

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

TENTATIVE DRAFT TIME SCHEDULE ORDER R5-2024-XXXX

REQUIRING  
CITY OF CLOVIS  
SEWAGE TREATMENT AND WATER REUSE FACILITY  
FRESNO COUNTY

TO COMPLY WITH WASTE DISCHARGE REQUIREMENTS PRESCRIBED IN  
ORDER R5-2024-XXXX  
(NPDES PERMIT CA0085235)

**FINDINGS**

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

1. City of Clovis (Discharger), owns and operates the Sewage Treatment and Water Reuse Facility (Facility). The Facility discharges up to 2.8 million gallons per day (mgd) of treated municipal wastewater to Fancher Creek, a water of the United States, or to the Diversion Channel, a water of the United States and a tributary of Little Dry Creek.
2. On XX June 2024, the Central Valley Water Board adopted Waste Discharge Requirements (WDR) Order R5-2024-00XX, NPDES Permit CA0085235 for discharges from the Facility, which includes final effluent limitations, in part, for total cyanide.
3. WDR Order R5-2024-XXXX section IV.A.1.a. includes Final Effluent Limitations at Discharge Point 001, in relevant part, as follows:

**Table 4. Effluent Limitations – Discharge Point 001**

Parameter	Units	Average Monthly	Maximum Daily
Cyanide, Total	µg/L	4.3	8.5

4. WDR Order R5-2024-00XX Section IV.A.2.a. includes Final Effluent Limitations at Discharge Point 002, in relevant part, as follows:

**Table 5. Effluent Limitations – Discharge Point 002**

Parameter	Units	Average Monthly	Maximum Daily
Cyanide, Total	µg/L	4.3	8.5

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**NEED FOR TIME SCHEDULE AND LEGAL BASIS**

5. WDR Order R5-2019-0021, which preceded WDR Order R5-2024-00XX, also included average monthly and maximum daily final effluent limitations for total cyanide of 4.3 µg/L and 8.5 µg/L, respectively.
6. On 4 April 2019, the Central Valley Water Board adopted Time Schedule Order (TSO) R5-2019-0022, which provided until 31 May 2024 for the Discharger to come into compliance with the final effluent limitations in WDR Order R5-2019-0021 for, among other constituents, total cyanide.
7. In its request and justification for a time schedule to comply with the total cyanide effluent limitations in WDR Order R5-2019-0021, the Discharger proposed to perform a Sample Preservation and Holding Time Study, including establishing Standard Operating Procedures for sampling and analysis of cyanide. TSO R5-2019-0022 required that the Sample Preservation and Holding Time Study and Standard Operating Procedures be submitted by 1 July 2020.
8. On 29 June 2020, the Discharger submitted its Cyanide Preliminary Study, including Standard Operating Procedures for Cyanide Sampling. The Cyanide Preliminary Study implemented changes in analytical laboratories and changes in sample preservation steps that appeared to reduce detections of cyanide in the effluent. New Standard Operating Procedures were implemented in April 2020 and appear to have reduced detections of cyanide above the water quality criteria. However, cyanide still was occasionally detected above the water quality criteria.
9. On 24 January 2024, the Discharger submitted an infeasibility analysis requesting additional time to comply with the existing final effluent limitations for total cyanide in WDR Order R5-2024-00XX. For compliance with the final effluent limitations for total cyanide, the Discharger has requested time to investigate and confirm the source(s) of cyanide, and identify and implement control measures.
10. The Discharger cannot consistently comply with the cyanide effluent limitations in WDR Order R5-2024-XXXX and must implement additional actions to reach compliance. This Order extends the time schedule for compliance with final effluent limitations for cyanide, sets interim limitations for cyanide, and is intended to provide protection from mandatory minimum penalties (MMPs) for cyanide.

**MANDATORY MINIMUM PENALTIES**

11. California Water Code (CWC) section 13385, subdivisions (h) and (i), requires the Central Valley Water Board to impose MMPs upon dischargers that violate certain effluent limitations. CWC section 13385(j)(3) exempts discharges from these MMPs:  
... 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 or 13308, if all the [specified] requirements are met.

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12. Per the requirements of CWC section 13385(j)(3), the Central Valley Water Board finds that:
- a. This Order specifies the actions that the Discharger is required to take in order to correct the violations that would otherwise be subject to CWC section 13385, subdivisions (h) and (i).
  - b. The final effluent limitations for cyanide are new, more stringent, or modified regulatory requirements that became applicable to the waste discharge on 1 June 2019 under WDRs Order R5-2019-0021 and after 1 July 2000. New or modified control measures are necessary in order to comply with the final effluent limitations for cyanide. The new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.
  - c. To comply with final effluent limitations, the Discharger proposed that an additional five years is necessary to allow for completion of pollution prevention activities, including source identification sampling and control measure implementation.
  - d. This Order establishes a time schedule to bring the waste discharge into compliance with the effluent limitations that is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitations.
  - e. The Discharger has prepared and is implementing in a timely and proper manner, a pollution prevention plan pursuant to CWC section 13263.3 for cyanide.
13. By statute, a Time Schedule Order may provide protection from MMPs for up to five years. However, CWC section 13385, subdivision (j)(3)(C)(ii)(II), authorizes the Central Valley Water Board to extend the time schedule for an additional five years if the Board finds, following a public hearing, that a Discharger is making diligent progress towards bringing the waste discharge into compliance and that the additional time is necessary to comply with the effluent limitations.
14. Compliance with this Order exempts the Discharger from mandatory minimum penalties as follows:
- a. **Cyanide.** WDRs Order R5-2019-0021 imposed new final effluent limitations for total cyanide that became effective 1 June 2019. These limitations were carried forward as final effluent limitations by WDRs Order R5-2024-XXXX, which became effective 1 August 2024. TSO R5-2019-0022 provided the Discharger with MMP protection from 1 June 2019 through 31 May 2024. This TSO extends MMP protection from 1 August 2024 until 31 July 2029. In accordance with CWC section 13385(j)(3)(C)(ii)(II), the Discharger has shown that it is making diligent

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progress toward bringing the waste discharge into compliance with the effluent limitations, that additional time is necessary to comply with the effluent limitations, and that the time schedule extension is as short as possible and does not exceed five (5) years in length.

15. In accordance with CWC section 13385(j)(3), the total length of protection from mandatory minimum penalties for the final effluent limitations for cyanide does not exceed ten (10) years.
16. This Order provides a time schedule for completing the actions necessary to ensure compliance with the final effluent limitations for cyanide contained in WDR Order R5-2024-XXXX. Since the time schedule for completion of actions necessary to bring the waste discharge into compliance exceeds one (1) year, this Order includes interim effluent limitations and interim requirements and dates for their achievement.
17. This Order includes updated performance-based interim effluent limitations for cyanide. The Central Valley Water Board calculated an interim average monthly effluent limitation (AMEL) for cyanide based on the current treatment plant performance. The interim effluent limitations were developed using the statistical based approach provided in USEPA's *Technical Support Document for Water Quality-Based Toxics Control (TSD)*. The TSD provides guidance on estimating the projected maximum effluent concentration using a lognormal distribution of the observed effluent concentrations at a desired confidence level, as detailed in Section 3.3 of the TSD. The multipliers in Table 3-1 of the TSD were used to calculate the 99th percent confidence level and 99<sup>th</sup> percentile of the data set based on the number of effluent samples and the coefficient of variation. The multipliers from the tables were multiplied by the highest observed representative effluent concentration (MEC) to estimate the maximum expected effluent concentration; this value was used as the interim effluent limitation for the average monthly effluent limitation (AMEL).

The interim maximum daily effluent limitations (MDELs) were calculated using the MDEL/AMEL multipliers per Table 2 of the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California.

In calculating interim effluent limitations for cyanide, representative effluent data between December 2020 and November 2023 was used. The following table summarizes the calculation of the interim effluent limitations for cyanide:

**Table 1. Interim Effluent Limitations**

Parameter	Units	Interim AMEL	Interim MDEL
Cyanide, Total	µg/L	15	30

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18. The Discharger can maintain compliance with the interim effluent limitations included in this Order. Interim effluent limitations are established when compliance with the final effluent limitations cannot be achieved by the existing Facility. 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. However, the interim effluent limitations establish an enforceable ceiling concentration until compliance with the final effluent limitation can be achieved.
19. If an interim effluent limit contained in this Order is exceeded, then the Discharger is subject to MMPs for that particular exceedance as it will no longer meet the exemption in CWC 13385(j)(3). It is the intent of the Board that a violation of an interim monthly effluent limitation subjects the Discharger to only one MMP for that monthly averaging period. In addition, a violation of an interim daily maximum effluent limit subjects the Discharger to one MMP for the day in which the sample was collected.

### OTHER REGULATORY REQUIREMENTS

20. CWC section 13300 states, in part:

“Whenever a regional board finds that a discharge of waste is taking place or threatening to take place that violates or will violate requirements prescribed by the regional board, or the state board, or that the waste collection, treatment, or disposal facilities of a discharger are approaching capacity, the board may require the discharger to submit for approval of the board, with such modifications as it may deem necessary, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements.”

21. CWC section 13383 states, in part:

“(a) The state board or a regional board may establish monitoring, inspection, entry, reporting, and recordkeeping requirements . . . for any person who discharges, or proposes to discharge, to navigable waters, any person who introduces pollutants into a publicly owned treatment works, any person who owns or operates, or proposes to own or operate, a publicly owned treatment works or other treatment works treating domestic sewage, or any person who uses or disposes, or proposes to use or dispose, of sewage sludge.”

“(b) The state board or regional boards may require any person subject to this section to establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required.”

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22. The Discharger owns and operates the wastewater treatment facility which is subject to this Order. The technical and monitoring reports required by this Order are necessary to determine compliance with the requirements in this Order, WDR Order R5-2024-XXXX, and subsequent WDRs.
23. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (“CEQA”) pursuant to Water Code section 13389, since the adoption or modification of a NPDES permit for an existing source is statutorily exempt and this Order only serves to implement a NPDES permit. (Pacific Water Conditioning Ass’n, Inc. v. City Council of City of Riverside (1977) 73 Cal.App.3d 546, 555-556.).
24. On XX June 2024, in Rancho Cordova, California, after due notice to the Discharger and all other affected persons, the Central Valley Water Board conducted a public hearing at which evidence was received to consider this Time Schedule Order under CWC section 13300 to establish a time schedule to achieve compliance with waste discharge requirements.

**IT IS HEREBY ORDERED THAT**, Time Schedule Order R5-2019-0022 is rescinded upon the effective date of this Order, except for enforcement purposes, and pursuant to CWC section 13300 and 13383, the Discharger shall comply with the following:

1. The Discharger shall comply with the following time schedule to ensure compliance with final effluent limitations for cyanide in WDR Order R5-2024-00XX and ensure completion of the compliance project described in Finding 9 above:

<b>Task</b>	<b>Compliance Date</b>
1. Submit Progress Reports. The progress reports shall detail the steps taken to comply with this Order, including documentation, showing the following as appropriate: completion of tasks, construction progress, evaluation of the effectiveness of the implemented measures, and assessment of whether additional measures are necessary to meet the compliance dates.	1 August 2025 1 August 2026 1 August 2027 1 August 2028
2. Submit a technical report identifying the source of cyanide, and present the selected method of compliance along with the preliminary engineering, if appropriate, and evaluation of alternatives.	1 May 2027
3. Comply with the Final Effluent Limitations for cyanide.	31 July 2029

2. The following interim effluent limitations for cyanide shall be effective beginning 1 August 2024. The Discharger shall comply with the following interim effluent limitations at Discharge Point 001 and Discharge Point 002 through 31 July 2029, or

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when the Discharger is able to come into compliance with the final effluent limitations, whichever is sooner.

**Interim Effluent Limitations**

Parameter	Units	Interim AMEL	Interim MDEL
Cyanide, Total	µg/L	15	30

3. 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.”

4. In accordance with California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. All technical reports specified herein that contain work plans for, that describe the conduct of investigations and studies, or that contain technical conclusions and recommendations concerning engineering and geology shall be prepared by or under the direction of appropriately qualified professional(s), even if not explicitly stated. Each technical report submitted by the Discharger shall contain the professional's signature and/or stamp of the seal.

If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement, may issue a complaint for administrative civil liability, or may take other enforcement actions. Failure to comply with this Order or with the WDR Order may result in the assessment of Administrative Civil Liability of up to \$10,000 per violation, per day, depending on the violation, pursuant to the Water Code, including sections 13350 and 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

Any person aggrieved by this action of the Central Valley 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, sections 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. Links to the laws and regulations applicable to filing petitions may be found on the [Water Quality Petitions Page](#)

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([http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality)) or will be provided upon request.

I, Patrick Pulupa, Executive Officer, do hereby certify that this Order with all attachments is a full, true, and correct copy of the Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on XX June 2024. This Order shall become effective upon the effective date of WDR Order R5-2024-XXXX, which is 1 August 2024.

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**PATRICK PULUPA, Executive Officer**

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**Date**