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Secretary for
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**California Regional Water Quality Control Board
North Coast Region
Bob Anderson, Chairman**

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Arnold
Schwarzenegger
Governor

June 27, 2008

Mr. Henry Ebinger
Director of Public Works
City of Tulelake
591 Main Street
Tulelake, CA 96134

Subject: Order No. R1-2008-0086 – Notice of Violation and Conditional Offer to Participate
in Expedited Payment Program Relating to Violations of NPDES Permit

File: City of Tulelake, Wastewater Treatment Facility; WDID No.1A84002OSIS
NPDES No. CA0023272

Dear Mr. Ebinger:

This letter is to notify the City of Tulelake (hereinafter Permittee) of alleged violations of the California Water Code identified in the State Water Resources Control Board's (State Water Board) water quality data system and to allow the Permittee to participate in the Water Boards' Expedited Payment Program for Effluent or Reporting Violations (Expedited Payment Program) to address liability which may be assessed pursuant to Water Code sections 13385 and 13385.1.

NOTICE OF VIOLATION

Based on information in the California Integrated Water Quality System (CIWQS) as of June 5, 2008, the North Coast Regional Water Quality Control Board (hereinafter Regional Water Board) alleges that the Permittee has violated the effluent limitations, reporting violations, or Water Code provisions identified in the Notice of Violation (NOV) attached as Exhibit "A". The Permittee will have the opportunity to address the alleged violations as discussed below.

STATUTORY LIABILITY

Subdivisions (h) and (i) of California Water Code section 13385 require the assessment of a mandatory minimum penalty of \$3,000 for each specified serious and chronic effluent

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limit violation. The Permittee is subject to discretionary administrative civil liabilities of up to \$10,000 for each day in which the violation occurs, plus \$10 for each gallon discharged but not cleaned up in excess of 1,000 gallons. These mandatory minimum penalties and discretionary administrative civil liabilities may be assessed by a Regional Water Quality Control Board (Regional Water Board) or the State Water Board (collectively "the Water Boards"), beginning with the date that the violations first occurred¹. The formal enforcement action which the Water Boards use to assess such liability is an administrative civil liability complaint, although the Water Boards may instead refer such matters to the Attorney General's Office for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess up to \$25,000 per violation. In addition, the Superior Court may assess up to \$25 per gallon discharged but not cleaned up in excess of 1,000 gallons.

OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM

The Permittee can avoid the issuance of a formal enforcement action and settle the alleged violations identified in the attached NOV by participating in the Water Boards' Expedited Payment Program. Details of the proposed settlement are described below and addressed in the enclosed documents.

To promote resolution of these violations, the Regional Water Board makes this Conditional Offer. The Permittee may accept this offer, waive the Permittee's right to a hearing, and pay the mandatory minimum penalty of \$12,000, for the violations described in the NOV. If the Permittee elects to do so, subject to the conditions below, the Regional Water Board will accept that payment in settlement of any enforcement action that would otherwise arise out of the violations identified in the Notice of Violation. Accordingly, the Regional Water Board will forego issuance of a formal administrative complaint, will not refer the violations to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in the NOV.

The Expedited Payment Program does not address liability for any violation that is not specifically identified in the NOV.

PERMITTEE'S OPTIONS FOR RESPONSE TO OFFER

If the Permittee accepts this offer, please complete and return the enclosed "Acceptance of Conditional Offer and Waiver of Right to Hearing" (Acceptance and Waiver) on or before July 30, 2008.

¹ Please note that there are no statutes of limitation that apply to administrative proceedings to assess mandatory minimum penalties. See *City of Oakland v. Public Employees' Retirement System*, (2002) 95 Cal.App.4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.) The Permittee has not been substantially prejudiced by the passage of time between the date(s) that Permittee reported the violations identified on Exhibit A and the date of this letter. The Permittee was aware of the violations at the time it reported them to the Regional Board. Regional Board staff's limited enforcement resources and competing enforcement priorities provide a rational explanation for the delay. In fact, the delay has actually benefited the Permittee because it extended the time before payment of the mandatory minimum penalties is due. For these reasons, any delay is not unreasonable.

If the Permittee contests some but not all of the violations identified in the attached NOV, the Permittee may elect to reserve the right to address the contested matters and resolve any uncontested violations through the payment of the mandatory minimum penalty for each uncontested violation. If the Permittee chooses this option, please communicate with the staff contact identified below to discuss the mechanism for memorializing that election on or before the due date.

If the Permittee chooses to contest any of the violations alleged in the NOV, please identify the specific violation and the basis for the challenge (factual error, affirmative defense, etc.) on or before the due date. The Regional Water Board staff will evaluate the contested violation and take one of two actions:

- 1) The Regional Water Board staff will determine that the violation is not supported, expunge the alleged violation from the CIWQS data base, take no further action against the Permittee for the alleged violation, and notify the Permittee of that determination;
- 2) The Regional Water Board staff will determine that the alleged violation is meritorious, and will notify the Permittee of that determination. The Permittee will be given thirty (30) days from the date of receipt of the Regional Water Board staff determination, to submit a supplemental Expedited Payment for each of those violations. If the Permittee chooses not to make a payment in response to the determination, the Permittee should expect to be contacted regarding formal enforcement action that will be initiated with regard to the contested violations. In a formal enforcement action, the liability amount sought and/or imposed may exceed the liability amount set forth in this Conditional Offer. Please be advised that the cost of staff enforcement is a factor which can be considered in assessing the liability amount.

CONDITIONS FOR REGIONAL WATER BOARD ACCEPTANCE OF RESOLUTION

Federal regulations require the Regional Water Board to publish and allow the public thirty (30) days to comment on any settlement of an enforcement action addressing NDPEs permit violations (40 C.F.R. section 123.27(d)(2)(iii)). Upon receipt of the Permittee's Acceptance and Waiver, the Regional Water Board staff will publish a notice of the proposed resolution of the violations.

If no comments are received within the 30-day period, and unless there are new material facts that become available to the Regional Water Board, the Executive Officer will execute the Acceptance and Waiver as a stipulated order assessing the uncontested mandatory minimum penalty amount pursuant to Water Code section 13385.

If, however, significant comments are received in opposition to the settlement, this Offer may be withdrawn. In that case, the Permittee's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. In that case, the unresolved violations will be

addressed in a liability assessment proceeding. At the liability assessment hearing, the Permittee will be free to make arguments as to any of the alleged violations, and the Permittee's agreement to accept this conditional offer will not in any way be binding or used as evidence against the Permittee. The Permittee will be provided with further information on the liability assessment proceeding.

In the event the Acceptance and Waiver is executed by the Executive Officer, payment of the assessed amount shall be due within ten (10) calendar days after the Permittee's receipt of the notice of the Executive Officer's execution. The \$12,000 liability shall be paid by check to the "State Water Pollution Cleanup and Abatement Account" and submitted to the Regional Water Board office. Failure to pay the penalty within the required time period may subject the Permittee to further liability.

Should you have any questions about the Notice of Violation or the Conditional Offer, please contact Manuel Baldenegro at 707-576-6727 regarding this matter.

Sincerely,

Luis G. Rivera
Assistant Executive Officer

Certified – Return Receipt Requested

Enclosures: Exhibit "A" - Notice of Violation _____
Acceptance of Conditional Resolution and Waiver of Right to Hearing _____

(062708_MGB_Tulelake_NOV.doc)

Exhibit "A"

CITY OF TULELAKE
NOTICE OF VIOLATION (January 1, 2000 – June 5, 2008)
MANDATORY MINIMUM PENALTIES WITHOUT ENFORCEMENT

The following table lists (based on information in CIWQS as of June 5, 2008) this facility's alleged violations of subdivisions (h) and (i) of California Water Code section 13385, from January 1, 2000 through June 5, 2008, which have not received mandatory minimum penalty assessment by the Regional Water Board. Calculation of MMP amounts owed and descriptions of the abbreviations that appear in the table are listed below. For additional information about the alleged violations listed in the table, please refer to the SWRCB Public Reports webpage http://www.waterboards.ca.gov/water_issues/programs/ciwqs/publicreports.shtml; choose the "MMP Report" link located under the "Enforcement Reports" category. Once in the Public Reports search page, enter the search criteria that correspond to your facility to access the list of violations.

CIWQS Violation ID	Violation Date	Violation Type	MMP Type	MMP Amount	Violation Description
216788	5/30/2002	CAT2	Serious	\$3,000	Exceeded Daily Chlorine Residual average of 0.1 mg/l - reported 0.2 mg/l
210629	7/30/2002	OEV	Chronic	\$3,000	Exceeded monthly Coliform median of 23 MPN/100 ml - reported 230 MPN/100 ml
210630	8/30/2002	OEV	Chronic	\$3,000	Exceeded monthly Coliform median of 23 MPN/100 ml - reported 230 MPN/100 ml
210631	9/30/2002	OEV	Chronic	\$3,000	Exceeded monthly Coliform median of 23 MPN/100 ml - reported 230 MPN/100 ml
MMP TOTAL				\$12,000	

Definition of Acronyms & Abbreviations

CIWQS	California Integrated Water Quality System database used by the Water Boards to manage violation and enforcement activities.
Violation ID	Identification number assigned to a violation in CIWQS.
Violation Date	Date that a violation actually occurred. For continuing violations, such as a monthly average, the last day of the reporting period is used. If the occurrence date is unknown, the date is entered as the day it was first discovered by staff, the Discharger, or a third party. For deficient or late reports, the occurrence date is the day after the report was due.
Violation Type	Classification of a violation. Two types of violations relate to MMPs: 1) Late Reporting Violations (LREP, DREP) 2) Effluent Violations (ATOX, CTOX, CAT1, CAT2, OEV)
	LREP - Late reporting violation. Every 30 days a report is late counts as one late reporting violation.
	DREP - Deficient reporting violation. Submittal of an incomplete report (i.e., missing signature, certification statement, laboratory identification, etc.) or failure to notify per a requirement (i.e., call out violation in self-monitoring report cover sheet) are considered to be deficient reporting violations. If the SMR calls out that monitoring was not completed, it will be recorded as deficient reporting. One violation is recorded for each deficient report.
	ATOX - Violation of an acute toxicity effluent limitation.
	CTOX - Violation of a chronic toxicity effluent limitation.
	CAT1 - Violation of an effluent limitation for a Group I pollutant by more than 40%.
	CAT2 - Violation of an effluent limitation for a Group II pollutant by more than 20%.
	OEV - Violation of any constituent-specific effluent limitation not included in Group I or Group II.
MMP Type	Classification of the type of MMP violation, which is either Chronic or Serious.
	Chronic - Chronic violation as defined by California Water Code section 13385 (i). To be counted as a chronic violation, there must be 3 preceding non-serious violations within a "rolling" 180 day period. The fourth non-serious violation that occurs within the 180 period is an MMP violation. A non-serious violation may be any one of the following: a) exceeds WRD effluent limitations; b) fails to file a report of waste discharge pursuant to California Water Code section 13260; c) files an incomplete report of waste discharge pursuant to California Water Code section 13260; or d) exceeds a toxicity discharge limitation where the WDRs do not contain pollutant-specific effluent limitations for toxic pollutants.
	Serious - Serious violation as defined by California Water Code section 13385 (h). Waste discharge exceeds the effluent limitation for a Group I pollutant by 40% or more (CAT1), or a Group II pollutant by 20% or more (CAT2). Also defined by California Water Code section 13385.1 as a failure to file a discharge monitoring report pursuant to Section 13383 for each period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.
Violation Description	Description of the violation. Includes report due date for late reports or indicates why deficient reports are deficient. For violations of permit conditions, summarizes the prohibition, specification, or provision that was violated and what the violation was. For effluent limit exceedances, lists the reporting period; constituent; limit; units; limitation period; and result.