

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2009-0586

MANDATORY PENALTY
IN THE MATTER OF

CITY OF PLACERVILLE
HANGTOWN CREEK WATER RECLAMATION FACILITY
EL DORADO COUNTY

This Order is issued to the City of Placerville (hereafter Discharger) pursuant to California Water Code (CWC) 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) Orders 5-01-045 and R5-2008-0053 (NPDES No. CA0078956).

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 the Hangtown Creek Water Reclamation Facility (WRF), which provides sewerage service to the City of Placerville and outlying areas in El Dorado County. Treated domestic, commercial and industrial wastewater is discharged to Hangtown Creek, a water of the United States, tributary to Weber Creek and tributary to the South Fork of the American River.
2. On 16 March 2001, the Central Valley Water Board issued WDRs Order 5-01-045 to regulate discharges of waste from the facility. The WDRs include effluent limitations and other requirements regarding the wastewater discharges. The WDRs also included a time schedule to meet final effluent limitations for turbidity, nitrates, and total coliform organisms by 16 March 2003. On 31 January 2003, the Board amended the WDRs to extend the time schedule to meet the final limitations until 16 March 2006.
3. On 25 April 2008, the Central Valley Water Board issued WDRs Order R5-2008-0053, effective 14 June 2008, which contained new requirements and rescinded WDRs Order 5-01-045. The WDRs include effluent limitations and other requirements regarding the waste discharges. The Board also issued Cease and Desist Order (CDO) R5-2008-0054, which includes a time schedule until 1 June 2009 to comply with final effluent limitations for total nitrate plus nitrite, turbidity, and total coliform organisms.
4. The Executive Officer previously issued Administrative Civil Liability Order R5-2008-0597 for mandatory penalties for effluent limitation violations from 1 January 2001 to 31 December 2007 in the amount of \$270,000. Order R5-2008-0597 stated that the entire \$270,000 penalty would be deemed satisfied by the Central Valley Water Board through the completion of a compliance project if the Discharger completed the compliance project and submitted the requisite reports. On 29 July 2009, the Discharger certified that it had spent \$44,688,429 on the reconstructed WRF and that construction was complete as of 28 February 2009. The Board considers this prior matter resolved.

5. On 28 April 2009, Central Valley Water Board staff sent the Discharger a draft Record of Violations (ROV) covering the time period from 1 January 2008 through 31 December 2008. The Discharger, in its 21 May 2009 response, agreed with the violations and stated that construction was complete and the project was on schedule. This Order includes a 26 March 2005 violation not addressed in the previous Order, and extends the period of record to 30 June 2009.

6. 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.

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 5-01-045 Effluent Limitations No. B.1. include, in part, the following effluent limitations:

<u>Constituent</u>	<u>Unit</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Average</u>	<u>Daily Maximum</u>
Nitrate ⁴	mg-N/L	10	--	--	--
Turbidity ⁴	NTU	--	--	2	5

⁴ Effluent Limitations for nitrates and turbidity are not in effect until 16 March 2006. See Provision G.5 for details.

<u>Constituent</u>	<u>Unit</u>	<u>1-Hour Median</u>	<u>4-Day Average</u>	<u>7-Day Median¹</u>	<u>Daily Maximum</u>
Chlorine	mg/L	0.02	0.01	--	--
Total Coliform	MPN/100mL	--	--	2.2	23

¹ 7-Day Median based on previous seven daily sample results. The Effluent Limitation 7-Day Median is not in effect until 16 March 2003. See Provision G.5. for details. A 30-Day Median of 2.2 MPN/100 mL will apply until the 7-Day median limit takes effect.

9. WDRs Order R5-2008-0053 Effluent Limitations IV.A.1.a. states, in part, “The Discharger shall maintain compliance with the effluent limitations specified in Table 6.”

Table 6. Final Effluent Limitations

Parameter	Units	Effluent Limitations	
		Inst. Min.	Inst. Max
pH	standard	6.5	8.0

10. WDRs Order R5-2008-0053 Effluent Limitations IV.A.1.d. Total Residual Chlorine, states, “Effluent total residual chlorine shall not exceed:

- i. 0.01 mg/L as a 4-day average; and
- ii. 0.02 mg/L as a 1-hour average.”

11. WDRs Order R5-2008-0053 Interim Effluent Limitations IV.A.2.a. states, in part:

- a. During the period beginning with the **Effective Date** [14 June 2008] of this Order and ending on **31 May 2009**, the Discharger shall maintain compliance with the following limitations at Discharge Point 001 with compliance measured at Monitoring Location EFF-001... The interim effluent limitations in Table 7a shall apply in lieu of the corresponding final effluent limitations specified for the same parameters during the period indicated in this provision.

Table 7a. Interim Effluent Limitations for...Dibromochloromethane...

Parameter	Units	Effluent Limitations					
		Ave. Monthly	30-Day Median	Ave. Weekly	Max. Daily	Inst. Min	Inst. Max
Dibromochloromethane	µg/L	--	--	--	2.66	--	--

12. 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 5-01-045 and R5-2008-0053 during the period beginning 1 January 2008 and ending 30 June 2009. 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)**.
13. According to the Discharger’s self-monitoring reports, the Discharger committed five (5) serious Group II violations of the above effluent limitations contained in Orders 5-01-045 and R5-2008-0053 during the period beginning 1 January 2008 and ending 30 June 2009. The 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 **fifteen thousand dollars (\$15,000)**.
14. According to the Discharger’s self-monitoring reports, on 26 March 2005, the Discharger committed one (1) non-serious violation of the effluent limitations for coliform contained in Order 5-01-045 that was not included in ACL Order R5-2008-0597. This violation is subject to mandatory penalties under CWC section 13385(i)(1) because this violation was preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for this non-serious violation is **three thousand dollars (\$3,000)**.
15. According to the Discharger’s self-monitoring reports, the Discharger committed twelve (12) non-serious violations of the above effluent limitations contained in Orders 5-01-045 and R5-20008-0053 during the period beginning 1 January 2008 and ending 30 June 2009. Eleven (11) 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-three thousand dollars (\$33,000)**.
16. The total amount of the mandatory penalties assessed for the cited effluent violations is **sixty thousand dollars (\$60,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Order.
17. 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...

18. CWC section 13385 (k)(2) states, in part:

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.

19. The Central Valley Water Board held a hearing regarding ACL Complaint R5-2008-0522 on 24 October 2008, and issued Resolution R5-2008-0159, which finds that the Discharger's WRF served a "small community with a financial hardship."
20. On 4 June 2008, the Discharger submitted a letter reporting that, as a compliance project, it was constructing a new wastewater treatment plant designed to address the effluent violations. An ultraviolet disinfection system addresses the chlorine residual, dibromochloromethane, and total coliform organisms violations; biological nutrient removal addresses nitrate and pH violations; and new secondary clarifiers and effluent filters address turbidity violations. On 29 July 2009, the Discharger submitted a letter reporting that it had completed construction and spent \$44,688,429 of local funds and a State Revolving Fund loan on the compliance project.
21. The Central Valley Water Board finds that the Compliance Project has been designed to correct the violations that led to the issuance of this Administrative Civil Liability Order, and that the Compliance Project is in accordance with the enforcement policy of the State Water Board. The Discharger has expended on the Compliance Project an amount in excess of the mandatory minimum penalty that is required by CWC sections 13385(h) and (i), excluding grants.
22. 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 (Resolution R5-2009-0027).
23. 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 and no comments were received.
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 (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

IT IS HEREBY ORDERED THAT:

1. The City of Placerville, its agents, successors and assigns, shall be assessed an Administrative Civil Liability in the amount of **sixty thousand dollars (\$60,000)**.
2. The entire \$60,000 penalty shall be deemed satisfied through the completed compliance project described in Finding 20.
3. If, in the judgment of the Executive Officer, the Discharger fails to complete the compliance project in accordance with the specified time schedule or fails to construct the Compliance Project in accordance with the Proposal without obtaining Central Valley Water Board approval, the suspended mandatory minimum penalty **(\$60,000)** must be paid within 30 days of notification by the Executive Officer of such failure.
4. 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.

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 (including mandatory furlough days), 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

8 December 2009

DATE

Attachment A
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2009-0586

City of Placerville
Hangtown Creek Water Reclamation Facility

RECORD OF VIOLATIONS (26 March 2005 and 1 January 2008 – 30 June 2009) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs 5-01-045 and R5-2008-0053)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period Type</u>	<u>Remarks</u>	<u>CIWQS</u>
1	26-Mar-05	Coliform	MPN/100m L	2.2	4	Weekly Avg	4	368199
2	30-Jan-08	Coliform	MPN/100m L	23	900	Daily Max	4	806608
3	31-Jan-08	Coliform	MPN/100m L	2.2	13	7-day med	4	806615
4	31-Jan-08	Nitrate	mg/L	10	12	Monthly	4	806617
5	8-Feb-08	Coliform	MPN/100m L	23	170	Daily Max	4	806618
6	11-Feb-08	Coliform	MPN/100m L	2.2	17	7-day med	4	806619
7	12-Feb-08	Coliform	MPN/100m L	2.2	17	7-day med	4	806620
8	13-Feb-08	Coliform	MPN/100m L	2.2	8	7-day med	4	806621
9	14-Feb-08	Coliform	MPN/100m L	2.2	8	7-day med	4	806622
10	15-Feb-08	Coliform	MPN/100m L	2.2	8	7-day med	4	806623
11	18-Feb-08	Coliform	MPN/100m L	2.2	8	7-day med	4	806624
12	19-Feb-08	Coliform	MPN/100m L	2.2	8	7-day med	4	806625
13	28-Feb-08	Turbidity	NTU	2	3	Daily	1	806989
14	13-Mar-08	Chlorine Residual	mg/L	0.02	0.81	1-hour	2	782380
15	31-Mar-08	Nitrate	mg/L	10	14	Monthly	1	806626
16	30-Apr-08	Nitrate	mg/L	10	19	Monthly	1	806629
17	20-May-08	Chlorine Residual	mg/L	0.02	4	1-hour	2	806630
18	29-Oct-08	pH	pH units	6.5	6.0	Instantaneous s	3	806632
19	17-Nov-08	Chlorine Residual	mg/L	0.02	5.26	1-hour	2	806642
20	12-Dec-08	Dibromochloromethane	µg/L	2.66	4.1	Daily	2	806643
21	18-Dec-08	Chlorine Residual	mg/L	0.02	0.12	1-hour	2	806644

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 violation falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.

VIOLATIONS through 9/30/2009

Group I Serious Violations:	3
Group II Serious Violations:	5
Non-Serious Exempt from MPs:	1
Non-serious Violations Subject to MPs:	12
Total Violations Subject to MPs:	<u>20</u>

Mandatory Minimum Penalty = (8 serious Violation + 12 Non-Serious Violations) x \$3,000 = \$60,000