

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

TIME SCHEDULE ORDER R5-2012-0114  
REQUIRING  
CITY OF BRENTWOOD  
WASTEWATER TREATMENT PLANT  
CONTRA COSTA COUNTY

TO COMPLY WITH REQUIREMENTS PRESCRIBED IN ORDER R5-2008-0006-01  
(NPDES PERMIT CA0082660)

The California Regional Water Quality Control Board, Central Valley Region, (hereinafter Central Valley Water Board) finds that:

1. Waste Discharge Requirements (WDR) Order R5-2008-0006, NPDES Permit No. CA0082660 prescribes WDRs for the City of Brentwood (hereinafter Discharger) Wastewater Treatment Plant (hereinafter Facility), Contra Costa County. WDR Order R5-2008-0006 was subsequently amended to WDR Order R5-2008-0006-01 on 6 December 2012.

2. WDR Order R5-2008-0006-01, contains Final Effluent Limitations IV.A.1.h., which reads as follows:

“h. **Temperature.** *The maximum temperature of the discharge shall not exceed the natural receiving water temperature by more than 20 °F.*”

3. WDR Order R5-2008-0006-01, contains Receiving Water Limitations at Section V.A.15., which reads as follows:

“V. *Receiving Water Limitations*

A. *Surface Water Limitations*

*Receiving surface water limitations are based on water quality objectives contained in the Thermal Plan and are a required part of this Order. The discharge shall not cause the following in Marsh Creek:*

15. **Temperature.** *The Thermal Plan is applicable to this discharge. The Thermal Plan requires that the discharge shall not cause the following in Marsh Creek:*

a. *The creation of a zone, defined by water temperatures of more than 1° F above natural receiving water temperature, which exceeds 25 percent of the cross-sectional area of the river channel at any point.”*

b. *A surface temperature rise greater than 4° F above the natural temperature of the receiving water at any time or place.”*

4. The State Water Resources Control Board adopted a *Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Water and Enclosed Bays and Estuaries of California* (Thermal Plan) on 18 May 1972, and amended this plan on 18 September 1975. This plan contains temperature objectives for surface waters, including estuaries. The Thermal Plan specifically includes the Sacramento-San Joaquin Delta within the definition of an estuary. The Facility discharges treated wastewater to Marsh Creek, within the legal boundary of the Delta as defined by Section 12220 of the California Water Code, thus the Thermal Plan requirements for discharges to estuaries are applicable to this discharge. The effluent limitations and receiving water limitations described in Findings 2 and 3 implement the Thermal Plan.
5. At the time WDR Order R5-2008-0006 was adopted, the Discharger was unable to immediately comply with the temperature effluent limitations and receiving water limitations, therefore, the Central Valley Water Board adopted Cease and Desist Order (CDO) R5-2008-0007 that provided a compliance schedule with compliance required by 25 January 2013.

#### **Need for Time Schedule and Legal Basis**

6. The Thermal Plan provides a general water quality provision where Regional Water Boards may, in accordance with Section 316(a) of the Federal Water Pollution Control Act of 1972, and subsequent federal regulations including 40 CFR 122, grant an exception to Specific Water Quality Objectives in the Thermal Plan. The Discharger's compliance strategy for meeting the Thermal Plan requirements has been to meet the requirements for a Thermal Plan Exception, which would result in a modification of the temperature effluent limitations and receiving water limitations such that the Facility could comply.

During the term of WDR Order R5-2008-0006-01, the Discharger developed a temperature study titled, "Thermal Plan Exception Justification for the City of Brentwood Wastewater Treatment Plant" (January 2010). The Thermal Plan Exception Justification report was submitted to the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) and the United States Fish and Wildlife Service (USFWS) for review. Approval of the proposed Thermal Plan exception was provided by NMFS on 19 August 2011. USFWS required further investigation and information from the Discharger. The Discharger is working with USFWS staff on a process and time frame to provide the necessary information. Therefore, this Order includes a time schedule to evaluate and implement the proposed alternatives to comply with the Thermal Plan by **31 December 2015**.

#### **Mandatory Minimum Penalties**

7. California Water Code (CWC) sections 13385(h) and (i) require the Central Valley Water Board to impose mandatory minimum penalties (MMPs) upon dischargers that violate certain effluent limitations. CWC section 13385(j)(3) exempts the discharge from MMPs "*where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or 13308, if all the*

[specified] *requirements are met...for the purposes of this subdivision, the time schedule may not exceed five years in length...*”.

8. Per the requirements of CWC section 13385(j)(3), the Central Valley Water Board finds that:
  - a. This Order specifies the actions that the Discharger is required to take in order to correct the violations that would otherwise be subject to CWC sections 13385(h) and (i).
  - b. The Discharger has stated that two years is necessary to allow the time to evaluate and implement the proposed alternatives to comply with the temperature effluent limitations. The Discharger is proposing alternative site-specific temperature effluent and receiving water limitations that would be more applicable to the segments of the receiving water downstream of the discharge (i.e. lower zone of Marsh Creek). The Discharger is working with USFWS staff on a process and time frame to provide necessary information to adequately address thermal impacts to *Hypomesus transpacificus* (delta smelt), which would allow USFWS staff to support the Discharger’s proposed Thermal Plan Exception.
  - c. This Order establishes a time schedule to bring the waste discharge into compliance with the effluent limitations that is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitations.
9. Compliance with this Order exempts the Discharger from MMPs for violations of the final effluent limitations for temperature required in WDR Order R5-2008-0006-01, as described in Finding 2, from 6 December 2012 (the adoption date of this Order) until 31 December 2015. The Discharger has previously been protected from MMPs for violations of the temperature effluent limitations.
10. The final effluent limitations for temperature became applicable to the waste discharge on the effective date of WDR Order R5-2008-0006 (15 March 2008). CDO R5-2008-0007 provided protection from MMP’s from 15 March 2008 to 6 December 2012 for violations of effluent limitations for temperature.
11. By statute, a Cease and Desist Order or Time Schedule Order may provide protection from MMP’s for no more than five years, except as provided in CWC section 13385(j)(3)(C)(ii).
12. Per the requirements of 13385(j)(3)(C)(ii)(II) following a public hearing, and upon a showing that the Discharger is making diligent progress toward bringing the waste discharge into compliance with the effluent limitation, the Central Valley Water Board may extend the time schedule for up to an additional five years, if the Discharger demonstrates that the additional time is necessary to comply with the effluent limitation. In accordance with CWC Section 13385(j)(3)(C)(ii)(II) the total length of the compliance schedules is less than ten years. The Central Valley Water Board finds, as described in previous findings in this Order, that the Discharger has demonstrated due diligence and is making diligent progress to bring the waste discharge into compliance with final effluent limitations for temperature in WDR Order

R5-2008-0006-01. The Discharger needs to provide additional information required by USFWS on the Thermal Plan Exception analysis to address the proposed temperature effects of the discharge on delta smelt before a Thermal Plan exception can be allowed. Therefore, the Discharger needs additional time to comply with the final effluent limitations.

13. If an interim effluent limit contained in this Order is exceeded, then the Discharger is subject to MMPs for that particular exceedance as it will no longer meet the exemption in CWC Section 13385(j)(3).
14. In accordance with CWC section 13385(j)(3), the total length of protection from MMPs for the temperature effluent limit does not exceed ten years from the date the effluent limit became applicable to the waste discharge.
15. This Order provides a time schedule for completing the actions necessary to ensure compliance with the final effluent limitations for temperature contained in WDR Order R5-2008-0006-01. Since the time schedule for completion of actions necessary to bring the waste discharge into compliance exceeds one year, this Order includes interim effluent limitations and interim requirements and dates for their achievement.
16. This Order includes interim effluent limitations for temperature based on the Discharger's proposed alternative effluent and receiving water limitations, which are described in the Thermal Plan Exception Justification report submitted on January 2010.
17. The Central Valley Water Board finds that the Discharger can maintain compliance with the interim effluent limitations included in this Order. Interim effluent limitations are established when compliance with the final effluent limitations cannot be achieved by the existing Facility. Discharge of constituents in concentrations in excess of the final effluent limitations, but in compliance with the interim effluent limitations, can significantly degrade water quality and adversely affect the beneficial uses of the receiving stream on a long-term basis. The interim effluent limitations, however, establish an enforceable ceiling concentration until compliance with the final effluent limitation can be achieved.

### **Other Regulatory Requirements**

18. CWC section 13300 states: *“Whenever a regional board finds that a discharge of waste is taking place or threatening to take place that violates or will violate requirements prescribed by the regional board, or the state board, or that the waste collection, treatment, or disposal facilities of a discharger are approaching capacity, the board may require the discharger to submit for approval of the board, with such modifications as it may deem necessary, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements.”*
19. CWC section 13267 states in part: *In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within*

*its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.*

20. The Discharger owns and operates the wastewater treatment facility which is subject to this Order. The technical and monitoring reports required by this Order are necessary to determine compliance with the WDRs and with this Order.
21. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) ("CEQA") pursuant to CWC section 13389, since the adoption or modification of a NPDES permit for an existing source is statutorily exempt and this Order only serves to implement a NPDES permit. (*Pacific Water Conditioning Ass'n, Inc. v. City Council of City of Riverside* (1977) 73 Cal.App.3d 546, 555-556.).
22. On 6 December 2012, in Rancho Cordova, California, after due notice to the Discharger and all other affected persons, the Central Valley Water Board conducted a public hearing at which evidence was received to consider this Time Schedule Order under CWC section 133301 to establish a time schedule to achieve compliance with waste discharge requirements.

**IT IS HEREBY ORDERED THAT:**

1. Cease and Desist Order R5-2008-0007 is rescinded upon the effective date of this Order except for enforcement purposes.
2. Pursuant to CWC Section 13300, the Discharger shall comply with the following time schedule to comply with the final effluent limitations for temperature by **31 December 2015**.

<b>TASK</b>	<b>COMPLIANCE DATE</b>
<b>Submit Annual Progress Reports.</b> The annual progress reports shall document the steps taken to comply with the final effluent and receiving water limits for temperature and with this Order.	<b>1 September 2013 and 1 September 2014</b>
<b>Submit Updated Thermal Plan Exception Report and Request for Thermal Plan Exception.</b> The Updated Thermal Plan Exception Report shall include the USFWS requested information (e.g., analysis of critical habitat for the delta smelt in Marsh Creek and proposed temperature discharge impacts to delta smelt), and shall include the USFWS response/comments to the Updated Thermal Plan Exception Report. The Discharger shall also submit a request for a Thermal Plan exception and modification of its NPDES permit.	<b>7 December 2014</b>
<b>Submit Report Demonstrating Compliance with the Final Effluent Limitations for Temperature</b>	<b>31 December 2015</b>

3. The following interim effluent limitations for temperature shall be effective upon adoption of this Order. The Discharger shall maintain compliance with the following interim effluent limitations through **31 December 2015**.

Interim Effluent Limitations – Discharge to Marsh Creek – Monitoring Location EFF-001

The maximum temperature of the discharge shall not exceed the natural receiving water temperature as measured at RSW-001 monitoring location by more than 20°F from 1 February through 30 November, or 24°F from 1 December through 31 January.

4. Any person signing a document submitted under this Order shall make the following certification:

*“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”*

5. In accordance with California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. All technical reports specified herein that contain work plans, that describe the conduct of investigations and studies, or that contain technical conclusions and recommendations concerning engineering and geology shall be prepared by or under the direction of appropriately qualified professional(s), even if not explicitly stated. Each technical report submitted by the Discharger shall contain the professional's signature and/or stamp of the seal.

If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement, may issue a complaint for administrative civil liability, or may take other enforcement actions. Failure to comply with this Order or with the WDRs may result in the assessment of Administrative Civil Liability of up to \$10,000 per violation, per day, depending on the violation, pursuant to the CWC, including sections 13268, 13350 and 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

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 of this Order, except that if the thirtieth day following the date of this Order 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](http://www.waterboards.ca.gov/public_notices/petitions/water_quality)  
or will be provided upon request.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 6 December 2012.

Original Signed by  
PAMELA C. CREEDON, Executive Officer