

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2013-0582

MANDATORY PENALTY
IN THE MATTER OF

CITY OF COLFAX
WASTEWATER TREATMENT FACILITY
PLACER COUNTY

This Order is issued to the City of Colfax (Discharger) pursuant to California Water Code (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) Order R5-2007-0130 (NPDES No. CA0079529).

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

1. The Discharger owns and operates a publicly owned treatment works. Domestic wastewater is treated and discharged to an unnamed tributary to Smuthers Ravine, which is tributary to the North Fork of the American River via Bunch Canyon.
2. On 25 October 2007, the Central Valley Water Board issued Waste Discharge Requirements (WDRs) Order R5-2007-0130, effective 14 December 2007, which contained new requirements and rescinded previous WDRs Order 5-01-180. On 30 May 2013 (effective 19 July 2013), the Board issued WDRs Order R5-2013-0045 and rescinded Order R5-2007-0130 except for purposes of enforcement.
3. On 25 October 2007, the Central Valley Water Board issued Cease and Desist Order (CDO) R5-2007-0131 requiring the Discharger to comply with the effluent nitrate limitations in the 2007 WDRs by 1 January 2009. On 28 January 2010, the Board issued CDO R5-2010-0001, which rescinded the 2007 CDO and required compliance with the effluent limitation for copper by 1 January 2014. On 2 December 2011, the Board issued CDO R5-2011-0097, which rescinded the 2010 CDO, and required in part, that storage pond #3 be lined, that inflow and infiltration be reduced, that storage capacity be evaluated, and that the Discharger comply with the final copper effluent limit by 1 January 2014. On 30 May 2013, the Board issued CDO R5-2013-0046, which requires that the Discharge comply with the final arsenic effluent limit by 30 May 2016.
4. On 7 January 2013, the Assistant Executive Officer issued ACL Order R5-2013-0500, which assessed Mandatory Minimum Penalties (MMPs) for effluent limitation violations occurring between 1 July 2011 and 30 September 2012 in the amount of \$33,000. ACL Order R5-2013-0500 stated that \$18,980 portion of the penalty would be deemed satisfied through the completion of a compliance project and the remaining \$14,020 was payable to the State Water Resources Control Board's (State Water Board) Cleanup and Abatement Account. The project has been completed, payment was received, and the

Board considers this ACL Order resolved for the violations specifically listed in Attachment A of the Order.

5. This Order addresses violations which occurred between 1 October 2012 and 31 May 2013. On 14 May 2013, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations (ROV) for effluent violations occurring between 1 October 2012 and 31 March 2013. On 7 June 2013, the Discharger agreed that the violations occurred and requested that the Board allow a portion of the penalties to be applied to a Supplemental Environmental Project (SEP). On 9 August 2013, the Discharger submitted a SEP, project schedule, and projected project cost (Attachment B). This Order extends the period of record to 31 May 2013 and adds the April 2013 aluminum violations as listed in Attachment A to this Order.
6. Water Code section 13385 subdivisions (h) and (i) require assessment of mandatory minimum penalties and state, in relevant part, the following:

Water Code section 13385 subdivision (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 subdivision (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.

Water Code section 13385 subdivision (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.

7. Water Code section 13385(j) exempts certain violations from mandatory minimum penalties, and states, in relevant part:

Subdivisions (h) and (i) do not apply to...

3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or 13308...

8. Water Code 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:

(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.

9. WDRs Order R5-2007-0130 Final Effluent Limitations IV.A.2.a. include, in part, the following effluent limitations:

a. The Discharger shall maintain compliance with the effluent limitations specified in Table 7 for discharges from the new wastewater treatment plant beginning 1 January 2009:

Table 7. Final Effluent Limitations

Parameter	Units	Average Monthly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
<i>Non-Conventional Pollutants</i>					
Aluminum, Total Recoverable	µg/L	71	143	--	--
Ammonia Nitrogen, Total (as N)	mg/L	0.8	2.1	--	--

10. According to the Discharger's self-monitoring reports, the Discharger committed nine (9) violations of the above effluent limitations for ammonia and aluminum contained in WDRs R5-2007-0130 between 1 October 2012 and 31 May 2013. These violations are defined as serious because the measured concentration of a Group I constituent exceeded the maximum prescribed level in WDRs Order R5-2007-0130 by 40 percent or more. The mandatory minimum penalty for these serious violations is **twenty-seven thousand dollars (\$27,000)**.

11. The total amount of the mandatory minimum penalties assessed for the cited effluent violations is **twenty-seven thousand dollars (\$27,000)**. These violations are specifically

identified in Attachment A to this Order as subject to mandatory minimum penalties. Attachment A to this Order is attached hereto and incorporated herein by reference.

12. 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 Persecution Team for this matter, and therefore Assistant Executive Officer Kenneth Landau has the authority to issue this Order.
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, and was provided to all interested parties. The 30-day public notice and comment period mandated by federal regulations (40 C.F.R. § 123.27) has expired. No comments were received.
14. Issuance of this Administrative Civil Liability Order to enforce Water Code 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, sections 15307, 15308 and 15321(a)(2).

THE CITY OF COLFAX IS HEREBY GIVEN NOTICE THAT:

1. The Discharger shall be assessed an Administrative Civil Liability of **twenty-seven thousand dollars (\$27,000)**.
2. The Discharger shall remit payment of **six thousand dollars (\$6,000)** of the imposed civil liability by check, which shall contain a reference to "ACL Order R5-2013-0582" 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 **31 October 2013**.
3. The remaining **twenty-one thousand dollars (\$21,000)** shall be suspended, pursuant to Water Code section 13385(l), pending completion of a Supplemental Environmental Project (SEP). The Discharger has chosen to complete the "*Private Sewer Lateral Rehabilitation Grants*" project. A summary of the SEP project description and deliverables that will be submitted to the Central Valley Water Board can be found in Attachment B of this Order.
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 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 \$21,000, the Discharger must remit the difference to the State Water Pollution Cleanup

and Abatement Account by **31 September 2014**, or within 30 days of project completion, whichever comes first.

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 cost are not part of the direct cost of the SEP.
7. Whenever the Discharger or its agents or subcontractors, or any fiscal agent holding SEP funds publicize any element of a SEP project, it 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 Assistant 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. The Discharger shall make any deadline extension request in writing at least 30 days prior to the deadline. Under no circumstances may the completion of any of the approved compliance projects extend past five (5) years from the issuance of this Order.
9. The Discharger must obtain written approval from the Assistant Executive Officer for any significant departures from the project outlines and the time schedules shown in Attachment B. Failure to obtain written approval for any significant departures may result in the assessment of the full amount of the suspended mandatory minimum penalty.
10. If, in the judgment of the Assistant Executive Officer, the Discharger fails to complete the compliance projects in accordance with the due dates listed in Attachment B (including any extensions approved by the Assistant Executive Officer), the Assistant Executive Officer may demand payment of the suspended liability that reflects the portion of the compliance project that has not been satisfactorily completed. Payment must be made within 30 days of such a demand.
11. Should the Discharger fail to take any of the above actions, the Assistant Executive Officer may refer the matter to the State Attorney General for enforcement of the terms of this Order. The Board reserves the right to take any enforcement action authorized by law.
12. 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 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 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

KENNETH D. LANDAU, Assistant Executive Officer

1 October 2013

DATE

Attachment A: Record of Violations

Attachment B: Supplemental Environmental Project

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2013-0582**

City of Colfax

Wastewater Treatment Plant

RECORD OF VIOLATIONS (1 October 2012 – 31 May 2013) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2007-0130)

	<u>Date</u>	<u>Violation</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
1	31-Dec-12	Ammonia	µg/l	0.8	1.22	Monthly Average	1	944486
2	3-Jan-13	Aluminum	µg/l	143	556	Daily Maximum	1	947429
3	14-Jan-13	Aluminum	µg/l	143	423	Daily Maximum	1	947430
4	31-Jan-13	Aluminum	µg/l	71	489	Monthly Average	1	947434
5	6-Feb-13	Aluminum	µg/l	143	336	Daily Maximum	1	947431
6	20-Feb-13	Aluminum	µg/l	143	628	Daily Maximum	1	947432
7	28-Feb-13	Aluminum	µg/l	71	482	Monthly Average	1	947435
8	3-Apr-13	Aluminum	µg/l	143	255	Daily Maximum	1	949237
9	30-Apr-13	Aluminum	µg/l	71	107	Monthly Average	1	949238

(WDR Order R5-2013-0045 became effective on 19 July 2013)

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violation falls within the first three violations in a six-month period, thus is not subject to mandatory minimum penalties.
4. Non-serious violation subject to mandatory minimum penalties.

<u>VIOLATIONS AS OF:</u>	<u>4/30/13</u>
Group I Serious Violations:	9
Group II Serious Violations:	0
Non-Serious Violations Not Subject to MMPs:	0
<u>Non-serious Violations Subject to MMPs:</u>	<u>0</u>
Total Violations Subject to MMPs:	9

Mandatory Minimum Penalty = (9 Serious Violations) x \$3,000 = \$27,000

**ATTACHMENT B
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2013-0582**

City of Colfax: SEP Project Description

Project Title: Private Sewer Lateral Rehabilitation Grants

Geographical Area of Interest: Smuthers Ravine a tributary of the North Fork of the American River, a water of the United States, via Bunch Canyon

Name of Responsible Entity: City of Colfax (Discharger)

Estimated Cost of Project Completion: \$21,000

Contact Information:

Gabe Armstrong, Interim City Manager
City of Colfax
P.O. Box 702
Colfax, CA 95713

Project Description:

The City of Colfax (City) will allocate \$21,000 to fund grants for private sewer lateral rehabilitation grants within the City's service area. By providing private sewer lateral rehabilitation grants, the City, is targeting the reduction of inflow and infiltration (I/I) to its sewer collection system.

The City will solicit and advertise for grantees to identify private sewer laterals that are in need of monitoring (e.g. CCTV or smoke testing), repairs, and/or replacement. The City will target specific areas based on previously completed smoke and CCTV screenings of the City's sewer collection system.

The City will be responsible for reviewing grantee applications on a quarterly basis. The City will then rank the grantees based on the need and the state of the private sewer lateral. The City will then work with the grantees to ensure that any work completed with the grant funds are completed to the satisfaction of the City. The City will not fully disperse the grant funds until the successful inspection of the completed work by the City.

Water Body, Beneficial Use and/or Pollutant Addressed by this Project:

The specific water body affected is Smuthers Ravine, a tributary to the North Fork of the American River, a water of the United States, via Bunch Canyon in Placer County. The SEP will benefit groundwater and surface waters within the City's service area by repairing faulty or leaking laterals, and by reducing wet weather peak flows to the City of Colfax's wastewater treatment plant.

ATTACHMENT B
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2013-0582

Project Schedule, Budget, Deliverables:

The Discharger will be responsible for completing and submitting the below deliverables:

1. Quarterly Report #1 / Application for Grant Funds and Advertisement for Grantees – The first quarterly report shall include: the grantee application form; proof of advertisement for grantees; a summary of project expenditures; and a description of the work completed to date.

The application will include at a minimum:

- a. Grantee information (Name, address, phone number)
- b. Project description
- c. Scope and budget for the proposed sewer lateral rehabilitation
- d. Certifications

Estimated Costs: \$0

Deliverable: Written report documenting the items above

Due Date: 1 January 2014

2. Quarterly Reports #2 and 3 / Review and Approve Grantee Applications – The second and third quarterly reports shall document the status of grantee applications, summarize project expenditures, and describe each of the sewer laterals which have been repaired/replaced.

Estimated Costs: \$21,000

Deliverable: Written report documenting the items above

Due Date: 1 April 2014 and 1 July 2014

3. Final Report – The City will submit a final report which includes a summary of the grants provided for under the SEP; a summary the project expenditures; and certification that all applicable environmental laws and regulations have been followed during the implementation of the project. 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 \$21,000. This serves as the final report required under the SEP and the following statement must be included above the signature line of the report: "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct."

Deliverable: Written report documenting the above items.

Due Date: 1 October 2014