

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Order No. R1-2009-0043

For

Violation of Waste Discharge Requirements
Order No. R1-2001-60
NPDES No. CA0024490

In the Matter of
McKinleyville Community Services District
Wastewater Treatment Facility
WDID No. 1B82084OHUM

Humboldt County

The California Regional Water Quality Control Board, North Coast Region (Regional Water Board), having received from the McKinleyville Community Services District (Discharger) a waiver of the right to a hearing in the matter of mandatory minimum penalties pursuant to Water Code section 13385, subdivisions (h) and (i) for failure to meet mandatory effluent requirements pursuant to Waste Discharge Requirements Order No. R1-2001-60 and its associated monitoring and reporting program, and having received the Discharger's request for the opportunity to implement a compliance project (CP) in lieu of the penalty prescribed, finds the following:

1. The Discharger owns and operates wastewater collection, treatment, and disposal facilities (WWTF) that serve the unincorporated area of McKinleyville in northern Humboldt County. The WWTF consists of two primary ponds and three secondary oxidation ponds followed by disinfection facilities. Treated and disinfected wastewater is discharged to the Mad River during the winter months at a dilution ratio of at least 100 to 1 whenever the river flow exceeds 200 cubic feet per second as measured at the Highway 101 Bridge. During the summer months (May 15 to September 30) and low-flow periods in the river, treated wastewater is discharged using a combination of percolation ponds and pasture irrigation.
2. The Regional Water Board adopted Order No. R1-2001-60, Waste Discharge Requirements, for the McKinleyville CSD on June 28, 2001. The Order also serves as a National Pollutant Discharge Elimination System (NPDES) Permit No. CA0024490.
3. Among the provisions in the Discharger's waste discharge requirements are the requirements to implement a discharge monitoring program and to prepare and submit NPDES self-monitoring reports to the Regional Water Board pursuant to Water Code section 13383. According to monitoring reports submitted by the Discharger, the Discharger exceeded effluent limitations 23 times during the period from June 1, 2005 through July 31, 2008.

4. Water Code section 13385, subdivisions (h) and (i) establish mandatory minimum penalties (MMPs) for violations of waste discharge requirement effluent limitations. Water Code section 13385, subdivision (k) allows the Regional Water Board to direct all or a portion of the penalty toward a Compliance Project (CP) in accordance with Section X of the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy).
5. On December 12, 2008, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R1-2008-0123 assessing a mandatory minimum penalty of \$60,000 for effluent violations as described in Finding No. 3 above. On January 12, 2009, the Discharger waived its right to a public hearing and paid the sum of \$10,000 to the State Water Pollution Cleanup and Abatement Account (CAA). An ongoing CP described in Finding 6 covers the outstanding balance of \$50,000.
6. ACLO R1-2007-0018 issued on April 27, 2007 assessed a mandatory minimum penalty of \$231,000 for the period January 1, 2000 through May 31, 2005. The Discharger paid \$10,000 to the CAA and embarked on a CP costing in excess of \$795,000 to cover the remaining balance of the civil liability of \$221,000. The project consisted of modifying pond 4 within the treatment plant and adding a constructed wetland. Completion of construction and planting of marsh plants occurred during the fall of 2005. It was estimated at the time of construction completion that full maturity of the marsh plants and maximum treatment levels would not occur until the winter of 2008. The treatment plant has shown steady improvement in performance since the installation of the wetland with three violations in 2007 and one through September of 2008. Those violations are subject to discretionary enforcement (not MMPs), because they occurred during the land disposal period of operation of the treatment plant. Therefore, the CP has proven very successful in correcting the violations that were the basis of ACLO R1-2007-0018, and the subsequent ACLC R1-2008-0123, which is the foundation of this Order as described in Finding No. 5.
7. On March 27, 2009 the State Water Board determined that the Discharger serves a small community with a financial hardship as defined by Water Code section 13385(k)(2). This determination allows the State Water Board or Regional Water Board to require the Discharger to spend a portion of the mandatory minimum penalties on a compliance project that conforms to Water Code section 13385 (k)(1)(A)(B)(C). The project undertaken by the Discharger meets these terms.
8. The CP meets the requirements of Water Code section 13385(k) and the State Water Resources Control Board's "Water Quality Enforcement Policy." It is designed to correct the violations that are the subject of the MMPs within five years and the Discharger has shown sufficient funding to complete the CP. Furthermore, the amount of the penalty suspended by this ACLO (\$50,000) and ACLO R1-2007-0018 (\$221,000) does not exceed the amount spent on the CP (\$795,000).

9. A duly noticed public hearing on this matter was held before the Regional Water Board on July 23, 2009 at the Regional Water Board office in Santa Rosa, California. The documents for the agenda item were provided to the Discharger and made available to the public prior to the hearing. The Discharger and the public were given the opportunity to testify and present evidence regarding the proposed settlement.
10. At the hearing, the Regional Water Board considered whether to affirm, reject or modify the Administrative Civil Liability Order and any other action appropriate as a result of the hearing.
11. The issuance of this Order is an enforcement action to protect the environment, and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, §§ 21000-21177) pursuant to title 14, California Code of Regulations, sections 15308 and 15321, subdivision (a)(2).
12. Any person affected by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with section 13320 of the Water Code and title 23, California Code of Regulations, section 2050. The petition must be received by the State Water Board within thirty days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

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

1. The Discharger shall be assessed the mandatory minimum penalty of \$60,000. The Discharger has paid the sum of \$10,000 to the CAA to cover a portion of staff costs. Based upon the satisfactory completion of a CP costing in excess of \$795,000 in December of 2008, which has brought the Discharger back into compliance, the remaining sum of \$50,000 is suspended.

Certification

I, Catherine Kuhlman, Executive Officer,
do hereby certify that the foregoing is a
full, true, and correct copy of an Order
adopted by the California Regional
Water Quality Control Board, North
Coast Region, on July 23, 2009.

Catherine Kuhlman
Executive Officer