

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CEASE AND DESIST ORDER NO. R5-2008-0007

REQUIRING THE CITY OF BRENTWOOD
WASTEWATER TREATMENT PLANT
CONTRA COSTA COUNTY
TO CEASE AND DESIST
FROM DISCHARGING CONTRARY TO REQUIREMENTS

The California Regional Water Quality Control Board, Central Valley Region, (hereafter Regional Water Board) finds that:

1. On **25 January 2008**, the Regional Water Board adopted Waste Discharge Requirements (WDR) Order No. R5-2008-0006, prescribing waste discharge requirements for the City of Brentwood (hereafter Discharger) at the Brentwood Wastewater Treatment Plant (hereafter Facility), Contra Costa County.
2. WDR Order No. R5-2008-0006, contains Final Effluent Limitations IV.A.1.a., which reads, in part, as follows:

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Copper, Total Recoverable	µg/L	--	--	10.4	--	--

3. The effluent limitation specified in Order No. R5-2008-0006 for copper is based on implementation of the Basin Plan site-specific water quality objective for the Sacramento-San Joaquin Delta. This limitation is based on an existing Basin Plan water quality objective that was adopted prior to 25 September 1995. The effluent limitation for copper is a new limitation, which was not prescribed in previous Order No. 5-00-171, adopted by the Regional Water Board on 16 June 2000.
4. WDR Order No. R5-2008-0006, contains Receiving Water Limitations at Section V.A.15.a., which reads as follows:

“V. Receiving Water Limitations

A. Surface Water Limitations

Receiving surface water limitations are based on water quality objectives contained in the Thermal Plan and are a required part of this Order. The discharge shall not cause the following in Marsh Creek:

15. **Temperature.** *The Thermal Plan is applicable to this discharge. The Thermal Plan requires that the discharge shall not cause the following in Marsh Creek:*

- a. *The creation of a zone, defined by water temperatures of more than 1° F above natural receiving water temperature, which exceeds 25 percent of the cross-sectional area of the river channel at any point.*
 - b. *A surface temperature rise greater than 4° F above the natural temperature of the receiving water at any time or place.*
5. WDR Order No. R5-2008-0006, contains Final Effluent Limitations IV.A.1.h., which reads as follows:

*“h. **Temperature.** The maximum temperature of the discharge shall not exceed the natural receiving water temperature by more than 20°F.”*
6. During the term of the previous Order, the receiving water limitations for temperature were exceeded over 30 times (see related discussion in Attachment F, Section II.D, in Order No. R5-2008-0006). In response to these exceedances, the Discharger prepared a proposal in March 2006 for alternative receiving water temperature limitations in Marsh Creek. The Discharger’s proposal addressed compliance with receiving water limitations for temperature contained in Order 5-00-171, which were based on compliance with the Basin Plan. Upon review of the receiving water and discharge type, the Regional Water Board has determined that the *Water Quality Control Plan For Control Of Temperature In The Coastal And Interstate Waters And Enclosed Bays And Estuaries Of California* (Thermal Plan) is the applicable to the discharge. Therefore, effluent and receiving water limitations for temperature established in Order No. R5-2008-0006 are based on the Thermal Plan. This Order includes a time schedule to evaluate and implement alternatives to comply with the Thermal Plan or, if it can be demonstrated that an exception to the Thermal Plan will not cause adverse impacts to aquatic life, the Discharger may request a Thermal Plan exception.
7. Section 13301 of the California Water Code (CWC) states in part, *“When a regional board finds that a discharge of waste is taking place or threatening to take place in violation of requirements or discharge prohibitions prescribed by the regional board or the state board, the board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the board, or (c) in the event of a threatened violation, take appropriate remedial or preventative action. In the event of an existing or threatened violation of waste discharge requirements in the operation of a community sewer system, cease and desist orders may restrict or prohibit the volume, type, or concentration of waste that might be added to such system by dischargers who did not discharge into the system prior to the issuance of the cease and desist order. Cease and desist orders may be issued directly by a board, after notice and hearing, or in accordance with the procedure set forth in Section 13302.”*
8. Federal regulations, 40 CFR section 122.44 (d)(1)(i), require that NPDES permit effluent limitations must control all pollutants which are or may be discharged at a level which will

cause or have the reasonable potential to cause or contribute to an in-stream excursion above any State water quality standard, including any narrative criteria for water quality. Beneficial uses, together with their corresponding water quality objectives or promulgated water quality criteria, can be defined per federal regulations as water quality standards.

9. In accordance with CWC section 13385(j)(3), the Regional Water Board finds that, based upon results of effluent monitoring and statistically projected effluent concentrations, the Discharger is not able to consistently comply with the new effluent limitations for copper. In addition, the Discharger is likely to have occasional violations of the effluent limitation for temperature. These limitations are new requirements that become applicable to the Order after the effective date of adoption of the waste discharge requirements, and after 1 July 2000, for which new or modified control measures are necessary in order to comply with the limitations, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.
10. Immediate compliance with the new effluent limitations for copper is not possible or practicable. The Clean Water Act and the California Water Code authorize time schedules for achieving compliance.
11. This Order provides time schedules for the Discharger to develop, submit, and implement methods of compliance, including utilizing pollution prevention activities or construct necessary treatment facilities to meet these new effluent limitations.
12. CWC section 13385(h) and (i) require the Regional Water Board to impose mandatory minimum penalties upon dischargers that violate certain effluent limitations. CWC section 13385(j) exempts certain violations from the mandatory minimum penalties. CWC section 13385(j)(3) exempts the discharge from mandatory minimum penalties *“where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all the [specified] requirements are met.”*
13. Compliance with this Order exempts the Discharger from mandatory penalties for violations of the effluent limitations for copper only, in accordance with CWC section 13385(j)(3). CWC section 13385(j)(3) requires the Discharger to prepare and implement a pollution prevention plan pursuant to section 13263.3 of the California Water Code. Therefore, a pollution prevention plan will be necessary for copper in order to effectively reduce the effluent concentrations by source control measures.
14. Since the time schedules for completion of action necessary to bring the waste discharge into compliance exceed 1 year, this Order includes interim requirements and dates for their achievement. The time schedules do not exceed 5 years.

The compliance time schedules in this Order include an interim performance-based effluent limitation for copper. The interim effluent limitation consists of a maximum daily effluent concentration derived using sample data provided by the Discharger. In

developing the interim limitations, where there are 10 sampling data points or more, sampling and laboratory variability is accounted for by establishing interim limits that are based on normally distributed data where 99.9% of the data points will lie within 3.3 standard deviations of the mean (*Basic Statistical Methods for Engineers and Scientists, Kennedy and Neville, Harper and Row*). Where actual sampling shows an exceedance of the proposed 3.3-standard deviation interim limit, the maximum detected concentration has been established as the interim limitation.

15. The Regional Water Board finds that the Discharger can undertake source control and treatment plant measures to maintain compliance with the interim limitation included in this Order. Interim limitations are established when compliance with the final effluent limitations cannot be achieved by the existing discharge. Discharge of constituents in concentrations in excess of the final effluent limitations, but in compliance with the interim effluent limitations, can significantly degrade water quality and adversely affect the beneficial uses of the receiving stream on a long-term basis. The interim limitations, however, establish an enforceable ceiling concentration until compliance with the effluent limitation can be achieved.
16. On **25 January 2008**, in Sacramento, California, after due notice to the Discharger and all other affected persons, the Regional Water Board conducted a public hearing at which evidence was received to consider a Cease and Desist Order under CWC section 13301 to establish a time schedule to achieve compliance with waste discharge requirements.
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 CWC sections 15061(b)(3) and 15321 (a)(2), Title 14, of the California Code of Regulations; and section 13389, California Water Code; and because issuance of this Order does not constitute "approval" of a "project."
18. Any person adversely affected by this action of the Board may petition the State Water Resources Control Board to review this action. The petition must be received by the State Water Resources Control Board, Office of the Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100, within 30 days of the date on which this action was taken. Copies of the law and regulations applicable to filing petitions will be provided on request.

IT IS HEREBY ORDERED THAT:

1. The Discharger shall comply with the following time schedule to assure compliance with the temperature effluent limitation at Section IV.A.1.h., and the temperature receiving water limitations at Section V.A.15 contained in Waste Discharge Requirements Order No. R5-2008-0007, as described in the Findings of this Order:

<u>Task</u>	<u>Date Due</u>
Submit Work Plan and Implementation Schedule	Within 6 months after the adoption of Order
Progress Reports ¹	1 January, annually, after approval of work plan until final compliance
Submit Thermal Plan Exception Report	Within 2 years after the adoption of Order
Full Compliance	Within 5 years after the adoption of Order

¹ The progress reports shall detail what steps have been implemented towards achieving compliance with waste discharge requirements, including studies, construction progress, evaluation of measures implemented, and recommendations for additional measures as necessary to achieve full compliance by the final date.

2. The Discharger shall comply with the following time schedule to ensure compliance with the copper final effluent limitations contained in WDR Order No. R5-2008-0006 as described in the above Findings:

<u>Task</u>	<u>Date Due</u>
Submit Method of Compliance Workplan/Schedule	Within 6 months after the adoption of Order No. R5-2008-0006
Submit and Implement Pollution Prevention Plan (PPP) ¹ for copper	Within 2 years after the adoption of Order No. R5-2008-0006
Progress Reports ²	1 January, annually, after approval of work plan until final compliance
Full Compliance	Within 5 years after the adoption of Order No. R5-2008-0006

¹ The PPP for copper shall be prepared and implemented in accordance with CWC section 13263.3

² The progress reports shall detail what steps have been implemented towards achieving compliance with waste discharge requirements, including studies, construction progress, evaluation of measures implemented, and recommendations for additional measures as necessary to achieve full compliance by the final date.

3. The following interim effluent limitation shall be effective immediately. The interim effluent limitation for copper shall be effective for a maximum of **up to 5 years** after the date of adoption of Order No. R5-2008-0006, or when the Discharger is able to come into compliance, whichever is sooner:

Parameter	Maximum Daily Effluent Limitation (µg/L)
Copper, Total Recoverable	15.2

4. For the compliance schedules required by this Order, the Discharger shall submit to the Regional Water Board on or before each compliance report due date, the specified document or, if appropriate, a written report detailing compliance or noncompliance with the specific schedule date and task. If noncompliance is being reported, the reasons for such noncompliance shall be stated, and shall include an estimate of the date when the Discharger will be in compliance. The Discharger shall notify the Regional Water Board by letter when it returns to compliance with the time schedule.
5. If, in the opinion of the Executive Officer, the City of Brentwood fails to comply with the provisions of this Order, the Executive Officer may apply to the Attorney General for judicial enforcement. If compliance with these effluent limitations is not achieved by the Full Compliance date, the discharge would not be exempt from the mandatory minimum penalties for violation of certain effluent limitations, and would be subject to issuance of a Cease and Desist Order in accordance with CWC section 13301.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on **25 January 2008**.

PAMELA C CREEDON, Executive Officer