

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2010-0520

MANDATORY PENALTY
IN THE MATTER OF

CITY OF NEVADA CITY
WASTEWATER TREATMENT PLANT
NEVADA COUNTY

This Order is issued to the City of Nevada City (hereafter 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 R5-2002-0050 (NPDES No. CA0079901).

The Assistant 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 collection, treatment, and disposal system, and provides sewerage service to the City of Nevada City. Treated municipal wastewater is discharged to Deer Creek, a water of the United States and a tributary to the Yuba River.
2. On 26 April 2002, the Central Valley Water Board adopted Waste Discharge Requirements (WDRs) Order R5-2002-0050 to regulate discharges of waste from the wastewater treatment plant (WWTP). The Board also adopted Cease and Desist Order (CDO) R5-2002-0051. CDO R5-2002-0051 established a time schedule until 15 April 2003 to comply with final effluent limitations for pH. It also provided a time schedule until 30 April 2007 to comply with final effluent limitations for ammonia, nitrate plus nitrite, and nitrite. On 4 December 2008, effective 23 January 2009, the Board adopted WDRs Order R5-2008-0177, which contained new requirements and rescinded WDRs Order R5-2002-0050.
3. On 10 November 2008, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2008-0607. The ACLC charged the Discharger with civil liability in the amount of \$69,000 which represented statutory Mandatory Minimum Penalties for effluent violations that occurred at the WWTP from 1 January 2000 through 30 April 2008. The ACLC allowed the Discharger to apply the \$69,000 penalty towards a compliance project described in Finding 15 below, pursuant to CWC section 13395(k). The Board considers payment of the mandatory minimum penalties satisfied through completion of the compliance project.
4. On 14 September 2009, the Executive Officer of the Central Valley Water Board issued ACLC R5-2009-0560. The ACLC charged the Discharger with civil liability in the amount of \$3,000 which represented statutory Mandatory Minimum Penalties for effluent violations that occurred at the WWTP from 1 May 2008 through 30 June 2009. This Complaint will be settled through completion of a new compliance project.
5. This Order covers the period of 1 December 2002 through 30 April 2008, and assesses penalties for five violations that were overlooked in ACLC R5-2008-0607.

6. CWC Section 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.

7. CWC Section 13323 states, in part:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

8. WDRs Order R5-2002-0050 Effluent Limitations No. B.1. states, in part,

Effluent shall not exceed the following limitations (from adoption until 31 March 2007):

<u>Constituents</u>	<u>Units</u>	<u>Average Monthly</u>	<u>Median Monthly</u>	<u>Average Weekly</u>	<u>Average Daily</u>	<u>Instantaneous Maximum</u>
BOD ₅ ¹	mg/L	10 ²	--	15 ²	30 ²	--
Total Suspended Solids	mg/L	10 ²	--	15 ²	30 ²	--
	lbs/day ³	58	--	86	170	--
Settleable Solids	mL/L	0.1	--	--	0.2	--
Total Coliform Organisms	MPN/100 mL	--	2.2	--	--	23

¹ 5-day, 20°C biochemical oxygen demand (BOD)

² To be ascertained by a 24-hour composite.

³ Based upon a design treatment capacity of 0.69 mgd (x mg/L x 8.345 x 0.69 mgd = y lbs/day)

9. WDRs Order R5-2002-0050 Effluent Limitations No. B.3. states:

The arithmetic mean of 20°C BOD (5-day) and of total suspended solids in effluent samples collected over a calendar month shall not exceed 5 percent of the arithmetic mean of the values for influent samples collected at approximately the same times during the same period (95 percent removal).

10. According to the Discharger's self-monitoring reports, the Discharger committed twelve (12) serious Group I violations of the above effluent limitations contained in Order R5-2002-0050 during the period beginning 1 December 2002 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. Eight (8) of the violations were assessed mandatory minimum penalties in ACLC R5-2008-0607. The mandatory minimum penalty for the four additional serious violations is **twelve thousand dollars (\$12,000)**.
11. According to the Discharger's self-monitoring reports, the Discharger committed twenty-four (24) non-serious violations of the above effluent limitations contained in Order R5-2002-0050 during the period beginning 1 December 2002 and ending 30 April 2008. Fifteen (15) 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. Fourteen (14) of these violations were assessed mandatory minimum penalties in ACLC R5-2008-0607. The mandatory minimum penalty for the additional one (1) non-serious violation is **three thousand dollars (\$3,000)**.
12. The total amount of the mandatory penalties assessed for the cited effluent violations is **fifteen thousand dollars (\$15,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Order.
13. CWC Section 13385 (k) states:
- (1) 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.

(2) For the purposes of this subdivision, "a publicly owned treatment works serving a small community" means a publicly owned treatment works serving a population of 10,000 persons or fewer or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works.

14. On 22 September 2008, the Executive Director of the State Water Resources Control Board determined that the service area of the Nevada City Wastewater Treatment Plant meets the definition of a small community with a financial hardship.
15. The Discharger has spent \$5.59 million for engineering design and construction of an expansion and upgrade project to the WWTP. Of this amount, \$1,602,000 is from a grant and cannot be used to offset the mandatory minimum penalties. The City opened the project bid on 8 June 2005. The Compliance Project was completed on 30 June 2008, when the City submitted the final cost accounting. The project included conversion of sequencing batch reactors to continuous flow activated sludge selector basins; construction of new secondary clarifiers; installation of a new effluent filter; and improvements to the chlorination/dechlorination system. Components of the completed compliance project cumulatively eliminated effluent limitation violations for BOD, total coliform organisms, and total suspended solids. With the completed Compliance Project, the Discharger has expended in excess of the mandatory minimum penalty that is required by CWC Sections 13385(h) and (i). The Compliance Project was designed to correct the violations that have led to the issuance of this Administrative Civil Liability Order within five years. The completed project is in accordance with the State Water Board *Water Quality Enforcement Policy*.
16. As described in Finding No. 3, the Discharger was allowed to apply its previous \$69,000 in mandatory penalties toward the Compliance Project. This Order allows \$15,000 in mandatory penalties to be applied to the same Compliance Project. Because the Project cost approximately \$3.99 million in non-grant funds, applying a total of \$84,000 in mandatory penalties toward the cost of the project complies with CWC 13385(k) and the Enforcement Policy. The violations took place prior to completion of the Compliance Project on 30 June 2008.
17. 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 Prosecution Team for this matter, and therefore Assistant Executive Officer Kenneth Landau has the authority to issue this Order.

18. 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 CFR 123.27) has expired.
19. 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 Section 21000 et seq.), in accordance with California Code of Regulations, Title 14, Section 15321(a)(2).

NEVADA CITY IS HEREBY GIVEN NOTICE THAT:

1. The Discharger shall be assessed an Administrative Civil Liability in the amount of **fifteen thousand dollars (\$15,000)**.
2. The entire \$15,000 penalty has been satisfied through the completion of the compliance project described above, in accordance with CWC Section 13385(k).
3. 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, state holiday, or furlough day, 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

10 June 2010

DATE

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R5-2010-0520

City of Nevada City
Wastewater Treatment Plant

RECORD OF VIOLATIONS (1 December 2002 – 30 April 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs R5-2002-0050 and R5-2008-0177)
Additional violations are in **boldface** type

#	Date	Violation Type	Units	Limit	Measure d	Period Type	Flow*	Remarks	CIWQS
1	16-Dec-02	TSS	lbs/day	170	203	Daily Avg	0.84*	5**	368074
2	16-Dec-02	Coliform	MPN/100 mL	23	50	Instant Max		3**	773301
3	16-Dec-02	Sett Sol.	mL/L	0.2	5	Daily		1	773300
4	17-Dec-02	Sett Sol	mL/L	0.2	0.5	Daily Avg		1**	773302
5	21-Dec-02	TSS	lbs/day	86	104	Weekly	0.59*	4**	368075
6	31-Dec-02	Sett Sol.	mL/L	0.1	0.2	Monthly		1	773304
7	29-Dec-03	TSS	mg/L	30	55	Daily Avg		1**	368093
8	29-Dec-03	Sett Sol	mL/L	0.2	0.4	Daily Avg		1**	773305
9	29-Dec-03	TSS	lbs/day	170	454	Daily Avg	0.99*	5**	368091
10	3-Jan-04	TSS	mg/L	15	34	Weekly		1**	368095
11	3-Jan-04	TSS	lbs/day	86	281	Weekly	1.04*	5**	368094
12	8-May-05	pH	pH Units	8.5	8.8	Instant Max		3**	764486
13	10-May-05	Coliform	MPN/100 mL	23	900	Instant Max		3**	773306
14	6-Jul-05	pH	pH Units	8.5	8.8	Instant Max		3**	764493
15	26-Sep-05	pH	pH Units	6.5	6	Instant Max		4**	764496
16	23-Nov-05	Coliform	MPN/100 mL	23	220	Instant Max		3**	773307
17	27-Nov-05	BOD	mg/L	30	34	Daily Avg		4**	773308
18	28-Nov-05	Coliform	MPN/100 mL	23	1600	Instant Max		4**	773309
19	30-Nov-05	BOD	mg/L	30	48	Daily Avg		1**	773321
20	30-Nov-05	BOD	mg/L	10	12	Monthly		4**	773319
21	30-Nov-05	TSS	mg/L	30	50	Daily Avg		1**	773315
22	30-Nov-05	BOD	mg/L	15	41	Weekly		1	773317
23	30-Nov-05	TSS	mg/L	15	39	Weekly		1	773312
24	30-Nov-05	TSS	lbs/day	86	110	Weekly	0.34*	4	773310
25	30-Nov-05	BOD	% Removal	95%	94%	Calendar Month		4**	773322
26	1-Dec-05	pH	pH Units	8.5	8.6	Instant Max		4**	764505
27	2-Dec-05	pH	pH Units	6.5	6.3	Instant Max		4**	764509
28	3-Dec-05	BOD	mg/L	15	41	Weekly		1**	793803
29	3-Dec-05	TSS	mg/L	15	39	Weekly		1**	793802
30	3-Dec-05	TSS	lbs/day	86	118	Weekly	0.36*	4**	793801
31	15-May-06	Coliform	MPN/100 mL	23	1600	Instant Max		4**	773323
32	18-May-06	Coliform	MPN/100 mL	23	1600	Instant Max		4**	773324
33	31-May-06	Coliform	MPN/100 mL	2.2	12	Median Monthly		4**	773325
34	29-Nov-06	pH	pH Units	8.5	9	Instant Max		3**	764567
35	13-Oct-07	Coliform	MPN/100 mL	2.2	4.5	7-Day Median		3**	793814
36	20-Oct-07	Coliform	MPN/100 mL	2.2	2.5	7-Day Median		3**	793816
37	3-Nov-07	Coliform	MPN/100 mL	2.2	2.5	7-Day Median		3**	793817
38	2-Feb-08	Coliform	MPN/100 mL	2.2	2.5	7-Day Median		4**	773332
39	9-Feb-08	Coliform	MPN/100 mL	2.2	4	7-Day Median		4**	773333

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 exempt.
4. Non-serious violation subject to mandatory penalties.
5. Violations of mass rate limitation that are due only to wet weather not assessed MMPs because the permit limitation is based on dry weather treatment capacity.

ADDITIONAL VIOLATIONS FROM 12/1/2002 THROUGH 4/30/2008

Group I Serious Violations:	4
Group II Serious Violations:	0
Non-Serious Exempt from MMPs:	0
Non-serious Violations Subject to MMPs:	1
<u>Total Additional Violations Subject to MMPs:</u>	<u>5</u>

Mandatory Minimum Penalty = (4 Serious Violations + 1 Non-Serious Violations) x \$3,000 = \$15,000

* Arithmetic mean of all 1-day flow rates in MGD of effluent while discharging to surface waters. Values greater than 0.69 MGD are considered wet weather flows.

** Violations previously addressed in ACLC R5-2008-0607.