

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2013-0578

MANDATORY PENALTY
IN THE MATTER OF

CITY OF PORTOLA
PORTOLA WASTEWATER TREATMENT PLANT
PLUMAS COUNTY

This Order is issued to the City of Portola (hereafter Discharger) pursuant to California 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) Orders R5-2009-0093 (NPDES No. CA0077844).

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

1. The Discharger owns and operates a municipal wastewater treatment plant providing sewerage service for the City of Portola. Treated wastewater, between 1 November to 15 May, may be discharged to a small constructed wetlands, then to the Middle Fork of the Feather River, a water of the United States. During the period of 16 May to 31 October, and at times when flow in the Feather River at the point of Discharge is less than 40 cubic feet per second, wastewater is held in ponds to be discharged at a later date.
2. On 8 October 2009, the Central Valley Water Board issued WDRs Order R5-2009-0093 (NPDES No. 0077844) to the City of Portola, to regulate the discharge of treated municipal wastewater, which contained new requirements and rescinded WDRs Order R5-2003-0110.
3. WDRs Order R5-2009-093 Effluent Limitations IV.A. includes, in part, the following limitations:
 1. Effluent Limitations – Discharge Point D-001

The Discharger shall maintain compliance with the following effluent limitations at Discharge Point D-001, with compliance measured at Monitoring Location EFF-001 as described in the attached MRP (Attachment E):

- a. The Discharger shall maintain compliance with the effluent limitations specified in Table 6:

Table 6. Effluent Limitations

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
BOD 5-day @ 20°C	mg/L	30	45	90		
	lbs/day ¹	1	1	1		
Total Suspended Solids	mg/L	30	45	90		
	lbs/day ¹	1	1	1		
pH	standard units				6.0	9.0
Ammonia, Total as N	mg/L	23		45		
Copper, Total	ug/L	53		106		

¹ The average mass discharge for the period from 1 November to 30 April shall not exceed 125.1 lbs/day.

- b. **Percent Removal:** The average monthly percent removal of BOD 5-day 20°C and total suspended solids shall not be less than 65 percent.

4. Water Code section 13385(h) and (i) require assessment of mandatory penalties and states, in part, the following:

Water Code 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.

Water Code 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 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 13358 (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.

5. 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.

6. On 11 May 2011, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2011-0579 for mandatory minimum penalties in the amount of \$9,000 for effluent violations from 22 March 2010 through 30 April 2010. On 1 August 2011, the Discharger submitted the Waiver Form with option 2 checked; which waived the 90-day hearing requirement in order to engage in settlement discussions with the Central Valley Water Board.

7. On 19 September 2011, the Assistant Executive Officer of the Central Valley Water Quality Control Board issued Administrative Civil Liability Complaint R5-2011-0592 for mandatory minimum penalties in the amount of \$3,000 for effluent violations of 22 March 2011 through 30 April 2011. On 7 October 2011, the Discharger submitted the Waiver Form with option 2 checked; which waived the 90-day hearing requirement in order to engage in settlement discussions with the Central Valley Water Board.

8. 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.

9. The State Water Resources Control Board has determined that the Discharger's wastewater treatment plant is a publicly owned treatment works serving a small community within the meaning of Water Code section 13385(k)(2).
10. On 2 November 2011, the Discharger submitted a proposed compliance project. The nature of their violations was high Total Suspended Solids in the effluent discharged to the river. The City has a seasonal discharge permit that allows for discharge to the Feather River from November through April given certain parameters of flow and water quality. The Discharger has been working to reduce discharge to the river through the development of on-site spray irrigation areas. Expanding the spray irrigation will reduce the volume of discharge, shorten the discharge season and reduce the likelihood of the discharge season extending into the periods of high suspended solids due to springtime algal blooms. The proposed compliance project is the expansion of existing evaporation spray areas and the construction of new reclamation fields. The reclamation fields will be irrigated with treated, disinfected effluent from the 6-Acre Pond during a defined irrigation season of May through September.
11. On 26 April 2012, Central Valley Water Board Staff requested the Discharger conduct a formal wetlands delineation of the proposed spray expansion area because of the close proximity to the Middle Fork Feather River, a water of the United States, and its adjacent wetlands. The Discharger completed the delineation in August 2012, and on 28 February 2013 received a jurisdictional determination from the US Corps of Engineers (SPK-2013-00152) confirming that the expanded spray irrigation area was outside waters of the United States.
12. On 3 July 2012, the City Manager Todd Roberts submitted accounting records showing the Discharger has expended \$73,000 on the wastewater treatment plant reclamation project and other facility improvements, which is in excess of the mandatory minimum penalty required by Water Code sections 13385(h) and (i).
13. The Central Valley Water Board finds that the compliance project corrected the violations that led to the issuance of Administrative Civil Liability Complaint R5-2011-0579 and Complaint R5-2011-0592. Furthermore, the project is in accordance with the Enforcement Policy of the State Water Board. First, the amount of the penalties, \$12,000 (sum of \$9,000 and \$3,000), that is suspended does not exceed the cost that was necessary to complete the compliance project, \$73,000. Second the Discharger spent an amount of money, \$73,000 on the compliance project that is equal to or greater than the amount of the penalty that is suspended, \$12,000. Third, the compliance project brought the Discharger back into compliance within five-years of issuance of the Administrative Civil Liability Complaints and prevents future noncompliance. Fourth, the Discharger submitted a Final Report, which states the compliance project is complete.
14. 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). 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.

15. 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 CFR 123.27) has expired.
16. Issuance of this Administrative Civil Liability Complaint 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).

IT IS HEREBY ORDERED, pursuant to Water Code section 13385, that:

1. The City of Portola. Portola Wastewater Treatment Plant, its agents, successors and assigns, shall be assessed an Administrative Civil Liability in the amount **twelve thousand dollars (\$12,000)**.
2. The entire \$12,000 is treated as a Suspended Administrative Liability as the Discharger has submitted proof to the Central Valley Water Board that the money spent toward the Compliance Project detailed in Findings 10, 11, 12, & 13 was equal or greater than the Suspended Administrative Liability.

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 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
or will be provided upon request.

This Order is effective immediately upon issuance.



KENNETH LANDAU, Assistant Executive Officer

1 October 2013
(Date)

PORTOLA WASTEWATER TREATMENT PLANT
 Record of Violations (March 2011 – April 2011)

MANDATORY MINIMUM PENALTIES
 (Data reported under Monitoring and Reporting Program No. R5-2009-0093)

Table 2. Effluent Violations

Violation Date	Discharge Point	Pollutant/Parameter	Units	Effluent Limit	Analytical Results	Percentage Over	Period	Violation Type	CIWQS Violation	MMP Amount
3/22/2011	D-001	Total Suspended Solids	mg/L	45	68	51	Weekly Average	Serious, Group I	896948	\$3,000.00
3/31/2011	D-001	Total Suspended Solids	mg/L	30	36	20	Monthly Average	Non-Serious, Group I	896947	1
4/26/2011	D-001	Total Suspended Solids	mg/L	45	55	22	Weekly Average	Non-Serious, Group I	899645	1
								TOTAL		\$3,000.00

¹ First three non-serious violations in a six-month period are not subject to mandatory minimum penalties.

Violation Types:

Serious Group I: any waste discharge that exceeds the effluent limitations for a group I pollutant by 40% or more.

Serious Group II: any waste discharge that exceeds the effluent limitations for a group II pollutant by 20% or more.

Non-Serious Violation: A non-serious violation occurs if the discharger does any one of the following four or more times in any period of 180 days:

- (a) violates a WDR effluent limitation;
- (b) fails to file a report of waste discharge pursuant to California Water Code section 13260;
- (c) files an incomplete report of waste discharge pursuant to California Water Code section 13260; or
- (d) violates a whole effluent toxicity limitation where the WDRs do not contain pollutant-specific effluent limitations for any toxic pollutants.

AMEL: Average Monthly Effluent Limitation

MDEL: Daily Maximum Effluent Limitation

**ATTACHMENT A
ADMINISTRATIVE LIABILITY ORDER R5-2013-0578**

**PORTOLA WASTEWATER TREATMENT PLANT
Record of Violations (March 2010 – April 2010)**

**MANDATORY MINIMUM PENALTIES
(Data reported under Monitoring and Reporting Program No. R5-2009-0093)**

Table 1. Effluent Violations

Violation Date	Discharge Point	Pollutant/ Parameter	Units	Effluent Limit	Analytical Results	Percentage Over	Period	Violation Type	CIWQ Violation	MMP Amount
3/22/2010	D-001	Total Suspended Solids	mg/L	45	61	36%	Weekly Average	Non-Serious, Group I	868572	1
3/30/2010	D-001	Acute Toxicity Test	% Survival	70	95	Failed	Monthly	Non-Serious, Other	868571	1, 2
3/31/2010	D-001	Total Suspended Solids	mg/L	30	52	73%	Monthly Average	Serious, Group I	868573	\$3,000.00
4/27/2010	D-001	Total Suspended Solids	mg/L	45	47	4%	Weekly Average	Non-Serious, Group I	870799	\$3,000.00
4/30/2010	D-001	Total Suspended Solids	mg/L	30	47	57%	Monthly Average	Serious, Group I	871475	\$3,000.00
								TOTAL		\$9,000.00

¹ First three non-serious violations in a six-month period are not subject to mandatory minimum penalties.

² Laboratory substituted fathead minnow for rainbow trout

Violation Types:

Serious Group I: any waste discharge that exceeds the effluent limitations for a group I pollutant by 40% or more.

Serious Group II: any waste discharge that exceeds the effluent limitations for a group II pollutant by 20% or more.

Non-Serious Violation: A non-serious violation occurs if the discharger does any one of the following four or more times in any period of 180 days:

- (a) violates a WDR effluent limitation;
- (b) fails to file a report of waste discharge pursuant to California Water Code section 13260;
- (c) files an incomplete report of waste discharge pursuant to California Water Code section 13260; or
- (d) violates a whole effluent toxicity limitation where the WDRs do not contain pollutant-specific effluent limitations for any toxic pollutants.

AMEL: Average Monthly Effluent Limitation

MDEL: Daily Maximum Effluent Limitation