

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

COMPLAINT NO. R5-2008-0517

MANDATORY PENALTY
IN THE MATTER OF
CITY OF PORTOLA
PLUMAS COUNTY

This Complaint is issued to the City of Portola (hereafter Discharger) pursuant to California Water Code (CWC) Section 13385, which authorizes the imposition of Administrative Civil Liability, CWC Section 13323, which authorizes the Executive Officer to issue this complaint, and CWC Section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements Order No. R5-2003-0110 (NPDES No. CA0077844).

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

1. On 11 July 2003, the Regional Water Board adopted Waste Discharge Requirements Order No. R5-2003-0110 (NPDES No. CA0082066), for the City of Portola, to regulate the discharge of treated municipal wastewater.
2. CWC section 13385(i) requires that a mandatory penalty of three thousand dollars (\$3,000) be assessed against the Discharger for each violation of waste discharge requirements effluent limitations when a violation occurs more than four times in a six-month period. The requirement to assess mandatory minimum penalties is not applicable to the first three violations.
3. Order No. R5-2003-0110 includes the following effluent limitations:

"B. Effluent Limitations

1. The effluent discharge to the wetlands shall not exceed the following limits:

Constituent	Unit	Monthly Median Effluent Limitation	Maximum Daily Effluent Limitation
Total Coliform	Mpn/100mL	23	500"

4. CWC section 13385(i) states, in part:

"... 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.

...

(2) For the purposes of this section, a "period of six consecutive months" means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date."

5. In February, March, and April of 2005, the Discharger violated the Maximum Daily Effluent Limitation on six occasions, and the Monthly Median Effluent Limitation on two occasions, for a total of eight violations. In accordance with CWC section 13385(i), the total number of violations subject to a mandatory minimum penalty is five (eight violations total, but excluding the first three violations). Therefore, the amount of the mandatory penalty for these violations is fifteen thousand dollars **(\$15,000)**.
6. CWC section 13385 (k)(1) states, in part:

"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."*
7. Portola is a small community as defined in CWC section 79084, and is within Plumas County, which is designated in the State Water Resources Control Board Enforcement Policy (State Water Resources Control Board Resolution 92-049) as a county with a financial hardship.
8. The discharger has spent \$20,000 to install additional aeration at the Treatment Plant lagoons. The additional aeration will provide treatment that will reduce effluent BOD and total suspended solids. Suspended solids can interfere with efficient disinfection, and therefore the additional aeration will help eliminate problems with inadequate disinfection. The installation of additional aeration is a project that has been designed to correct the violations.

9. The Discharger has completed the above compliance projects to address the effluent coliform violations, as well as other potential violations, such as BOD, suspended solids, and pH. With the completed compliance project, the Discharger has expended in excess of the minimum mandatory penalty that is required by CWC Section 13385(i).
10. The compliance project was performed in accordance with the State Water Resources Control Board Enforcement Policy.
11. 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).

THE CITY OF PORTOLA IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that the Discharger be assessed a Mandatory Penalty in the amount of fifteen thousand dollars **(\$15,000)**.
2. The Discharger has satisfied the Mandatory Penalty by completion of the compliance projects noted above in accordance with CWC section 13385(k).
3. A hearing shall be held by the Regional Water Board on **June 12/13 2008** unless the Discharger agrees to waive the hearing by completing the attached form and returning it to the Regional Water Board by **18 April 2008**.
4. If a hearing on this matter is held, the Regional Water 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.

Signed By

JAMES C. PEDRI, Executive Officer

20 March 2008

(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 City of Portola (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0517 (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 service of the Complaint;
3. I hereby waive the Discharger's right to such a hearing before the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) within ninety (90) days of the service of the complaint; and
4. I certify that the Discharger has expended in excess of the amount of the mandatory minimum penalties with completion of the compliance project specified in the Complaint. In accordance with the findings of the Complaint, the discharger has performed this compliance project in lieu of a monetary civil liability.
5. I understand the completion of the above compliance project constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Regional Water Board receive new information during this comment period, the Regional Water Board may withdraw the complaint and issue a new complaint.
6. I understand that completion of the above compliance project 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)