

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

TENTATIVE

ORDER NO. R9-2009-0075

**ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
AGAINST
MOUNTAIN WATER ICE COMPANY
OCEANSIDE ICE PLANT
FOR
VIOLATION OF ORDER NO. R9-2005-0015**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), having considered in a public meeting on May 13, 2009, all comments received on the issuance of liability against Mountain Water Ice Company regarding violations alleged in Amended Complaint No. R9-2008-0161, dated March 30, 2009 (Complaint), having provided public notice thereof and not less than thirty (30) days for public comment, and on the recommendation for administrative assessment of mandatory minimum penalties (MMP) in the amount of \$432,000 finds as follows:

1. Mountain Water Ice Company owns and holds the NPDES permit for the Oceanside Ice Plant located in Oceanside, California (*Waste Discharge Requirements Order No. R9-2005-0015, NPDES No. CA0108391*).
2. Mountain Water Ice Company discharges untreated wastewater from the Oceanside Ice Plant to the San Luis Rey River and is subject to numeric effluent limitations contained in Order No. R9-2005-0015.
3. On March 30, 2009, the Assistant Executive Officer issued Amended ACL Complaint No. R9-2008-0161 to Mountain Water Ice Company proposing to impose \$243,000 in MMP for 80 alleged violations of effluent limitations established in the NPDES permit.
4. Mountain Water Ice Company has violated provisions of law for which the Regional Board may impose discretionary administrative civil liability pursuant to section 13385(a)(2) of the California Water Code (CWC) because every violation of an NPDES permit is subject to discretionary liability under CWC section 13385(a)(2).
5. Mountain Water Ice Company has violated provisions of law for which the Regional Board must impose MMP pursuant to CWC sections 13385(h) and (i), as described in Attachment 1 to this Order. The violations consisted of

effluent limitation exceedances of waste discharge requirements for discharges of pollutants from point sources to Waters of the United States.

- a. Twelve (12) of the violations are subject to MMP pursuant to CWC section 13385(h). CWC section 13385(h)(1) requires that an MMP of \$3,000 be imposed for each serious violation. CWC section 13385(h)(2) defines a 'serious' violation, as any waste discharge that violates an effluent limitation contained in waste discharge requirements (applying to surface water discharges) for a Group I pollutant by 40 percent or more or for a Group II pollutant by 20 percent or more. Total suspended solids, and flow are Group I pollutants and Bromoform is a Group II pollutant as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations and Appendices A and B to the State Water Resources Control Board's Water Quality Enforcement Policy (February 2002); and
 - b. Sixty nine (69) of the violations are subject to MMP pursuant to CWC section 13385(i). CWC section 13385(i)(1) requires that an MMP of \$3,000 be imposed for each effluent limitation violation (i.e. any waste discharge that violates an effluent limitation contained in waste discharge requirements applying to surface water discharges) beginning with the fourth violation in any six-month period.
6. On April 23, 2009 Mountain Water Ice Company waived its right to a public hearing before the Regional Board and agreed to pay the recommended \$243,000 in MMP to the State Water Resources Control Board's Cleanup and Abatement Account.
 7. Issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) pursuant to section 45321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This action is also exempt from the provisions of CEQA in accordance with section 15061(b)(3) of Chapter 3, Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
 8. The Regional Board incurred costs totaling \$12,963 which includes investigation, preparation of enforcement documents and communication with Mountain Water Ice Company regarding the enforcement action.

IT IS HEREBY ORDERED, that pursuant to California Water Code Section 13385(h) and (i), that civil liability is imposed on Mountain Water Ice Company in the amount of \$243,000.

1. Mountain Water Ice Company shall submit a check to the Regional Board in the amount of \$243,000 payable to the "State Water Resources Control Board, Cleanup and Abatement Account" within 30 days of adoption of this Order.
2. Fulfillment of Mountain Water Ice's obligations under this Order constitutes full and final satisfaction of any and all liability for each allegation in Amended Complaint No. R9-2008-0161.
3. The Executive Officer is authorized to refer this matter to the Office of Attorney General for enforcement if Mountain Water Ice fails to comply with Paragraph 1.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on May 13, 2009.

TENTATIVE

JOHN H. ROBERTUS
Executive Officer

CIWQS Entries

Regulatory Measure ID 356141

Place ID 245791

Party ID 29383

Violation IDs: 785020, 798470, 798322, 785054, 785052, 785069, 785019, 785018, 785017, 785016, 785015, 785014, 785013, 785011, 785010, 785009, 785008, 785007, 785006, 785005, 785004, 785003, 785002, 785001, 785000, 784999, 784998, 784997, 784996, 784995, 784994, 784993, 784992, 784990, 784989, 784988, 784986, 784985, 784984, 784982, 784981, 785039, 785040, 785070, 784942, 784941, 798337, 785025, 785024, 785452, 798487, 785072, 785075, 784940, 784939, 874938, 784937, 784936, 784935, 784933, 784932, 809402, 809403, 809404, 809405, 809406, 809407, 809408, 809411, 809412, 809413, 809414, 809415, 809416, 809418, 809419, 809420, 809421, 809422, 809423, 809424, 809428, 809429

Attachment 1- ACL Order No. R9-2009-0075
Mountain Water Ice Company
Effluent Limitation Violations Subject to MMP

Violation Date	Violation ID	Constituent	Effluent Limitation	Unit	Permitted Limit	Reported Value	Mandatory Minimum Penalty ^{II}	Notes ^{I,II}
4/16/07	785020	flow	daily maximum flow rate	gallon per day	85,000	99,600	\$0	1st violation in 6-month period
6/18/07	798470	total dissolved solids	maximum daily mass loading	lbs/day	390	472	\$0	3rd violation in 6-month period
6/18/07	798322	total dissolved solids	average monthly mass loading	lbs/day	355	424	\$0	2nd violation in 6-month period
6/18/07	785054	total dissolved solids	maximum daily	mg/L	550	815	\$3,000	serious violation
6/18/07	785052	total dissolved solids	average monthly	mg/L	500	815	\$3,000	serious violation
6/18/07	785069	bromoform	maximum daily	ug/L	6.6	11.0	\$3,000	serious violation
6/23/07	785019	flow	daily maximum flow rate	gallon per day	85,000	85,900	\$3,000	4th or greater Violation in 6-month period
6/28/07	785018	flow	daily maximum flow rate	gallon per day	85,000	87,100	\$3,000	4th or greater Violation in 6-month period
6/30/07	785017	flow	daily maximum flow rate	gallon per day	85,000	86,500	\$3,000	4th or greater Violation in 6-month period
7/1/07	785016	flow	daily maximum flow rate	gallon per day	85,000	86,000	\$3,000	4th or greater Violation in 6-month period
7/2/07	785015	flow	daily maximum flow rate	gallon per day	85,000	87,000	\$3,000	4th or greater Violation in 6-month period
7/3/07	785014	flow	daily maximum flow rate	gallon per day	85,000	107,100	\$3,000	4th or greater Violation in 6-month period
7/5/07	785013	flow	daily maximum flow rate	gallon per day	85,000	87,400	\$3,000	4th or greater Violation in 6-month period
7/6/07	785011	flow	daily maximum flow rate	gallon per day	85,000	91,500	\$3,000	4th or greater Violation in 6-month period
7/7/07	785010	flow	daily maximum flow rate	gallon per day	85,000	91,100	\$3,000	4th or greater Violation in 6-month period
7/8/07	785009	flow	daily maximum flow rate	gallon per day	85,000	89,900	\$3,000	4th or greater Violation in 6-month period
7/9/07	785008	flow	daily maximum flow rate	gallon per day	85,000	96,000	\$3,000	4th or greater Violation in 6-month period
7/10/07	785007	flow	daily maximum flow rate	gallon per day	85,000	100,400	\$3,000	4th or greater Violation in 6-month period

Attachment 1- ACL Order No. R9-2009-0075
Mountain Water Ice Company
Effluent Limitation Violations Subject to MMP

Violation Date	Violation ID	Constituent	Effluent Limitation	Unit	Permitted Limit	Reported Value	Mandatory Minimum Penalty ^{II}	Notes ^{I,II}
7/12/07	785006	flow	daily maximum flow rate	gallon per day	85,000	86,800	\$3,000	4th or greater Violation in 6-month period
7/13/07	785005	flow	daily maximum flow rate	gallon per day	85,000	91,500	\$3,000	4th or greater Violation in 6-month period
7/14/07	785004	flow	daily maximum flow rate	gallon per day	85,000	91,700	\$3,000	4th or greater Violation in 6-month period
7/29/07	785003	flow	daily maximum flow rate	gallon per day	85,000	90,500	\$3,000	4th or greater Violation in 6-month period
7/30/07	785002	flow	daily maximum flow rate	gallon per day	85,000	85,400	\$3,000	4th or greater Violation in 6-month period
8/4/07	785001	flow	daily maximum flow rate	gallon per day	85,000	86,300	\$3,000	4th or greater Violation in 6-month period
8/10/07	785000	flow	daily maximum flow rate	gallon per day	85,000	90,800	\$3,000	4th or greater Violation in 6-month period
8/17/07	784999	flow	daily maximum flow rate	gallon per day	85,000	86,200	\$3,000	4th or greater Violation in 6-month period
8/18/07	784998	flow	daily maximum flow rate	gallon per day	85,000	89,700	\$3,000	4th or greater Violation in 6-month period
8/25/07	784997	flow	daily maximum flow rate	gallon per day	85,000	85,900	\$3,000	4th or greater Violation in 6-month period
8/31/07	784996	flow	daily maximum flow rate	gallon per day	85,000	85,700	\$3,000	4th or greater Violation in 6-month period
9/1/07	784995	flow	daily maximum flow rate	gallon per day	85,000	86,800	\$3,000	4th or greater Violation in 6-month period
9/2/07	784994	flow	daily maximum flow rate	gallon per day	85,000	89,300	\$3,000	4th or greater Violation in 6-month period
9/3/07	784993	flow	daily maximum flow rate	gallon per day	85,000	100,300	\$3,000	4th or greater Violation in 6-month period
9/5/07	784992	flow	daily maximum flow rate	gallon per day	85,000	86,000	\$3,000	4th or greater Violation in 6-month period
9/6/07	784990	flow	daily maximum flow rate	gallon per day	85,000	94,500	\$3,000	4th or greater Violation in 6-month period
9/7/07	784989	flow	daily maximum flow rate	gallon per day	85,000	92,800	\$3,000	4th or greater Violation in 6-month period
9/8/07	784988	flow	daily maximum flow rate	gallon per day	85,000	86,200	\$3,000	4th or greater Violation in 6-month period

Attachment 1- ACL Order No. R9-2009-0075
Mountain Water Ice Company
Effluent Limitation Violations Subject to MMP

Violation Date	Violation ID	Constituent	Effluent Limitation	Unit	Permitted Limit	Reported Value	Mandatory Minimum Penalty ⁱⁱ	Notes ^{i,iii}
9/9/07	784986	flow	daily maximum flow rate	gallon per day	85,000	101,000	\$3,000	4th or greater Violation in 6-month period
9/10/07	784985	flow	daily maximum flow rate	gallon per day	85,000	87,300	\$3,000	4th or greater Violation in 6-month period
9/11/07	784984	flow	daily maximum flow rate	gallon per day	85,000	90,100	\$3,000	4th or greater Violation in 6-month period
9/13/07	784982	flow	daily maximum flow rate	gallon per day	85,000	88,500	\$3,000	4th or greater Violation in 6-month period
9/14/07	784981	flow	daily maximum flow rate	gallon per day	85,000	86,200	\$3,000	4th or greater Violation in 6-month period
12/12/07	785039	total dissolved solids	average monthly	mg/L	500	822	\$3,000	serious violation
12/12/07	785040	total dissolved solids	maximum daily	mg/L	550	822	\$3,000	serious violation
12/12/07	785070	bromoform	maximum daily	ug/L	6.6	13.8	\$3,000	serious violation
5/18/08	784942	flow	daily maximum flow rate	gallon per day	85,000	87,200	\$3,000	4th or greater Violation in 6-month period
5/24/08	784941	flow	daily maximum flow rate	gallon per day	85,000	86,200	\$3,000	4th or greater Violation in 6-month period
6/4/08	798337	total dissolved solids	average monthly mass loading	lbs/day	355	488	\$3,000	serious violation
6/4/08	785025	total dissolved solids	maximum daily	mg/L	550	854	\$3,000	serious violation
6/4/08	785024	total dissolved solids	average monthly	mg/L	500	854	\$3,000	serious violation
6/4/08	785452	pH	range	standard units	6.5-8.5	8.66	\$3,000	4th or greater Violation in 6-month period
6/4/08	798487	bromoform	average monthly mass loading	lbs/day	0.003	0.008	\$3,000	serious violation
6/4/08	785072	bromoform	maximum daily	ug/L	8.63	14.7	\$3,000	serious violation
6/4/08	785075	bromoform	average monthly	ug/L	4.3	14.7	\$3,000	serious violation
6/15/08	784940	flow	daily maximum flow rate	gallon per day	85,000	100,600	\$3,000	4th or greater Violation in 6-month period
6/21/08	784939	flow	daily maximum flow rate	gallon per day	85,000	95,500	\$3,000	4th or greater Violation in 6-month period

Attachment 1- ACL Order No. R9-2009-0075
Mountain Water Ice Company
Effluent Limitation Violations Subject to MMP

Violation Date	Violation ID	Constituent	Effluent Limitation	Unit	Permitted Limit	Reported Value	Mandatory Minimum Penalty ⁱⁱ	Notes ^{i,ii}
6/22/08	784938	flow	daily maximum flow rate	gallon per day	85,000	96,000	\$3,000	4th or greater Violation in 6-month period
6/24/08	784937	flow	daily maximum flow rate	gallon per day	85,000	87,100	\$3,000	4th or greater Violation in 6-month period
6/25/08	784936	flow	daily maximum flow rate	gallon per day	85,000	85,900	\$3,000	4th or greater Violation in 6-month period
6/27/08	784935	flow	daily maximum flow rate	gallon per day	85,000	89,900	\$3,000	4th or greater Violation in 6-month period
6/28/08	784933	flow	daily maximum flow rate	gallon per day	85,000	108,200	\$3,000	4th or greater Violation in 6-month period
6/30/08	784932	flow	daily maximum flow rate	gallon per day	85,000	106,200	\$3,000	4th or greater Violation in 6-month period
7/1/08	809402	flow	daily maximum flow rate	gallon per day	85,000	102,300	\$3,000	4th or greater Violation in 6-month period
7/2/08	809403	flow	daily maximum flow rate	gallon per day	85,000	109,000	\$3,000	4th or greater Violation in 6-month period
7/3/08	809404	flow	daily maximum flow rate	gallon per day	85,000	97,800	\$3,000	4th or greater Violation in 6-month period
7/4/08	809405	flow	daily maximum flow rate	gallon per day	85,000	94,700	\$3,000	4th or greater Violation in 6-month period
7/7/08	809406	flow	daily maximum flow rate	gallon per day	85,000	91,900	\$3,000	4th or greater Violation in 6-month period
7/8/08	809407	flow	daily maximum flow rate	gallon per day	85,000	101,300	\$3,000	4th or greater Violation in 6-month period
7/9/08	809408	flow	daily maximum flow rate	gallon per day	85,000	90,500	\$3,000	4th or greater Violation in 6-month period
7/10/08	809411	flow	daily maximum flow rate	gallon per day	85,000	87,400	\$3,000	4th or greater Violation in 6-month period
7/11/08	809412	flow	daily maximum flow rate	gallon per day	85,000	87,100	\$3,000	4th or greater Violation in 6-month period
7/13/08	809413	flow	daily maximum flow rate	gallon per day	85,000	89,500	\$3,000	4th or greater Violation in 6-month period

Attachment 1- ACL Order No. R9-2009-0075
 Mountain Water Ice Company
 Effluent Limitation Violations Subject to MMP

Violation Date	Violation ID	Constituent	Effluent Limitation	Unit	Permitted Limit	Reported Value	Mandatory Minimum Penalty ⁱⁱ	Notes ^{i,ii}
7/14/08	809414	flow	daily maximum flow rate	gallon per day	85,000	91,600	\$3,000	4th or greater Violation in 6-month period
7/15/08	809415	flow	daily maximum flow rate	gallon per day	85,000	85,200	\$3,000	4th or greater Violation in 6-month period
7/17/08	809416	flow	daily maximum flow rate	gallon per day	85,000	89,700	\$3,000	4th or greater Violation in 6-month period
7/20/08	809417	flow	daily maximum flow rate	gallon per day	85,000	99,800	\$3,000	4th or greater Violation in 6-month period
7/21/08	809418	flow	daily maximum flow rate	gallon per day	85,000	88,500	\$3,000	4th or greater Violation in 6-month period
7/24/08	809419	flow	daily maximum flow rate	gallon per day	85,000	89,400	\$3,000	4th or greater Violation in 6-month period
7/25/08	809420	flow	daily maximum flow rate	gallon per day	85,000	87,200	\$3,000	4th or greater Violation in 6-month period
8/8/08	809421	flow	daily maximum flow rate	gallon per day	85,000	106,000	\$3,000	4th or greater Violation in 6-month period
8/10/08	809422	flow	daily maximum flow rate	gallon per day	85,000	90,000	\$3,000	4th or greater Violation in 6-month period
8/15/08	809423	flow	daily maximum flow rate	gallon per day	85,000	99,300	\$3,000	4th or greater Violation in 6-month period
8/17/08	809424	flow	daily maximum flow rate	gallon per day	85,000	104,700	\$3,000	4th or greater Violation in 6-month period
8/29/08	809428	flow	daily maximum flow rate	gallon per day	85,000	85,400	\$3,000	4th or greater Violation in 6-month period
8/30/08	809429	flow	daily maximum flow rate	gallon per day	85,000	94,500	\$3,000	4th or greater Violation in 6-month period
							\$243,000	

ⁱ CWC Section 13385(h) requires that an MMP of \$3,000 be imposed for each serious violation. Serious violations are based on:

- a. Total dissolved solids (TDS) and Flow are Group I pollutants.
A serious violation occurs when the discharge exceeds Group I effluent limitations by 40 percent or more; and
- b. Bromoform is a Group II pollutant.
A serious violation occurs when the discharge exceeds Group II effluent limitations by 20 percent or more

ⁱⁱ CWC Section 13385(i) requires the assessment of a \$3,000 MMP for the fourth violation and each subsequent violation during any six-month period.