

EXECUTIVE OFFICER'S SUMMARY REPORT
8:30 a.m, June 12, 2008
Regional Water Board Hearing Room
5550 Skylane Blvd., Suite A
Santa Rosa, California

ITEM: 6

SUBJECT: PUBLIC HEARING Order No. R1-2008-0048 to consider adoption of an Administrative Civil Liability Order in the matter of **City of Arcata Wastewater Treatment Facility**, Humboldt County, W DID No. 1B82114OHUM

DISCUSSION

The Regional Water Board issued Administrative Civil Liability Complaint No. R1-2006-0006 to the City of Arcata on January 4, 2006 for violations of Waste Discharge Requirements Order No. 98-13, which was subsequently rescinded with the adoption of Waste Discharge Requirements Order No. R1-2004-0036. The Complaint assessed \$306,000 in administrative civil penalties for 114 violations of effluent limits, primarily related to biological oxygen demand (BOD), total suspended solids (TSS), percent removal, and coliform bacteria.

The Complaint covered the time period from January 1, 2000 to June 21, 2004, when the new waste discharge requirements were adopted. The penalty was amended down to \$297,000 with the adoption of Administrative Civil Liability Order No. R1-2006-0054 on May 17, 2006. On June 16, 2006, the Discharger filed a "Petition for Review" with the State Water Board. The State Water Board, on January 15, 2008, held a public hearing and dismissed the issues raised in the petition and reduced the penalty to \$285,000.

On February 13, 2008, the City of Arcata filed a lawsuit in the Humboldt County Superior Court. The suit seeks to vacate the mandatory minimum penalties (MMPs) and invalidate and modify certain provisions of the current and expired NPDES Permits.

On July 30, 2007, the Executive Officer issued Administrative Civil Liability Complaint No. R1-2007-0064 assessing a civil liability of \$104,000 for violations of the 2004 waste discharge requirements for the period June 22, 2004 to March 31, 2007. There were \$54,000 in mandatory minimum penalties (MMPs) and \$50,000 for sanitary sewer overflows (SSOs). Thirty-three thousand dollars of

the MMPs relate to violations of BOD, TSS, percent removal, and coliform bacteria (conventional pollutants). Twenty-one thousand dollars of the MMPs relate to copper and cyanide (toxic pollutants).

The Discharger has agreed to settle all aspects of ACLC No. R1-2007-0064 except for the \$33,000 in MMPs related to conventional pollutants. The effluent limits for those parameters are currently at issue in the litigation described above. The proposed order postpones pursuing the MMPs resulting from violations of conventional pollutants at this time and will hold those MMPs in abeyance until the lawsuit is settled.

For the remaining \$21,000 in MMPs for toxic pollutants, the Discharger will pay \$3,000 to the State Water Pollution Cleanup and Abatement Account (CAA), and will spend \$18,000 on a Supplemental Environmental Project (SEP) to reroute a portion of the South Fork Janes Creek to improve the flow regimen reduce siltation, and improve instream and riparian habitat. For the \$50,000 discretionary penalty for SSOs, the Discharger will spend a minimum of \$32,500 on two projects to reduce SSOs. The first project, which is completed, provides secondary containment at the Pickwick Apartments to eliminate a chronic overflow. The second project will reconstruct four manholes located along Bayside Road and one manhole on 10th Street to eliminate infiltration and exfiltration. The remaining \$17,500 balance of the \$50,000 penalty will be paid to the CAA.

The proposed order assesses a civil penalty of \$104,000 as follows:

Disposition of Penalty Payments	SSOs	Conventional Pollutants	Toxic Pollutants	Total
Pay to CAA	\$17,500		\$3,000	\$20,500
SEP			\$18,000	\$18,000
SSO Projects	\$32,500			\$32,500
Held in abeyance		\$33,000		\$33,000
Totals	\$50,000	\$33,000	\$21,000	\$104,000

By letter dated May 8, 2008 the City of Arcata concurred with the adoption of the order.

Staff Recommendation: Adopt the Order as proposed.