

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R6T-2012-0040

**IN THE MATTER OF
NORTH TAHOE PUBLIC UTILITY DISTRICT
DECEMBER 19, 2010, DISCHARGE TO LAKE TAHOE,
PLACER COUNTY, WDID NO. 6SSO11110**

_____Placer County_____

The California Regional Water Quality Control Board – Lahontan Region (Lahontan Water Board) hereby finds that the North Tahoe Public Utility District (NTPUD) has violated California Water Code section 13376, Section 301 of the Clean Water Act and prohibitions contained in the *Water Quality Control Plan for the Lahontan Region* (Basin Plan) by discharging 129,500 gallons of untreated sewage into Lake Tahoe on December 19, 2010. The Lahontan Water Board specifically finds that:

BACKGROUND

1. NTPUD provides sanitary sewer services to the communities of Agate Bay, Brockway Vista, Carnelian Bay, Cedar Flat, Kings Beach, and Tahoe Vista along the north shore of Lake Tahoe. NTPUD collects untreated sewage through a system consisting of approximately 94 miles of gravity sewers, 6.3 miles of force mains, and 18 pump stations, including the Dollar Hill Pump Station. The Dollar Hill Pump Station is located at or near the downstream end of the NTPUD sewer system, and it receives untreated sewage flows from nearly the entire system.
2. NTPUD does not directly treat or dispose of the untreated sewage before it passes through the Dollar Hill Pump Station. Instead, untreated sewage from NTPUD is conveyed via a force main located just downstream from the Dollar Hill Pump Station to the Tahoe Truckee Sanitation Agency for treatment and disposal outside of the Lake Tahoe Basin.

CHRONOLOGY OF EVENTS

3. NTPUD installed an updated emergency backup power system at its Dollar Hill Pump Station in or around June 2010.
4. On December 19, 2010, a severe winter snow storm halted commercial power supply to the Dollar Hill Pump Station. The pump station emergency backup power system attempted to start but was unable to operate because of a failure in the power supply to the backup generator fuel system.

5. The Dollar Hill Pump Station remained inoperable for approximately three hours, causing untreated sewage to back up within NTPUD's incoming sewer main. Untreated sewage eventually backed up to and discharged through a manhole located along the public street near 3670 North Lake Boulevard in Carnelian Bay. The discharge took place from approximately 2:10 p.m. until 5:06 p.m. (approximately 3 hours) on December 19, 2010, and totaled approximately 130,000 gallons.
6. The untreated sewage flowed from the NTPUD manhole onto private property located at 3730 North Lake Boulevard, into and around the private residence on the property, and ultimately into Lake Tahoe. The interior of the private residence received and was damaged by approximately one inch of untreated sewage covering the floor of the living unit below the garage and by approximately three-quarters of an inch of untreated sewage in the mechanical room and finished basement areas. The discharge also damaged outdoor support posts and foundation posts, lawn areas, rock stairs, and landscaped areas on the private property. Approximately 500 gallons of untreated sewage was later recovered from inside the private residence; the remainder, approximately 129,500 gallons, flowed into Lake Tahoe.
7. Although the Lahontan Water Board heard testimony regarding a dispute as to the design and operation of the NTPUD Dollar Hill Pump Station backup generator system, ultimately the NTPUD is responsible for the proper operation and maintenance of the pump station and for the contractors that it hires. Where, as here, there is ambiguity as to ultimate fault, the Water Board will generally not apportion liability to a contractor, finding it more appropriate for the utility to pursue its remedies in law if it believes that its contractor did not perform up to an adequate standard of care.
8. On April 16, 2012, the Assistant Executive Officer issued Complaint No. R6T-2012-0010. The Complaint alleges NTPUD violated the requirements of State Water Resources Control Board (State Water Board) Order No. 2006-0003-DWQ, prohibitions contained in the Basin Plan, Water Code section 13376, and Clean Water Act section 301. The Complaint proposes administrative civil liability of **\$232,100.00**.
9. On July 12, 2012, in South Lake Tahoe, California, after notice to NTPUD and all other affected persons and the public, the Lahontan Water Board conducted a public hearing at which evidence was received to consider this Order and NTPUD, or its representative(s), had the opportunity to be heard and to contest the allegations in the Complaint.

REGULATORY CONSIDERATIONS

10. On May 2, 2006, the State Water Board adopted Order No. 2006-0003-DWQ pursuant to Water Code section 13263, prescribing statewide general waste discharge requirements for all public sanitary sewer systems greater than one mile in length that collect and/or convey untreated or partially treated wastewater (sewage) to a publicly owned treatment facility in the State of California. Order No. 2006-0003-DWQ establishes requirements for enrollees to operate and maintain their collection systems. NTPUD is an enrollee under this Order. Order No. 2006-0003-DWQ contains the following prohibitions:
 - a. Paragraph C.1 prohibits sanitary system overflows (SSOs) that result in a discharge of untreated sewage to waters of the United States.
 - b. Paragraph C.2 prohibits SSOs that result in discharge of untreated sewage that creates a nuisance as defined in Water Code section 13050, subdivision (m).
11. Water Code section 13050, subdivision (m) defines nuisance as anything that meets all of the following requirements:
 - a. Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
 - b. Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.
 - c. Occurs during, or as a result of, the treatment or disposal of wastes.
12. Section 301 of the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. § 1311) prohibits the discharge of pollutants to waters of the United States except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.
13. Water Code section 13376 prohibits the discharge of pollutants to waters of the United States without filing a report of waste discharge in accordance with Water Code section 13260.
14. The Lahontan Water Board adopted the *Water Quality Control Plan for the Lahontan Region* (Basin Plan) pursuant to Water Code Section 13243. The Basin Plan contains the following prohibitions:

“The discharge of treated or untreated domestic sewage, garbage or other solid wastes, or any other deleterious material to the surface

waters of the Lake Tahoe Basin is prohibited." [Basin Plan, at p. 5.2-2 (see also p. 4.1-1).]

"The discharge, attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand, and other organic and earthen materials, to the surface waters of the Lake Tahoe Basin, is prohibited." [Basin Plan, at p. 5.2-3.]

15. Water Code section 13950, subdivision (a), prohibits the disposal of municipal waste to surface or ground water in the Lake Tahoe Basin, and declares waste disposal within the Basin to be a public nuisance. Section 13950 is incorporated into the Basin Plan, at p. 5.2-2.

VIOLATIONS

16. NTPUD violated Water Code section 13376 by discharging approximately 129,500 gallons of untreated sewage to waters of the United States (Lake Tahoe) on December 19, 2010, without filing a report of waste discharge. This violation subjects NTPUD to liability pursuant to Water Code section 13385, subdivision (a)(1).
17. NTPUD violated Section 301 of the Clean Water Act by discharging approximately 129,500 gallons of untreated sewage to waters of the United States (Lake Tahoe) on December 19, 2010, without obtaining an NPDES permit. This violation subjects NTPUD to liability pursuant to Water Code section 13385, subdivision (a)(5).
18. NTPUD violated prohibitions in the Basin Plan by discharging approximately 129,500 gallons of untreated sewage into Lake Tahoe on December 19, 2010. These violations subject NTPUD to liability pursuant to Water Code section 13385, subdivision (a)(4).
19. NTPUD violated the discharge prohibition set forth in Paragraph C.1 of Order No. 2006-0003-DWQ on December 19, 2010 by discharging approximately 129,500 gallons of untreated sewage into waters of the United States (Lake Tahoe).
20. NTPUD violated the nuisance prohibition set forth in Paragraph C.2 of Order No. 2006-0003-DWQ on December 19, 2010, by discharging approximately 130,000 gallons of untreated sewage across public property, onto private property located at 3730 North Lake Boulevard, Carnelian Bay, into and around the private residence located on the property, and, ultimately, into Lake Tahoe. The discharge created a nuisance as defined by Water Code section 13050, subdivision (m), because it occurred during the transfer of untreated sewage for treatment or disposal, it was injurious to, offensive to the senses, and an obstruction of the comfortable enjoyment of the property located at 3730 North Lake Boulevard, and it passed over surface streets and into Lake Tahoe, impacting the community at

large. These violations subject NTPUD to liability pursuant to Water Code section 13350, subdivision (a).

CALCULATION OF ADMINISTRATIVE CIVIL LIABILITY

21. For the violations cited above, administrative civil liability may be assessed either under Water Code section 13350 or Water Code section 13385, but not both (see § 13385, subd. (g)). Since the discharge was to waters of the United States, it is appropriate to proceed under Water Code section 13385 here.
22. Pursuant to Water Code section 13385, subdivision (c), civil liability may be imposed administratively by the Lahontan Water Board in an amount not to exceed the sum of both of the following:
 - (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs; and
 - (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
23. Pursuant to Water Code section 13385, subdivision (e), in determining the amount of any civil liability, the Lahontan Water Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require.
24. On November 17, 2009, the State Water Board adopted Resolution 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 Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered under Water Code section 13385, subdivision (e). The entire Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf
25. **Maximum Administrative Civil Liability:** Pursuant to Water Code section 13385, subdivision (c), the total maximum administrative civil liability that may be imposed for the violations in this Order is **\$1,295,000**.

26. **Minimum Administrative Civil Liability:** The Enforcement Policy requires that the minimum liability imposed not be below the economic benefit derived from the discharge plus ten percent. NTPUD did not derive economic benefit from the discharge, as discussed in the administrative civil liability methodology, and the minimum liability amount is zero. The administrative civil liability methodology is attached to this Order and incorporated by reference.
27. **Administrative Civil Liability Determination:** The Lahontan Water Board has applied the administrative civil liability methodology in the Enforcement Policy and considered each of the Water Code section 13385, subdivision (e), factors based upon information in the record, including testimonies at the public hearing and information described in greater detail in Attachment A. The Lahontan Water Board hereby finds that civil liability should be imposed administratively on NTPUD in the amount of **\$239,081.25**, which falls within the allowable range.

GENERAL

28. This Order only resolves liability that NTPUD incurred on December 19, 2010 for the violations specifically alleged in the Complaint. This Order does not relieve NTPUD of liability for any violations not alleged in the Complaint. The Lahontan Water Board retains the authority to assess additional civil liabilities for violations of applicable laws or orders for which civil liabilities have not yet been assessed, or for violations that may subsequently occur.
29. Issuance of this Order is an enforcement action and is, therefore, exempt from the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.), pursuant to title 14, California Code of Regulations, section 15321, subdivision (a)(2).
30. Any person aggrieved by this action of the Lahontan Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday or State holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions will be provided upon request, and may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

IT IS HEREBY ORDERED THAT:

1. Administrative civil liability is imposed upon NTPUD in the amount of **\$239,081.25**.
2. NTPUD shall submit payment with a cashier's check or money order in the full amount of **\$239,081.25** payable to the *State Water Resources Control Board's State Water Pollution Cleanup and Abatement Account* within 30 days of the date this Order is adopted.
3. Should NTPUD fail to make the specified payment to the State Water Resources Control Board's State Water Pollution Cleanup and Abatement Account within the time limit specified in this Order, the Lahontan Water Board may enforce this Order by applying for a judgment pursuant to Water Code section 13328. The Lahontan Water Board's Executive Officer is hereby authorized to pursue a judgment pursuant to Water Code section 13328 if the criterion specified in this paragraph is satisfied.

I, Patty Zwarts Kouyoumdjian, 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, Lahontan Region on July 12, 2012.



Patty Zwarts Kouyoumdjian
Executive Officer

Attachment A: Administrative Civil Liability Methodology