



Alan Lloyd, Ph.D.
Agency Secretary

California Regional Water Quality Control Board

Central Valley Region

Robert Schneider, Chair



Arnold
Schwarzenegger
Governor

Sacramento Main Office

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>

10 August 2005

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Mr. Michael Hill-Weld, Director
Department of Transportation and Sanitation
950 Maidu Avenue
Nevada City, CA 95959-8600

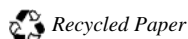
**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2005-0518 INCLUDING
MANDATORY MINIMUM PENALTIES; CASCADE SHORES WASTEWATER TREATMENT
PLANT, NPDES NO. CA0073241, NEVADA COUNTY**

Enclosed is an Administrative Civil Liability Complaint issued by the Executive Officer of the Central Valley Regional Water Quality Control Board (Regional Board) pursuant to Section 13385 of the California Water Code for violations of Waste Discharge Requirements (WDR) Order No. 94-160 and Order No. 5-01-177 (NPDES No. CA0083241) by the Nevada County Sanitation District No. 1 and Nevada County (Discharger). The Complaint proposes administrative civil liability of \$574,000 for specific effluent limitation violations and the May 2005 raw sewage spill to Gas Canyon Creek. This includes \$531,000 in non-discretionary mandatory minimum penalties for the effluent limitation violations.

Pursuant to California Water Code Section 13323, the Discharger may either choose to pay the civil liability and waive a hearing before the Regional Board on the matter or choose to contest the Complaint and proceed to a hearing. If the Discharger chooses to waive the right to a hearing, a duly authorized person must sign the waiver and submit it to this office, along with a check payable to the "State Water Resources Control Board Cleanup and Abatement Account" in the full amount of the civil liability. Any waiver will not be effective until 30 days from the date of this Complaint to allow other interested persons to comment on this action. If the Regional Board does not receive a waiver and a check for the full amount of \$574,000 by **5 September 2005**, a hearing will be scheduled at the 20/21 October 2005 Regional Board Meeting in Sacramento. Additionally, the Executive Officer may decide to schedule the Complaint for a hearing consistent with California Water Code Section 13323(b). If the Discharger intends to proceed to hearing on this matter, it must submit written comments and evidence to the Regional Board, attention: Alex Baillie, by **5 September 2005**.

Persons wishing to submit comments on this action should submit written comments within 30 days from the date of this letter to the Regional Board, attention: Alex Baillie.

California Environmental Protection Agency



If you have any questions or comments, please contact Alex Baillie at (916) 464-4815 or Richard McHenry (916) 464-4655.

THOMAS R. PINKOS
Executive Officer

Enclosure

cc: U.S. Environmental Protection Agency, Region IX, San Francisco
U.S. Fish and Wildlife Service, Sacramento
U.S. Marine Fisheries Service, Santa Rosa
Mr. Phil Isorena, State Water Resources Control Board, Sacramento
Mr. Mark Bradley, State Water Resources Control Board, Sacramento
Ms. Frances McChesney, State Water Resources Control Board, Sacramento
Ms. Carole Oz, Department of Fish and Game, Region 2, Rancho Cordova
Mr. Gary Schultz, Department of Health Services, Redding
Mr. Carl Lischeske, Department of Health Services, Sacramento
Mr. Kurtis Zumwalt, Nevada County Environmental Health Department, Nevada City
Mr. Nate Beason, Nevada County Board of Supervisors, Nevada City
Mr. Dan Rich, ECO:LOGIC Engineering, Rocklin
Mr. Tom Holdrege, Holdrege and Kull, Nevada City
Mr. Robert Crabb, Cascade Shores Homeowners Association, Nevada City
Ms. Annette Murphy, Nevada City
Mr. Bill Jennings, DeltaKeeper, Stockton
Mr. Dave Moller, *The Union*, Grass Valley
Auburn Journal, Auburn

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2005-0518

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

COUNTY OF NEVADA
COUNTY OF NEVADA SANITATION DISTRICT NO. 1
CASCADE SHORES WASTEWATER TREATMENT PLANT
NEVADA COUNTY

This complaint is issued to the Nevada County Sanitation District No. 1 and the County of Nevada, (hereafter referred to individually as Nevada County Sanitation District No. 1 and Nevada County or jointly as Discharger) based on a finding of violations of NPDES Waste Discharge Requirements Order No. No. 94-160 and WDR Order No. 5-01-177 (NPDES No. CA0083241), pursuant to California Water Code (CWC) Section 13385, which authorizes the imposition of Administrative Civil Liability, and CWC Section 13323, which authorizes the Executive Officer to issue this complaint.

The Executive Officer of the Regional Water Quality Control Board, Central Valley Region (Regional Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger owns and operates the Cascade Shores Wastewater Treatment Plant (WWTP) and accompanying collection, treatment and disposal systems, which provides sewerage service to the Cascade Shores Community. Treated municipal wastewater is discharged to Gas Canyon Creek, a water of the United States, and tributary to Green Horn Creek, Rollins Reservoir, and the Bear River.
2. On 20 May 1994, the Regional Board adopted WDR Order No. 94-160 to regulate discharges of waste from the WWTP. On 14 June 2001, the Regional Board adopted WDR Order No. 5-01-177, rescinding Order No. 94-160.

Mandatory Penalties

3. CWC Section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC Section 13385(h)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each serious violation.

CWC Section 13385 (h)(2) states for 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) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the discharger does any of the following four or more times in any period of six consecutive months.

- i. Violates a waste discharge requirement effluent limitation.*
- ii. Fails to file a report pursuant to CWC Section 13260.*
- iii. Files an incomplete report pursuant to CWC Section 13260.*
- iv. 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. WDR Order No. 94-160 Effluent Limitations No. C. 1 includes, in part, the following effluent limitations:

<u>Constituent</u>	<u>Unit</u>	<u>Monthly Median</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>
Chlorine Residual	mg/l	---	---	---	0.02
BOD	mg/l		15	20	35
Total Suspended Solids	mg/l		15	20	35
Settleable Solids	ml/l				0.1
Chlorine Residual	mg/l	---	---	---	0.02
Total Coliform Organisms	MPN/100 ml	2.2	--	---	23

5. WDR Order No. 94-160 Effluent Limitations No. C. 3 states, that “The discharge shall not have a pH less than 6.5 nor greater than 8.5.”

6. WDR Order No. 5-01-177 Effluent Limitations No. B. 1A includes, in part, the following effluent limitations:

<u>Constituent</u>	<u>Unit</u>	<u>Monthly Median</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>
Chlorine Residual	mg/l	---	---	---	0.02
BOD	mg/l		15	20	35
	lb/Day		3.3	4.3	7.6
Total Suspended Solids	mg/l		15	20	35
	lbs/Day		3.3	4.3	7.6
Settleable Solids	ml/l				0.1
Chlorine Residual	mg/l	---	---	---	0.02

<u>Constituent</u>	<u>Unit</u>	<u>Monthly Median</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>
Total Coliform Organisms	MPN/100 ml	2.2	--	---	23

7. WDR Order No. 5-01-177 Effluent Limitations No. B. 4 states, "The discharge shall not have a pH less than 6.5 nor greater than 8.5."
8. WDR Order No. 5-01-177 Effluent Limitations No. B. 5 states, "The concentration of dissolved oxygen shall not fall below 7.0 mg/l in the discharge."
9. WDR Order No. 94-160 and Order No. 5-01-177 require that the Discharger implement Monitoring and Reporting Programs No. 94-160 and No. 5-01-177, respectively. Both Monitoring and Reporting Program No. 94-160 and No. 5-01-177 prescribe effluent monitoring requirements including, but not limited to, biochemical oxygen demand (BOD), total suspended solids (TSS), settleable solids, pH, chlorine residual, and total coliform organisms.
10. According to December 2004 Self-Monitoring Report, the winter operation mode for the WWTP includes taking the filters out of service due to high storm flows. The filtration process is used to remove pollutants from the waste stream. WDR Order No. 5-01-177 Effluent Limitation B.2 requires that wastewater be oxidized, coagulated and filtered, or equivalent treatment provided and bypassing the filtration treatment process is a violation of the Order. The winter operational procedure of taking the filtration process off-line is in violation of the Order No. 5-01-177 Effluent Limitations. Filtration is an effective treatment process for the removal of total suspended solids. The majority of effluent violations were for total suspended solids (approximately 50 violations) and taking the filter off-line may, in part, have contributed to the violations due to a reduction in treatment. [KB1]Despite that this action resulted in TSS violations, increased suspended solids are an indicator of the presence of increased levels of pollutants in the wastestream. For example, filtration is an effective means of removing pathogens from the wastestream. Failure to filter the wastestream directly degrades contact recreation, food crop irrigation, and municipal and domestic uses of downstream waters as well as threatens other beneficial uses by the increased pollutant load.
11. The WWTP is only staffed for approximately twelve to sixteen hours per week and is left unmanned for the remaining period of time (152 hours). In order to detect potential upsets or process control problems when unmanned, the WWTP is equipped with an alarm system. The alarm system is limited to six alarm parameters: intrusion alarm, water alarm, generator, low water pressure, chlorine gas leak, and sulfur dioxide gas leak and does not include sufficient process control or monitoring parameters to detect effluent violations when the WWTP is unmanned. The Discharger has attributed some of the cited effluent violations to the soda ash tank, chlorine tank, and equalization tank being prematurely pumped dry prior to the WWTP operator returning to the site. The tanks are not equipped with level alarms, which could have prevented the violations. In addition, the clogging of

chemical feed lines, the breaking of the drive belt for the air blower and other equipment malfunctions have also resulted in violations when the WWTP was unmanned. Due to the lack of process control or effluent monitoring alarms, the duration of the violation lasted until the WWTP operator returned to the site.

On 21 December 2003, the Nevada County found that the drive gear on the motor for the chlorinator had failed and that the effluent was not being fully disinfected prior to discharge. In order to stop the discharge, the WWTP operator attempted to switch the WWTP's flow to the storage pond but found the electric valve was inoperative. Therefore, the WWTP continued to discharge partially disinfected effluent to Gas Canyon Creek.

On 11 January 2004, the Nevada County found that highly chlorinated effluent, reported as 27 mg/l of chlorine, was being discharged to Gas Canyon Creek. This concentration greatly exceeds Order No. 5-01-177 Effluent Chlorine Residual Limitation of 0.02 mg/l. U.S. EPA states in its Ambient Water Quality Criteria, on which the effluent limit was based, that chlorine concentrations not exceed 0.019 mg/l as a one-hour average, in order to prevent acutely toxic conditions in aquatic life. The reported chlorine concentration of 27 mg/l is more than one thousand four hundred (1,400) times the acute criterion and is acutely toxic (lethal) to aquatic life. According to the County of Nevada Spill Report, dated 12 January 2004, the violation was caused when WWTP operation staff inadvertently left the chlorine system setup in the filter backwash mode prior to leaving the WWTP on 9 January 2004. It is common practice in the wastewater industry to have effluent alarms connected to a continuous chlorine residual monitoring devices. However, the WWTP is not equipped with an effluent chlorine monitoring alarm and the violation went undetected for several days.

The DSMRs, spill reports, and inspection reports by Regional Board staff show a number of violations that can be directly attributed to the absence of full-time operations staff, inadequate maintenance (*e.g.*, failure to clean out chlorine contact tank), and an inadequate alarm system (*e.g.*, ran out of chlorine, blower shut down).

12. According to the Discharger's self-monitoring reports (DSMR), the Discharger committed violations of the effluent limitations contained in Order No. 98-189 and Order 5-01-177 during the period beginning 1 January 2000 and ending 30 April 2005, as detailed in Attachment A. The mandatory minimum penalties for these cited effluent violations are summarized as follows:
 - Daily Maximum Total Coliform Organisms limitation: one hundred two thousand dollars (**\$102,000**) in penalties have been assessed for 34 violations;
 - Monthly Median Total Coliform Organisms limitation: twenty four thousand dollars (**\$24,000**) in penalties have been assessed for the eight violations.
 - Effluent pH limitation: thirty nine thousand dollars (**\$39,000**) in penalties have been assessed for 13 violations;

- Effluent Settleable Solids limitation: six thousand dollars (**\$6,000**) in penalties have been assessed for two violations;
- Effluent Dissolved Oxygen limitation: one hundred eight thousand dollars (**\$108,000**) in penalties have been assessed for 36 violations;
- Effluent Daily Maximum TSS limitation: eighteen thousand dollars (**\$18,000**) in penalties have been assessed for six violations;
- Effluent Weekly TSS limitation: forty five thousand dollars (**\$45,000**) in penalties have been assessed for 15 violations;
- Effluent Monthly TSS limitation: eighty seven thousand dollars (**\$87,000**) in penalties have been assessed for 29 violations;
- Effluent Daily Maximum BOD limitation: nine thousand dollars (**\$9,000**) in penalties have been assessed for three violations;
- Effluent Weekly Average BOD limitation: sixty six thousand dollars (**\$66,000**) in penalties have been assessed for 22 violations;
- Effluent Monthly Average BOD limitation: fifteen thousand dollars (**\$15,000**) in penalties have been assessed for five violations; and
- Total Chlorine Residual limitation: twelve thousand dollars (**\$12,000**) in penalties have been assessed for four violations.

The total amount of the mandatory penalties assessed for the cited effluent violations is five hundred thirty one thousand dollars (**\$531,000**), as shown on Attachment A.

Raw Sewage Spill

13. On 9 May 2005, a landslide took place on the cliff overhanging the Cascade Shores WWTP, resulting in the displacement of the main influent pipeline to the plant and the discharge of raw sewage to Gas Canyon Creek. The discharge of raw sewage continued unabated for nine days before it was finally stopped when repairs to the sewer line and WWTP were completed on 18 May 2005. The total volume of raw sewage discharged to Gas Canyon Creek was approximately 178,000 gallons.
14. On 11-13 May 2005, Regional Board's staff inspected the spill site and noted several sewer manholes situated along paved roads away from the spill site, which appeared to be suitable locations to potentially control the discharge by plugging the sewer lines and collecting the sewage. During the inspection visits, Regional Board staff informed Nevada County's management of the importance of controlling or minimizing the discharge of raw sewage to the creek. However, Nevada County allowed the discharge to continue in an uncontrolled fashion.

15. WDR Order No. 5-01-177 Prohibition No. A. 1 states, “*Discharge of wastewater at a location or in a manner different from that described in the Findings is prohibited.*” Due to the sewer line breakage, raw sewage was discharged upstream of the WWTP at a location and in a manner not described in the Order.
16. WDR Order No. 5-01-177 Prohibition No. A. 4 states, “*The Discharge shall not cause degradation of any water supply.*” Based on the results of samples collected by the Discharger and Regional Board staff, the discharge of raw sewage caused an exceedance of the Basin Plan objective for fecal coliform organisms, thereby degrading water quality and impairing the beneficial use of contact recreation and municipal and domestic supply in downstream waters.
17. WDR Order No. 5-01-177 Effluent No. B. 2 states, “*Wastewater shall be oxidized, coagulated and filtered, or equivalent treatment.*” Due to the sewer line breakage, raw sewage was discharged to Gas Canyon Creek without receiving the required treatment.
18. Standard Provision A.17 states, in part, that “*The discharger shall take all reasonable steps to minimize any adverse effects to waters of the State or users of those waters resulting from any discharge or sludge use or disposal in violation of this Order...*” Nevada County failed to take the appropriate action(s) to minimize the effects of the spill and did not undertake any cleanup activities for the discharge of raw sewage to the Gas Canyon Creek. Specifically, Nevada County had the ability to plug the sewer lines, store or pump the effluent to tanks or vac-trucks (which they own), and haul the untreated sewage to a nearby wastewater treatment plant. The low volume of sewage generated within the community (average daily flow rate of approximately 20,000 gallons per day) makes this compliance option reasonable.
19. The 2001 Annual Report for the WWTP states, in part, that, “*Monitor slope erosion above the plant – This plant is located at the base of a bluff in an area that had been hydraulically mined in the past. In recent years of high rainfall there has been concern about the stability of the slope. Engineering has informed us that a slope stabilization project would be very costly. Currently, we are visually monitoring the slope and it appears that little additional erosion is occurring. We have a contingency plan in place in case the influent pipe breaks due to erosion or landslide...*” Nevada County had knowledge that the hill slope instability might cause the sewer line to fail and in fact had prepared a contingency plan. During the time period prior to the landslide, Nevada County did not attempt to either stabilize the slope or conduct improvements to the sewer line and WWTP, thereby gaining economic benefit by deferring the associated cost for the hillside improvements. After the sewer line failed, Nevada County failed to act for more than a week to either stop or minimize the discharge of raw sewage and gained economic benefit by not treating 178,000 gallons of sewage and not incurring direct costs associated with properly containing and controlling the sewage discharge.
20. Nevada County had knowledge of the potential slope failure to cause sewage spills, the bypass was avoidable, and the Discharger achieved economic benefit by failing to implement reasonable engineered alternatives. Furthermore, the retention and subsequent disposal of

the sewage to other permitted facilities was a feasible compliance alternative to allowing the discharge to continue. Nevada County owns the necessary equipment (*i.e.* vactor trucks, line plugs, *etc.*) to collect and haul the sewage to an alternate disposal site. Four other wastewater treatment plants (three of which are operated by the Discharger) are situated within approximately 30 miles from the spill site. The assessment of Administrative Civil Liability for the raw sewage spill is appropriate.

21. CWC Section 13385 states, in part:

(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(2) Any waste discharge requirements...issued pursuant to this chapter...

(5) Any requirements of Section 301, 302, 306, 307,308, 318, 401, or 405 of the Clean Water Act, as amended.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

22. Given the nature and extent of the violation, Nevada County's culpability, and the fact that Nevada County allowed the discharge of raw sewage to continue to Gas Canyon Creek for more than a week, assessment of civil liability in accordance with CWC Section 13385 is appropriate. The maximum statutory liability is \$1,860,000 [\$10,000 for each day of violation (\$10,000 times 9 days) plus approximately \$1,770,000 (\$10 times (178,000 gallons – 1000 gallons)].

23. In determining the liability assessed, the Discharger's ability to pay must be considered. The Nevada County annual budget is approximately 40 million dollars. The Nevada County Sanitation District No. 1 annual budget is approximately \$200,000. At a minimum, the liability assessed must recover the economic benefit gained by the Discharger. The Discharger derived an economic benefit from the acts that constitute the violation, which is estimated to be not less than thirty three thousand dollars (**\$33,000**). The Discharger deferred costs associated with either stabilization of the hill slope and/or improving the sewer line, failed to treat 178,000 gallons of raw sewage, and failed to prevent or minimize the release of raw sewage such as, but not limited to, pumping and hauling the sewage offsite. Regional Board staff costs are estimated to be not less than \$10,000.
24. 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 (Public Resources Code Section 21000, *et. seq.*), in accordance with Title 14 California Code of Regulations, Enforcement Actions by Regulatory Agencies, Section 15321(a)(2).

THE NEVADA COUNTY SANITATION DISTRICT NO. 1 AND NEVADA COUNTY IS
HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes to assess Administrative Civil Liability in the amount of **five hundred seventy four thousand dollars (\$574,000)**, of which \$531,000 is the minimum mandatory penalty required by CWC Section 13385 for the effluent violations and \$43,000 is additional liability for the sewage spill. The amount of the additional liability proposed is based upon a review of the factors cited in CWC Section 13385 and the State Water Resources Control Board's Water Quality Enforcement Policy.
2. A hearing on this matter will be held at the Regional Board meeting scheduled on **20-21 October 2005**, unless the Discharger agrees to:
 - a. Waive the hearing and pay the proposed civil liability in full; or
 - b. Waive the right to a hearing in 90 days, and submit a settlement proposal within 30 days of the date of this Complaint that could include an agreement to conduct a Supplemental Environmental Project (SEP) and also includes payment of monetary liability. The Discharger may preserve its right to a hearing pending approval of the settlement proposal.
3. If a hearing on this matter is held, the Regional Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. The Discharger may waive the right to a hearing. If you wish to waive the hearing, **within 30 days of the date of this complaint**, sign and return the waiver to the Regional Board's office with a check in the amount of the civil liability made payable to the "State Water Resources Control Board Cleanup and Abatement Account." Any waiver will not be

effective until 30 days from the date of this complaint to allow interested persons to comment on this action.

THOMAS R. PINKOS, Executive Officer

Date

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent the Nevada County Sanitation District No. 1 and Nevada County (hereinafter jointly known as “Discharger”) in connection with Administrative Civil Liability Complaint No. R5-2005-0518 (hereinafter the “Complaint”);
2. I am informed of the right provided by California Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint;
3. I hereby waive the Discharger’s right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of issuance of the Complaint; and
4. Without admitting liability for the matters alleged in the Complaint, I certify that the Discharger will remit payment for the civil liability imposed in the amount of **\$574,000** by check, which contains a reference to “ACL Complaint No. R5-2005-0518” and is made payable to the “*State Water Resources Control Board Cleanup and Abatement Account.*”
5. I understand the payment of the above amount constitutes a settlement of violations alleged in the Complaint that will not become final until after a public comment period.
6. I understand that the Executive Officer has complete discretion to modify or terminate this settlement during the 30-day public comment period, which began on the date of the Complaint.
7. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(Print Name and Title)

(Signature)

(Date)