

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Order No. R1-2007-0018

For

Violation of Waste Discharge Requirements
Order No. R1-2001-60
NPDES No. CA0024490

In the Matter of
McKinleyville Community Services District
Wastewater Treatment Facility
WDID No. 1B82084OHUM

Humboldt County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), having received from the McKinleyville Community Services District (CSD) (hereinafter Discharger) a waiver of the right to a hearing in the matter of mandatory minimum penalties pursuant to Water Code section 13385, subdivisions (h) and (i) for failure to meet mandatory effluent requirements as required by Waste Discharge Requirements Order No. R1-2006-60 and its associated monitoring and reporting program, and having received the Discharger's request for the opportunity to implement a compliance project (CP) in lieu of the penalty prescribed, finds the following:

1. The Discharger owns and operates wastewater collection, treatment, and disposal facilities (WWTF) that serve the unincorporated area of McKinleyville in northern Humboldt County. The WWTF consists of two primary ponds and three secondary oxidation ponds followed by disinfection facilities. Treated and disinfected wastewater is discharged to the Mad River during the winter months at a dilution ratio of at least 100 to 1 whenever the river flow exceeds 200 cubic feet per second as measured at the Highway 101 Bridge. During the summer months (May 15 to September 30) and low-flow periods in the river, treated wastewater is discharged using a combination of percolation ponds and pasture irrigation.
2. The Regional Water Board adopted Order No. R1-2001-60, Waste Discharge Requirements, for the McKinleyville CSD on June 28, 2001. The Order also serves as a National Pollutant Discharge Elimination System (NPDES) Permit No. CA0024490.

3. Among the provisions in the Discharger's waste discharge requirements are the requirements to implement a discharge monitoring program and to prepare and submit NPDES self-monitoring reports to the Regional Water Board pursuant to Water Code section 13383. According to monitoring reports submitted by the Discharger, the Discharger exceeded effluent limitations 92 times during the period from January 1, 2000 through May 31, 2005.
4. Water Code section 13385, subdivisions (h) and (i) establish mandatory minimum penalties (MMPs) for violations of waste discharge requirement effluent limitations. Water Code section 13385, subdivision (k) allows the Regional Water Board to direct all or a portion of the penalty toward a Compliance Project (CP) in accordance with Section X of the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy).
5. On March 16, 2006, the Executive Officer issued Administrative Civil Liability Complaint No. R1-2006-0034 assessing a mandatory minimum penalty of \$231,000 for effluent violations as described in Finding No. 4 above. On April 17, 2006, the Discharger waived its right to a public hearing and requested to pay the sum of \$10,000 to the State Water Pollution Cleanup and Abatement Account (CAA) and spend the remaining sum of \$221,000 on a CP. The Discharger paid \$10,000 into the CAA on April 21, 2006.
6. After discussions with Regional Water Board staff regarding impending MMPs and the need for more reliable treatment to stop the continuing assessment of MMPs, the District began planning for the construction of treatment marshes in 2001 with the intention that the project would serve as a CP and the money spent on the treatment marshes would be suspended from MMPs eventually issued by the Regional Board. The CP consists of modifying pond 4 within the treatment plant and adding a constructed wetland pond. Completion of construction of the wetlands facility and installation of marsh plants occurred during the fall of 2005. Full maturity of the marsh plants and maximum treatment levels are not expected to occur until the winter of 2008. The wetlands should provide progressively improved treatment as the plants mature over the next two years. The total project cost is estimated at \$795,000.
7. A duly noticed public hearing on this matter was held before the Regional Water Board on April 26, 2007 at the Regional Water Board office in Santa Rosa, California. The documents for the agenda item were provided to the Discharger and made available to the public prior to the hearing. The Discharger and the public were given the opportunity to testify and present evidence regarding the proposed settlement.

8. At the hearing, the Regional Water Board considered whether to affirm, reject or modify the Administrative Civil Liability Order and any other action appropriate as a result of the hearing.
9. The Regional Water Board finds that the CP, as proposed, meets the requirements of Water Code section 13385, subdivision (k). The Discharger is a publicly owned treatment works serving a small community, as defined by Water Code section 79084, subdivision (b) and: 1) the CP is designed to correct the violations within five years; 2) the CP is in accordance with the State Water Board's Enforcement Policy [specifically, the amount of the penalty suspended does not exceed the cost to return to and/or maintain future compliance and the CP will comply with the general conditions in subsection (c) of Section X of the State Water Board's Enforcement Policy]; and 3) the Discharger has demonstrated that it has sufficient funding to complete the CP.
10. The issuance of this Order is an enforcement action to protect the environment, and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, §§ 21000-21177) pursuant to title 14, California Code of Regulations, sections 15308 and 15321, subdivision (a)(2).
11. Any person affected by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with section 13320 of the Water Code and title 23, California Code of Regulations, section 2050. The petition must be received by the State Water Board within thirty days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

THEREFORE, IT IS HEREBY ORDERED pursuant to Water Code section 13385 that:

1. The Discharger shall be assessed the mandatory minimum penalty in the amount of \$231,000. The Discharger has paid the sum of \$10,000 to the CAA to cover a portion of staff costs. The remaining sum of \$221,000 is eligible to be permanently suspended upon satisfactory completion of the CP as described in Finding 6 of this Order. The CP meets the criteria established in the Enforcement Policy and construction has been completed. To be fully operational, the wetlands plants need to mature, which will take until the winter of 2008. The Discharger shall submit progress reports describing the development of the marsh plants and improvements to effluent quality according to the following time schedule:

TASK	DATE
Describe marsh plant development and viability and an assessment of effluent quality improvements as a result of the marshes. Include photos in digital format showing the marshes from several different aspects.	Calendar Year 2007, Submit progress report as part of the WWTF Annual Report, on or before February 28, 2008
The CP should be complete. Prepare a final report certifying completion of the CP and an overall evaluation of the CP. Include information showing whether the CP will achieve its intended objectives and goals. Include a post project accounting of all expenditures with proof of payment.	Calendar Year 2008, Submit report on or before February 28, 2009.

2. If, given written justification from the Discharger, the Executive Officer determines that a delay in the CP implementation schedule was beyond the reasonable control of the Discharger, the Executive Officer may revise the implementation schedule as appropriate. Written justification must be received by the Executive Officer before the specific due date occurs, must describe circumstances causing the delay, and must state when each task of the CP will be completed.
3. The remaining penalty amount of \$221,000 shall be permanently suspended if the Executive Officer determines that the Discharger has completed the CP and provided the Regional Water Board with the scheduled progress reports toward completion of the CP and the final report by February 28, 2009. If the Discharger fails to adequately complete the approved CP or fails to complete any of the above-described tasks by the corresponding due date, the Executive Officer may require immediate payment of the suspended liability to the CAA.

It is the Discharger's responsibility to complete the CP, regardless of any agreements between the Discharger and any third party contracted to implement the CP. Therefore, the Discharger may want to consider a third party performance bond or the inclusion of a penalty clause in their contract. The final report shall contain documentation of expenditures. If the final total cost of the successfully completed CP is less than the amount suspended for completion of the CP, the Discharger must remit the difference to the CAA.

Certification

I, Catherine E. Kuhlman, Executive Officer,
do hereby certify that the foregoing is a full, true,
and correct copy of an Order adopted by the
California Regional Water Quality Control Board, North Coast Region,
on April 26, 2007

Catherine E. Kuhlman
Executive Officer

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