

**ADMINISTRATIVE CIVIL LIABILITY ORDER
FOR
CITY OF PLYMOUTH
WASTEWATER TREATMENT PLANT
AMADOR COUNTY**

Introduction

The City of Plymouth (hereby known as “Discharger”) owns and operates a wastewater treatment, storage, and disposal system, which are located approximately two miles west of the City of Plymouth in Amador County. The Discharger’s wastewater system is regulated by Waste Discharge Requirements (WDRs) Order No. 5-01-095, which prescribes requirements for the treatment, storage and disposal of up to 170,000 gallons per day of wastewater (dry weather flow). The Discharger is also regulated under Cease and Desist (C&D) Order No. R5-2005-0006, adopted on 27 January 2005.

On 7 June 2005, the Executive Officer issued Administrative Civil Liability (ACL) Complaint No. R5-2005-0515 because the Discharger failed to submit certain technical reports required pursuant to C&D Order No. R5-2005-0006.

On 29 July 2005, the Discharger submitted a letter stating that it had agreed to pay the \$20,000 ACL and requested that 50% (\$10,000) of the ACL be allocated to a Supplemental Environmental Project (SEP). The proposed SEP would include riparian restoration elements on the stream banks of Sutter Creek at Lions Park (a public park operated by Amador County) in Sutter Creek, Amador County. The Discharger paid the remaining amount of \$10,000 of the ACL on 16 August 2005.

Historical Overview

The wastewater treatment plant (WWTP) consists of an aerated facultative pond, two polishing ponds, chlorination facilities, and a 185 acre-foot unlined effluent storage reservoir. Wastewater disposal occurs through spray irrigation on approximately 85 of the 125 acres of sprayfields owned by the City. The WDRs also allow disposal on land owned by Roy E. Mason, but only after submittal and approval of a Title 22 Engineering Report. That report has not yet been submitted, and therefore waste may not be disposed of on this land.

The Findings of WDRs describe a number of major deficiencies in the Discharger’s wastewater system, and therefore the WDRs requires the Discharger to submit reports addressing upgrades to the facility. The major reports include a water balance, a revenue plan, a groundwater monitoring well installation workplan, a report showing that a stormwater water diversion ditch has been installed around the storage reservoir, and a Long Term Wastewater Management Plan.

The City of Plymouth has failed to comply with a number of the prohibitions, discharge specifications, and provisions prescribed by its WDRs. Violations include, but are not limited to, discharge of waste into surface drainage courses and surface waters, disposal of wastewater to the sprayfield during the winter months, not consistently maintaining a dissolved oxygen concentration above 1.0 mg/l in the wastewater treatment ponds, not consistently meeting the effluent limitation for ammonia as nitrogen, failure to comply with its monitoring and reporting program, failure to submit a report showing that the City has installed a stormwater diversions system around the effluent storage reservoir, and failure to comply with Discharge Specifications B.8, B.9 and B.10 of the WDRs. These three specifications require that the Discharger have enough storage capacity to contain the wastewater flow allowed by the WDRs, all rainfall generated during a 100-year annual precipitation event, and all ancillary infiltration

and inflow, while always maintaining at least two feet of freeboard in the storage reservoir. The Discharger's water balance shows that it cannot meet these three specifications.

The failure to comply with the WDRs has led to the issuance of a number of Notices of Violation, and ultimately, the adoption of a Cease and Desist Order.

Violations of the Cease and Desist Order

Items No. 2 and 3 of the C&D require the submittal of a *Flow Meter Installation Report* and a *Contingency Plan*. Both were due on 28 February 2005. On 2 March 2005, staff notified the Discharger via a telephone call that the two reports were overdue. On 7 March 2005, the Discharger submitted the two reports. Each report was 6 days late.

Item No. 4 of the C&D requires the submittal, by 15 April 2005, of a *Wastewater Pond Aeration Report*. The purpose of this report was to show that aerator units have been installed in the wastewater treatment ponds to provide adequate treatment of the wastewater such that the Discharger would comply with the dissolved oxygen limit of the WDRs. In addition, sufficient aeration will help prevent nuisance/odor conditions and algae growth within the ponds. During the week of 25 April 2005, staff notified the Discharger via telephone that the report was late. The Discharger stated that the report was not submitted because not all of the aerators had been installed. As of the date of the ACL Complaint, the report had not been submitted.

Item Nos. 5 and 6 of the C&D requires the submittal of a *Spray Irrigation Management Plan* and a *Spray Irrigation Improvement Report*. Both were due on 30 April 2005. The purpose of these submittals are to explain (1) how the City will manage its spray irrigation activities to prevent tailwater runoff from entering surface drainage courses and associated buffer zones within the sprayfields, and (2) describe the physical improvements made to the sprayfields to prevent tailwater runoff from entering the surface drainage courses and buffer zones. As of the date of the ACLC, the reports had not been submitted.

Item No. 7 of the C&D requires the submittal of a *Final Revenue Plan*, which was due by 30 May 2005. This plan is to show the cost associated with the necessary improvements/upgrades to the wastewater system, and whether the City has adequate funds to comply. If funds are not available, the Final Revenue Plan is to contain an implementation schedule to acquire the funds

Administrative Civil Liability Complaint

The Discharger has violated California Water Code (CWC) Sections 13301 and 13267 by not submitting the required technical reports, and is subject to a civil liability action. On 7 June 2005, the Executive Officer issued Administrative Civil Liability Complaint No. R5-2005-0515 for \$20,000 to the City of Plymouth.

In determining the amount of any civil liability pursuant to CWC Section 13327, the Regional Board must take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and other matters as justice may require.

These factors were considered as follows:

Nature and Circumstances

The nature of the violations is that the Discharger was required in a C&D Order, pursuant to CWC Section 13267, to submit the above-described technical reports. These reports were necessary to show that the Discharger had made several improvements to its wastewater treatment and disposal facility as required by the C&D Order, and had prepared plans to ensure (1) that two feet of freeboard is consistently maintained in the effluent storage reservoir, (2) tailwater runoff from the sprayfields does not enter buffer zones specified in the WDRs, or into the surface drainage courses which traverse the sprayfield, and (3) that the City has adequate funds to make improvements and upgrades to the wastewater system. The circumstances are such that the Discharger was aware of the necessity to provide the required technical reports by certain dates, but failed to do so.

Extent

The extent of the violations is that the Discharger was required, pursuant to CWC Section 13267, to submit those technical reports described above by certain dates. The first two reports were submitted a total of 12 days late. Four reports have not been submitted, and as of the date of this ACL Complaint were a total of 152 days late.

Gravity

The gravity of the violations is that the reports are necessary to show that the Discharger has made certain improvements to its wastewater treatment, storage, and disposal system.

- The lack of a functioning flow meter means that the Discharger cannot accurately measure flows and therefore cannot accurately determine the size of a storage reservoir and sprayfields needed to dispose of the waste.
- The lack of enough aerators means that the Discharger cannot treat its waste in a manner to comply with the WDRs. Inadequately treated waste can lead to groundwater degradation and nuisance odor conditions.
- The Discharger has shown, through its own technical reports, that it does not have sufficient storage capacity at the plant. The contingency plan was required to ensure that the Discharger has planned the measures to be taken to prevent discharges to surface waters, in the event that the storage pond is full enough to spill.
- The Discharger has not been able to operate the sprayfield correctly in the past. Staff's inspections have found that tailwater overflowing into surface drainages, broken spray heads, and extreme vegetation resulting in under-utilization of the entire acreage. The two reports concerning the sprayfield are necessary to show that the Discharger has made the physical and operational improvements necessary to operate the sprayfield in compliance with the WDRs.
- The Discharger has indicated that it is a small City and has limited funds to make improvements and upgrades to the wastewater system to comply with its WDRs and C&D. The Final Revenue plan is necessary to show whether the City has adequate funds to make

improvements and upgrades to the wastewater system. If the City does not currently have adequate funds, the the Revenue Plan must show how the City will obtain funds to make the necessary improvements and upgrades.

Ability to Pay/Continue in Business

The Discharger has indicated in the past that it is a small city with financial difficulties. This factor was considered in setting the liability.

Voluntary Cleanup Efforts Undertaken

This ACL Order addresses failure to submit technical reports and, therefore, this factor is not relevant. However, the Discharger is still required to submit the technical reports to comply with the C&D Order.

Degree of Culpability

The Discharger is responsible for the making improvements to the WWTP and for the submittal of the technical reports required by the C&D Order, and is culpable for the violations cited. Staff has spent a significant amount of time attempting to work cooperatively with the Discharger in this matter. When the Discharger failed to meet some of the requirements of the WDRs, staff did not propose an ACL Complaint. Instead, staff met with the Discharger, negotiated task completion and report due dates acceptable to the Discharger, and drafted a C&D Order No. R5-2005-0006. Additionally, at the request of the Plymouth City Manager, staff attended a Plymouth City Council meeting and gave a presentation describing why the C&D Order had been prepared, the specific items required by the Order, and the potential penalties for non-compliance. The City Council was specifically informed that failure to comply with the C&D Order would result in staff's recommendation that an ACL Complaint be prepared.

When the Discharger failed to submit the first two reports required by the C&D Order by the due dates, staff made the extra effort to contact the Discharger and to reiterate the need to comply with the Order. When the third report was not submitted by the due date, staff again called the Discharger and warned that continued failure to comply with the C&D Order would result in formal enforcement action. The Discharger has been aware of the task completion and report submittal deadlines contained in the Order since at least November 2004, when the draft C&D Order was issued. The dates in the Order were based on the Discharger's input. It is noted that the Discharger did not contest the C&D Order before the Regional Board.

Economic Savings

By failing to submit the required complete reports, the Discharger has realized an economic savings in delaying the expenditure of funds necessary to complete the required technical reports and any needed improvements to the wastewater treatment system. The Discharger must still submit the technical reports and make the improvements, so the economic savings is simply the interest it has saved on any loans. Staff estimates that the Discharger accrued no more than \$1,000 in savings due to non-submittal of the technical reports.

Other Matters as Justice May Require

Staff spent approximately 40 hours, or \$3,200 in staff costs, in generation of the ACL Complaint, including review of the files. Staff estimate that we will incur another 60 hours of work (another \$4,800) to prepare the agenda material for the ACL Order and to prepare for the Regional Board

presentation.

Prior History of Violations

The Discharger has a long history of violations at this facility, including discharges of waste to surface drainage courses and surface waters, failure to meet dissolved oxygen and effluent limitations, failure to submit technical reports required by the WDRs, and most importantly, failure to make needed improvements to the WWTP.

Determination of Amount

Water Code Section 13268 authorizes the imposition of administrative civil liability for violation of Water Code Section 13267. The maximum liability for each day of violation is one thousand dollars (\$1,000). As of 7 June 2005, the required technical reports will be a cumulative total of 152 days late. Therefore, the total maximum administrative civil liability amount available to the Regional Board for the violations noted in the Complaint is \$152,000. No minimum liability is required to be imposed under Section 13268(b)(1).

The Discharger has also violated CWC Section 13350(e)(1) and Section 13350(e)(1)(B). This section authorized civil liability for violation of a Board Order. The maximum penalty is \$5,000 per day of non-compliance, while the minimum penalty is \$100 per day of non-compliance. As of 7 June 2005, the Discharger has been in violation of its C&D Order for 59 days. Therefore, the maximum liability under Section 13350 is \$295,000, while the minimum liability is \$5,900.

Response by the Discharger

In a letter dated 29 July 2005, the City stated that it had agreed to pay ACL in the amount of \$20,000 and requested that 50% (\$10,000) of the of ACL be utilized for a Supplemental Environmental Project (SEP). Additional information about the proposed SEP was received from the Discharger on 12, 15 and 17 August 2005. The SEP would be administered by the Central Sierra Resource Conservation and Development Council and involves preliminary preparation for a bank stabilization project and for an Americans with Disabilities Act stream access project. Details of the proposed SEP are included in Attachment A of the proposed ACL Order. In addition, the Discharger's 29 July 2005 letter stated that it would submit the outstanding reports required by C&D Order No. R5-2005-0006 by certain dates, which include:

- Spray Irrigation Management Plan by 30 August 2005,
- Spray Irrigation Improvement Report by 30 August 2005, and
- Final Revenue Plan by 15 September 2005.

The City submitted the outstanding Wastewater Pond Aeration Report on 13 July 2005. The report meets the requirements of the C&D.

Summary

The City of Plymouth has a long-standing pattern of failure to comply with Regional Board directives. It failed to complete the improvements to its WWTP under the timeline required by its WDRs, and in addition, has allowed surface water discharges and other violations due to its poor operation of the

facility. The Executive Officer had the option of issuing an ACL Complaint because of the City's failure to comply with its WDRs, but in recognition of its financial situation, instead directed staff to prepare a Cease and Desist Order. This C&D Order has provided the City with a new timeline to make all of the necessary operational and physical improvements. It is noted that the Discharger was involved in negotiating the terms of the C&D Order and agreed to the timelines for facility improvements and report submittals. The City Council and City Manager were fully aware of the potential liability for failure to comply with the C&D, yet the City of Plymouth has failed to comply with the report submittal requirements of the C&D.

This item is being brought to the Board for consideration and adoption on advice from legal counsel because the Discharger proposed that half of the ACL amount be applied to a SEP. Although the Executive Officer has the authority to sign settlement agreements, the "settlement" would then be considered a contract and the enforcement mechanism would be through the court system, whereas an Order is enforceable by the Board through the Water Code.

The Executive Officer issued an ACL Complaint to the City of Plymouth in the amount of \$20,000, and staff recommends that the Board adopt the ACL Order that includes the proposed SEP and a requirement to submit the outstanding reports by specified dates. If the reports are not submitted by the due dates or the SEP is not completed, then the Discharger must submit the remainder of the ACL (\$10,000) upon order of the Executive Officer

JSK/MRL/WSW:
15/16 September 2005 Board meeting
Central Valley Regional Water Quality Control Board