

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

ORDER NO. R1-2010-0001

IMPOSING ADMINISTRATIVE CIVIL LIABILITY
PURSUANT TO SETTLEMENT
OF
ADMINISTRATIVE CIVIL LIABILITY ORDERS
No. R1-2006-0054 and No. R1-2007-0064

In the Matter of the
City of Arcata, Wastewater Treatment Plant
WDID No. 1B82114OHUM

Humboldt County

The California Regional Water Quality Control Board, North Coast Region (“Regional Water Board”) finds:

1. On May 17, 2006, the Regional Water Board issued Administrative Civil Liability Order No. R1-2006-0054 (Order) (attachment A), which assessed an administrative civil liability of \$297,000 against the City of Arcata (City or Discharger). The penalty was issued for violations of effluent limitations contained in Waste Discharge Requirements Order 98-13 (1998 Order), which also served as a National Pollutant Discharge Elimination System permit. This permit was replaced by R1-2004-0036 (2004 Permit). The violations set forth in the Order occurred between January 1, 2000 and June 21, 2004, and were subject to mandatory minimum penalties (MMPs) set forth in California Water Code section 13385, subsection (h) and (i).
2. On June 16, 2006 the Discharger petitioned the Regional Water Board’s Order to the State Water Resources Control Board (State Water Board)(File No. A-1754).
3. On February 19, 2007, the Discharger requested, pursuant to Water Code section 13320, that the Regional Water Board retroactively modify and reissue its 2004 Permit pursuant to the authority the Discharger asserted is granted to the Regional Water Board under 40 C.F.R. sections 124.5 and 122.62 and Water Code sections 13372 and 13374. Regional Water Board legal counsel determined that the Regional Water Board did not have the legal authority to retroactively modify a permit in order to alleviate MMPs. The City petitioned to the State Water Board the Regional Water Board’s failure to timely modify its 2004 Permit both retroactively and prospectively per the City’s request (SWRCB File No. A-1850).
4. On January 15, 2008 the State Water Board dismissed the Discharger’s administrative appeals except for changing four technical errors found in the Order that reduced the final penalty amount to \$285,000 (SWRCB Order No. 2008-0001)(attachment B).

5. In response to the State Water Boards' actions and dismissals, the Discharger filed a petition for writ of mandate in Humboldt County Superior Court ("Superior Court"), which was later amended on February 12, 2008 ("Lawsuit"). The Lawsuit challenged the permits as being inconsistent with the Clean Water Act and California's Porter-Cologne Water Quality Control Act. In addition the Lawsuit challenged the Regional Water Board's authority to issue MMPs, the Regional Water Board's decision to not allow the Discharger to complete a Compliance Project pursuant to Water Code section 13385(k), and the Regional Water Board's staff's authority to deny the request for retroactive modification of the 2004 Permit without first bringing the request before the Regional Water Board. The venue for the Lawsuit was changed to the Contra Costa Superior Court. Following these actions, the Discharger and Regional Water Board staff entered into extensive settlement negotiations.
6. On July 30, 2007, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R1-2007-0064 assessing a civil liability of \$104,000 for violations of the 2004 Permit for the period starting on June 22, 2004 and ending on March 31, 2007. The Discharger proposed to settle all aspects of this Complaint, except for the \$33,000 in MMPs related to violations of BOD, TSS, percent removal and coliform bacteria, which were related to issues pending as part of the Lawsuit. The Discharger and Regional Water Board Staff agreed that the \$33,000 in MMPs would be held in abeyance until the Lawsuit was settled.
7. Representatives of the Discharger and the Regional Water Board Prosecution Staff entered into a settlement as memorialized in the "Settlement Agreement Regarding Permit Terms and Administrative Civil Liability Order R1-2006-0054 for the Arcata Wastewater Treatment Plant" (Settlement Agreement) (attachment C).
8. The Settlement Agreement requires the Discharger to pay \$25,000 of the \$285,000 civil liability assessed by R1-2006-0054 to the State Water Pollution Cleanup and Abatement Account (CAA). Pursuant to approval by the State Water Board Executive Officer on September 17, 2008 that the City can be treated as a publicly owned treatment works serving a small community, consistent with Water Code section 13385(k), the City is allowed to complete a compliance project for the remainder of the \$285,000 civil liability (\$260,000). In addition, the Settlement Agreement allowed the City to satisfy the \$33,000 civil penalty held in abeyance from Administrative Civil Liability Complaint No. R1-2007-0064, described in Finding 6, by completing a compliance project costing in excess of \$293,000 (\$260,000 from R1-2006-0054 + \$33,000 from R1-2007-0064).
9. The entire amount of the two civil liabilities, totaling \$318,000 (\$285,000 from R1-2006-0054 and \$33,000 from R1-2007-0064 that was held in abeyance), less the \$25,000 paid to the CAA, will be settled in the form of a compliance project that meets the requirements of Water Code section 13385(k) and Section X of the State Water Board's 2002 "Water Quality Enforcement Policy."
10. The Discharger has proposed a compliance project consisting of three components at a total cost of \$300,000. The project, when completed will improve wastewater

treatment plant efficiency and substantially reduce collection system overflows during the winter season. The three components of the project include:

a. Marsh Creation and Improvements - \$175,000

The Discharger will convert an existing 3.6 acre oxidation pond into two treatment marshes and upgrade the inlet and outlet of existing marshes 1, 2, & 4. This will result in two new treatment marshes, and will increase the efficiency of the existing treatment marshes. The inlet/outlet improvements will reduce short circuiting within the existing marshes and, with the additional new marshes, will increase the total detention time of the system by 0.75 to 1.25 days, depending on flows.

b. 1st Street Lift Station Improvements - \$85,000

The Discharger will increase the wet well capacity of the lift station by 60 percent (7,000 gallons). The increased wet well capacity improves the flow from the Sunny Brae and Northtown collection systems. Improved flow reduces collection system flooding and associated overflows.

c. Sunny Brae Collection System Routing Study - \$40,000

This study is intended to help the Discharger to identify a feasible route for new collection system piping between the Sunny Brae neighborhoods, the Bayside LS force main and the treatment plant. The new piping will also collect waste from a leach-field area along Old Bayside Road. In completing this study, the Discharger will finalize the environmental review, obtain necessary project permits, and develop construction bid documents for the selected route.

11. The Settlement Agreement attached hereto supports the assessment of administrative civil liability in the amount of \$318,000 for the alleged violations. This amount represents the statutory minimum liability that is allowed for the violations. The Settlement Documents also support allowing the City to satisfy its civil liability by completing a compliance project that will improve wastewater treatment plant efficiency and substantially reduce collection system overflows during the winter season. Consequently, the settlement is consistent with the public interest.
12. As part of the Settlement Agreement, the Regional Water Board staff agreed to release and support a draft permit for public comment and Board approval that incorporates the terms described in the attached Settlement Agreement as revisions to the City's Permit when the permit is next reissued. The permit terms to be addressed as described in the Settlement Agreement are:
 - a. 85% Removal Requirements
 - b. Concentration and Mass Based Limits
 - c. Reasonable Potential and Daily Limits
 - d. Monthly and Weekly Limits
 - e. Sanitary Sewer Overflow Requirements

- f. Flow Issues
 - g. Temperature
 - h. Receiving Water Limitations
 - i. Monitoring
13. Dismissal of the Lawsuit will occur when Regional Water Board staff release a draft permit for public comment that includes permit revisions listed in Finding 12 above and the permit is adopted by the Regional Water Board. Dismissal shall occur regardless of whether the final adopted permit contains the revisions agreed to by the Discharger and Regional Water Board staff. Changes to the draft permit based upon legal issues or concerns raised during the public comment period or as directed by Regional Water Board members will not negate the agreement to dismiss the Lawsuit under the Settlement Agreement.
 14. The Settlement Agreement provides that within ten (10) working days of the adoption of the City's next permit, the City will provide written notice to the Regional Water Board and its counsel of the dismissal of the Lawsuit. Within thirty (30) days of dismissal of the Lawsuit, the Discharger will pay \$25,000 to the CAA and begin implementing the compliance project.
 15. Government Code section 11415.60 authorizes the Regional Water Board to issue a decision by settlement, pursuant to an agreement of the parties, without conducting an adjudicative proceeding.
 16. A duly noticed public hearing on this matter was held before the Regional Water Board on January 21, 2010 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.
 17. Issuance of this order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*) in accordance with section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that:

1. Pursuant to the Settlement Agreement (attachment C) executed by the Assistant Executive Officer on behalf of the staff of the Regional Water Board Watershed Protection Division and the Discharger, administrative civil liability under California Water Code section 13385, subdivision (e) is imposed on the Discharger in the amount of \$313,000.
2. Pursuant to the Settlement Agreement, the Discharger shall dismiss the Lawsuit within ten (10) business days of the adoption of a new permit by the Regional Water Board.

3. Pursuant to the Settlement Agreement, the Discharger shall pay \$25,000 to the CAA within thirty (30) days of the dismissal of the Lawsuit.

4. Pursuant to the Settlement Agreement, the Discharger shall, within thirty (30) days of the dismissal of the Lawsuit, begin implementing the compliance project described in Finding 12, above, and attached as attachment C. The compliance project shall be completed in accordance with the following three time schedules:

SCHEDULE 1

MARSH CREATION AND IMPROVEMENTS			
TASK (by number)	START DATE	COMPLETION DATE	COMPLETION REPORTS DUE
(1) Prepare Engineering Designs and Plans	Within 30 days of Lawsuit dismissal	6 months from start date	30 days from completion date
(2) Prepare site (pond) for construction	Begin immediately following completion of Task 1	6 months from start date	30 days from completion date
(3) Dewater, survey and reconfigure oxidation pond bottom and add 6 inches of topsoil	Begin immediately following completion of Task 2	6 months from start date	30 days from completion date.
(4) Construct influent trench, internal levee, submerged berms and trenches. Install inlet and outlet structures	Begin immediately following completion of Task 3	6 months from start date	30 days from completion date
(5) Plant and monitor marsh growth and development	Begin immediately following completion of Task 4	5 years from Lawsuit dismissal	Submit a progress report six months from start of planting and every six months thereafter. Submit a final report within 30 days of completion.

SCHEDULE 2

I STREET LIFT STATION IMPROVEMENTS			
TASK	START DATE	COMPLETION DATE	COMPLETION REPORTS DUE
(1) Prepare Engineering Designs and Plans	Within 30 days of Lawsuit dismissal	3 months from start date	30 days from completion date
(2) Complete Permit Applications	Within 30 days of Lawsuit dismissal	3 months from start date	30 days from completion date
(3) Prepare, Advertise, and Award Bid	Immediately following completion of task 2	2 months from start date	30 days from completion date
(4) Construct Project	Immediately following completion of task 3	6 months from start date	30 days from completion date

SCHEDULE 3

SUNNY BRAE SEWER LINE RE-ROUTING STUDY			
TASK	START DATE	COMPLETION DATE	COMPLETION REPORTS DUE
(1) Create Project Concept and Bid Specifications	Within 30 days of Lawsuit dismissal	3 months from start date	30 days from completion date
(2) Complete Bid Documents and Advertise for Bids	Immediately following completion of task 1	6 months from start date	30 days from completion date
(3) Review, Interview, Negotiate Contract, Award Bid	Immediately following completion of task 2	3 months from start date	30 days from completion date

5. If, given written justification from the Discharger, the Executive Officer determines that a delay in the compliance project's implementation schedule is 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 the

circumstances causing the delay, and must state when each task of the compliance project will be completed.

6. Failure to meet the deadlines above, including completing the compliance project to the Executive Officer's satisfaction, will result in the Discharger being required to pay any suspended penalties. Payment of the suspended penalties does not relieve the Discharger of the independent obligation to take necessary actions to achieve compliance with its permit.
7. When the Lawsuit is dismissed, specific dates shall be put in the above time schedules by the Executive Officer.

Certification

I, Catherine 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 January 21, 2010