

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2009-0535

MANDATORY PENALTY
IN THE MATTER OF

CITY OF REDDING
CLEAR CREEK WASTEWATER TREATMENT PLANT
SHASTA COUNTY

This Administrative Civil Liability Complaint is issued to the City of Redding, Clear Creek Wastewater Treatment Plant (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 R5-2003-0130 (NPDES No. CA0079731).

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

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system, and provides sewerage service for the City of Redding. Treated municipal wastewater is discharged from the Clear Creek Wastewater Treatment Plant to the Sacramento River, a water of the United States
2. On 5 September 2003, the Central Valley Water Board adopted Waste Discharge Requirements Order R5-2003-0130 (NPDES No. CA0079731), for the City of Redding, to regulate discharges of waste from the Clear Creek Wastewater Treatment Plant.
3. CWC sections 13385(h) requires assessment of mandatory penalties and states, 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.

4. 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.

5. Order No. R5-2003-0130 included the following effluent limitation:

B. Effluent Limitations

1. Effluent shall not exceed the following limits:

<u>Constituent</u>	<u>Unit</u>	<u>Daily Maximum</u>
Chlorine Residual c 1-hour average	mg/L	0.02 ^{cn}

6. On 28 January 2007 the daily maximum effluent chlorine residual concentration was measured at 0.0286 milligrams per liter (mg/L), or 43.3 percent greater than the allowed daily maximum of 0.02 mg/L in affect at the time. The violation was the result of a faulty cell on the outfall chlorine analyzer.
7. On 29 January 2007 the daily maximum effluent chlorine residual concentration was measured at 0.0283 mg/L, or 41.6 percent greater than the allowed daily maximum of 0.02 mg/L in affect at the time. The violation was the result of a faulty cell on the outfall chlorine analyzer.
8. On 28 February 2007 the daily maximum effluent chlorine residual concentration was measured at 0.055 mg/L, or 175 percent greater than the allowed daily maximum of 0.02 mg/L in affect at the time. The violation was the result of a failure of the de-chlorination equipment to react to the passing of a slug of effluent with a higher than normal chlorine residual.
9. On 8 March 2007 the daily maximum effluent chlorine residual concentration was measured at 0.16 mg/L, or 700 percent greater than the allowed daily maximum of 0.02 mg/L in affect at the time. The violation occurred due to a vacuum leak on the de-chlorination regulator line compression fitting which caused inadequate sulfur dioxide injection into the effluent flow.
10. CWC section 13385(h)(2) defines a serious violation as an exceedance of 40% or more of a group I pollutant as defined in 40 CFR 123.45 or an exceedance by 20% or more of a group II pollutant as defined in 40 CFR 123.45. Chlorine residual is a group II pollutant under 40 CFR 123.45, and the measured exceedances are therefore serious violations under CWC section 13385 (h), and are subject to a mandatory minimum

11. penalty of \$3,000 each. The total amount of the mandatory minimum penalty for the four serious violations during the period beginning 28 January 2007 and ending 8 March 2007 is \$12,000. The total amount of the mandatory penalty is therefore \$12,000.
12. 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 (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

THE CITY OF REDDING IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed a Mandatory Penalty in the amount of **twelve thousand dollars (\$12,000)**.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **13/14 August 2009**, unless the Discharger does either of the following by **15 June 2009**:
 - a. Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **twelve thousand dollars (\$12,000)**; or
 - b. Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board along with a letter describing issues to be discussed in settlement negotiations.
3. If a hearing on this matter is conducted, the Central Valley 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.

original signed by

JAMES C. PEDRI, Assistant Executive Officer

18 May 2009

(Date)

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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

1. I am duly authorized to represent the City of Redding (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2009-0535 (hereinafter the "Complaint");
2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint; and
4. **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
 - a. I certify that the Discharger will remit payment for the proposed civil liability in the amount of **twelve thousand dollars (\$12,000)** by check, which will contain a reference to "ACL Complaint R5-2009-0535" and will be made payable to the "*State Water Pollution Cleanup and Abatement Account.*" Payment must be received by the Central Valley Water Board by **15 June 2009** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the 13/14 August 2009 Central Valley Water Board meeting.
 - b. 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 regulations (40 CFR 123.27) expires. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Central Valley Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. 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.

-or-

5. **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.

6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)

Central Valley Regional Water Quality Control Board

PROPOSED DRAFT HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R5-2009-0535

ISSUED TO
CITY OF REDDING
CLEAR CREEK WASTEWATER TREATMENT PLANT
SHASTA COUNTY

SCHEDULED FOR 13/14 AUGUST 2009

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Assistant Executive Officer has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (CWC) section 13323 to the City of Redding (“Discharger”), alleging that it has violated CWC section 13385 by exceeding effluent limits contained in Order R5-2003-0130. The Complaint proposes that an administrative civil liability in the amount of twelve thousand dollars (\$12,000) be imposed. A hearing is currently scheduled to be held before the Central Valley Water Board during its 13/14 August 2009 meeting.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Central Valley Water Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on 13/14 August 2009 will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Central Valley Water Board meeting agenda. The meeting will be held at 11020 Sun Center Drive, Suite 200, Rancho Cordova, California.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Central Valley Water Board’s web page at:

http://www.waterboards.ca.gov/centralvalley/board_info/meetings.

Hearing Procedures

The hearing will be conducted in accordance with this Hearing Procedure. This proposed draft version of the Hearing Procedure has been prepared by the Prosecution Team, and is subject to revision and approval by the Central Valley Water Board’s Advisory Team. A copy of the general procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648,

subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Gov't Code § 11500) does not apply to this hearing.

THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. **ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE CENTRAL VALLEY WATER BOARD'S ADVISORY TEAM NO LATER THAN 28 May 2009, OR THEY WILL BE WAIVED.** THESE DRAFT HEARING PROCEDURES WILL BECOME FINAL AT 5:00 P.M. ON **28 May 2009** IF NO PARTY SUBMITS TIMELY OBJECTION(S), OR AS OTHERWISE DIRECTED BY THE ADVISORY TEAM. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participants

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the Central Valley Water Board, staff or others, at the discretion of the Central Valley Water Board.

The following participants are hereby designated as parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. The City of Redding, referred to as the Discharger

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received no later than 5 p.m. on **2 June 2009** to Lori Okun (contact information listed below). The request shall include an explanation of the basis for status as a designated party (i.e., how the issues to be addressed in the hearing and the potential actions by the Central Valley Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be received by the Advisory Team, the person requesting party status, and all other parties by 5 p.m. on **5 June 2009**. The parties will be notified by 5 p.m. on **9 June 2009** whether the request has been granted or denied.

Primary Contacts

Advisory Team:

Ken Landau, Assistant Executive Officer
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
Phone: (916) 464-4726; fax: (916) 464-4758
klandau@waterboards.ca.gov

Lori Okun, Senior Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
1001 I Street
Sacramento, CA 95814
Phone: (916) 341-5165; fax: (916) 341-5199
lokun@waterboards.ca.gov

Prosecution Team:

James Pedri, Assistant Executive Officer
George Day, Senior Water Resource Control Engineer
Bryan Smith, Senior Water Resource Control Engineer
Stacy Gotham, Water Resource Control Engineer
415 Knollcrest Drive, Suite 100,
Redding, California 96002
Phone: (530) 224-4845
sgotham@waterboards.ca.gov

Patrick Pulupa, Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
1001 I Street
Sacramento, CA 95814
Phone: (916) 341-5189; fax: (916) 341-5199
ppulupa@waterboards.ca.gov

Discharger:

Mr. Kurt Starman, City Manager
City of Redding
P.O. Box 496071
Redding, CA 96049-6071

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Central Valley Water Board (Prosecution Team) have been separated from those who will provide advice to the Central Valley Water Board (Advisory Team). Members of the Advisory Team are: Ken Landau, Assistant Executive Officer; and Lori Okun, Senior Staff Counsel. Members of the Prosecution Team are: Jim Pedri, Assistant Executive Officer; George Day, Senior Water Resource Control Engineer; Bryan Smith, Senior Water Resource Control Engineer, Stacy Gotham, Water Resource Control Engineer; and Patrick Pulupa, Staff Counsel. Any members

of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Central Valley Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested person on the one hand, and a Central Valley Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined 25 minutes to present evidence (including evidence presented by witnesses called by the designated party), cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than ten days after all of the evidence has been received. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Central Valley Water Board Chair (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Central Valley Water Board to consider. Evidence and exhibits already in the public files of the Central Valley Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

The evidence upon which the Complaint is based will have been entered into the administrative file at the time the Complaint is issued. However, the Prosecution Team may submit additional evidence into the administrative file until 5 p.m. on **8 June 2009**. The Board's Advisory Team, all other Designated Parties, and all Interested Parties will be notified if additional evidence is added to the file, and will be provided with copies of the additional evidence. Should the Prosecution Team require witnesses to provide direct testimony at the Hearing, the Prosecution Team will provide the Board's Advisory Team, all other Designated Parties, and all Interested Parties with the information contained in items 3 and 4, above, by 5 p.m. on **5 June 2009**.

The remaining designated parties shall submit 11 hard copies and one electronic copy of the information described in items 1 through 4 above to Ken Landau so that they are received no later than 5 p.m. on **22 June 2009** in addition to the foregoing, each designated party shall send (1) one copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above. The Designated Parties should submit all rebuttal evidence to Ken Landau no later than 5 p.m. on **21 July 2009** in order to allow all parties to consider all evidence prior to the hearing. "Rebuttal evidence" is limited to evidence that is offered to disprove or contradict evidence presented by an opposing party.

If the total amount of information submitted by any party is less than 15 pages, that party may submit the information by email, rather than in writing. In addition to the foregoing, each designated party shall send (1) one copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Central Valley Water Board may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the Central Valley Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 415 Knollcrest Drive, Suite 100, Redding. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Central Valley Water Board's Chair. Many of these documents are also posted on-line at <http://www.waterboards.ca.gov/centralvalley/>. Although the web page is updated regularly, to assure access to the latest information, you may contact Stacy Gotham (530) 224-4845.

Questions

Questions concerning this proceeding may be addressed to Lori Okun at (916) 341-5165.

Important Deadlines

(Note: the Central Valley Water Board is required to provide a hearing within 90 days of issuance of the Complaint (CWC § 13323). The Advisory Team will generally adhere to this schedule unless the discharger submits a waiver and it is accepted.)

18 May 2009	Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice
28 May 2009	Objections due on proposed Hearing Procedure; Hearing Procedure becomes final if no Objections
02 June 2009	Deadline for submission of request for designated party status.
05 June 2009	Deadline for opposition to request for designated party status.
05 June 2009	Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.
09 June 2009	Advisory Team issues decision on requests for designated party status, if any.
15 June 2009	Discharger's deadline for submitting signed form to waive right to hearing within 90 days.
22 June 2009	Remaining Designated Parties' (including the Discharger) Deadline for submission of all information required under "Evidence and Policy Statements," above.
21 July 2009	All Designated Parties' should submit all rebuttal evidence (if any) and evidentiary objections by this date.
13/14 August 2009	Hearing

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