

EXECUTIVE OFFICER'S SUMMARY REPORT
8:30 a.m., January 21, 2010
Regional Water Board Office
David C. Joseph Meeting Room
5550 Skylane Blvd., Suite A
Santa Rosa California

ITEM: 2

SUBJECT: Public Hearing on Order No. R1-2010-0001, to consider whether to affirm, reject, or modify an Order imposing Administrative Civil Liability pursuant to settlement of Administrative Civil Liability Order No. R1-2006-0054 and Administrative Civil Liability Complaint No. R1-2007-0064, in the matter of the **City of Arcata**, Wastewater Treatment Plant, W DID No. 1B82114OHUM

DISCUSSION

On May 17, 2006, the Regional Water Board issued Administrative Civil Liability Order No. R1-2006-0054 which assessed an Administrative Civil Liability of \$297,000 against the City of Arcata. The penalty was issued for violations of effluent limitations contained in Waste Discharge Requirements (WDRs) Order 98-13 which also served as a National Pollutant Discharge Elimination System permit. This permit was subsequently replaced by WDR Order No. R1-2004-0036 dated June 22, 2004. The violations described in the Order occurred between January 1, 2000 and June 21, 2004, and were subject to mandatory minimum penalties (MMPs).

On June 16, 2006, the Discharger petitioned the Regional Water Board's Order to the State Water Resources Control Board.

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. 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.

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.

In response to the State Water Boards' actions and dismissals, the Discharger filed a petition for writ of mandate in Humboldt County Superior Court (Lawsuit) which was later amended on February 12, 2008. 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 as a small community 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.

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.

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", which is attached.

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). The City is allowed to complete a compliance project for the remaining \$260,000 civil liability and in addition, include the \$33,000 civil penalty held in abeyance from Administrative Civil Liability Complaint No. R1-2007-0064. A minimum of \$293,000 must be spent on the project.

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 three existing marshes. 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 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.

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 Settlement Agreement as revisions to the City's Permit when the permit is next reissued.

Dismissal of the Lawsuit will occur when Regional Water Board staff releases 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.

No comments have been received during the 30 day public comment period.

PRELIMINARY STAFF
RECOMMENDATION:

Adopt Administrative Civil Liability Order No. R1-2010-0001 for the City of Arcata.