

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

In the Matter of:)
)
The City of Crescent City) **Order No. R1-2011-0043**
)
Complaint No. R1-2010-0018 for) **Settlement Agreement and Stipulation**
Administrative Civil Liability) **for Entry of Order; Order (Proposed)**
)

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulation”) is entered into by and between the Regional Water Quality Control Board, North Coast Region (Regional Water Board) Prosecution Team (“Prosecution Team”) and the City of Crescent City (“Discharger”) (collectively “Parties”) and is presented to the Regional Water Board for adoption as an Order, by settlement, pursuant to Government Code section 11415.60. This Stipulation and Order are in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability (ACL) Complaint No. R1-2010-0018, dated February 3, 2010 to the Discharger (the “Complaint”).

Section II: Recitals

1. The Discharger owns and operates the City of Crescent Wastewater Treatment Facility (hereinafter WWTF), a municipal wastewater treatment facility located at 210 Battery Street, Crescent City, Del Norte County, California. The WWTF serves the City of Crescent City and County Service Area #1. The WWTF discharges secondary treated municipal wastewater into the Pacific Ocean.
2. On January 25, 2006, the Regional Water Board adopted Waste Discharge Requirements (“WDRs”) Order No. R1-2006-0001 for the Discharger to regulate discharges of treated wastewater from the WWTF. Order No. R1-2006-0001 serves as a National Pollutant Discharge Elimination System (NPDES) Permit under the Federal Clean Water Act (NPDES No.CA0022756). Order No. R1-2006-0001 became effective on February 24, 2006.
3. The Complaint, as issued, recommends imposing administrative civil liability totaling \$195,000 for alleged violations of Order No. R1-2006-0001 incurred by exceeding effluent limitations, failing to timely submit monitoring reports, and violating discharge prohibitions by exceeding receiving water limitations. The proposed civil liability included \$174,000 in mandatory minimum penalties for exceeding effluent limitations and failing to timely submit monitoring reports, \$11,000 in discretionary civil liability for violating discharge prohibitions by exceeding receiving water limitations, and staff costs of \$10,000.

4. Subsequent to the issuance of the Complaint, Regional Water Board staff revisited the alleged violations of Order No. R1-2006-0001 incurred by violating discharge prohibitions by exceeding receiving water limitations. Regional Water Board staff determined that those violations are Class III violations pursuant to the Water Quality Enforcement Policy (Enforcement Policy), adopted by the State Water Resources Control Board on November 17, 2009 and effective May 20, 2010. Thus, for the purpose of settlement, and without adjudicated factual basis, the Prosecution Team agrees to dismiss without prejudice those violations for which the Complaint proposed that a discretionary civil liability be imposed. Therefore, this Stipulation and Order shall represent a final and binding resolution and settlement of the violations of Order No. R1-2006-0001 incurred by exceeding effluent limitations and failing to timely submit monitoring reports alleged in the Complaint (Alleged Violations).
5. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Staff believes that the resolution of the Alleged Violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the Alleged Violations except as provided in this Stipulation and that this Stipulation is in the best interest of the public.
6. To resolve by consent and without further administrative proceedings certain alleged violations of the California Water Code ("CWC") set forth in the Complaint, the Parties have agreed to the imposition of \$174,000 in mandatory minimum penalties against the Discharger. The Discharger paid \$10,000 to the State Water Resources Control Board Cleanup and Abatement Account on March 29, 2010. The remaining \$164,000 in penalties shall be suspended conditioned upon completion of the Compliance Project (CP) as set forth in this Stipulation.

Section III: Stipulations

The Parties stipulate to the following.

7. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling \$174,000, as set forth in Paragraph 6 of Section II herein. The Parties agree that the Discharger paid \$10,000 to the State Water Resources Control Board Cleanup and Abatement Account on March 29, 2010. Further, the Parties agree that \$164,000 of this administrative liability, which consists of mandatory minimum penalties, shall be suspended ("Suspended Liability") pending completion of the CP to complete the installation of an automated facility dedicated to the storage and metering of chlorinated wastewater, citric acid, and filter press filtrate back to the headworks of the

Discharger's WWTF, as set forth in Paragraphs 8 through 16 of Section III herein and Attachment "A" attached hereto and incorporated by reference.

8. **CP Description:** The CP shall consist of the installation of an automated facility which will be dedicated to the storage and metering back to the headworks of chlorinated wastewater, citric acid, and filter press filtrate of the Discharger's WWTF, as described in greater detail in Attachment "A". Currently, the plant operator oversees the retention of wastewater from both the sludge dewatering process and the disinfection process for the rotating biological contactor (RBC) chambers, and manually reintroduces those waste streams into the headworks; this method is prone to occasional errors in estimating the anticipated dilution at the headworks, leading to permit violations. The automated storage and metering facility would allow for a more controlled introduction of waste streams into the plant headworks, thus ensuring greater dilution. Completion of this CP is anticipated to reduce the likelihood that effluent discharged from the WWTF would exceed the permit limitations for ammonia, chlorine, biological oxygen demand (BOD), and other waste chemicals and bring the Discharger into compliance with effluent limitations set forth in Order No. R1-2006-0001.

The implementation schedule for completion of the CP is as follows:

MILESTONE	DEADLINE
Design and specification completed	January 1, 2011*
Submit progress report	July 1, 2011
Submit progress report	October 1, 2011
Complete CP	December 31, 2011
Submit Report of Completion including a detailed list of expenditures	March 1, 2012

* This Task has been completed.

9. **Extension of the Implementation Schedule Deadlines:** If, given written justification from the Discharger, the Regional Water Board staff determines that a delay in the CP 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 Regional Water Board staff before the specific due date occurs, must describe circumstances causing the delay, and must state when each task of the CP will be completed. If any extension of the implementation schedule is granted, the Regional Water Board staff shall provide a new implementation schedule, which shall include the date the CP will be completed ("Completion Date").

10. **CP Costs:** The installed cost estimate for the CP is approximately \$250,000 (See Attachment "A"). The amount of the liability to be suspended upon completion of the CP is \$164,000 in mandatory minimum penalties, as expressly authorized by CWC section 13385(k). No additional liability above and beyond the \$164,000 shall be suspended for costs incurred to complete the CP.
11. **CP Quarterly Progress Reports:** The Discharger shall provide quarterly reports of progress to the Regional Water Board staff commencing 90 days after this Stipulation becomes final and continuing through submittal of the certified statement of completion of the CP described in Paragraph 12. If no activity occurred during a particular quarter, a quarterly report so stating shall be submitted.
12. **Certification of Completion of CP:** On or before December 31, 2011, (or within 60 days of the Completion Date, if an extension to the Completion Date is granted pursuant to Paragraph 9) the Discharger shall provide a certified statement of completion of the CP ("Certification of Completion"). The Certification shall be submitted by a responsible official under penalty of perjury under the laws of the state of California, to Regional Water Board staff. The Certification of Completion shall include the following:
 - a. Certification that the CP has been completed in accordance with the terms of this Stipulation and Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the CP and the costs incurred by the Discharger.
 - b. Certification documenting the expenditures by the Discharger during the completion period for the CP. Expenditures may include, but are not limited to, payments to outside vendors or contractors implementing the CP. The Discharger shall provide any additional information requested by the Regional Water Board staff that is reasonably necessary to verify CP expenditures.
 - c. Certification that the Discharger followed all applicable environmental laws and regulations in the implementation of the CP including but not limited to the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act.
13. **Third Party Financial Audit of CP:** At the written request of Regional Water Board staff, the Discharger, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Regional Water Board staff providing such party's(ies') professional opinion that the Discharger has expended money in the amounts claimed by the Discharger. The written request shall specify the reasons why the audit is being requested. The audit report shall be provided to

Regional Water Board staff within three (3) months of notice from Regional Water Board staff to the Discharger of the need for an independent third party audit. The audit need not address any costs incurred by the Regional Water Board for oversight.

14. **Failure to Expend the Entire Suspended Liability on the Approved CP:** In the event that the Discharger is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that the entire suspended liability of \$164,000 has been spent for the completed CP, the Discharger shall pay the difference between the suspended liability of \$164,000 and the amount the Discharger can demonstrate was actually spent on the CP, as administrative civil liability. The Discharger shall be liable to pay the State Water Resources Control Board Cleanup and Abatement Account the additional administrative civil liability within 30 days of receipt of notice of the Regional Water Board staff's determination that the Discharger failed to demonstrate that the entire CP Amount was spent to complete the CP.
15. **Failure to Complete CP:** If the Discharger fails to complete the CP by December 31, 2011, as required by this Stipulation and Order, (or by the extended Completion Date, if an extension is granted pursuant to Paragraph 9), the Regional Water Board staff shall issue a Notice of Violation (NOV). As a consequence, the Discharger shall be liable to pay the State Water Resources Control Board Cleanup and Abatement Account the Suspended Liability of \$164,000 within 30 days of receipt of the NOV.
16. **Completion of the CP to the Regional Water Board Staff's Satisfaction:** Upon the Discharger's satisfaction of its CP obligations under this Stipulation and completion of the CP and any audit requested by the Regional Water Board, Regional Water Board staff shall send the Discharger a letter recognizing satisfactory completion of its obligations under the CP. Receipt of this letter shall terminate any further CP obligations of the Discharger and result in the permanent stay of the Suspended Liability.
17. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulation and Order and/or compliance with the terms of this Stipulation and Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject them to further enforcement, including additional administrative civil liability.
18. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

19. **Public Notice:** The Discharger understands that this Stipulation and proposed Order was noticed for public comment on March 17, 2011 prior to consideration by the Regional Water Board. In the event objections are raised during the public comment period, the Regional Water Board or the Executive Officer may, under certain circumstances, require a public hearing regarding the Stipulation and proposed Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances.
20. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
21. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Discharger is represented by counsel in this matter.
22. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved the Regional Water Board or the Executive Officer.
23. **If the Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:
 - a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and

therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or

- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
24. **Waiver of Hearing:** The Discharger has been informed of the rights provided by CWC section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.
25. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
26. **Regional Water Board is Not Liable:** Neither the Regional Water Board members nor the Regional or State Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation, Order, or CP, nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulation and Order.
27. **Discharger's Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.
28. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Order.
29. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

30. **Effective Date:** The obligations under this Stipulation are effective and binding on the Parties only upon the entry of an Order by the Regional Water Board, which incorporates the terms of this Stipulation.
31. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
32. **Counterpart Signatures:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
North Coast Region

By: _____
Luis Rivera, Assistant Executive Officer

Date: _____

City of Crescent City

By: _____
Jim Barnt

Director of Public Works

Date: _____

Section IV: Findings of the Regional Water Board

33. This Order incorporates the terms of the foregoing Stipulation.
34. The Parties believe that settlement of this matter is in the best interest of the People of the State. Therefore, to settle the Complaint, the Discharger hereby agrees to comply with the terms and conditions of this Order.
35. The Regional Water Board finds that the Recitals set forth herein in Section II are true.

36. This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
37. Pursuant to CWC Section 13385(k), the Regional Water Board may, in lieu of assessing all or a portion of mandatory minimum penalties pursuant to CWC Section 13385(h) and (i), require a publicly owned treatment works serving a small community to spend all or a portion of mandatory minimum penalties towards the completion of a compliance project (CP) proposed by the publicly owned treatment works. The CP must conform to the requirements specified in the State Water Resources Control Board's (State Water Board) Water Quality Enforcement Policy (Enforcement Policy).
38. The Discharger qualifies as a small community with a financial hardship. The basis of that determination is set forth in the analysis and recommendation prepared by the State Water Board, Office of Research, Planning, and Performance, approved by the State Water Board's Executive Director. (See Attachment "B" attached hereto, incorporated herein, and made a part of this administrative civil liability order by this reference).
39. On November 17, 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf
40. Section VIII of the Enforcement Policy states that CPs shall only be considered where they are expressly authorized by statute, i.e., CWC Section 13385(k), and may not be considered in connection with discretionary administrative civil liability.
41. The Regional Water Board held a duly noticed public hearing on this matter on May 5, 2011, at Trinity the Wharfinger Building, #1 Marina Way, Eureka, California. The documents associated with the agenda item for this matter 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.
42. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

43. The Regional Water Board or its Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.

Pursuant to CWC section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, North Coast Region.

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 May 5, 2011.

Catherine Kuhlman
Executive Officer