

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

TENTATIVE

TIME SCHEDULE ORDER NO. R9-2009-0047

**REQUIRING
MOUNTAIN WATER ICE COMPANY
OCEANSIDE, CALIFORNIA**

**TO COMPLY WITH REQUIREMENTS PRESCRIBED IN
ORDER NO. R9-2005-0015
(NPDES PERMIT NO. CA0108391)**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board) finds that:

1. On March 9, 2005, the Regional Board adopted Waste Discharge Requirements Order No. R9-2005-0015 (NPDES No. CA0108391), for Mountain Water Ice Company (hereinafter Discharger), for the discharge of up to 85,000 gallons per day of untreated wastewater to the San Luis Rey River, a water of the United States and a tributary to the Pacific Ocean.
2. Order No. R9-2005-0015 includes effluent limitations that the Discharger is required to comply with that read, in part, as follows:

Constituent	Units	Average Monthly	Maximum Daily
Total Dissolved Solids	mg/L	500	550
	lbs/day	355	390

3. The Discharger discharges untreated potable water used in the making of ice products. Beginning in 2007, the facility began exceeding its total dissolved solids effluent limitations due to increases in total dissolved solids in the only municipal water supply reasonably available.
4. The discharge of total dissolved solids to the San Luis Rey River in excess of the effluent limitations prescribed in Order No. R9-2005-0015 threatens to cause a condition of pollution or nuisance in the receiving water.

5. Many of the total dissolved solids effluent limitation violations since 2007 are subject to mandatory minimum penalties pursuant to California Water Code (CWC) section 13385(h) and (i). The violations are a result of high total dissolved solids in the facility's source water. The Discharger would continue to accrue penalties pending completion of new control measures.
6. Section 13385(j) states, in part, that mandatory minimum penalties do not apply to a violation of an effluent limitation where the waste discharge is in compliance with a time schedule order issued pursuant to Section 13300; the time schedule order was issued on or after July 1, 2000 and specifies the actions the discharger is required to take in order to correct the violations; and the Regional Board finds that the discharger is not able to consistently comply with the effluent limitations for any one of four reasons set forth in Section 13385(j)(3)(B), including that:

“Unanticipated changes in the quality of the municipal or industrial water supply available to the discharger are the cause of unavoidable changes in the composition of the waste discharge, the changes in the composition of the waste discharge are the cause of the inability to comply with the effluent limitation, no alternative water supply is reasonably available to the discharger, and new or modified measures to control the composition of the waste discharge cannot be designed, installed, and put into operation within 30 calendar days.”
7. The Discharger has requested issuance of a Time Schedule Order that would protect it from mandatory minimum penalties related to the total dissolved solids effluent limitations prescribed in Order No. R9-2005-0015 so that available funds can be directed toward the implementation of pollution prevention techniques needed to comply with the NPDES permit.
8. In accordance with CWC section 13385(j)(3)(B), the Regional Board finds that the Discharger is not able to consistently comply with the effluent limitations prescribed in Order No. R9-2005-0015 for total dissolved solids. This effluent limitation became effective after July 1, 2000; unanticipated changes in the quality of the water supply are the cause of unavoidable changes in the composition of the waste and the violations of the effluent limitations 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.

9. The Discharger has submitted a Pollution Prevention Plan that indicates that new or modified control measures to eliminate the effluent limitation violations cannot be operational within 30 calendar days.
10. Pursuant to CWC section 13267(b), the Regional Board may require the Discharger to furnish, under penalty of perjury, technical or monitoring program reports. Monitoring reports and other technical reports are necessary to determine compliance with the NPDES permit and with this Order.
11. This Time Schedule Order is issued in accordance with CWC section 13300 and establishes a time schedule for compliance.
12. Compliance with this Order exempts the Discharger from mandatory penalties for violations of effluent limitations for total dissolved solids 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 CWC section 13263.3.
13. CWC section 13385(j)(3)(A) requires this Order to specify the actions that the Discharger is required to take in order to correct the violations that would otherwise be subject to mandatory minimum penalties. This Order requires the Discharger to develop and implement new or modified control measures to comply with the effluent limitations for total dissolved solids prescribed in Order No. R9-2005-0015. This Order requires the Discharger to submit a feasibility study to determine the appropriate pollution prevention technique(s) necessary to bring the discharge into compliance, complete the required design, permitting and construction activities and achieve full compliance with Order No. R9-2005-0015.
14. This enforcement action is being taken for the protection of the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with section 15308, Chapter 3, Title 14 of the California Code of Regulations. The issuance of this Order is also an enforcement action taken by a regulatory agency and is exempt from the provisions of CEQA pursuant to section 15321(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. Finally, issuance of this Order is exempt from the provisions of CEQA because the Order does not constitute approval of a project.

15. Any person adversely affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action. The petition must be received by the State Board within 30 days of the date on which the action was taken. Copies of the law and regulations applicable to filing petitions will be provided on request.

IT IS HEREBY ORDERED THAT pursuant to CWC sections 13300 and 13267 Mountain Water Ice Company shall comply with the following time schedule to ensure compliance with the requirements contained in Order No. R9-2005-0015 Effluent Limitations for total dissolved solids.

Task	Compliance Date
Complete a Feasibility Study to facilitate selection of the appropriate pollution prevention technique(s) necessary to bring the discharge into compliance with the total dissolved solids effluent limitations prescribed in Order No. R9-2005-0015	August 15, 2009
Complete the design of the appropriate pollution prevention technique(s) identified in the Feasibility Study.	October 15, 2009
Complete the construction and permitting activities necessary to implement the selected pollution prevention technique(s).	December 31, 2009
Achieve full compliance with the total dissolved solids effluent limitations prescribed in Order No. R9-2005-0015	March 9, 2010

1. The Discharger shall submit to the Regional Board on or before each compliance 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 Board by letter when it returns to compliance with the time schedule.
2. The following interim effluent limitations for total dissolved solids shall be effective until **March 9, 2010** or when the Discharger achieves compliance, whichever is earlier:

Constituent	Units	Effluent Limitations	
		Average Monthly	Maximum Daily
Total Dissolved Solids	mg/L	950 ¹	950
	Lbs/day	673	673

3. If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may apply to the Attorney General for judicial enforcement or issue a complaint for Administrative Civil Liability. If compliance with these effluent limitations is not achieved by the Full Compliance Date, the discharge would not be exempt from mandatory minimum penalties for violation of the effluent limitations and would be subject to issuance of a Cease and Desist Order in accordance with CWC section 13301.
4. As required by the California Business and Professions Code Sections 6735, 7835, and 7835.1, all technical reports required herein shall be prepared by, or under the supervision of, a California Registered Engineer or Registered Geologist (as applicable) and shall be signed by the registered professional.
5. Any person signing a document submitted under this Order shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

I, John H. Robertus, 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, San Diego Region, on May 13, 2009.

TENTATIVE

JOHN H. ROBERTUS
Executive Officer

¹ The Interim limit is based on effluent performance data from June 2005 through December 2008 for the Mountain Water Ice Company.