

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0592

MANDATORY PENALTY  
IN THE MATTER OF

CITY OF PORTOLA  
PORTOLA WASTEWATER TREATMENT PLANT  
PLUMAS COUNTY

This Administrative Civil Liability Complaint is issued to the City of Portola (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, and 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 R5-2009-0093 (NPDES No. CA0077844).

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

1. The Discharger owns and operates a municipal wastewater treatment plant providing sewerage service for the City of Portola. Treated wastewater, between 1 November to 15 May, may be discharged to a small constructed wetlands, then to the Middle Fork of the Feather River, a water of the United States. During the period of 16 May to 31 October, and at times when flow in the Feather River at the point of Discharge is less than 40 cubic feet per second, wastewater is held in ponds to be discharged at a later date.
2. On 8 October 2009, the Central Valley Water Board issued WDRs Order R5-2009-0093 (NPDES No. 0077844) to the City of Portola, to regulate the discharge of treated municipal wastewater, which contained new requirements and rescinded WDRs Order R5-2003-0110.
3. On 11 May 2011, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Order R5-2011-0579 for mandatory minimum penalties in the amount of \$9,000 for effluent violations from 22 March 2010 through 30 April 2010. On 1 August 2011, the Discharger submitted the Waiver Form with option 2 checked; which waived the 90-day hearing requirement in order to engage in settlement discussions with the Central Valley Water Board.
4. This Complaint covers the period of 22 March 2011 through 26 April 2011. On 4 August 2011, the Central Valley Water Board staff issued the Discharger a draft Record of Violations (ROV) for the above time period. Staff has discussed the ROV with the Discharger; none of the violations are being contested.

5. CWC section 13385(h) requires assessment of mandatory penalties and states, 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 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.

6. CWC section 13385 (i) requires the assessment of mandatory penalties and states in part, the following:

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.

7. 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.

8. WDRs Order R5-2009-093 Effluent Limitations A.1. includes, in part, the following limitations:

- A. Effluent Limitations – Discharge Point D-001

The Discharger shall maintain compliance with the following effluent limitations at Discharge Point D-001, with compliance measured at Monitoring Location EFF-001 as described in the attached MRP (Attachment E):

- a. The Discharger shall maintain compliance with the effluent limitations specified in Table 6:

**Table 6. Effluent Limitations**

The Discharger shall maintain compliance with the following effluent limitations at Discharge Point 001

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
BOD 5-day @ 20°C	mg/L	30	45	90		
	lbs/day <sup>1</sup>	1	1	1		
Total Suspended Solids	mg/L	30	45	90		
	lbs/day <sup>1</sup>	1	1	1		
pH	standard units				6.0	9.0
Ammonia, Total as N	mg/L	23		45		
Copper, Total	ug/L	53		106		

<sup>1</sup> The average mass discharge for the period from 1 November to 31 April shall not exceed 125.1 lbs/day.

- b. Percent Removal: The average monthly percent removal of BOD 5-day 20°C and total suspended solids shall not be less than 65 percent.
9. According to the Discharger’s self-monitoring reports, the Discharger committed one (1) serious Group I violation of the above effluent limitations contained in WDRs Order R5-2009-0093 during the period beginning 1 March 2011, and ending 30 April 2011. This violation is defined as serious because the measured concentration of a Group I constituent exceeded maximum prescribed levels in WDRs Order R5-2009-0093 by 40 percent or more. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
  10. According to the Discharger’s self-monitoring reports, the discharger committed two (2) non-serious Group I violations of the above effluent limitations contained in WDRs Order R5-2009-0093 during the period beginning 1 March 2011, and ending 30 April 2011. Both of these violations are not subject to mandatory minimum penalties, CWC section 13358(i)(1), as they fall within the first three violations during a six month period. There is no mandatory minimum penalty associated with the two non-serious violations.
  11. The total amount of the mandatory minimum penalties assessed for the cited effluent violations is **three thousand dollars (\$3,000)**. The cited effluent violations are included in Attachment A, a part of this Order.
  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).

**THE CITY OF PORTOLA 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 **three thousand dollars (\$3,000)**.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled **on 30 November or 1 or 2 December 2011**, unless the Discharger does one of the following by **12 October 2011**:
  - a) The Discharger waives the hearing by completing the attached form (checking off the box next to Option #1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **three thousand dollars (\$3,000)**; or
  - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
  - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
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.
4. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

Original signed by

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PAMELA C. CREEDON, Executive Officer

19 September 2011

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(Date)

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the City of Portola (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2011-0592 (hereafter Complaint). 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. The person who has been issued a complaint may waive the right to a hearing."

**(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)**

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **three thousand dollars (\$3,000)** by check that references "ACL Complaint R5-2011-0592" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by 12 October 2011.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. 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

**(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s) and to propose a compliance project. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

**(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

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(Print Name and Title)

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(Signature)

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(Date)

Draft Record of Violations (March - April )

**MANDATORY MINIMUM PENALTIES**  
(Data reported under Monitoring and Reporting Program No. R5-2009-0093)

**Table 1. Effluent Violations**

<b>Violation Date</b>	<b>Pollutant/Parameter</b>	<b>Effluent Limit</b>	<b>Analytical Results</b>	<b>Percentage Over</b>	<b>Violation Type</b>	<b>MMP Amount</b>
3/22/2011	Total Suspended Solids	45 mg/L (Weekly Average)	68 mg/L	51	Serious, Group I	\$3,000.00
3/31/2011	Total Suspended Solids	30 mg/L (Monthly Average)	36 mg/L	20	Non-Serious, Group I	-- <sup>1</sup>
4/26/2011	Total Suspended Solids	45 mg/L (Weekly Average)	55 mg/L	22	Non-Serious, Group I	-- <sup>1</sup>
<b>TOTAL</b>						<b>\$3,000.00</b>

<sup>1</sup>First three non-serious violations in a six-month period are not subject to mandatory minimum penalties.

Violation Types:

- Serious, Group I (Group I Pollutant  $\geq$  40% Exceedance)
- Serious, Group II (Group II Pollutant  $\geq$  20% Exceedance)
- Non-Serious, Group I (Group I Pollutant < 40% Exceedance)
- Non-Serious, Group II (Group II Pollutant < 20% Exceedance)
- Non-Serious, Other WDR Effluent Limitation