

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

TENTATIVE ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2009-0504

MANDATORY PENALTY
IN THE MATTER OF

CITY OF PORTOLA
WASTEWATER TREATMENT PLANT
PLUMAS COUNTY

This Order is issued to the City of Portola (hereafter 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 R5-2003-0110 (NPDES No. CA0077844).

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

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system, and provides sewerage service to the town of Portola. Treated municipal wastewater may be discharged to the Middle Fork of the Feather River, a water of the United States, from 1 November to 15 May.
2. On 23 April 2004, the Central Valley Water Board issued Waste Discharge Requirements Order R5-2003-0110 (NPDES No. CA0077844), for the City of Portola, to regulate the discharge of treated municipal wastewater.
3. On 9 December 2008, the Assistant Executive Officer issued Administrative Civil Liability Complaint R5-2008-0633 to the Discharger, alleging violations of Order R5-2003-011 that are subject to mandatory minimum penalties. Pursuant to CWC section 13323, the Discharger has waived its right to a hearing within 90 days of issuance of the Complaint.
4. CWC section 13385(i) requires the assessment of mandatory penalties and states, in part, the following:

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.

5. Order R5-2003-0110 includes the following effluent limitations:

B. Effluent Limitations

5. The discharge shall not have a pH less than 6.0 nor greater than 9.0.

6. According to the Discharger's self-monitoring reports, the Discharger committed 24 non-serious violations of the effluent pH limitation contained in Order R5-2003-0110 from 15 March 15th 2004 to April 13th 2004 (all pH measurements were greater than 9.0). Twenty-one of the non-serious violations are subject to mandatory penalties under CWC section 13385(i)(1) because these violations were preceded by three similar violations within a six-month period. The mandatory minimum penalty for these non-serious violations is **sixty-three thousand dollars (\$63,000)**.

7. 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.

8. On 9 February 2009, the Executive Director of the State Water Resources Control Board confirmed that the City of Portola Wastewater Treatment Plant is a publicly owned treatment works serving a small community within the meaning of CWC section 13385(k)(2). The Water Quality Enforcement Policy lists Plumas County as a rural county with financial hardship. Quincy is on the State Water Board's previous list of small communities with a financial hardship.

9. On 18 December 2008, the Discharger requested to complete a Compliance Project in lieu of payment of the ACL. On 29 April 2009 the Discharger submitted a proposal to conduct a full-scale pilot study to evaluate potential solutions to the pH issue. The Discharger proposes to purchase monitoring equipment, and construct a building and

pH adjustment facilities at the discharge point. This is a seasonal discharge and the pilot study is to be completed during the winter of 2009-2010.

10. The Central Valley 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.
11. Issuance of this Administrative Civil Liability Order 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).
12. On 15 March 2007, the Central Valley 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).
13. This Order constitutes a settlement of the violations herein mentioned. Notice of this settlement was published on the Central Valley Water Board's website, in a newspaper of general circulation in the community, and was provided to all interested parties on 8 May 2009. The Central Valley Water Board will receive comments on this settlement, as mandated by Federal regulations (40 CFR 123.27), through 8 June 2009.
14. This tentative Order is set to become final on or after 8 June 2009, provided that significant comments raising issues that would cause the Central Valley Water Board to reconsider this action are not received in the public comment period.

IT IS HEREBY ORDERED, pursuant to CWC section 13385, that

1. The Discharger shall be assessed a Mandatory Penalty in the amount of **sixty-three thousand dollars (\$63,000)**.
2. The entire \$63,000 penalty shall be permanently suspended if the discharger complies with the following time schedule to complete the compliance project:

<u>Task</u>	<u>Compliance Date</u>
Achieve full compliance with effluent limitations for discharges to surface waters	1 July 2011
Submit documentation of Compliance Project costs	1 July 2011

3. 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

4. The Discharger must obtain explicit approval from the Executive Officer for any significant departures from the project proposed by the City manager on 29 April 2009. Failure to obtain approval for any significant departures will result in the assessment of the full amount of the suspended mandatory minimum penalty.
5. 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 proposal without obtaining Central Valley Water Board approval, the suspended mandatory minimum penalty **(\$63,000)** must be paid within 30 days of notification by the Executive Officer of such failure.

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 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

PAMELA C. CREEDON, Executive Officer

9 December 2009

(Date)