; µmhos/cm; M; 801	CHRONIC
778809	7/31/07	CAT2	2Q; Bromodichloromethane; 6; ug/l; M; 14	SERIOUS
778811	7/31/07	CAT2	2Q; Dibromochloromethane; 1.6; ug/l; M; 1.8	CHRONIC
778815	8/07/07	OEV	8M; EC; 700; µmhos/cm; M; 919	CHRONIC
778816	9/11/07	OEV	9M; EC; 700; µmhos/cm; M; 718	CHRONIC
778819	10/09/07	CAT1	3Q; Bromodichloromethane; 6; ug/l; M; 9.2	SERIOUS
778820	10/09/07	CAT1	3Q; Dibromochloromethane; 1.6; ug/l; M; 2.1	CHRONIC
778825	12/05/07	OEV	12M; EC; 700; µmhos/cm; M; 704	CHRONIC
696651	1/31/08	OEV	1M; EC; 700; µmhos/cm; M; 719	CHRONIC
778774	3/31/08	OEV	3M; EC; 700; µmhos/cm; M; 742	CHRONIC
339408	4/30/08	OEV	4M; EC; 700; µmhos/cm; M; 718	CHRONIC
778776	5/31/08	OEV	5M; EC; 700; µmhos/cm; M; 762	CHRONIC
778779	6/03/08	CAT1	6M; TSS; 45; mg/L; W; 46	CHRONIC
778781	6/10/08	CAT1	6M; TSS; 45; mg/L; W; 54	CHRONIC
778782	6/17/08	CAT1	6M; TSS; 45; mg/L; W; 50	CHRONIC
778778	6/30/08	OEV	6M; EC; 700; µmhos/cm; M; 725	CHRONIC
778784	6/30/08	CAT1	6M; TSS; 30; mg/L; M; 44.25	SERIOUS

1 Violation ID in CIWQS

2 Abbreviations used in this table are defined in table of abbreviations below.

3 Violation Descriptions are coded as follows: Reporting period (e.g., 4M = April); constituent or parameter (e.g., pH, EC); effluent limitation; units; limitation period; and reported result.

4 Chronic non-serious and serious violations are subject to MMPs. Exempt non-serious violations fall within the first three violations in a six-month period, thus are exempt.

5 Violations supporting the classification of Violation ID 778957 as “CHRONIC” were the three violations of the daily maximum effluent limitation for total coliform organisms that occurred on 3/23/04, 4/27/04, and 4/29/04, which were all previously addressed by ACL Order R5-2005-0076 adopted 2 August 2005.

Abbreviation	Definition
7DM	7-day median
BOD	5-day biochemical oxygen demand
CAT1	Violation of Group I pollutant effluent limitation as defined in Enforcement Policy
CAT2	Violation of Group II pollutant effluent limitation as defined in Enforcement Policy
CIWQS	California Integrated Water Quality System database
D	Daily
EC	Electrical conductivity
I	Instantaneous
M	Monthly
MMP	Mandatory Minimum Penalty
MPN	Most probable number
OEV	Other effluent violation as defined in Enforcement Policy
TCO	Total coliform organisms
TSS	Total suspended solids
W	Weekly

VIOLATION SUMMARY				
	MMP TYPE			
Violation Type	CHRONIC	EXEMPT	SERIOUS	Grand Total
CAT1	16		8	24
CAT2	2		5	7
OEV	51	3		54
Grand Total	69	3	13	85

MMP VIOLATION TYPE	**VIOLATION PERIOD 5/1/04 TO 6/30/08**
Serious Violations of Group I Pollutant Effluent Limitations Subject to MMPs:	8
Serious Violations of Group II Pollutant Effluent Limitations Subject to MMPs:	5
Chronic Non-serious Violations Subject to MMPs:	69
Total Violations Subject to MMPs:	82
Non-serious Violations Exempt from MMPs:	3

Mandatory Minimum Penalty = (13 Serious Violations + 69 Chronic Violations) x $3,000 = $246,000

State Water Resources Control Board

Executive Office

Linda S. Adams
Secretary for Environmental Protection

Tam M. Doduc, Board Chair
1001 I Street • Sacramento, California 95814 • (916) 341-5615
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
Fax (916) 341-5621 • http://www.waterboards.ca.gov

Arnold Schwarzenegger
Governor

DR
Loren Harlow
Jim Pedri
JED
WSW
LW

TO: Loren J. Harlow
Assistant Executive Officer
Regional Water Quality Control Board
Central Valley – Fresno Branch Office

FROM: Dorothy Rice
Executive Director

DATE: September 2, 2008

SUBJECT: **DETERMINATION OF PLANADA AS A SMALL COMMUNITY WITH FINANCIAL HARDSHIP**

In response to your request, dated August 15, 2008, for a determination as to whether the community of Planada qualifies as a small community with a financial hardship, I am forwarding the analysis and recommendation (Attachment 1) prepared by the Office of Research, Planning and Performance (ORPP). Attachment 2 to this memo contains my approval of the recommendation to designate Planada as a small community with a financial hardship.

If you have any questions regarding this determination, please contact me at (916) 341-5893 or Caren Trgovcich at (916) 341-5727.

Attachments

cc: Reed Sato, Director
Office of Enforcement

Pamela Creedon
Executive Officer
Regional Water Quality Control Board
Central Valley Region

RECEIVED
SACRAMENTO
CVRWQCB
08 SEP -4 PM 1:13

State Water Resources Control Board

Linda S. Adams
Secretary for Environmental Protection

Executive Office

Tam M. Doduc, Board Chair
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Arnold Schwarzenegger
Governor

TO: Gerald Horner, Economist
Office of Research, Planning, and Performance

Caren Trgovcich, Director
Office of Research, Planning, and Performance

FROM: Dorothy Rice
Executive Director

DATE: September 2, 2008

SUBJECT: **IDENTIFICATION OF PLANADA AS A SMALL COMMUNITY WITH A FINANCIAL HARDSHIP**

I am approving the recommendation to designate Planada as a small community with a financial hardship. This approval is based upon the analysis and factors used to determine financial hardship described in your memo dated August 15, 2008, regarding small communities with a financial hardship.

If you have any questions, please contact me at (916) 341-5615.

cc: Reed Sato, Director
Office of Enforcement

Loren J. Harlow
Assistant Executive Officer
Regional Water Quality Control Board
Central Valley Region – Fresno Branch Office

Linda S. Adams
Secretary for Environmental Protection

State Water Resources Control Board

Office of Research, Planning, and Performance
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Arnold Schwarzenegger
Governor

TO: Dorothy Rice
Executive Director

Caren Trgovcich, Director
Office of Research, Planning, and Performance

FROM: Gerald Horner
Economist

DATE: August 29, 2008

SUBJECT: **REQUEST FOR DETERMINATION OF A SMALL COMMUNITY WITH A FINANCIAL HARDSHIP-COMMUNITY OF PLANADA**

On August 15, 2008, Loren Harlow, Assistant Executive Officer, Central Valley Regional Water Quality Control Board, requested concurrence on previous determinations regarding the status of the community of Planada as a Small Community with a Financial Hardship. In reviewing the earlier determination, I have concluded that the community of Planada does qualify as Small Community with a Financial Hardship. I have updated my earlier analysis below to reflect recent developments in the factors that can be used to evaluate financial hardship.

California Water Code section 13385(k)(2) defines a "publicly owned treatment works serving a small community" as

> "a publicly owned treatment works serving a population of 10,000 persons or fewer or a rural county, with a financial hardship as determined by the state board after 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."

Determining whether a given publicly owned treatment works (POTW) is "serving a small community" entails two separate determinations: (1) whether the POTW is either situated within a rural county or has a population of 10,000 or less; and (2) whether the POTW's service area has a "financial hardship."

1. Rural County/Population Cap

The first question is whether Planada is located in a "rural county." Planada is located in Merced County. The State Water Board's Water Quality Enforcement Policy defines a "rural county" as a county classified by the Economic Research Service, United States Department of Agriculture (ERS, USDA) with a rural-urban continuum code of four through nine. Merced County has a rural-urban continuum code of three and therefore is not designated as a rural county.

2. Financial Hardship

The Water Quality Enforcement Policy (Enforcement Policy) considers the population of the area served and the median household income of the area served in determining financial hardship. The Enforcement Policy's discussion on financial hardship predates the most recent amendment of Section 13385(k)(2), however. Prior to the amendment, the law provided no guidance on how to evaluate financial hardship, only that the finding would be "as determined by the state board." (Water Code, section 79084.) Operating under that open-ended mandate, the State Water Board defined "financial hardship" in the Enforcement Policy in terms of median household income (MHI).

The subsequent amendment of Section 13385(k)(2) suggested additional factors (rate of unemployment and low population density) beyond MHI for the State Water Board to consider. The amendment did not purport to dictate an exclusive list, leaving the final determination of which factors to consider and what weight to give each of them entirely up to the State Water Board's discretion. Nevertheless, by identifying the additional factors, the amendment strongly suggests that the State Water Board look beyond median household income when determining financial hardship.

With that backdrop in mind, we in the Office of Research, Planning and Performance have reconsidered the approach for determining financial hardship. While we decided to continue to use median household income as a factor, we also developed additional criteria for assessing whether the POTW listed in Mr. Harlow's request serves a small community with a "financial hardship." The full list of criteria we considered are:

1. Median household income (the MHI divides the income distribution into two equal groups, one having incomes above the median, and the other having incomes below the median) for the community is less than 80 percent of the California MHI;

2. The community has an unemployment rate of 10 percent or greater (All civilians 16 years old and over are classified as unemployed if they (1) were neither "at work" nor "with a job but not at work" during the reference week,

and (2) were actively looking for work during the last four weeks, and (3) were available to accept a job. Also included as unemployed are civilians who did not work at all during the reference week, were waiting to be called back to a job from which they had been laid off, and were available for work except for temporary illness. The 10 percent criterion is similar to the 150 percent of the national unemployment rate used by some federal agencies in defining economically distressed communities. The national employment rate varies between five to six percent. 150 percent of that amount is seven and half percent to nine percent.); or

3. Twenty percent (20 percent) of the population is below the poverty level (Following the Office of Management and Budget's (OMB's) Directive 14, the Census Bureau uses a set of money income thresholds that vary by family size and composition to detect who is poor. If the total income for a family or unrelated individual falls below the relevant poverty threshold, then the family or unrelated individual is classified as being "below the poverty level." The 20 percent threshold is used by some federal agencies in determining economically distressed communities).

Planada can be considered a small community with a financial hardship because the population served of 4,357 is less than 10,000, and the MHI of $24,288 is less than 80 percent the California MHI[1].

Please contact me at (916) 341-5279 or via email should you have questions or concerns.

cc: Reed Sato, Director
Office of Enforcement

[1] In 2000 the California MHI was $47,493. 80 percent of that is $37,994.