

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2011-0522

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 Nevada County Sanitation District No. 1, Lake of the Pines (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") Orders R5-2002-0095 and R5-2009-0031 (NPDES No. CA0081612).

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 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 On 7 June 2002, the Central Valley Water Board issued WDRs Order R5-2002-0095, which contained new requirements and rescinded WDRs Order 95-114. On 23 April 2009, effective 13 June 2009, the Board rescinded WDRs Order R5-2002-0095 and issued WDRs Order R5-2009-0031, which contained new requirements.
3. On 23 July 2009, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Order R5-2009-0552 for mandatory minimum penalties for effluent violations from 1 January 2000 through 31 March 2008. The Discharger paid \$82,000 to the Cleanup and Abatement Account, and agreed to complete a Supplemental Environmental Project (SEP) for \$47,000. The Discharger currently is implementing the SEP.
4. On 23 December 2009, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations (ROV) for effluent limitation violations for the period of 1 April 2008 through 30 September 2009. In its 15 January 2010 response, the Discharger contested a violation in the draft ROV and requested that no penalties be assessed. Board staff considered the Discharger's response and has retained the contested violation, as discussed in detail in Attachment C of this Order. This Order extends the period of record to 31 October 2010.
5. CWC section 13385(h) requires the 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 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.

6. CWC section 13385(l) allows a discharger to complete a Supplemental Environmental Project (SEP) in lieu of paying the full amount of a mandatory penalty, and states, in relevant part:

(l)(1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or the regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).

(2) For the purposes of this section, a "supplemental environmental project" means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section.

7. WDRs Order 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</u> <u>Monthly</u>	<u>Average</u> <u>4-day</u>	<u>Average</u> <u>Daily</u>	<u>Average</u> <u>1-Hour</u>
Aluminum	µg/L	--	87	--	750

8. According to the Discharger's self-monitoring reports, the Discharger committed one Group I serious violation of the above cited effluent limitation in WDRs Order R5-2002-0095 from 1 April 2008 through 12 June 2008 and no effluent limitation violations of WDRs Order R5 2009-0031 from 13 June 2008 through 31 October 2010. The violation is defined as serious because the measured concentration of a Group I constituent exceeded maximum prescribed levels by more than 40 percent on this

occasion. The mandatory minimum penalty for the **one (1)** Group I serious violation is **three thousand dollars (\$3,000)**.

9. The total amount of the mandatory penalty assessed for the cited effluent violation is **three thousand dollars (\$3,000)**. The cited effluent violation is included in Attachment A, a part of this Order. This Order addresses administrative civil liability for the effluent limit violation that is specifically listed in Attachment A as subject to mandatory minimum penalties.
10. The ACL Complaint will be resolved as follows: The Discharger will complete the Supplemental Environmental Project, funding \$3,000 of the project with penalty money. This proposed settlement is governed by the State Water Resources Control Board's Policy on Supplemental Environmental Projects and CWC section 13385(I). The project would not be undertaken in the absence of the enforcement action, and is further described in Attachment B, a part of this Order.
11. This Order constitutes a settlement of the violations herein mentioned. Notice of this settlement was published on the Central Valley Water Board's website, and was provided to all interested parties. The 30-day public notice and comment period mandated by Federal regulations (40 C.F.R. § 123.27) has expired. The Discharger requested a time extension but, in a telephone conversation with Board staff on 23 February 2011, agreed to complete the project within the timeframe set forth in the draft Order. No other comments were received.
12. On 23 April 2009, the Central Valley Water Board delegated the authority to issue Administrative Civil Liability Orders, where the matter is not contested by the Discharger, to the Executive Officer (Resolution R5-2009-0027), or to an Assistant Executive Officer when the Executive Officer is serving as head of the Board's Prosecution Team (Resolution R5-2009-0027). Pamela Creedon is serving as the head of the Board's Prosecution Team for this matter, and therefore Assistant Executive Officer Kenneth Landau has the authority to issue this Order.
13. 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 § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

NEVADA COUNTY SANITATION DISTRICT NO. 1 IS HEREBY GIVEN NOTICE THAT:

1. The Discharger shall be assessed an Administrative Civil Liability in the amount of **three thousand dollars (\$3,000)**.
2. The \$3,000 assessed penalty shall be suspended, pursuant to CWC section 13385(I), pending completion of a Supplemental Environmental Project. The SEP chosen by the Discharger is titled *Additional Testing, Pilot Biosolids/Green Waste Composting and Environmental Remediation*. The SEP Project Description, which includes a list of

deliverables that will be submitted to the Central Valley Water Board throughout the project, can be found as Attachment B, a part of this Order.

3. The Discharger is ultimately responsible for ensuring that the work described in Attachment B is satisfactorily completed. In addition, the Discharger is responsible for submitting all technical reports and quarterly progress reports by the due dates listed in Attachment B. The quarterly progress reports and the Final Report shall also be submitted to the State Water Resources Control Board, Division of Finance.
4. If the final cost of the successfully completed SEP is less than the suspended amount of \$3,000, the Discharger must remit the difference to the *State Water Pollution Cleanup and Abatement Account* by **31 May 2011**, or within 30 days of project completion, whichever comes first.
5. Consistent with the State Water Board's *Policy on Supplemental Environmental Projects*, the Discharger shall reimburse the Central Valley Water Board for the full cost of staff oversight of the SEP. Staff oversight costs are not part of the direct cost of the SEP. By **30 March 2011**, the Discharger shall provide documentation stating that it agrees to pay staff oversight costs, and the name and address to be used for billing purposes.
6. Whenever the Discharger or its agents or subcontractors, or any fiscal agent holding SEP funds, publicize any element of a SEP project, they shall state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action against the Discharger.
7. The Assistant Executive Officer may extend the deadlines contained in this Order if the Discharger demonstrates that unforeseeable contingencies have created delays, provided that the Discharger continues to undertake all appropriate measures to meet the deadlines and makes the extension request in advance of the expiration of the deadline. The Discharger shall make any deadline extension request in writing at least 30 days prior to the deadline. The Discharger must obtain written approval from the Assistant Executive Officer for any significant departures from the project described in Attachment B. Failure to obtain written approval for any significant departures will result in the assessment of the actual cost difference between the portion of the project completed in conformity with the SEP described in Attachment B and the total amount of the suspended penalty.
8. If the Assistant Executive Officer determines that any of the tasks listed in Attachment B are not satisfactorily completed by their respective due date (including any extensions approved by the Assistant Executive Officer), the Assistant Executive Officer may demand payment of the suspended liability that reflects the portion of the SEP that has not been satisfactorily completed. Payment shall be made via check made payable to the *State Water Pollution Cleanup and Abatement Account*, and shall be due within 30 days of the demand. The check shall have written upon it the number of this ACL Order.

9. Should the Discharger fail to take any of the above actions, the Assistant Executive Officer may refer the matter to the State Attorney General for enforcement of the terms of this Order.
10. This Order is final upon signature.

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 Order becomes final, except that if the thirtieth day following the date that this 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. 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.

Original signed by

KENNETH D. LANDAU, Assistant Executive Officer

25 February 2011

DATE

Attachment A: Record of Violations
Attachment B: Supplemental Environmental Project
Attachment C: Response to Comments

BLH:

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2011-0522

Nevada County Sanitation District No. 1
Lake of the Pines Wastewater Treatment Plant
RECORD OF VIOLATIONS (1 April 2008 – 31 October 2010) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs R5-2002-0095 and R5-2009-0031)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
1	30-Apr-09	Aluminum	µg/L	87	132	4-Day	1	831881

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 violation falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.

<u>VIOLATIONS AS OF:</u>	<u>10/31/2010</u>
Group I Serious Violations:	1
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	0
Non-serious Violations Subject to MPs:	0
<u>Total Violations Subject to MPs:</u>	<u>1</u>

Mandatory Minimum Penalty = (1 serious Violation + 0 Non-Serious Violations) x \$3,000 = \$3,000

Attachment B
Administrative Civil Liability Order No. R5-2011-0522

Proposed SEP Project Description

Project Title: Additional Testing, Pilot Biosolids/Green Waste Composting and Environmental Remediation

Geographic area of interest: Tahoe National Forest, including the Bear River watershed

Name of responsible entity: Nevada County Sanitation District No. 1 (Discharger).

Estimated cost for project completion: The Discharger will pay the \$3,000 cost of the project.

Contact Information:

Scott Joslyn
Wastewater Operations Manager
Nevada County Sanitation District No. 1
950 Maidu Ave, Suite 290
Nevada City, CA 95959
(530) 265-7103

Brief description of the project:

This SEP, in support of the SEP in ACL Order R5-2009-0552, provides for additional testing and analyses to answer additional concerns of the US Forest Service with respect to the potential toxicity of biosolids-based compost and the impact of xenobiotics on amphibians. The original SEP involves the creation of local compost, and the subsequent application of the compost to specific mine sites, under the direction of the Forest Service. By applying organic material to barren areas, vegetation can become established, and the hydraulically mined areas can be returned to vibrant forests capable of supporting native vegetation and preventing sediment erosion.

Water body, beneficial use and/or pollutant addressed by this project:

The SEP will allow the SEP in ACL Order R5-2009-0552 to move forward.

Project schedule, budget, and deliverables:

1. Compost Soil analysis. The Discharger will submit a final report showing the analytical results for constituents of concern including 40 CFR 503 criteria, endocrine disrupting chemicals, pharmaceutical and personal care products, and priority pollutants. The accounting must clearly show whether the final cost of the successfully completed SEP is less than, equal to, or more than the suspended liability of \$3,000. If the final cost is less than the suspended liability of \$3,000, the Discharger will submit a check for the difference between the expenditure and the suspended liability of \$3,000. **Due date: 31 May 2011.**

Summarized and edited from documents submitted by Nevada County Sanitation District No. 1
BLH:



Linda S. Adams
Acting Secretary for
Environmental Protection

ATTACHMENT C
California Regional Water Quality Control Board
Central Valley Region

Katherine Hart, Chair



Edmund G. Brown Jr.
Governor

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

TO: Victor Vasquez
Sr. Engineer
NPDES Compliance & Enforcement

FROM: Barry Hilton
NPDES Compliance & Enforcement

DATE: 23 February 2011

SIGNATURE: _____

SUBJECT: RESPONSE TO COMMENTS, NEVADA COUNTY SANITATION DISTRICT 1,
LAKE OF THE PINES WWTP

On 23 December 2009, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations for effluent limitation violations for the period of 1 April 2008 through 30 September 2009. (This Complaint has been extended to address the period through 30 June 2010, during which time no further violations occurred.) The violation in this Order occurred on 30 April 2009, after issuance but before the effective date of Order R5-2009-0031. Therefore, at the time of the violation, the Discharger was required to comply with Order R5-2002-0095.

The Discharger, in its 15 January 2010 response, disagreed with the Record of Violations and requested that no penalties be assessed. Specifically, the Discharger disagreed with the manner that the 4-day average effluent concentration for aluminum was calculated. WDRs Order R5-2002-0095, Effluent Limitations B.1 established an average 4-day aluminum effluent limitation of 87 µg/L. There was one sample during a seven-day period. The Discharger stated that there were four days during which effluent samples were analyzed for aluminum in April 2009: 50 (4/10), 18.8 (4/16), 8.3 (4/23), and 132 µg/L (4/30) with a four sample day average of 52.3 µg/L. The Discharger interpreted the four-day average as the average of the four sample days.

However, when there is only one sample during a designated monitoring period, and if the sample exceeds the average effluent limitation for the monitoring period, the result is a violation for the monitoring period. This determination has been made using the following documents as guidance:

- The California Toxics Rule, 40 CFR 131, states, in part, "...a 4-day averaging period for chronic criteria...means that measured or predicted ambient pollutant concentrations should be averaged over a 4-day period to determine attainment of a chronic criteria."
- The Draft "Total Residual Chlorine and Chlorine-Produced Oxidants Policy of California" (June 2006) defines a four-day average as "...an average of discrete data set in four-day intervals."

- The USEPA “Technical Support Document for Water Quality-Based Toxics Control,” (1991) states”...the 4-day averaging period would imply that concentrations in all samples obtained within any 4-day period should be averaged...”
- Central Valley Water Board staff have consistently utilized single samples per week to determine compliance with the hourly maximum, daily maximum, four-day average, and weekly average.

The Discharger’s 30 April 2009 aluminum sample of 132 µg/L single-day result is also the 4-day average result and violated the four-day average concentration because the sample result was within a continuous four-day period. A four-sample per month average taken once per week for four weeks does not meet the definition of a four-day sample because the samples are not on contiguous consecutive days. Therefore, the violation meets the definition of a serious Group I violation because it is more than 40 percent greater than the effluent limitation and is subject to a mandatory minimum penalty of \$3,000.