

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0573

MANDATORY PENALTY
IN THE MATTER OF

NEVADA COUNTY SANITATION DISTRICT NO. 1
CASCADE SHORES WASTEWATER TREATMENT PLANT
NEVADA COUNTY

This Complaint is issued to the Nevada County Sanitation District No. 1 (hereafter Discharger) 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. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2008-0111 (NPDES No. CA0083241).

The 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 the Cascade Shores Wastewater Treatment Plant (WWTP), a wastewater collection, treatment, and disposal system that provides sewerage service to the Cascade Shores community. Treated municipal wastewater is discharged to Gas Canyon Creek, a water of the United States.
2. On 31 July 2008, the Central Valley Water Board issued WDRs Order R5-2008-0111, effective 31 July 2008, which contained new requirements and rescinded WDRs Order 5-01-177, except for enforcement purposes. On 31 July 2008, the Board also issued CDO R5-2008-0112, which rescinded CDO R5-2006-0035 and provided interim effluent limitations for total coliform, nitrates, and ammonia until 18 May 2010 or until the Discharger can achieve compliance, whichever is earlier.
3. On 16 December 2009, the Executive Officer issued ACL Order R5-2009-0578 for mandatory minimum penalties in the amount of \$33,000 for effluent violations from 1 December 2003 through 31 July 2009. The ACL Order provided that the entire penalty may be suspended if the Discharger constructs, within a specified time schedule, a new wastewater treatment plant designed to correct effluent limitation violations. The Discharger completed construction of the new wastewater treatment plant and the Board considers those effluent violations specifically listed in Attachment A to ACL Order R5-2009-0578 resolved.
4. On 14 December 2010, the Assistant Executive Officer of the Central Valley Water Board issued Time Schedule Order (TSO) R5-2010-0909. TSO R5-2010-0909 contains interim effluent limitations for copper.
5. This complaint addresses administrative civil liability for effluent violations that occurred during the period from 1 August 2009 through 31 January 2011. 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. In determining the proposed administrative civil liability, the Executive Officer considered the interim effluent limitations in TSO R5-2010-0909 and the protection from mandatory minimum penalties provided by CDO R5-2008-0112.

6. On 28 March 2011, Central Valley Water Board staff issued the Discharger a draft Record of Violations (ROV). The Discharger responded on 12 April 2011 and agreed with the violations. The Discharger stated that it may also wish to engage in settlement discussions and propose a compliance project.
7. 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, 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. 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.

9. WDRs Order R5-2008-0111 Final Effluent Limitations IV.A.1.a. states in part:

- a. The Discharger shall maintain compliance with the following effluent limitations specified in Table 6.

Table 6. Final Effluent Limitations

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
<i>Conventional Pollutants</i>						
pH	standard units	--	--	--	6.5	8.0
<i>Priority Pollutants</i>						
Copper, Total Recoverable ¹	µg/L	1.6	--	3.2	--	--

10. WDRs Order R5-2008-0111 Final Effluent Limitations IV.A.1.e. states in part

- e. Total Coliform Organisms. Effluent total coliform organisms shall not exceed:
 - i. 2.2 most probable number (MPN) per 100 mL, as a 7-day median;

- 11. According to the Discharger’s self-monitoring reports, the Discharger committed eleven (11) serious Group II violations of the above effluent limitations contained in WDRs Order R5-2008-0111 during the period beginning 1 August 2009 and ending 31 January 2011, as shown in Attachment A. These violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in the WDRs by twenty percent or more. The mandatory minimum penalty for these serious violations is **thirty-three thousand dollars (\$33,000)**.
- 12. According to the Discharger’s self-monitoring reports, the Discharger committed four (4) non-serious violations of the above effluent limitations contained in WDRs Order R5-2008-0111 during the period beginning 1 August 2009 and ending 31 January 2011, as shown in Attachment A. The non-serious violations are subject to mandatory penalties under CWC section 13385 subdivision (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 **twelve thousand dollars (\$12,000)**.
- 13. The total amount of the mandatory penalties assessed for the cited effluent violations is **forty-five thousand dollars (\$45,000)**. As stated herein, a detailed list of the cited 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.

14. 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 section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

NEVADA COUNTY SANITATION DISTRICT NO. 1 IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **forty-five thousand dollars (\$45,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **3/4/5 August 2011**, unless the Discharger does one of the following by **6 June 2011**:
 - 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, along with payment for the proposed civil liability of **forty-five thousand dollars (\$45,000)**; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
 - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
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 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 Frederick Moss for
PAMELA C. CREEDON, Executive Officer

6 May 2011
DATE

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the Nevada County Sanitation District No. 1 (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2011-0573 (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 **forty-five thousand dollars (\$45,000)** by check that references "ACL Complaint R5-2011-0573" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **6 June 2011**.
- 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 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
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0573**

**Nevada County Sanitation District No. 1
Cascade Shores Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 August 2009 – 31 January 2011) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2008-0111)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
1	31-May-10	Copper, Total	µg/L	1.6	5.2	Average Monthly	2	875584
2	30-Jun-10	Copper, Total	µg/L	1.6	2.4	Average Monthly	2	880440
3	31-Jul-10	Copper, Total	µg/L	1.6	2.6	Average Monthly	2	880441
4	5-Aug-10	Copper, Total	µg/L	3.2	6	Maximum Daily	2	882980
5	31-Aug-10	Copper, Total	µg/L	1.6	6	Average Monthly	2	882981
6	2-Sep-10	Copper, Total	µg/L	3.2	6.4	Daily Maximum	2	883856
7	30-Sep-10	Copper, Total	µg/L	1.6	6.4	Average Monthly	2	884080
8	5-Oct-10	pH	SU	8.0	8.4	Instant Max	4	887169
9	5-Oct-10	pH	SU	6.5	6.0	Instant Min	4	885599
10	31-Oct-10	Copper, Total	µg/L	1.6	3.2	Average Monthly	2	885595
11	4-Nov-10	Copper, Total	µg/L	3.2	5.5	Maximum Daily	2	890714
12	30-Nov-10	Copper, Total	µg/L	1.6	5.5	Average Monthly	2	890716
13	2-Dec-10	Copper, Total	µg/L	3.2	4.8	Maximum Daily	2	890715
14	21-Dec-10	pH	SU	6.5	5.7	Instant Max	4	889820
15	31-Jan-11	Coliform	MPN/100 mL	2.2	4	7-Day Median	4	892511

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 six-month period, thus is not subject to mandatory minimum penalties.
4. Non-serious violation subject to mandatory minimum penalties.

<u>VIOLATIONS AS OF:</u>	<u>1/31/2011</u>
Group I Serious Violations:	0
Group II Serious Violations:	11
Non-Serious Violations Not subject to MMPs:	0
Non-serious Violations Subject to MMPs:	4
<u>Total Violations Subject to MMPs:</u>	<u>15</u>

Mandatory Minimum Penalty = (11 serious Violations + 4 Non-Serious Violations) x \$3,000 = \$45,000