

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2013-0500

MANDATORY PENALTY
IN THE MATTER OF

CITY OF COLFAX
WASTEWATER TREATMENT FACILITY
PLACER COUNTY

This Order is issued to the City of Colfax (Discharger) pursuant to California Water Code (Water Code) 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 R5-2007-0130 (NPDES No. CA0079529).

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

1. The Discharger owns and operates a publicly owned treatment works (POTW). Domestic wastewater and collected seepage from below the storage reservoir is treated and discharged to an unnamed tributary to Smuthers Ravine, which is tributary to the North Fork of the American River via Bunch Canyon.
2. On 25 October 2007, the Central Valley Water Board issued Waste Discharge Requirements Order R5-2007-0130, effective 14 December 2007 (2007 WDRs), which contained new requirements and rescinded previous WDRs Order 5-01-180. The 2007 WDRs include effluent limitations and other requirements regarding the waste discharge.
3. On 25 October 2007, the Central Valley Water Board issued Cease and Desist Order (CDO) R5-2007-0131 requiring the Discharger to comply with the effluent nitrate limitations in the 2007 WDRs by 1 January 2009. On 28 January 2010, the Board issued CDO R5-2010-0001 (2010 CDO), which rescinded CDO R5-2007-0131, and required compliance with the effluent limitation for copper by 1 January 2014. On 2 December 2011, the Board adopted CDO R5-2011-0097 (2011 CDO), which rescinded the 2010 CDO. The 2011 CDO required:
 - Dewatering and lining of storage Pond #3 by 30 November 2012;
 - Compliance with the copper effluent limitation by 1 January 2014 including completion of a water effects ratio study;
 - Implementation of an infiltration and inflow reduction project including submittal of a *Final Collection System I/I Reduction Report* by 30 April 2014; and,
 - Completion and submittal of a *Storage Capacity Evaluation Report* by 30 April 2014.
4. On 10 September 2008, the Executive Officer issued ACL Order R5-2008-0534, which assessed Mandatory Minimum Penalties (MMPs) for effluent limitation violations from 1 April 2003 to 31 December 2007 in the amount of \$234,000. ACL Order R5-2008-0534 stated that the entire \$234,000 penalty would be deemed satisfied through the completion of a compliance project. The project has been completed and the Board considers this ACL Order resolved for the violations specifically listed in Attachment A of the Order.
5. On 2 December 2011, the Central Valley Water Board adopted ACL Order R5-2011-0096 which assessed MMPs for effluent limitation violations from 1 January 2011 through 30 June 2011 in the

amount of \$165,000. ACL Order R5-2011-0096 allowed \$153,000 to be deemed satisfied through the completion of three compliance projects with the remaining \$12,000 payable to the State Water Resources Control Board's (State Water Board) Cleanup and Abatement Account. The projects have been completed, payment was received, and the Board considers this ACL Order resolved for the violations specifically listed in Attachment A of the Order.

6. This Order addresses violations subject to MMPs which occurred during the period of 1 July 2011 through 30 September 2012. On 3 July 2012, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations (ROV) for the period of 1 July 2011 through 30 April 2012. On 20 July 2012, the Discharger responded to the ROV and requested that a portion of the MMPs be applied towards two ongoing compliance projects to offset the mandatory minimum penalties, as allowed by Water Code section 13385(k). This Order extends the period of record to 30 September 2012. These violations are specifically identified in Attachment A to this Order as subject to mandatory minimum penalties. Attachment A is attached hereto and incorporated herein by this reference.
7. Water Code section 13385 subdivisions (h) and (i) require assessment of mandatory minimum penalties and state, in relevant part, the following:

Water Code section 13385 subdivision (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.

Water Code section 13385 subdivision (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.

Water Code section 13385 subdivision (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.

8. Water Code section 13385(j) exempts certain violations from mandatory minimum penalties, and states, in relevant part:

Subdivisions (h) and (i) do not apply to...

- 3) A violation of an effluent limitation 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...

9. Water Code 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.

10. WDRs Order R5-2007-0130 Final Effluent Limitations IV.A.2.a. include, in part, the following effluent limitations:

- a. The Discharger shall maintain compliance with the effluent limitations specified in Table 7 for discharges from the new wastewater treatment plant beginning 1 January 2009:

Table 7. Final Effluent Limitations

Parameter	Units	Average Monthly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
<i>Priority Pollutants</i>					
Copper, Total Recoverable	µg/L	2.7	5.5	--	--
Bis(2-Ethylhexyl) Phthalate	µg/L	1.8	3.6	--	--
<i>Non-Conventional Pollutants</i>					
Aluminum, Total Recoverable	µg/L	71	143	--	--
Ammonia Nitrogen, Total (as N)	mg/L	0.8	2.1	--	--
Total Coliform	MPN/100 mL	--	--	--	240

11. WDRs Order R5-2007-0130 Effluent Limitations IV.A.2.i. include the following effluent limitations:

- i. Turbidity. Effluent turbidity shall not exceed:
 - i. 2 NTU, as a daily average; and
 - ii. 5 NTU, more than 5 percent of the time within a 24-hour period.

12. WDRs Order R5-2007-0130 Effluent Limitations IV.A.2.e. include the following effluent limitation:

- e. Mass Limitation for Mercury. The monthly average total recoverable mercury loading in the effluent shall not exceed 0.000761 lbs/month.

13. Cease and Desist Order R5-2010-0001 Directive 5 states, in part:

The following interim effluent limitation for copper shall be effective immediately, and shall remain in effect through 31 December 2013...

Parameter	Maximum Daily Effluent Limitation
Copper (µg/L)	6.7

In accordance with the provisions of Water Code section 13385(j)(3), violations of the copper interim effluent limitation in the 2010 CDO subject the Discharger to mandatory minimum penalties for violations of the final copper effluent limitation contained in the WDRs.

14. According to the Discharger's self-monitoring reports, the Discharger committed nine (9) violations of the above effluent limitations for ammonia contained in the 2007 WDRs during the period beginning 1 July 2011 and ending 30 September 2012. The Discharger stated that the ammonia violations were the result of high influent loadings of spent yeast from a cider facility that discharges to the City's collection system. These high loadings resulted in an upset of the nitrification process which caused the effluent to exceed WDRs limitations for ammonia.

Following the identification of the cause of the upset, the City ordered the cider facility to immediately stop the discharge of spent yeast to the collection system and implemented a monitoring program to fully characterize the current discharge from the facility. The City is also developing an industrial discharge permit to minimize the risk of a similar upset in the future.

Water Code section 13385(j)(1) provides protection from MMPs for violations that resulted from an upset caused by an intentional discharge of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight. Based on information submitted by the Discharger, the Board finds that the upset was caused by an intentional discharge by a third part that could not have been prevented or avoided by the exercise of due care or foresight. Per Water Code section 13385(j)(1), the nine (9) ammonia violations are not subject to MMPs.

15. According to the Discharger's self-monitoring reports, the Discharger committed six (6) serious Group II violations of the above effluent limitations contained in the 2007 WDRs and the 2010 CDO during the period beginning 1 July 2011 and ending 30 September 2012. The violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels by twenty percent (20%) or more on these occasions. The mandatory minimum penalty for these serious violations is **eighteen thousand dollars (\$18,000)**.
16. According to the Discharger's self-monitoring reports, the Discharger committed five (5) non-serious violations of the above effluent limitations contained in the 2007 WDRs during the period beginning 1 July 2011 and ending 30 September 2012. All five (5) of these non-serious violations are subject to mandatory penalties under Water Code 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 **fifteen thousand dollars (\$15,000)**.

17. The total amount of the mandatory minimum penalties assessed for the cited effluent violations is **thirty-three thousand dollars (\$33,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Order. This Order addresses administrative civil liability for violations that are specifically listed in Attachment A as subject to mandatory minimum penalties.
18. Water Code 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.
19. On 1 February 2008, State Water Board staff determined that the City of Colfax Wastewater Treatment Plant is a publicly owned treatment works serving a small community within the meaning of Water Code section 13385(k)(2).

Compliance Project #1

20. ACL Order R5-2011-0096 allowed the Discharger to apply its previous mandatory minimum penalties for copper totaling \$57,000 towards a compliance project consisting of a water effects ratio study (WER Study). The objective of the WER Study is to develop a scientifically-defensible, discharger-specific WER, consistent with U.S.EPA guidance as described in *Streamlined Water-Effect Ratio Procedure for Discharges of Copper...* (U.S.EPA 2001). The WER Study will be used to refine copper effluent limitations for the Colfax WWTP. The State Water Board's Water Quality Enforcement Policy (May 20, 2010) considers “conducting water quality investigations or monitoring” to be an acceptable compliance project for the purposes of 13385(k).

As shown in Attachment A, the Discharger accrued five (5) additional copper violations, all of which are subject to MMPs. The Discharger completed the compliance project on 20 January 2012 and expended a total of \$66,980 on the WER Study. The Discharger has requested that the remaining \$9,980 of the study that was not previously used to offset previous copper MMPs in ACL Order R5-2011-0096 be applied to the current \$15,000 in copper MMPs charged in this Order. This Order allows \$9,980 of the current copper MMPs to be applied

towards the cost of the copper WER compliance project leaving \$5,020 of MMPs that cannot be applied to a compliance project. Therefore, this Order requires the Discharger to pay **\$5,020** in mandatory minimum penalties for these five copper violations.

Compliance Project #2

21. The 2011 CDO required the Discharger to line Pond 3 to eliminate seepage from the pond to the unnamed tributary to Smuthers Ravine. The CDO also required the Discharger to implement a seepage treatment system to treat and discharge seepage water separately from the main wastewater treatment plant to facilitate draining of Pond 3 and allow lining of the Pond in 2012. The effluent turbidity violations occurred during a period when effluent from the main wastewater treatment plant had been diverted and was not discharging. The turbidity violations were from discharge of the seepage treatment plant. According to the CDO, when Pond 3 is lined and with approval from the Central Valley Water Board's Executive Officer, collection and treatment of the seepage will no longer be required since the potential source of contamination in the seepage has been eliminated. The Board finds that lining Pond 3 qualifies as a compliance project within the meaning of Water Code section 13385 (k) because it will result in preventing additional turbidity effluent violations from the seepage discharge. Therefore, the Discharger may use expenses incurred to complete the project to offset the two turbidity MMPs.
22. The 2011 CDO required the Discharger to line Pond 3 to eliminate seepage from the pond to the unnamed tributary to Smuthers Ravine. Bis (2 ethyl hexyl) phthalate is normally not detected in the effluent; according to the Discharger, this detection was probably the result of installing PVC piping and associated fittings to meet the treatment plant upgrade and pond draining requirements of the CDO. Board staff agrees that the installation of this piping is a likely source of the bis (2-ethylhexyl) phthalate violation. The Discharger requested that the MMP for this violation be satisfied by completion of the pond lining project and associated modifications required by the CDO. Since the pond liner project is being conducted to satisfy conditions of the CDO and bring the effluent into compliance with WDRs effluent limitations, the pond liner project qualifies as a compliance project within the meaning of Water Code section 13385(k). The Discharger may use expenses incurred to complete the project to offset the one bis (2-ethylhexyl) phthalate MMP.

Additional Findings

23. The Central Valley Water Board finds that the Compliance Projects will remedy the violations for the copper, turbidity, and bis (2-ethylhexyl) phthalate violations. The Compliance Projects have been designed to correct these violations within five years, the timeline for the Compliance Projects is as short as possible, and the Compliance Projects have been designed in accordance with the State Water Board's Water Quality Enforcement Policy. The amount that the Discharger has expended or plans to expend on the Compliance Projects is in excess of the mandatory minimum penalty that the Board is required to assess under Water Code sections 13385(h) and (i) for the violations that are to be addressed by the Compliance Projects.
24. The Compliance Projects are not designed to correct the violations of the effluent limitations for mercury, aluminum, or total coliform. Therefore, this Order requires the Discharger to pay \$9,000 in mandatory minimum penalties for these violations. In addition, this Order requires the Discharger to pay \$5,020 in mandatory penalties associated with the copper violations.
25. 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. Comments were received and considered.

26. 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, or to an Assistant Executive Officer when the Executive Officer is serving as head of the Board's Prosecution Team (Resolution R5-2009-0027). Executive Officer 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.
27. 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, sections 15307, 15308 and 15321(a)(2).

THE CITY OF COLFAX IS HEREBY GIVEN NOTICE THAT:

1. The Discharger shall be assessed an Administrative Civil Liability of **thirty-three thousand dollars (\$33,000)**.
2. In accordance with Water Code section 13385(k), a \$9,980 portion of the penalty for the effluent copper violations has been satisfied through the completion of the compliance project described in Finding 20.
3. In accordance with Water Code section 13385(k), the \$9,000 portion of the penalty associated with the two turbidity and one bis (2-ethylhexyl) phthalate violations shall be permanently suspended if the Discharger submits evidence that it has spent at least \$9,000 and completes the compliance project described in Findings 21 and 22 according to the schedule below:

<u>Task</u>	<u>Compliance Date</u>
Complete the Pond 3 Lining Project	30 November 2012
Submit Final Report Documenting Completion of the Pond 3 Lining Project and Documenting Costs	30 January 2013

4. 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.
5. By **9 February 2013**, the Discharger shall pay **fourteen thousand and twenty dollars (\$14,020)** to the State Water Board's Cleanup and Abatement Account. Payment shall be in the form of a check made payable to the *State Water Pollution Cleanup and Abatement Account* and shall have the number of this ACL Order written upon it. The check shall be mailed to the Central Valley Water Board at 11020 Sun Center Drive Suite 200, Rancho Cordova, CA 95670.
6. 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. The Discharger shall make any deadline extension request in writing at least 30 days prior to the deadline. Under no circumstances may the completion of any of the approved compliance projects extend past five (5) years from the issuance of this Order.

7. The Discharger must obtain written approval from the Assistant Executive Officer for any significant departures from the project outlines and the time schedules shown above. Failure to obtain written approval for any significant departures may result in the assessment of the full amount of the suspended mandatory minimum penalty.
8. If, in the judgment of the Assistant Executive Officer, the Discharger fails to complete the compliance projects in accordance with the due dates listed above (including any extensions approved by the Assistant Executive Officer), the Executive Officer may demand payment of the suspended liability that reflects the portion of the compliance project that has not been satisfactorily completed. Payment must be made within 30 days of such a demand.
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. The Board reserves the right to take any enforcement action authorized by law.
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 Water Code 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

7 January 2013

DATE

Attachment A: Record of Violations

Attachment A
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2013-0500

City of Colfax
Wastewater Treatment Plant

RECORD OF VIOLATIONS (1 July 2011 – 30 September 2012) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2007-0130)

Date	Parameter	Units	WDRs Limit /		Measured	Period Type	Remarks	CIWQS
			CDO Limit	CDO R5-2010-0001 In Effect				
1	13-Sep-11	Copper	µg/L	5.5 / 6.7*	10.2	Daily Maximum	2	915422
2	30-Sep-11	Copper	µg/L	5.5 / 6.7*	7.3	Daily Maximum	2	916564
3	30-Sep-11	Copper	µg/L	2.7 / 6.7*	8.8	Monthly Average	2	916566
4	4-Oct-11	Copper	µg/L	5.5 / 6.7*	13.1	Daily Maximum	2	916565
5	31-Oct-11	Copper	µg/L	2.7 / 6.7*	8.2	Monthly Average	2	916567
<i>CDO R5-2011-0097 Adopted</i>								
6	14-Mar-12	Turbidity	NTU	2	4	Daily Average	4	925576
7	16-Mar-12	Turbidity	NTU	2	5	Daily Average	4	925577
8	31-Mar-12	BEP**	µg/L	1.8	3.1	Monthly Average	2	925557
9	30-Apr-12	Mercury	lbs/mo	0.000761	0.00083	Monthly Discharge	4	928067
10	23-May-12	Total Coliform	MPN/100mL	240	>1600	Instantaneous Maximum	4	930783
11	30-May-12	Ammonia	mg/L	2.1	10.9	Daily Maximum	5	930784
12	31-May-12	Ammonia	mg/L	0.8	3.1	Monthly Average	5	930785
13	9-Jun-12	Ammonia	mg/L	2.1	11.7	Daily Maximum	5	932698
14	13-Jun-12	Ammonia	mg/L	2.1	5.3	Daily Maximum	5	932699
15	20-Jun-12	Ammonia	mg/L	2.1	7.3	Daily Maximum	5	932700
16	27-Jun-12	Ammonia	mg/L	2.1	7.1	Daily Maximum	5	932701
17	30-Jun-12	Ammonia	mg/L	0.8	7.9	Monthly Average	5	932702
18	4-Jul-12	Ammonia	mg/L	2.1	2.6	Daily Maximum	5	936061
19	31-Jul-12	Ammonia	mg/L	0.8	0.96	Monthly Average	5	936062
20	31 Aug-12	Aluminum	µg/L	71	73.2	Monthly Average	4	937517

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.
5. Not subject to MMPs per Water Code section 13385(j)(1)(C)

VIOLATIONS AS OF: 09/30/2012

Group I Serious Violations:	0
Group II Serious Violations:	6
Non-Serious Violations Exempt from MMPs:	0
Non-serious Violations Subject to MMPs:	5
<u>Total Violations Subject to MMPs:</u>	<u>11</u>

Mandatory Minimum Penalty = (6 Serious Violations + 5 Non-Serious Violations) x \$3,000 = \$33,000

* Subject to MMPs because the effluent exceeded the interim daily maximum effluent limitation in CDO R5-2010-0001

** BEP: Bis (2-Ethylhexyl) Phthalate