

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2015-0513

MANDATORY PENALTY
IN THE MATTER OF

CITY OF DAVIS
WASTEWATER TREATMENT PLANT
YOLO COUNTY

This Complaint is issued to the City of Davis (hereafter Discharger) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability, Water Code section 13323, which authorizes the Executive Officer to issue this Complaint and Water Code 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 allegations that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2013-0127 (NPDES No. CA0079049).

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

1. The Discharger owns and operates a municipal wastewater collection, treatment, and disposal system, and provides sewerage service within the City of Davis. Treated municipal wastewater is discharged to either the Willow Slough Bypass or the Conaway Ranch Toe Drain, both waters of the United States, and tributary to the Yolo Bypass.
2. In order to regulate discharges from the wastewater treatment plant, on 4 October 2013, the Central Valley Water Board adopted Waste Discharge Requirements (WDRs) Order R5-2013-0127. The WDRs were amended on 9 October 2014, but the Order number did not change.
3. On 4 October 2013, the Board adopted Time Schedule Order (TSO) R5-2013-0128, which includes interim effluent limitations for copper and aluminum when discharging to Willow Slough Bypass and interim effluent limitations for aluminum when discharging to Conaway Ranch Toe Drain. TSO R5-2013-0128 also provides a time schedule to comply with final effluent limitations for copper and aluminum by 25 October 2017. On 5 December 2014, the Board adopted TSO R5-2014-0159, which includes interim effluent limitations for selenium and cyanide when discharging to Willow Slough Bypass and interim effluent limitations for copper and selenium when discharging to Conaway Ranch Toe Drain. TSO R5-2014-0159 also provides a time schedule to comply with final effluent limitations for selenium and copper by 25 October 2017, and cyanide by 25 October 2019. This Complaint considers the exemption from mandatory minimum penalties provided by the TSOs.
4. On 8 September 2014, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2014-0552 for mandatory minimum penalties for effluent violations occurring between 1 October 2012 and

31 March 2014. The Discharger paid the civil liability and the Board considers those effluent violations specifically listed in Attachment A to ACLC R5-2014-0552 to be resolved.

5. This Complaint addresses administrative civil liability for effluent violations that occurred between 1 April 2014 and 31 December 2014. These violations are specifically identified in Attachment A to this Complaint as subject to mandatory minimum penalties. Attachment A to this Complaint is attached hereto and incorporated herein by this reference.
6. On 5 January 2015, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations for effluent limitation violations from 1 April 2014 through 31 October 2014. The Discharger responded on 27 January 2015 and agreed with the violations. This Complaint extends the dates through 31 December 2014.
7. Water Code section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

Water Code 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.

Water Code 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.

Water Code section 13385 subdivision (i)(1) states, in part:

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.

8. Water Code 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.

9. Water Code section 13385(j) exempts certain violations from the mandatory minimum penalties, and states, in relevant part:

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 13308 if all of the following requirements are met:
 - C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible....For the purposes of this subdivision, the time schedule may not exceed five years in length The interim requirements shall include both of the following:
 - i) Effluent limitations for the pollutant or pollutants of concern.
 - ii) Actions and milestones leading to compliance with the effluent limitation

10. TSO R5-2013-0128 contains interim effluent limitations for copper when discharging to Willow Slough Bypass; however, as shown in Attachment A, the Discharger exceeded those interim effluent limitations and therefore Water Code section 13385(j) does not exempt those particular violations from mandatory minimum penalties.

11. WDRs Order R5-2013-0127 Effluent Limitations IV.A.1.a., Discharge Point No. 001 (Willow Slough Bypass) include, in part, the following effluent limitations:

Table 6. Final Effluent Limitations—Discharge Point No. 001

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Priority Pollutants						
Copper, Total Recoverable	µg/L	23	--	49	--	--

12. TSO R5-2013-0128 established interim effluent limitations for copper:

Parameter	Units	Average Monthly	Maximum Daily
Discharge Point No. 001			
Copper, Total Recoverable	µg/L	53	114

13. According to the Discharger’s self-monitoring reports, the Discharger committed two (2) serious Group II violations of the above effluent limitations contained in WDRs Order R5-2013-0127 and TSO R5-2013-0128, as shown in Attachment A. These violations are defined as serious because measured concentrations of Group II constituents exceeded

maximum prescribed levels in WDRs Order R5-2013-0127 by 20 percent or more. The mandatory minimum penalty for these serious violations is **six thousand dollars (\$6,000)**.

14. The total amount of the mandatory penalties assessed for the alleged effluent violations is **six thousand dollars (\$6,000)**. As stated herein, a detailed list of the alleged effluent violations is included in Attachment A. This Complaint addresses administrative civil liability for violations that are specifically identified in Attachment A as subject to mandatory minimum penalties.
15. On 14 February 2014, the Executive Officer designated Andrew Altevogt, Assistant Executive Officer, as the Lead Prosecution Officer for all enforcement matters originating in the Central Valley Region. The 14 February 2014 Delegation of Authority also authorizes Andrew Altevogt to issue Administrative Civil Liability Complaints.
16. Issuance of this Administrative Civil Liability Complaint to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

CITY OF DAVIS IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **six thousand dollars (\$6,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **4/5 June 2015**, unless the Discharger does one of the following by **3 April 2015**:
 - a) Waives the hearing by completing the attached form (checking off the box next to Option 1) and returning it to the Central Valley Water Board. In addition, submits payment for the proposed civil liability of **six thousand dollars (\$6,000)** to the State Water Board, with a copy of the check to the Central Valley Water Board; or
 - b) Requests to engage in settlement discussions by checking the box next to Option 2 on the attached form, and returning it to the Board along with a letter describing the issues to be discussed. The Central Valley Water Board must agree to the postponement; or
 - c) Requests to delay the hearing by checking off the box next to Option 3 on the attached form, and returning it to the Board along with a letter describing the proposed length of delay and the issues to be discussed. The Central Valley Water Board must agree to the postponement.
3. If a hearing on this matter is held, 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.

4. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

Original signed by

ANDREW ALTEVOGT, Assistant Executive Officer

9 March 2015

DATE

Attachment A: Record of Violations

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the City of Davis (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2015-0513 (hereafter Complaint). 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. The person who has been issued a complaint may waive the right to a hearing."

(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **six thousand dollars (\$6,000)** by check that references "ACL Complaint R5-2015-0513" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the State Water Resources Control Board, Accounting Office, Attn: ACL Payment at PO Box 1888, Sacramento, California, 95812-1888 by **3 April 2015**. The waiver and a copy of the check must be submitted to the Central Valley Water Board at 11020 Sun Center Drive #200, Rancho Cordova California, 95670 by **3 April 2015**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant 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. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. 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.

(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A TO ACLC R5-2015-0513

City of Davis

Wastewater Treatment Plant

RECORD OF VIOLATIONS (1 April 2014 – 31 December 2014) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2013-0127)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>WDRs</u> <u>Limit</u>	<u>TSO</u> <u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
1	19-May-14	Copper*	µg/L	49	114	885	Maximum Daily	2	971575
2	31-May-14	Copper*	µg/L	23	53	452	Average Monthly	2	971577

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 violation falls within the first three violations in a 180-day period, thus is not subject to mandatory minimum penalties. Penalties that may be assessed for this violation are discretionary. This violation is not addressed or resolved in this ROV.
4. Non-serious violation subject to mandatory minimum penalties.

<u>VIOLATIONS AS OF:</u>	<u>12/31/2014</u>
Group I Serious Violations:	0
Group II Serious Violations:	2
Non-Serious Violations Not Subject to MMPs:	0
<u>Non-serious Violations Subject to MMPs:</u>	<u>0</u>
Total Violations Subject to MMPs:	2

Mandatory Minimum Penalty = (2 Group II Violations) x \$3,000 = \$6,000

- * The Discharger exceeded the maximum daily and average monthly interim effluent limitation for copper on 19 May 2014 and 31 May 2014, respectively. Therefore, TSO R5-2013-0128 does not provide exemption to mandatory minimum penalties for copper during the May 2014 monitoring period.

WSW

RECEIVED
RANCHO CORDOVA
CYRWOCB

2015 APR -1 PM 1:15

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FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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COPY

STAN GAYCOTE / ASSISTANT PUBLIC WORKS DIRECTOR
(Print Name and Title)

[Signature]
(Signature)

3/12/15
(Date)

ATTACHMENT A TO ACLC R5-2015-0513

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THIS CHECK IS VOID WITHOUT A BLUE AND GREEN BACKGROUND AND AN ARTIFICIAL WATERMARK ON THE BACK - HOLD AT AN ANGLE TO VIEW



City of Davis
23 RUSSELL BLVD
DAVIS, CALIFORNIA 95616
(530) 757-5615

DATE: 03/26/2015
NUMBER: 414162

Wells Fargo Bank, NA
420 Monterey Street
San Francisco, CA 94014
11-24
1210

AMOUNT

\$*****6,000.00

VOID AFTER SIX MONTHS

PAY

SIX THOUSAND AND 00/100 DOLLARS *****

TO THE
ORDER
OF

19529
SWPC&A ACCOUNT
SWRCB ACCOUNTING OFFICE
ATTN: ACL PAYMENT
P O BOX 1888
SACRAMENTO CA 95812-1888

Kelly F. J.
Kelly L. St. John

BORDER CONTAINS MICROPRINTING



⑈414162⑈ ⑆121000248⑆4122161037⑈

CITY OF DAVIS 23 Russell Blvd. Davis, CA 95616 (530) 757-5615 Date: 03/26/2015 Check Number: 414162

Invoice Date	Invoice Number	Item Description	P.O. Number	Net Amount
03/09/2015	R5-2015-0	ACL COMPLAINT R5-2015-051 053	G02693	6000.00

19529 SWPC&A ACCOUNT

TOTAL

6000.00

Detach and Retain for Your Records