

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2013-0540

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 (Water Code) 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) Orders R5-2008-0177 and R5-2012-0033 (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 4 December 2008, the Central Valley Water Board adopted Waste Discharge Requirements (WDRs) Order R5-2008-0177 to regulate discharges of waste from the wastewater treatment plant (WWTP). On 7 June 2012, effective 27 July 2012, the Board adopted WDRs Order R5-2012-0033, which contained new requirements and rescinded WDRs Order R5-2008-0177, except for the purpose of enforcement.
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 Mandatory Minimum Penalties (MMPs) 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 towards a \$5.59 million compliance project conducted by the Discharger to expand and upgrade the WWTP, pursuant to Water Code section 13385(k). The Board considers payment of the MMPs satisfied through completion of the compliance project.
4. On 10 June 2010, the Assistant Executive Officer issued Administrative Civil Liability Order (ACLO) R5-2010-0520. The ACLO charged the Discharger with civil liability in the amount of \$15,000 which represented MMPs for effluent violations that were overlooked in ACLC 2008-0607 that occurred at the WWTP from 1 December 2002 through 30 April 2008. The ACLO allowed the Discharger to apply the \$15,000 towards the same \$5.59 million WWTP expansion and upgrade compliance project, pursuant to Water Code section 13385(k). The Board considers payment of the MMPs satisfied through completion of the compliance project.
5. On 10 June 2010, the Assistant Executive Officer issued ACLO R5-2010-0519. The ACLO charged the Discharger with civil liability in the amount of \$3,000 which represented MMPs for effluent violations that occurred at the WWTP from 1 May 2008 through 28 February 2010. The ACLO allowed the Discharger to apply the \$3,000 towards a \$7,209 chlorination/dechlorination system upgrade compliance project, pursuant to Water Code section 13385(k). The Board considers payment of the MMPs satisfied through completion of the compliance project.

6. This Order addresses violations subject to MMPs which occurred during the period of 1 March 2010 through 31 December 2012. On 11 February 2013, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations (ROV) for the period of 1 March 2010 through 31 December 2012. On 4 March 2013, the Discharger responded to the ROV and requested that the MMPs be applied towards a compliance project.
7. This Order allows the \$3,000 penalty to be applied toward a compliance project for the violations specifically identified in Attachment A to this Order as subject to mandatory minimum penalties. Attachment A is attached hereto and incorporated herein by this reference.
8. 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.

9. Water Code 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.

10. WDRs Order R5-2008-0177 Effluent Limitations IV.A.1 state, in part: "The Discharger shall maintain compliance with the effluent limitations specified in Table 6:"

Table 6. Effluent Limitations

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Ammonia (as N)	mg/L	2.0	--	5.8	--	--
	lbs/day ¹	12	--	33	--	--
Total Coliform Organisms	MPN/100 mL	--	--	--	--	240

¹Based on a average dry weather flow of 0.69 MGD.

- f. Total Coliform Organisms. Effluent total coliform organisms shall not exceed:
 - i. 2.2 most probable number (MPN) per 100 mL, as a 7-day median; and
 - ii. 23 MPN/100 mL, more than once in a 30-day period.

11. According to the Discharger’s self-monitoring reports, the Discharger committed one (1) serious Group I violation of the above effluent limitations contained in Order R5-2008-0177 during the period beginning 1 March 2010 and ending 31 December 2012. The violation is defined as serious because the measured concentration of the Group I constituent exceeded maximum prescribed levels by more than 40 percent on this occasion. The mandatory minimum penalty for this one (1) serious violation is **three thousand dollars (\$3,000)**.

12. According to the Discharger’s self-monitoring reports, the Discharger committed one (1) non-serious violation of the above effluent limitations contained in Order R5-2008-0177 during the period beginning 1 March 2010 and ending 31 December 2012. The non-serious violation is not subject to mandatory penalties under Water Code section 13385(i)(1) because this violation was not preceded by three or more similar violations within a six-month period.

13. The total amount of the mandatory penalties assessed for the cited effluent violations is **three thousand dollars (\$3,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Order.

14. Water Code 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.

15. The 2009 State Water Resources Control Board's *Water Quality Enforcement Policy* delegates the Regional Boards the authority to determine whether a publicly owned treatment works serves a small community with financial hardship. On 6 March 2013, the Central Valley Water Board determined that the Nevada City Wastewater Treatment Plant's service area meets the definition of a small community with a financial hardship.
16. On 4 March 2013, the Discharger submitted information showing that it spent over \$21,000 to install a dissolved oxygen control system in the aeration basins. The control system allows the Discharger to maintain dissolved oxygen concentrations above 2.0 mg/L by varying the speed of the aeration blowers. This has improved the nitrification process and will improve ammonia removal, and correct and prevent ammonia violations similar to the alleged violation subject to MMPs under this Order. The documentation submitted by the Discharger shows that a check for the initial \$10,000 payment for the project was made on 31 October 2012, which is after the date of the effluent ammonia violation.
17. With the completion of the Compliance Project, the Discharger has spent in excess of the mandatory minimum penalty that is required by Water Code Sections 13385(h) and (i). The Compliance Project has been designed to correct the violations that have led to this Administrative Civil Liability Order within five years. The completed project is in accordance with the State Water Board's *Water Quality Enforcement Policy*.
18. 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.
19. 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. No comments were received.
20. 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 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 **three thousand dollars (\$3,000)**.
2. The entire \$3,000 penalty has been satisfied through the completion of the compliance project described above, in accordance with Water Code 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 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

14 May 2013

DATE

Attachment A: Record of Violations
MAF: 13 May 2013

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R5-2013-0540**

**City of Nevada City
Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 March 2010 – 31 December 2012) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs R5-2008-0177 and R5-2012-0033)

	<u>Date</u>	<u>Violation</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
*	17-May-08	Total Coliform	MPN/100mL	2.2	9	7-Day Median	4	807516
1	30-Aug-10	Total Coliform	MPN/100mL	23	Two samples > 23 in a 30-day period	More than 1 exceedance in a 30-day period	3	890764
2	30-Sep-11	Ammonia	mg/L	2.0	3.1	Monthly Average	1	913014

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 180-day period, thus is not subject to mandatory minimum penalties.
4. Non-serious violation subject to mandatory minimum penalties.

<u>VIOLATIONS AS OF:</u>	<u>12/31/12</u>
Group I Serious Violations:	1
Group II Serious Violations:	0
Non-Serious Violations Not Subject to MMPs:	1
<u>Non-serious Violations Subject to MMPs:</u>	<u>0</u>
Total Violations Subject to MMPs:	1

Mandatory Minimum Penalty = (1 serious Violation) x \$3,000 = \$3,000

* Violations previously addressed in ACLC R5-2010-0519