

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0511

MANDATORY PENALTY
IN THE MATTER OF
TOWN OF DISCOVERY BAY AND ECO RESOURCES, INC.
DISCOVERY BAY WASTEWATER TREATMENT PLANT
CONTRA COSTA COUNTY

This complaint is issued to The Town of Discovery Bay and ECO Resources, Inc. (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order No. R5-2003-0067 (NPDES No. CA0078590).

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Regional Water Board) finds the following:

1. The Town of Discovery Bay owns the Discovery Bay Wastewater Treatment Plant (WWTP), which provides sewerage service to the town of Discovery Bay in Contra Costa County. Southwest Water Company (formerly ECO Resources, Inc.) operates the WWTP. Treated domestic, commercial and industrial wastewater is discharged to Old River, a water of the United States.
2. On 25 April 2003, the Regional Water Board adopted WDRs Order No. R5-2003-0067. The WDRs include effluent limitations and other requirements regarding the wastewater discharge.
3. On 25 April 2003, the Regional Water Board adopted Cease and Desist Order (CDO) No. R5-2003-0068 requiring the Discharger to comply with effluent limitations for copper in WDRs Order No. R5-2003-0067 by 1 June 2004.
4. CWC Section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) states, "Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation."

CWC section 13385 (h)(2) states, "For the purposes of this section, a 'serious violation' means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more."

CWC section 13385(i)(1) states, *“Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:*

- A) *Violates a waste discharge requirement effluent limitation.*
- B) *Fails to file a report pursuant to Section 13260.*
- C) *Files an incomplete report pursuant to Section 13260.*
- D) *Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.”*

5. CWC Section 13323 states, in part:

“Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.”

6. The Executive Officer has issued three prior Administrative Civil Liability Complaints (ACLs) for Mandatory Minimum Penalties to the Discharger. The three ACLs include ACLC No. 5-01-187 for effluent limitation violations from 1 January 2000 to 28 February 2001 in the amount of \$69,000; ACLC No. R5-2002-0511 for effluent limitation violations from 1 March 2001 to 31 March 2002 in the amount of \$45,000; and ACLC No. R5-2004-0523 for violations from 1 April 2002 to 31 March 2004 in the amount of \$75,000. The Discharger has paid the penalties associated with these ACLs, and these cases are closed.

7. WDRs Order No. R5-2003-0067 Effluent Limitations No. B. 2 includes, in part, the following effluent limitations:

<u>Constituent</u>	<u>Unit</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>7-day Median</u>	<u>Daily Maximum</u>
Total Suspended Solids ²	mg/L	30	40		50
	lbs/day ³	525	700		875
Copper	µg/L	Att E			Att E ⁵
	lbs/day ³	4			4
<u>Total Coliform Organisms</u>	MPN/100mL			23	240

² To be ascertained by a 24-hour composite.

³ Based upon a design treatment capacity of 2.1 mgd.

⁴ Using the value, in µg/l, determined from attachments E, F, and G, calculate the lbs per da limit by using the formula: 1/1000 x µg/l x 8.345 x 2.1 mgd = lbs/day.

⁵ For instances when the receiving water hardness is greater than 135 mg/l, the applicable daily maximum limit becomes 165 µg/l.

8. According to the Discharger’s self-monitoring reports, the Discharger committed seven (7) serious violations of the above effluent limitations for Group II constituents contained in Order No. R5-2003-0067 during the period beginning 1 April 2004 and ending

31 December 2007. The violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels by more than 20 percent on these occasions. The mandatory minimum penalty for these serious violations is **twenty-one thousand dollars (\$21,000)**.

9. According to the Discharger's self-monitoring reports, the Discharger committed twenty (20) non-serious violations of the above effluent limitations contained in Order No R5-2003-0067 during the period beginning 1 April 2004 and ending 31 December 2007. Nine (9) of these non-serious violations are subject to mandatory penalties under CWC Section 13385 (i)(1) because these violations were preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for these non-serious violations is **twenty-seven thousand dollars (\$27,000)**.
10. The total amount of the mandatory penalties assessed for the cited effluent violations is **forty-eight thousand dollars (\$48,000)**. A detailed list of all the effluent violations is included in Attachment A, which is made a part of this Order.
11. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000, et. seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

THE TOWN OF DISCOVERY BAY AND ECO RESOURCES, INC. ARE HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **forty-eight thousand dollars (\$48,000)**.
2. A hearing on this matter will be held at the Regional Water Board meeting scheduled on **12/13 June 2008**, unless the Discharger agrees to complete the following by **17 April 2008**:
 - a) Waive the hearing by completing the attached form and returning it to the Regional Water Board; and
 - b) Pay the proposed civil liability of **forty-eight thousand dollars (\$48,000)** in full.
3. If a hearing on this matter is held, the Regional Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

JACK E. DEL CONTE, Assistant Executive Officer

18 March 2008

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent The Town of Discovery Bay and ECO Resources, Inc. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0511 (hereinafter the "Complaint");
2. I am informed of the right provided by California Water Code Section 13323, subdivision (b), to a hearing within ninety (90) days of service of the Complaint;
3. I hereby waive the Discharger's right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of service of the Complaint; and
4. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **forty-eight thousand dollars (\$48,000)** by check, which contains a reference to "ACL Complaint No. R5-2008-0511" and is made payable to the "*State Water Pollution Cleanup and Abatement Account.*"
5. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulation (40 CFR 123.27) expires. Should the Regional Water Board receive new information during this comment period, the Regional Water Board may withdraw the complaint, return payment, and issue a new complaint.
6. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(Print Name and Title)

(Signature)

(Date)

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0511**

**Discovery Bay
Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 April 2004 – 31 December 2007) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program No. R5-2003-0067)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period</u> <u>Type</u>	<u>Flow</u> <u>Rate</u>	<u>CIWQS</u> <u>Number</u>	<u>Remarks</u>
1	6-Jul-04	Coliform	MPN/100 mL	240	1600	Daily		257745	3
2	27-Jul-04	TSS	mg/L	50	56	Daily		257774	3
3	13-Oct-04	Copper	µg/L	96	110	Daily		257775	3
4	31-Oct-04	Copper	µg/L	52	90	Monthly		257776	2
5	23-Feb-05	Coliform	MPN/100 mL	240	500	Daily		258037	4
6	12-Apr-05	Coliform	MPN/100 mL	240	300	Daily		258039	3
7	13-Apr-05	Coliform	MPN/100 mL	240	1600	Daily		258038	3
8	27-Apr-05	Coliform	MPN/100 mL	23	305	7-day		258044	4
9	27-Apr-05	Coliform	MPN/100 mL	240	500	Daily		258040	4
10	28-Apr-05	Coliform	MPN/100 mL	23	110	7-day		258071	4
11	3-May-05	Coliform	MPN/100 mL	23	30	7-day		258041	4
12	31-Jul-05	Copper	µg/L	25	35	Monthly		258043	2
13	30-Apr-06	Copper	µg/L	22	25	Monthly		258072	3
14	30-Jun-06	Copper	µg/L	11	20	Monthly		263580	2
15	5-Jul-06	Copper	µg/L	21	40	Daily		263582	2
16	12-Jul-06	Copper	µg/L	21	40	Daily		263583	2
17	31-Jul-06	Copper	µg/L	17	40	Monthly		263581	2
18	31-Jul-06	Copper	lbs/day	0.3	0.4	Monthly	1.116	264239	2
19	7-Feb-07	Coliform	MPN/100mL	240	1600	Daily		264237	3
20	12-Feb-07	Coliform	MPN/100mL	240	1600	Daily		264240	3
21	10-Oct-07	Coliform	MPN/100mL	240	1600	Daily		264238	3
22	24-Oct-07	Coliform	MPN/100mL	240	1600	Daily		267218	3
23	10-Oct-07	Coliform	MPN/100mL	23	802	7-day		267222	3
24	24-Oct-07	Coliform	MPN/100mL	23	801	7-day		267619	4
25	25-Oct-07	Coliform	MPN/100mL	23	130	7-day		267618	4
26	26-Oct-07	Coliform	MPN/100mL	23	69	7-day		267632	4
27	30-Oct-07	Coliform	MPN/100mL	23	69	7-day		268832	4

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.
5. Mass rate limitation exceedances due only to wet weather not assessed MMPs pursuant to State Water Board Order WQO 2004-0013.

<u>VIOLATIONS AS OF:</u>	<u>12/31/2007</u>
Group I Serious Violations:	0
Group II Serious Violations:	7
Non-Serious Exempt from MPs:	11
Non-serious Violations Subject to MPs:	9
<u>Total Violations Subject to MPs:</u>	<u>16</u>

Mandatory Minimum Penalty = (7 Serious Violations + 9 Non-Serious Violations) x \$3,000 = \$48,000

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* Arithmetic mean of all 1-day flow rates (in MGD) while discharging to surface waters during limitation period. Values greater than the design dry weather flow rate (2.1 MGD) are considered wet weather for purposes of applying SWRCB Order WQO 2004-0013.