

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R5-2008-0534

MANDATORY PENALTY
IN THE MATTER OF

CITY OF COLFAX
WASTEWATER TREATMENT PLANT
PLACER COUNTY

This Order is issued to the City of Colfax (hereafter referred to as Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL). This Order is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order No. 5-01-180 (NPDES No. CA0079529).

The Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) finds the following:

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system and provides sewerage service to the City of Colfax. Treated domestic, commercial, and industrial wastewater is discharged to an unnamed tributary of Smuthers Ravine, a water of the United States.
2. On 14 June 2001, the Regional Water Board adopted WDRs Order No. 5-01-180. The WDRs include effluent limitations and other requirements regarding the wastewater discharges.
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, "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 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.”

5. On 5 December 2003, the Regional Water Board adopted Administrative Civil Liability Order No. R5-2003-0167 in the amount of \$351,000 for Mandatory Minimum Penalties (MMPs) from 1 January 2000 through 31 March 2003. The Regional Water Board has acknowledged that the Discharger completed a previous compliance project in lieu of payment of the penalty, and considers this prior matter resolved.

6. WDRs Order No. 5-01-180 Effluent Limitations No. B.1.a. include, in part, the following effluent limitations:

<u>Constituent</u>	<u>Unit</u>	<u>Monthly Average</u>	<u>7-day Average</u>	<u>Daily Maximum</u>
BOD ¹	mg/L	10 ²	15 ²	25 ²
	lbs/day ³	16.7	25	41.7
Total Suspended Solids	mg/L	10 ²	15 ²	25 ²
	lbs/day ³	16.7	25	41.7

¹ 5-day, 20°C biochemical oxygen demand (BOD)

² To be ascertained by a 24-hour composite

³ Based upon a design treatment capacity of 0.20 mgd ($x \text{ mg/L} \times 8.345 \times 0.2 \text{ mgd} = y \text{ lbday}$)

7. WDRs Order No. 5-01-180 Effluent Limitations No. B.1.b. states in part: *“Effluent shall not exceed the following limits until **14 June 2006.**”*

<u>Constituent</u>	<u>Units</u>	<u>Monthly Median</u>	<u>Daily Maximum</u>
Total Coliform Organisms	MPN/100mL	23	500
Chlorine Residual	mg/L		0.02

8. WDRs Order No. 5-01-180 Effluent Limitations No. B.1.c. states in part: *“Effluent shall not exceed the following limits after **14 June 2006.**”*

<u>Constituent</u>	<u>Units</u>	<u>7-day Media n</u>	<u>4-Day Average</u>	<u>Daily Average</u>	<u>1-Hour Average</u>	<u>Daily Maximum</u>
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Total Coliform Organisms	MPN/100mL	2.2 ⁴	23 ⁵
Chlorine Residual	mg/L	0.01	0.02
<u>Turbidity</u>	NTU	2	5

⁴ 7-Day Median based on previous seven daily sample results

⁵ In a 30 day period, only a single sample may exceed 23 MPN/100mL

9. WDRs Order No. 5-01-180 Effluent Limitations No. B.3 states: *“The discharge to the receiving water shall not have a pH less than 6.5 nor greater than 8.5.”*
10. According to the Discharger’s self-monitoring reports, the Discharger committed twenty-four (24) serious Group I violations of the above effluent limitations contained in Order No. 5-01-180 during the period beginning 1 April 2003 and ending 31 December 2007. The violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels by more than 40 percent on these occasions. The mandatory minimum penalty for these serious violations is **seventy-two thousand dollars (\$72,000)**.
11. According to the Discharger’s self-monitoring reports, the Discharger committed nine (9) serious violations of the above effluent limitations for Group II constituents contained in Order No. 5-01-180 during the period beginning 1 April 2003 and ending 31 December 2007. The violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels by more than 20 percent on these occasions. The mandatory minimum penalty for these serious violations is **twenty-seven thousand dollars (\$27,000)**.
12. According to the Discharger’s self-monitoring reports, the Discharger committed forty-five (45) non-serious violations of the above effluent limitations contained in Order No. 5-01-180 during the period beginning 1 April 2003 and ending 31 December 2007. Forty-five (45) of the non-serious violations are subject to mandatory penalties under CWC section 13385(i)(1) because these violations were preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for these non-serious violations is **one hundred thirty-five thousand dollars (\$135,000)**.
13. The total amount of the mandatory penalties assessed for the cited effluent violations is **two hundred thirty-four thousand dollars (\$234,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Order.
14. CWC section 13385 (k) states:

“(1) 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.

(2) 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."

15. Staff at the State Water Resources Control Board has determined that the City of Colfax Wastewater Treatment Plant is a publicly owned treatment works serving a small community within the meaning of CWC section 13385(k)(2).
16. The Discharger is in the process of spending an estimated \$9,993,000 on a compliance project to construct a new wastewater treatment plant to meet effluent limitations that will correct the violations. Of this amount, \$2,000,000 is from a grant and cannot be used to offset the mandatory minimum penalties. The new plant will consist of a biological treatment process, coagulation system, filtration, ultra-violet disinfection, and mechanical sludge dewatering. On 2 June 2008, the City's engineer submitted a detailed outline of the project, the construction schedule, and a listing of project costs. This project outline is incorporated into this Order by reference. When the compliance project is completed, the Discharger will have expended in excess of the mandatory minimum penalty that is required by CWC sections 13385(h) and (i).
17. The Regional Water Board finds that the Compliance Project has been designed to correct the violations that have led to the issuance of this Administrative Civil Liability Order within five years, that the project is in accordance with the enforcement policy of the State Water Board, and that the Discharger has appropriate financing to complete the project.
18. 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 section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).
19. On 15 March 2007, the Regional Water Board explicitly delegated to the Executive Officer the authority to issue orders to assess administrative civil liability where the matter is not contested by the discharger. (Resolution R5-2007-0009).

20. Any person aggrieved by this action of the Regional 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 tentative Order becomes final, except that if the thirtieth day following the date that this tentative 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. This tentative Order is set to become final on 10 September 2008. 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.

IT IS HEREBY ORDERED pursuant to California Water Code sections 13385(a), (h), (i), and (k), and Resolution R5-2007-009, that:

1. The City of Colfax, its agents, successors and assigns, shall be assessed an Administrative Civil Liability in the amount of **two hundred thirty-four thousand dollars (\$234,000)**.
2. The entire \$234,000 penalty shall be suspended if the Discharger complies with the following time schedule to complete its compliance project:

<u>Task</u>	<u>Compliance Date</u>
Complete Construction of Wastewater Treatment Plant, as described in Finding No. 17	1 November 2008
Full Operation of Wastewater Treatment Plant, as described in Finding No. 17	1 January 2009
Submit final documentation of Compliance Project costs	1 January 2009

3. A progress report shall be submitted on or before each of the above compliance dates. The report shall describe the work undertaken to comply with this Order.
4. The Executive Officer may extend the abovementioned deadlines if the Discharger demonstrates that unforeseeable contingencies have created delays, provided that the Discharger continues to undertake all appropriate measures to meet the deadlines. The discharger shall make any deadline extension request in writing. Under no circumstances may the completion of the Compliance Project extend past five (5) years from the issuance of this Order.
5. The Discharger must obtain explicit approval from the Executive Officer for any significant departures from the project outline submitted by the City's engineer on 2 June 2008. Failure to obtain approval for any significant departures will result in the assessment of the full amount of the suspended mandatory minimum penalty.
6. If, in the judgment of the Executive Officer, the Discharger fails to complete the compliance project in accordance with the specified time schedule or fails to construct the

compliance project in accordance with the project outline submitted by the City's engineer on 2 June 2008 without obtaining Regional Water Board approval, the suspended mandatory minimum penalty **(\$234,000)** must be paid within 30 days of notification by the Executive Officer of such failure.

7. This Order constitutes a settlement of the violations herein mentioned. Notice of this settlement was published on the Regional Water Board's website and was provided to all interested parties on 18 June 2008, and the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) has expired. This Order is effective immediately upon issuance.

PAMELA C. CREEDON, Executive Officer

10 September 2008

Attachment A: Record of Violations
BLH: 09/10/08

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R5-2008-0534

City of Colfax
Wastewater Treatment Plant

RECORD OF VIOLATIONS (1 April 2003 – 31 December 2007) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program No. 5-01-180)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period Type</u>	<u>Flow Rate</u>	<u>Remarks</u>
1	2-Apr-03	BOD	mg/l	25	37	Daily		1
2	2-Apr-03	BOD	lbs/day	41.7	99	Daily	0.25	1
3	5-Apr-03	BOD	mg/l	15	37	Weekly		1
4	30-Apr-03	BOD	mg/l	10	19	Monthly		1
5	10-May-03	BOD	mg/l	15	20	Weekly		4
6	31-May-03	BOD	mg/l	10	14	Monthly		4
7	7-Jun-03	BOD	mg/l	15	18	Weekly		4
8	30-Jun-03	BOD	mg/l	10	14	Monthly		4
9	5-Jul-03	BOD	mg/l	15	22	Weekly		1
10	5-Jul-03	BOD	lbs/day	25	29	Weekly	0.12	4
11	16-Jul-03	pH	pH units	6.5	6.3	Instantaneous		4
12	18-Jul-03	pH	pH units	6.5	6.2	Instantaneous		4
13	21-Jul-03	pH	pH units	6.5	6.4	Instantaneous		4
14	23-Jul-03	pH	pH units	6.5	6.2	Instantaneous		4
15	25-Jul-03	pH	pH units	6.5	6.4	Instantaneous		4
16	31-Jul-03	BOD	mg/l	10	17	Monthly		1
17	31-Jul-03	BOD	lbs/day	16.7	21	Monthly	0.13	4
18	31-Jul-03	pH	pH units	6.5	6.3	Instantaneous		4
19	4-Aug-03	pH	pH units	6.5	6.4	Instantaneous		4
20	6-Aug-03	BOD	mg/l	25	51	Daily		1
21	6-Aug-03	BOD	lbs/day	41.7	58	Daily	0.12	4
22	9-Aug-03	BOD	mg/l	15	51	Weekly		1
23	9-Aug-03	BOD	lbs/day	25	58	Weekly	0.12	1
24	11-Aug-03	pH	pH units	6.5	6.2	Instantaneous		4
25	13-Aug-03	pH	pH units	6.5	6.4	Instantaneous		4
26	15-Aug-03	pH	pH units	6.5	6	Instantaneous		4
27	18-Aug-03	pH	pH units	6.5	6.2	Instantaneous		4
28	20-Aug-03	BOD	mg/l	25	122	Daily		1
29	20-Aug-03	BOD	lbs/day	41.7	157	Daily	0.1	1
30	20-Aug-03	pH	pH units	6.5	6.2	Instantaneous		4
31	22-Aug-03	pH	pH units	6.5	6.3	Instantaneous		4

ATTACHMENT A
 CITY OF COLFAX WASTEWATER TREATMENT FACILITY
 ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R5-2008-0534

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period Type</u>	<u>Flow Rate</u>	<u>Remarks</u>
32	23-Aug-03	BOD	mg/l	15	122	Weekly		1
33	23-Aug-03	BOD	lbs/day	25	157	Weekly	0.1	1
34	25-Aug-03	pH	pH units	6.5	6.2	Instantaneous		4
35	27-Aug-03	pH	pH units	6.5	6.2	Instantaneous		4
36	29-Aug-03	pH	pH units	6.5	6.1	Instantaneous		4
37	31-Aug-03	BOD	mg/l	10	87	Monthly		1
38	31-Aug-03	BOD	lbs/day	16.7	108	Monthly	0.11	1
39	3-Sep-03	pH	pH units	6.5	5.8	Instantaneous		4
40	1-Oct-03	BOD	mg/l	25	28	Daily		4
41	1-Oct-03	pH	pH units	6.5	6.3	Instantaneous		4
42	4-Oct-03	BOD	mg/l	15	28	Weekly		1
43	18-Oct-03	BOD	mg/l	15	23	Weekly		1
44	31-Oct-03	BOD	mg/l	10	26	Monthly		1
45	8-Nov-03	BOD	mg/l	15	17	Weekly		4
46	26-Nov-03	pH	pH units	6.5	6.3	Instantaneous		4
47	30-Nov-03	BOD	mg/l	10	14	Monthly		4
48	18-Feb-04	TSS	mg/l	25	27	Daily		4
49	21-Feb-04	TSS	mg/l	15	27	Weekly		1
50	24-Feb-04	TSS	lbs/day	25	27	Weekly	0.16	4
51	29-Feb-04	TSS	mg/l	10	18	Monthly		1
52	29-Feb-04	TSS	lbs/day	16.7	17.4	Monthly	0.13	4
53	31-Mar-04	TSS	mg/l	10	12	Monthly		4
54	6-Jun-04	Coliform	MPN/100m l	500	1600	Daily		4
55	12-Aug-04	Chlorine	mg/l	0.02	0.1	Daily		2
56	1-Sep-04	pH	pH units	6.5	6.3	Instantaneous		4
57	30-Sep-04	TSS	mg/l	10	11	Monthly		4
58	31-Oct-04	TSS	mg/l	10	11	Monthly		4
59	29-Nov-04	Chlorine	mg/l	0.02	1	Daily		2
60	29-Nov-04	pH	pH units	6.5	5.9	Instantaneous		4
61	25-Mar-05	Coliform	MPN/100m l	500	900	Daily		4
62	5-Jun-05	Chlorine	mg/l	0.02	0.1	Daily		2
63	8-Jun-05	Chlorine	mg/l	0.02	0.5	Daily		2
64	15-Jun-05	Chlorine	mg/l	0.02	0.3	Daily		2
65	5-Aug-05	Coliform	MPN/100m l	500	900	Daily		4

ATTACHMENT A
 CITY OF COLFAX WASTEWATER TREATMENT FACILITY
 ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R5-2008-0534

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period Type</u>	<u>Flow Rate</u>	<u>Remarks</u>
66	25-Aug-05	Chlorine	mg/l	0.02	0.15	Daily		2
67	31-Aug-05	Chlorine	mg/l	0.02	1	Daily		2
68	31-Aug-05	Coliform	MPN/100m l	23	25	Monthly		4
69	20-Sep-05	Chlorine	mg/l	0.02	0.1	Daily		2
70	9-Nov-05	Chlorine	mg/l	0.02	5	Daily		2
71	4-Jan-06	TSS	mg/l	15	21	Weekly		1
72	7-Jan-06	TSS	mg/l	15	21	Weekly		1
73	31-Jan-06	TSS	mg/l	10	15	Monthly		1
74	31-Mar-06	TSS	mg/l	10	12	Monthly		4
75	31-Mar-06	TSS	% removal	85%	74%	Monthly		4
76	14-Aug-06	pH	pH units	6.5	6.3	Instantaneous		4
77	24-Aug-06	pH	pH units	6.5	6.2	Instantaneous		4
78	23-Oct-06	Turbidity	NTU	2	20	Instantaneous		1

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 violations 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>12/31/2007</u>
Group I Serious Violations:	24
Group II Serious Violations:	9
Non-Serious Exempt from MPs:	0
Non-serious Violations Subject to MPs:	45
<u>Total Violations Subject to MPs:</u>	<u>78</u>

Mandatory Minimum Penalty = (33 Serious Violations + 45 Non-Serious Violations) x \$3,000 = \$234,000