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Agency Secretary

California Regional Water Quality Control Board

Central Valley Region

Robert Schneider, Chair



Arnold
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29 March 2005

CERTIFIED MAIL
7004 1160 0000 0143 8386

Mr. Michael F. Brinton
City of Manteca
Department of Public Works
1001 W. Center St.
Manteca, CA 95337

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2005-0509; CITY OF MANTECA
WASTEWATER QUALITY CONTROL FACILITY, SAN JOAQUIN COUNTY

Enclosed is an Administrative Civil Liability Complaint issued by the Executive Officer of the Central Valley Regional Water Quality Control Board (Regional Board) pursuant to California Water Code Section 13385 for violations of Waste Discharge Requirements Order No. 97-115, No. 5-01-007, and No. R5-2004-0028 (NPDES No. CA0081558) by the City of Manteca. The Complaint proposes an administrative civil liability of \$533,000.

Pursuant to the California Water Code Section 13323, the Discharger may either choose to pay the civil liability and waive a Regional Board hearing on the matter or choose to contest the complaint and proceed to a hearing before the Regional Board. If the Discharger chooses to waive the right to a hearing, then a duly authorized person must sign the waiver and submit it to this office, along with a check payable to the "State Water Pollution Cleanup and Abatement Account" in the full amount of the civil liability. Any waiver will not be effective until 30 days from the date of this Complaint to allow other interested persons to comment on this action. If the Regional Board does not receive a waiver and a check for the full amount by **28 April 2005**, a hearing will be scheduled at the 23-24 June 2005 Regional Board Meeting in Sacramento. Additionally, the Executive Officer may decide to schedule the complaint for a hearing consistent with California Water Code Section 13323(b). If you intend to proceed to a hearing on this matter, you must submit written comments and evidence to the Regional Board, attention: James D. Marshall, by **28 April 2005**.

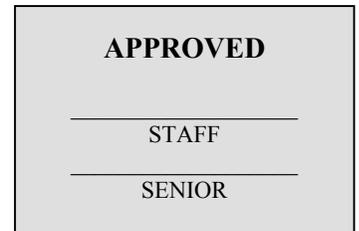
Persons wishing to submit comments on this action should submit written comments within 30 days from the date of this letter to the Regional Board, attention: James D. Marshall.

California Environmental Protection Agency



If you have any questions or comments, please contact Mr. Marshall at (916) 464-4772 or jdmarschall@waterboards.ca.gov.

THOMAS R. PINKOS
Executive Officer



Enclosure

cc: Regional Board Members, Rancho Cordova
Ms. Kathi Moore, U.S. Environmental Protection Agency, Region IX, San Francisco
Ms. Lisa Brown, CalEPA, Sacramento
Mr. Mark Bradley, State Water Resources Control Board, Sacramento
Ms. Frances McChesney, State Water Resources Control Board, Sacramento
Mr. Phil Isorena, State Water Resources Control Board, Sacramento
Mr. Joe Spano, Department of Health Services, Office of Drinking Water, Stockton
Department of Health Services, Environmental Management Branch, Sacramento
Ms. Carol Oz, Department of Fish & Game, Region II, Rancho Cordova
Delta Protection Commission, Walnut Grove
Department of Environmental Health, San Joaquin County, Stockton
Mr. Steve Macaulay, California Urban Water Agencies, Sacramento
Mr. Richard Denton, Contra Costa Water District, Concord
Mr. Dante Nomellini, Jr., Central Delta Water Agency, Stockton
Mr. John Herrick, South Delta Water Agency, Stockton
Mr. Eric Parfrey, Sierra Club, Stockton
Mr. Bill Jennings, Delta Keeper, Stockton
Ms. Marilyn Sykes, Stoel Rives LLP, Sacramento
Mr. Dana Nichols, Stockton Record, Stockton
Ms. Georgianna Reichelt, Manteca

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2005-0509
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
AND MANDATORY PENALTY
IN THE MATTER OF

CITY OF MANTECA
SAN JOAQUIN COUNTY

This complaint is issued to the City of Manteca (hereafter Discharger) based on a finding of violations of NPDES Waste Discharge Requirements (WDR) Order No. 97-115, Order No. 5-01-007, and Order No. R5-2004-0028 (NPDES No. CA0081558), pursuant to California Water Code (CWC) Section 13385, which authorizes the imposition of Administrative Civil Liability, and CWC Section 13323, which authorizes the Executive Officer to issue this complaint.

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

1. The Discharger owns and operates the City of Manteca Wastewater Quality Control Facility, which provides sewerage service to the City of Manteca. Treated municipal wastewater is discharged to the San Joaquin River, a water of the United States, and part of the Sacramento-San Joaquin Delta.
2. On 20 June 1997, the Regional Board adopted WDR Order No. 97-115 to regulate discharges of waste from the WQCF. On 26 January 2001, the Regional Board adopted WDR Order No. 5-01-007, rescinding Order No. 97-115. On 19 March 2004, the Regional Board adopted WDR Order No. R5-2004-0028, rescinding Order No. 5-01-007.

Mandatory Penalties

3. CWC Section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC Section 13385(h)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each serious violation.

CWC Section 13385 (h)(2) states for 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) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the discharger does any of the following four or more times in any period of six consecutive months.

- i. Violates a waste discharge requirement effluent limitation.
- ii. Fails to file a report pursuant to CWC Section 13260.
- iii. Files an incomplete report pursuant to CWC Section 13260.
- iv. 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.

4. WDR Order Nos. 97-115, 5-01-007, and R5-2004-0028 include, in part, the following effluent limitations:

<u>Constituent</u>	<u>Unit</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>1-Hour Average</u>	<u>Daily Maximum</u>
BOD ₅ ¹	mg/l	20 ²	30 ²	---	50 ²
	lbs/day ³	1350	2030	---	3380
Total Suspended Solids	mg/l	20 ²	30 ²	---	50 ²
	lbs/day ³	1350	2030	---	3380
Total Coliform	MPN/100 ml	---	23 ⁴	---	500
Settleable Solids	ml/l	0.1	--	---	0.2
Chlorine Residual ⁶	mg/l	---	0.01 ⁵	0.02	---
Arsenic ⁷	ug/l	10	---	---	---
	lbs/day ³	0.68	---	---	---
Copper ⁷	ug/l	7.9	---	---	10.4
	lbs/day ³	0.53	---	---	0.70
Cyanide ⁷	ug/l	3.7	---	---	10
	lbs/day ³	0.25	---	---	0.68
Bis(2-ethylhexyl)phthalate ⁷	ug/l	22	---	---	44
	lbs/day ³	1.5	---	---	3
Bromodichloromethane ⁷	ug/l	5	---	---	8
	lbs/day ³	0.34	---	---	0.54
Dibromochloromethane ⁷	ug/l	1.4	---	---	2.8
	lbs/day ³	0.095	---	---	0.19

¹5-day, 20°C biochemical oxygen demand (BOD)

²To be ascertained by a 24-hour composite

³Based upon a design treatment capacity of 8.11 mgd

⁴Weekly median

⁵Expressed as 4-day average

⁶WDR Order Nos. 5-01-007 and R5-2004-0028, only

⁷WDR Order No. R5-2004-0028, only

5. CWC Section 13385(j) provides exceptions to the assessment of mandatory penalties required by CWC Section 13385(h) and (i). CWC Section 13385(j) states, in part, the

following:

”(j) Subdivisions (h) and (i) do not apply to any of the following:

*”(3) A violation of an effluent limitation 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 Section 13308...” (emphasis added)*

6. On 19 March 2004, pursuant to CWC Section 13301, the Regional Board adopted Cease and Desist Order (CDO) No. R5-2004-0029, which was subsequently amended by Resolution No. R5-2004-0142 on 26 July 2004. Pursuant to CWC Section 13385(j), while the Discharger is in compliance with CDO No. R5-2004-0029, violations of Effluent Limitations B.1 through B.3 for aluminum, arsenic, copper, cyanide, electrical conductivity, iron, manganese, MBAS, nitrate, and nitrite contained in WDR Order No. R5-2004-0028 are exempt from the assessment of mandatory penalties.
7. As of 1 September 2004, the Discharger failed to comply with the time schedule to assure compliance with Effluent Limitations B.1 through B.3 for arsenic, copper, cyanide, iron, manganese, and MBAS required in CDO No. R5-2004-0029. Therefore, violations of Effluent Limitations B.1 through B.3 for arsenic, copper, cyanide, iron, manganese, and MBAS contained in WDR Order No. R5-2004-0028, occurring on or after 1 September 2004, are not exempt from the assessment of mandatory penalties.
8. On 25 June 2004, the Discharger was issued Administrative Civil Liability Complaint (ACLC) No. R5-2004-0829 assessing mandatory penalties pursuant to CWC Section 13385(h). The mandatory penalties were assessed based on 35 effluent violations occurring between 1 January 2000 and 31 March 2004. One of the violations has since been determined to not be subject to mandatory penalties, which would require the ACLC to be amended. The Discharger has not paid the liability to the State Water Pollution Clean Up and Abatement Account. Instead, the Discharger has proposed a supplemental environmental project, which has not been approved by the Regional Board. This complaint rescinds ACLC No. R5-2004-0829 and incorporates the amended assessment of mandatory penalties for effluent violations occurring from 1 January 2000 through 31 January 2005.
9. According to monitoring reports submitted by the Discharger, the Discharger committed seventy-four (74) serious violations during the period beginning 1 January 2000 and ending on 31 January 2005. The mandatory penalty for these serious violations is **\$222,000**.
10. According to monitoring reports submitted by the Discharger, the Discharger also committed sixty-six (66) violations of effluent limitations that were not considered serious violations. Fifty-seven (57) of these non-serious violations are subject to

mandatory penalties under CWC Section 13385(i)(2). The mandatory penalty for these non-serious violations is **\$171,000**.

11. The total mandatory penalty for serious and non-serious violations is **\$393,000**. A detailed list of all violations is included in Attachment A, a part of this complaint.

Non-Discharge Violations

12. The Discharger is in violation of WDR Order No. R5-2004-0028 due to failure to comply with the compliance time schedules in Provisions H.1, 2, 5, 6, 7, 8, 10, and 21. The Discharger is also in violation of CDO No. R5-2004-0029 due to failure to comply with compliance time schedules required in CDO Items 2 and 5.
13. On 18 August 2004, staff issued a Notice of Violation (NOV) regarding the Discharger's failure to comply with Provision H.21, which requires implementation of a pretreatment program pursuant to Code of Federal Regulations Part 403.
14. The Discharger has failed to fully implement a pretreatment program for several years. Tetra Tech, on behalf of the Regional Board, conducted a Pretreatment Compliance Audit on 25-26 October 2001, followed by Pretreatment Compliance Inspections on 15 May 2003 and 22 June 2004. Each inspection report cited similar inadequacies in the Discharger's draft pretreatment program. The Discharger has not been monitoring and conducting compliance inspections, has not been issuing permits, and has not evaluated the Significant Industrial Users for the need to develop and implement slug discharge control plans. Each inspection recommended the Discharger adopt the necessary legal authority to fully implement a pretreatment program and recommended the Discharger implement its draft program more fully.
15. State Water Resources Control Board legal counsel conducted a legal review of the Discharger's pretreatment program in January 2003. By letter dated 22 January 2003, Regional Board staff forwarded the legal review comments to the Discharger and advised the Discharger to update and adopt all necessary documents and fully implement the pretreatment program as soon as possible. The Discharger has not responded to these actions and continues to operate without an approved pretreatment program. The Regional Board cannot approve the pretreatment program without an adopted sewer use ordinance and other required program elements that have been approved by the Manteca City Council.
16. On 22 November 2004, staff issued a NOV and CWC Section 13267 Order regarding the Discharger's failure to comply with Provisions H.1, 2, 5, 6, 7, and 10 and the compliance time schedules required in CDO No. R5-2004-0029. In addition to the NOV, Water Quality Control Facility staff was made aware of the Discharger's non-compliance during a compliance inspection on 8 December 2004. The Discharger has failed to meet any of these compliance time schedules and has only submitted reports in response to NOVs and CWC Section 13267 Orders.

17. In response to the 22 November 2004 NOV, the Discharger claims it has fallen behind on the time schedules due to staffing and budgeting constraints, and maintains its budget was in the final stages of development when WDR Order No. R5-2004-0028 was adopted in March 2004. However, the Discharger has failed to comply with nearly all compliance time schedules in WDR Order No. R5-2004-0028 and CDO No. R5-2004-0029. The compliance time schedules require the Discharger to inform the Regional Board when out of compliance and to provide a schedule for when compliance is anticipated. The Discharger only provided this information after being issued a NOV for failure to comply.

Calculation of Penalty for Non-Discharge Violations

18. CWC Section 13385 states, in part:

“(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

“(1) Section 13375 or 13376”.

“(2) Any waste discharge requirements...issued pursuant to this chapter...”

“(5) Any requirements of Section 301, 302, 306, 307,308, 318, 401, or 405 of the Clean Water Act, as amended”.

“(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 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.

“(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”.

“(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, 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 violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation”.

19. The Discharger's delay in submitting required reports and fully implementing a pretreatment program has resulted in economic savings to the Discharger. It is estimated that the Discharger derived an economic benefit, from the acts that constitute the violations, of not less than \$61,000. As of 29 March 2005, the Discharger has been in violation of WDR Order No. R5-2004-0028 for a maximum of 234 days for failure to submit reports. The maximum statutory liability is \$2,340,000 (\$10,000 for each day of violation).
20. The amount of the liability for the non-discharge violations has been established based upon a review of the factors cited in CWC Section 13385 and the State Water Resources Control Board's Water Quality Enforcement Policy. See Attachment B, a part of this complaint, for a summary of the non-discharge violations contributing to the calculation of the penalty.
21. 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 Title 14 California Code of Regulations, Enforcement Actions by Regulatory Agencies, Section 15321(a)(2).

THE CITY OF MANTECA IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board rescinds Administrative Civil Liability Complaint No. R5-2004-0829 and incorporates the assessment of mandatory penalties into this complaint.
2. The Executive Officer of the Regional Board proposes that the Discharger be assessed an Administrative Civil Liability and Mandatory Penalty in the amount of **five hundred thirty-three thousand dollars (\$533,000)**, which includes \$393,000 in mandatory penalties, and which would recover the economic benefit derived from the acts that constitute the violations, and would recover Regional Board staff costs. The amount of the proposed liability, other than the mandatory penalty portion, is based upon a review of the factors cited in CWC Section 13385 and the State Water Resources Control Board's Water Quality Enforcement Policy.
3. A hearing on this matter will be held at the Regional Board meeting scheduled on **23-24 June 2005**, unless the Discharger agrees to:
 - a. Waive the hearing and pay the proposed civil liability in full; or
 - b. Waive the right to a hearing in 90 days, and submit a settlement proposal within 30 days of the date of this complaint that includes an agreement to conduct a Supplemental Environmental Project (SEP) and also includes payment of monetary liability. The Discharger may preserve its right to a hearing pending approval of the settlement proposal.

4. If a hearing on this matter is held, the Regional 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.
5. The Discharger may waive the right to a hearing. If you wish to waive the hearing, **within 30 days of the date of this complaint**, sign and return the waiver to the Regional Board's office with a check in the amount of the civil liability made payable to the "State Water Pollution Cleanup and Abatement Account." Any waiver will not be effective until 30 days from the date of this complaint to allow interested persons to comment on this action.

THOMAS R. PINKOS, Executive Officer

29 March 2005

Date

**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 City of Manteca (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2005-0509 (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 issuance 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 issuance of the Complaint; and
4. Without admitting liability for the matters alleged in the Complaint, I certify that the Discharger will remit payment for the civil liability imposed in the amount of **five hundred thirty-three thousand dollars (\$533,000)** by check, which contains a reference to "ACL Complaint No. R5-2005-0509" 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 violations alleged in the Complaint that will not become final until after a public comment period.
6. I understand that the Executive Officer has complete discretion to modify or terminate this settlement.
7. 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)