

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2009-0548

MANDATORY PENALTY
IN THE MATTER OF

CITY OF LINCOLN
WASTEWATER TREATMENT PLANT
PLACER COUNTY

This Order is issued to the City of Lincoln (Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability. This Order is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order 5-01-242 (NPDES No. CA0084476).

The 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 wastewater treatment plant (WWTP), which provides sewerage service for the City of Lincoln and adjacent areas. The City discharges treated municipal wastewater to reclamation areas and to Auburn Ravine Creek, tributary to the East Side Canal, Cross Canal, and the Sacramento River, a water of the United States.
2. On 19 October 2001, the Central Valley Water Board issued WDRs Order 5-01-242 to regulate discharges of waste from the new WWTP. On 14 March 2003, the WWTP commenced discharge.
3. CWC sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC 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.

CWC 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 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) 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.

4. CWC section 13385(l) allows a discharger to complete a Supplemental Environmental Project (SEP) in lieu of paying the full amount of a mandatory penalty, and states, in relevant part:

(l)(1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or the regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).

(2) For the purposes of this section, a "supplemental environmental project" means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section.

5. WDRs Order 5-01-242 Effluent Limitations No. B.1., include, in part, the following effluent limitations: "Equivalent secondary effluent from the WWTP discharged to Auburn Ravine...shall not be discharged during periods when a minimum of 20-to-1 (receiving water-to-effluent) dilution ratio is unavailable and shall not exceed the following limits: "

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>4-Day Average</u>	<u>Monthly Median</u>	<u>Daily Maximum</u>	<u>1-Hour Average</u>
Total Suspended Solids	mg/L	60	90		--	120	--
Chlorine Residual	mg/L	--	--	0.01	--	0.02	--
Aluminum	µg/L	--	--	87	--	--	750
	lbs/day ²	--	--	--	--	--	--
Copper	µg/L	--	--	-- ⁴	--	--	-- ⁴
	lbs/day ²	--	--	--	--	--	--
Lead	µg/L	--	--	-- ⁵	--	--	-- ⁵

² Based upon an average dry weather flow of 2.4 MGD. During periods of pond discharge, the mass shall not exceed the amount calculated from a maximum pond pumping rate of 5.6 mgd (concentration x 5.6 mgd x 8.34).

⁴ For copper, the 4-day average limitation is $(e(0.8545[\ln(\text{hardness})]-1.702))$ and the 1-hour average limitation is $(e(0.9422[\ln(\text{hardness})]-1.700))$.

⁵ For lead, the 4-day average limitation is $(e(1.273[\ln(\text{hardness})]-4.705))$ and the 1-hour average limitation is $(e(1.273[\ln(\text{hardness})]-1.460))$.

6. According to the Discharger's self-monitoring reports, the Discharger committed three (3) serious Group I violations of the above effluent limitations contained in Order 5-01-242 during the period beginning 14 March 2003 and ending 30 April 2008. The violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels by more than 40 percent on these occasions. The mandatory minimum penalty for these serious violations is **nine thousand dollars (\$9,000)**.
7. According to the Discharger's self-monitoring reports, the Discharger committed twenty (20) serious Group II violations of the above effluent limitations contained in Order 5-01-242 during the period beginning 14 March 2003 and ending 30 April 2008. These violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels by more than 20 percent on these occasions. The mandatory minimum penalty for these serious violations is **sixty thousand dollars (\$60,000)**.
8. According to the Discharger's self-monitoring reports, the Discharger committed fourteen (14) non-serious violations of the above effluent limitations contained in Order 5-01-242 during the period beginning 14 March 2003 and ending 30 April 2008. Ten (10) of the non-serious violations are subject to mandatory penalties under CWC 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 **thirty thousand dollars (\$30,000)**.
9. The total amount of the mandatory penalties assessed for the cited effluent violations is **ninety-nine thousand dollars (\$99,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Order.
10. On 17 September 2008, Assistant Executive Officer Jack Del Conte issued Administrative Civil Liability Complaint R5-2008-0569 to the Discharger. The Complaint assessed \$99,000 in mandatory minimum penalties. Following issuance of the ACL Complaint, the Discharger and the Central Valley Water Board's prosecution team conferred for the

purpose of settling this matter and the allegations herein without a formal hearing. After arms-length negotiations, the Discharger and the Board's prosecution team arrived at a mutually acceptable resolution of the Complaint.

11. The ACL Complaint will be resolved as follows: The Discharger will pay \$42,000 to the *State Water Pollution Control Cleanup and Abatement Account*, and will timely complete the \$57,000 Supplemental Environmental Project described in Attachment B, a part of this Order. The proposed settlement takes into account the factors cited in CWC section 13385(e) and the State Water Resources Control Board's *Water Quality Enforcement Policy*.
12. 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. The 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) has expired.
13. 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, section 15321(a)(2).

THE CITY OF LINCOLN IS HEREBY GIVEN NOTICE THAT:

1. The Discharger shall be assessed an Administrative Civil Liability in the amount of **ninety-nine thousand dollars (\$99,000)**.
2. The Discharger will remit payment for **forty-two thousand dollars (\$42,000)** of the imposed civil liability by check, which shall contain a reference to "ACL Order R5-2009-0548" and shall be made payable to the "*State Water Pollution Cleanup and Abatement Account*." This payment must be received by the Central Valley Water Board **by 17 August 2009**.
3. Of the \$99,000 assessed penalty, **fifty-seven thousand dollars (\$57,000)** shall be suspended, pursuant to CWC section 13385(l), pending completion of a Supplemental Environmental Project (SEP). The SEP chosen by the Discharger is the Auburn Ravine Water Quality and Stream Ecology Monitoring Program. A summary of the SEP Project Description, which includes a list of deliverables that will be submitted to the Central Valley Water Board throughout the project, can be found as Attachment B, a part of this Order. **By 17 August 2009**, the Discharger shall place the \$57,000 into an account specifically established to fund this SEP.
4. The Discharger is ultimately responsible for ensuring that the work described in Attachment B is satisfactorily completed. In addition, the Discharger is responsible for submitting all technical reports and quarterly progress reports by the due dates listed in

Attachment B. The quarterly progress reports and the Final Report shall also be submitted to the State Water Resources Control Board, Division of Finance.

5. If the final cost of the successfully completed SEP is less than the suspended amount of \$57,000, the Discharger must remit the difference to the *State Water Pollution Cleanup and Abatement Account* by **30 May 2011**.
6. As required by the State Water Board's *Policy on Supplemental Environmental Projects*, the Discharger shall reimburse the Central Valley Water Board for the full cost of staff oversight of the SEP. Staff oversight costs are not part of the direct cost of the SEP. By **17 August 2009**, the Discharger shall provide documentation stating that it agrees to pay staff oversight costs, and the name and address to be used for billing purposes.
7. Whenever the Discharger or its agents or subcontractors, or any fiscal agent holding SEP funds, publicize any element of a SEP project, they shall state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action against the Discharger.
8. The 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 and makes the extension request in advance of the expiration of the deadline. The Discharger shall make any deadline extension request in writing. Any request for an extension not responded to in writing by the Board shall be deemed denied. The Discharger must obtain explicit approval from the Executive Officer for any significant departures from the project described in Attachment B. Failure to obtain written approval for any significant departures will result in the assessment of the actual cost difference between the portion of the project completed in conformity with the SEP described in Attachment B and the total amount of the suspended penalty.
9. If the Executive Officer determines that any of the tasks listed above are not satisfactorily completed by their respective due date (including any extensions approved by the Executive Officer), the Executive Officer may demand payment of the suspended liability that reflects the portion of the SEP that has not been satisfactorily completed. Payment shall be made via check made payable to the *State Water Pollution Cleanup and Abatement Account*, and shall be due within 30 days of the demand. The check shall have written upon it the number of this ACL Order.
10. Should the Discharger fail to take any of the above actions, the Executive Officer may refer the matter to the State Attorney General for enforcement of the terms of this Order.
11. 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 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 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

15 July 2009

DATE

BLH: 13 July 2009

Attachment A: Record of Violations
Attachment B: Supplemental Environmental Project

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2009-0548**

**CITY OF LINCOLN
Wastewater Treatment Plant**

RECORD OF VIOLATIONS (14 March 2003– 30 April 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program 5-01-242)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Flow Rate*</u>	<u>Remarks</u>
1	21-Apr-03	Chlorine Residual	mg/L	0.02	2.3	Daily Maximum		2
2	8-May-03	Aluminum	lbs/day	4.1	5.3	4-Day Average	4.335	3
3	8-May-03	Aluminum	µg/L	87	147	4-Day Average		1
4	8-May-03	Copper	µg/L	5.2	6.4	4-Day Average		2
5	18-Jul-03	Copper	µg/L	2.9	3.5	1-Hour Average		2
6	19-Jul-03	Copper	µg/L	2.9	3.4	1-Hour Average		4
7	20-Jul-03	Copper	µg/L	2.9	3.4	1-Hour Average		4
8	21-Jul-03	Copper	µg/L	2.2	3.4	4-Day Average		2
9	21-Jul-03	Copper	µg/L	2.9	3.1	1-Hour Average		4
10	18-Aug-03	Copper	µg/L	2.5	3.2	1-Hour Average		2
11	19-Aug-03	Copper	µg/L	2.5	3.5	1-Hour Average		2
12	20-Aug-03	Copper	µg/L	2.5	3.3	1-Hour Average		2
13	21-Aug-03	Copper	µg/L	1.9	3.4	4-Day Average		2
14	21-Aug-03	Copper	µg/L	2.5	3.6	1-Hour Average		2
15	30-Oct-03	Coliform	MPN/100mL	23	130	Monthly Median		4
16	22-Jan-04	Aluminum	µg/L	87	120	4-Day Average		4
17	22-Jan-04	Copper	lbs/day	0.27	0.39	4-Day Average	2.354	2
18	22-Jan-04	Copper	µg/L	5.9	7.3	4-Day Average		2
19	19-Feb-04	Aluminum	lbs/day	4.1	4.2	4-Day Average	4.453	4
20	19-Feb-04	Aluminum	µg/L	87	113	4-Day Average		4
21	19-Feb-04	Copper	µg/L	5.4	6.4	4-Day Average		4
22	12-Apr-04	Copper	µg/L	6.4	7.6	1-Hour Average		4
23	15-Apr-04	Copper	µg/L	4.6	5.7	4-Day Average		2
24	21-May-04	Copper	µg/L	4.4	15	1-Hour Average		2
25	22-May-04	Copper	µg/L	4.4	7	1-Hour Average		2
26	23-May-04	Copper	µg/L	4.4	5.6	1-Hour Average		2
27	24-May-04	Aluminum	µg/L	87	255	4-Day Average		1
28	24-May-04	Copper	µg/L	3.2	8.9	4-Day Average		2
29	24-May-04	Copper	µg/L	4.4	8	1-Hour Average		2
30	1-Jul-04	Aluminum	µg/L	87	310	4-Day Average		1
31	1-Jul-04	Copper	µg/L	2.5	9.4	4-Day Average		2
32	1-Jul-04	Copper	µg/L	3.2	9.4	1-Hour Average		2
33	1-Jul-04	Lead	µg/L	0.43	1.1	4-Day Average		2
34	1-Jul-04	TSS	mg/L	60	70	Monthly Average		4
35	11-Dec-06	Total Coliform	MPN/100mL	240	>1600	Daily Maximum		3
36	12-Dec-06	Total Coliform	MPN/100mL	240	>1600	Daily Maximum		3
37	16-Jul-07	Total Coliform	MPN/100mL	2.2	8	7-day Median		3

Remarks:

1. Serious Violation: For Group 1 pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group 2 pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.

<u>VIOLATIONS AS OF:</u>	<u>4/30/2008</u>
Group 1 Serious Violations:	3
Group 2 Serious Violations:	20
Non-Serious Violations, Exempt from MPs:	4
Non-Serious Violations, Subject to MPs:	10
<u>Total Violations Subject to MPs:</u>	<u>33</u>

Mandatory Minimum Penalty = (23 Serious Violations + 10 non-Serious Violations) × \$3,000 = \$99,000

* Arithmetic mean of all 1-day flow rates (in MGD) while discharging to surface waters during limitation period.

ATTACHMENT B
Administrative Civil Liability Order No. R5-2009-0548

Proposed SEP Project Description

Project Title: Auburn Ravine Water Quality and Stream Ecology Monitoring Project

Geographic area of interest: Auburn Ravine, Placer County

Name of responsible entity: City of Lincoln (Discharger), with support from Lincoln High School and the Save Auburn Ravine Steelhead and Salmon (SARSAS).

Estimated cost for project completion: The total cost of this project is estimated at \$117,206, and will include donated time as well as paid support from the Discharger, Lincoln High School, and local biologists and experts. The SEP will contribute \$57,000 toward the project.

Contact Information:

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Lincoln High School Science Dept.
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Brief description of the project:

The City, Lincoln High School, and SARSAS staff and other local biologists and water quality specialists will support and implement a water quality and stream ecology monitoring program. The program will be executed by the City in close coordination with the Lincoln High School Science Department and will be carried out by advanced environmental science students beginning in the fall of 2009. The purpose of the course is to initiate a long-term water quality and related stream ecology monitoring program in Auburn Ravine based on the State Water Board's Surface Water Ambient Monitoring Protocol (SWAMP). Monitoring data will be provided to the CA Department of Fish and Game (CDFG) as part of the state-wide SWAMP data base, as well as to SARSAS and the City of Lincoln.

The program will provide Lincoln High School with the necessary equipment and guidance to initiate long-term monitoring in Auburn Ravine and educate present and future generations on the importance of water quality and stream ecology. The monitoring program and new course will be implemented during the fall of each year over a 12 week period beginning in 2009. As part of the course, students will study, monitor, and work on water quality and stream ecology issues in Auburn Ravine during two hours each day. Therefore, the total annual time invested solely by the student monitors on Auburn Ravine water quality and stream ecology issues will be 480 person hours. The program will focus on a different aspect of Auburn ravine stream ecology and water quality monitoring each week during the 12 week annual program. The program is modeled after the Loma Rica High School Arcade Creek project, which is currently in its 10th year of monitoring.

Water body, beneficial use and/or pollutant addressed by this project:

The water quality and stream ecology monitoring program is in Auburn Ravine, the site of the water quality violations that led to issuance of the Mandatory Minimum Penalties. Therefore, the project has an exact geographic nexus with the area where the water quality problem or violation occurred. The project is directly related to the specific violations in that the Auburn Ravine monitoring program will assess water quality and water quality-related stream ecology at McBean Park (a restoration area managed by the Wildlife Heritage Foundation). Students will begin a long-term monitoring program that will focus on physical and biological water quality parameters, thereby providing not only a violation nexus, but also the additional aquatic life monitoring benefits (from riparian monitoring, BMI monitoring, stream-related wildlife monitoring, and restoration monitoring). The SEP is designed to address the protection of beneficial uses that could have been affected by the copper, aluminum, and total coliform violations. The annual monitoring will evaluate the status of Auburn Ravine's water quality, habitat quality, and food resources (benthic macro-invertebrates) that support recreational and aquatic life beneficial uses. The study will be conducted during the fall of each year to ensure water quality data coincides with the most sensitive of all the beneficial uses, cold water fisheries migration through Auburn Ravine.

Project Tasks, General Schedule, and Budget

The project is fully described in the Discharger's 13 March 2009 submittal, and is summarized below.

Task 1: Preliminary Project Planning and Approvals.

This portion of the project is supported by the Discharger (approximately \$23,937), and is not part of the SEP-funded program. It is currently underway. SEP cost: \$0.

Task 2: Project Initiation and Detailed Monitoring Design.

During the summer of 2009, the Discharger's biologists and water quality scientists will work closely with Lincoln High School science staff to complete a detailed weekly summary/plan of monitoring events. The Discharger will provide funding for and facilitate Lincoln High School science staff training. Mr. Chant Lavaell, the lead science staff at the High School will attend a three day CDFG SWAMP protocol course. In addition, Chant has the opportunity to shadow professional water quality scientists and biologists during stream ecology and water quality monitoring projects. As part of this task Lincoln High School, is donating the time to develop a water quality course curriculum and will be supported by the Discharger's staff/experts in the field. The end result will be a daily lesson plan and field monitoring plan for the twelve week monitoring program and water quality course. This task will encompass all development activity up until implementation in the fall of 2009. This task will also include the purchase of all the needed water quality and stream monitoring equipment. The equipment purchased with SEP funds will be as described in Table 2 of the 13 March 2009 proposal. Some portions of this task will be paid by the Discharger. SEP cost: \$23,937, as fully described in the 13 March 2009 proposal.

Task 3: Monitoring Implementation.

The Water Quality and Stream Ecology Monitoring Program/Course in Auburn Ravine will be conducted during a 12 week period in the fall of 2009. This is the seed and will form the

baseline for long term annual monitoring carried out by Lincoln High School students each year. During this first year the Discharger and the School will coordinate with experts in the field to provide guest speakers for each main monitoring week topic (i.e. General SWAMP protocol, Physical Water Quality, Biological Assessment/Benthic Macroinvertebrates, Riparian Habitat, Stream and Riparian-Associated Wildlife, Water Quality Regulations, Violations and Enforcement, and Stream Restoration). Potential speakers could include Fish and Game, the Lincoln WWTP Lab technicians, Biologists, GPS/GIS Analysts, Land Use Planners, and the City Public Works staff. The task also includes field work and laboratory guidance from local experts. Some portions of this task will be paid by the Discharger. SEP Cost: \$19,281, as fully described in the 13 March 2009 proposal.

Task 4: Second Year Monitoring

This task provides support for equipment maintenance and direct costs for the class to continue in the Fall of 2010 (and beyond). By this point, the project is expected to be relatively self-sufficient. SEP cost: \$13,782, as fully described in the 13 March 2009 proposal.

Deliverables:

The Discharger will be responsible for providing all deliverables described below.

1. Funding Documentation. The Discharger will submit a report showing that it has placed \$57,000 in a separate account in order to fund this SEP. **Due date: 17 August 2009.**
2. Task 2 Completion Report: Shall include a summary of all training attended by Lincoln High School science staff (including receipts and documentation of attendance), a list of the equipment purchased (including receipts), a bulleted list of the daily topics for the monitoring team, and a list of all expenses for this task. **Due date: 30 October 2009.**
3. Task 3 Completion Report: Shall include a bulleted list of the monitoring topics covered in the class, photos of the monitoring conducted in Auburn Ravine, stream and water quality data summarized in Excel and student reports, and a listing of all expenses for this task. The report will also document that this data has been uploaded into the SWAMP database. **Due date: 30 January 2010.**
4. Task 4 Completion Report: Shall include a bulleted list of the monitoring topics covered in the class, photos of the monitoring conducted in Auburn Ravine, stream and water quality data summarized in Excel and student reports, and a listing of all expenses for this task. The report will also document that this data has been uploaded into the SWAMP database. **Due date: 30 January 2011.**
5. Final Report: Shall include a summary of all tasks completed, an analysis of the success of the project in terms of teaching the students and collecting water quality data. The two years of data will be summarized. The report will also include a discussion of whether or not the program can continue on its own. The report must also include a post-project accounting of all expenditures. The accounting must clearly show whether the final cost of the successfully completed SEP is less than, equal to, or more

than the suspended liability of \$57,000. The report must be completed under penalty of perjury. **Due date: 30 April 2011.**

6. Quarterly Progress Reports. Beginning with the third quarter 2009, quarterly progress reports shall be submitted by the **30th day of the month following the end of each quarter** (i.e., the Third Quarter 2009 progress report will be submitted by 30 October 2009, and will cover the period from 1 July through 31 September 2009). Each progress report will describe the work completed during the quarter. If appropriate, the quarterly report may be combined with a report described above; however, the title page must clearly indicate that the submittal is also a quarterly report.