

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0587

For

VIOLATION OF WASTEWATER DISCHARGE REQUIREMENTS
ORDER NOS. R5-2003-0130 and R5-2010-0096 (NPDES NO. CA0079731)

IN THE MATTER OF

CITY OF REDDING
CLEAR CREEK WASTEWATER TREATMENT PLANT
WDID NO. 5A450103001

SHASTA COUNTY

This Administrative Civil Liability Complaint (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. The Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2003-0130 and WDRs Order R5-2010-0096 (NPDES No. CA0079731).

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

1. The Discharger owns and operates a Publicly Owned Treatment Works (POTW). The treatment system consists of screening for removal of large solids, grit removal, primary clarification, activated sludge treatment with secondary clarification, filtration, chlorination/dechlorination, flow equalization, and emergency storage. Waste activated sludge is stabilized in facultative sludge lagoons and air dried to generate Class B biosolids. Biosolids from the secondary treatment process are land applied on property owned by the Discharger. Wastewater is discharged through a diffuser at Discharge Point D-001 to the Sacramento River, a water of the United States.
2. Section 301 of the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C, §1311) and the CWC section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a NPDES permit. The Regional Board, through delegated authority, may issue a Waste Discharge Requirement Order (WDR) to allow for the discharge of pollutants to surface waters. The WDRs serve as a NPDES Permit under the Federal Clean Water Act. From 5 September 2003 to 22 September 2010, the Discharger's POTW was regulated by Waste Discharge Requirements Order R5-2003-0130 (NPDES No. CA0079731), to regulate discharges of treated wastewater from the facility. On 23 September 2010, the Central Valley Water Board issued Waste Discharge Requirements Order R5-2010-0096 (NPDES No. CA0079731), to regulate discharges of treated wastewater from the facility. Both WDR Order R5-2003-0130 and WDR Order R5-2010-0096 apply to violations cited in this Complaint.

3. Order No. R5-2003-0130 includes, in part, the following effluent limitations:

B. Effluent Limitations

1. Effluent Limitations shall not exceed the following limits:

Parameter	Units	Effluent Limitation				
		Monthly Average	Weekly Average	Monthly Median	4-day Average	Daily Maximum
BOD ^a	mg/L	10	15			30
	lbs/day ^b	734	1,101			2,202
Total Suspended Solids	mg/L	10	15			30
	lbs/day ^b	734	1,101			2,202
Chlorine Residual	mg/L				0.01	0.02 ^c
Total Recoverable Copper	ug/L	12				17
Total Recoverable Zinc	lbs/day ^b	0.88				1.2
	ug/L	81				120
Bromodichloromethane	lbs/day ^b	5.9				8.8
	ug/L	21				42
Dibromochloromethane	lbs/day ^b	1.5				3.1
	ug/L	14				29
Tetrachloroethene	lbs/day ^b	1.0				2.1
	ug/L	30				59
Total Coliform Organisms	lbs/day ^b	2.2				4.3
	MPN/100 ml			23		500

- a 5-day, 20°C Biochemical Oxygen Demand (BOD)
- b Based upon a design treatment capacity of 8.8 mgd.
- c 1-hour average

2. The arithmetic mean of 20°C BOD (5-day) and total suspended solids in effluent samples collected over a monthly period shall not exceed 15 percent of the arithmetic mean of the values for influent samples collected at approximately the same times during the same period (85 percent removal).
3. The discharge shall not have a pH less than 6.0 nor greater than 9.0.
4. The average dry weather (July through September) discharge flow shall not exceed 8.8 MGD).
5. Survival of aquatic organisms in 96-hour bioassays of undiluted waste shall be no less than:

Minimum for one bioassay _____ 70%
 Median for any three consecutive bioassays _____ 90%.

4. Order No. R5-2010-0096 includes, in part, the following effluent limitations:

A. Effluent Limitations – Discharge Point No. 001

6. Final Effluent Limitations – Discharge Point No. 001

- a. The Discharger shall maintain compliance with the following effluent limitations at Discharge Point No. 001 with compliance measured at Monitoring Location EFF-001 as described in the attached MRP (Attachment E)

Table 6. Effluent Limitations – Discharge point No. 001

Parameter	Units	Effluent Limitation				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
<i>Conventional Pollutants</i>						
Biochemical Oxygen Demand, 5-day 20°C	mg/L	10	15	30		
	lbs/day ^a	734	1,101	2,202		
Total Suspended Solids	mg/L	10	15	30		
	lbs/day ^a	734	1,101	2,202		
pH	standard units				6.0	8.5
<i>Priority Pollutants</i>						
Copper, Total Recoverable	ug/L	17		26		
Chlorodibromomethane	ug/L	3.5		10.3		
Dichlorobormomethane	ug/L	12.2		29.3		
Zinc, Total Recoverable	ug/L	57		86		
<i>Non-Conventional Pollutants</i>						
Ammonia Nitrogen, Total (as N)	mg/L	0.7		2.15		

¹ Based upon a design flow of 8.8 mgd.

- b. **Percent Removal:** The average monthly percent removal of BOD₅ and TSS shall not be less than 85 percent.
- c. **Acute Whole Effluent Toxicity.** Survival of aquatic organisms in 96-hour bioassays of undiluted waste shall be no less than:
 - i. 70%, minimum for one bioassay; and
 - ii. 90%, median for any three consecutive bioassays.
- d. **Chronic Whole Effluent Toxicity.** There shall be no chronic whole effluent toxicity in the effluent.
- e. **Total Residual Chlorine.** Effluent total residual chlorine shall not exceed:
 - i. 0.011 mg/L, as a 4-day average;
 - ii. 0.019 mg/L, as a 1-hour average;

- f. **Total Coliform Organisms.** From the effective date of this Order and for three years thereafter, effluent total coliform organisms shall not exceed:
 - i. 23 most probable number (MPN) per 100 mL, as a monthly median; and
 - ii. 240 MPN/100mL, more than once in any 30-day period.
 - g. **Total Coliform Organisms.** Beginning on the first day of the fourth year following the effective date of this Order, and thereafter, effluent total coliform organisms shall not exceed:
 - i. 23 most probable number (MPN) per 100 mL, as a 7-day median; and
 - ii. 240 MPN/100mL, more than once in any 30-day period.
 - h. **Average Daily Discharge Flow.** The average dry weather flow shall not exceed 8.8 mgd.
 - i. **Aluminum, Total Recoverable.** For a calendar year, the annual average effluent limitation shall not exceed 200 ug/L.
5. Furthermore, all NPDES permits must specify requirements for recording and reporting monitoring results. (40 C.F.R. § 122.48). CWC section 13383 authorizes the Regional Water Board to establish monitoring and reporting requirements. The WDRs require the Discharger to implement a discharge monitoring program and to prepare and submit timely monthly and annual NPDES self-monitoring reports to the Regional Water Board, which are designed to ensure compliance with effluent limitations contained in the WDRs.

STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED

- 6. An administrative civil liability may be imposed pursuant to the procedures described in CWC section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
- 7. Pursuant to CWC section 13385(a), any person who violates CWC section 13376, any waste discharge requirements issued pursuant to Chapter 5.5 of the Porter-Cologne Water Quality Control Act (Compliance with the Provisions of the Clean Water Act), any requirements established pursuant to CWC section 13383, or any requirements of section 301 of the Clean Water Act is subject to administrative civil liability pursuant to CWC section 13385(c).

8. CWC section 13385(c), provides for the imposition of civil liability by the Regional Water Board 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; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is 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.
9. CWC sections 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.

ALLEGED EFFLUENT LIMITATION VIOLATIONS

Effluent Limitation Violations, Mandatory Minimum Penalties

10. Between 17 December 2009 and 2 April 2011 the Discharger exceeded effluent limits and reported six serious violations for residual chlorine and total suspended solids (TSS) and four non-serious violations for biological oxygen demand (BOD₅) and TSS. A summary of these violations can be found in Appendix A.

11. On 17 December 2009, between 0900 and 1000 hours, the 1-hour average chlorine residual concentration at EFF-001 was calculated to be 0.025 mg/L or 25 percent greater than the allowed 1-hour average chlorine residual effluent limitation of 0.02 mg/L. This serious violation is subject to mandatory minimum penalties under CWC section 13385(h)(1).
12. On 17 December 2009, between 1000 and 1100 hours, the 1-hour average chlorine residual concentration at EFF-001 was calculated to be 0.05 mg/L or 150 percent greater than the allowed 1-hour average chlorine residual effluent limitation of 0.02 mg/L. This serious violation is subject to mandatory minimum penalties under CWC section 13385(h)(1).
13. On 17 December 2009, between 1100 and 1200 hours, the 1-hour average chlorine residual concentration at EFF-001 was calculated to be 0.043 mg/L or 115 percent greater than the allowed 1-hour average chlorine residual effluent limitation of 0.02 mg/L. This serious violation is subject to mandatory minimum penalties under CWC section 13385(h)(1).
14. On 25 March 2011, between 0000 and 0100 hours, the 1-hour average chlorine residual concentration at EFF-001 was calculated to be 0.04 mg/L. This serious violation is subject to mandatory minimum penalties; however, given the potential for harm from this violation the Central Valley Water Board has elected to issue a discretionary penalty for this violation, detailed below.
15. On 25 March 2011, between 0100 and 0200 hours, the 1-hour average chlorine residual concentration at EFF-001 was calculated to be 0.07 mg/L. This serious violation is subject to mandatory minimum penalties; however, given the potential for harm from this violation the Central Valley Water Board has elected to issue a discretionary penalty for this violation, detailed below.
16. On 27 March 2011, the daily maximum total settleable solids concentration at EFF-001 was measured at 46.3 mg/L or 54.3 percent greater than the allowed maximum daily maximum total settleable solids effluent limitation of 30 mg/L. This serious violation is subject to mandatory minimum penalties under CWC section 13385(h)(1).
17. On 27 March 2011, the daily maximum BOD-5 concentration at EFF-001 was measured at 36.4 mg/L or 21.3 percent greater than the allowed daily maximum BOD-5 effluent limitation of 30 mg/L. This non-serious violation is subject to mandatory penalties under CWC section 13385(i)(1) because the violation was preceded by three or more effluent limitation violations within a six-month period.
18. On 31 March 2011, the daily maximum total settleable solids concentration at EFF-001 was measured at 38.5 mg/L or 28.3 percent greater than the allowed maximum daily maximum total settleable solids effluent limitation of 30 mg/L. This non-serious violation is subject to mandatory penalties under CWC section 13385(i)(1) because the violation was preceded by three or more effluent limitation violations within a six-month period.

19. On 2 April 2011, the weekly average BOD₅ concentration at EFF-001 was measured at 15.5 mg/L or 3.3 percent greater than the allowed weekly average BOD-5 effluent limitation of 15 mg/L. This non-serious violation is subject to mandatory penalties under CWC section 13385(i)(1) because the violation was preceded by three or more effluent limitation violations within a six-month period.
20. On 2 April 2011, the weekly average total settleable solids concentration at EFF-001 was measured at 19.5 mg/L or 30 percent greater than the allowed weekly average total settleable solids effluent limitation of 15 mg/L. This non-serious violation is subject to mandatory penalties under CWC section 13385(i)(1) because the violation was preceded by three or more effluent limitation violations within a six-month period.

Effluent Limit Violations, Discretionary Penalties

21. On 25 March 2011, between 0000 and 0100 hours, the 1-hour average chlorine residual concentration at EFF-001 was calculated to be 0.04 mg/L or 110.5 percent greater than the 1-hour average chlorine residual effluent limitation of 0.019 mg/L. In addition, a maximum concentration of 0.32 mg/l or 1,584 percent greater than the allowed 1-hour average chlorine residual effluent limitation of 0.019 mg/L was measured at EFF-001.
22. On 25 March 2011, between 0100 and 0200 hours, the 1-hour average chlorine residual concentration at EFF-001 was calculated to be 0.07 mg/L or 268 percent greater than the 1-hour average chlorine residual effluent limitation of 0.019 mg/L. In addition, a maximum concentration of 0.21 mg/L or 1,005 percent greater than the allowed 1-hour average chlorine residual effluent limitation of 0.019 mg/L was measured at EFF-001.
23. Excess chlorine is a pollutant parameter that is exceptionally harmful to the environment. The two violations cited exceeded the 1-hour average chlorine residual effluent limitation in WDR Order R5-2010-0096 by more than 100 percent. The gravity of these violations posed a serious threat to water quality and aquatic life in the Sacramento River. The Central Valley Water Board staff has determined that discretionary penalties based on the volume of discharge from the hours of 0000 to 0200 are appropriate for these two violations.
24. The discharge volume on 25 March 2011 from the hours of 0000 to 0200 was determined by multiplying the 1-minute average discharge flow (3,348.44 gallons per minute (gpm) during the exceedance) by the exceedance time (actual discharge time above chlorine residual effluent limitation of 0.019 mg/L) of 55 minutes. Total volume equals 3,348.44 gpm multiplied by 55 minutes for a total discharge of 184,164 gallons.

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

25. Pursuant to CWC section 13385, subdivision (e), in determining the amount of any civil liability imposed under CWC section 13385(c), the Central Valley Water Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, 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 violations, and other matters that justice may require. CWC section 13385, subdivision (e) also requires that at a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation(s).

26. On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in CWC section 13385(e). The entire Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

The administrative civil liability was derived from the use of the penalty methodology in the Policy. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require. The required factors have been considered for the prohibited discharge violations using the methodology in the Enforcement Policy, as explained in detail in Attachment B.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

27. Pursuant to CWC section 13385, subsections (h) and (i), the Central Valley Water Board is required to assess a mandatory minimum penalty in the amount of twenty four thousand dollars (\$24,000) for violations of the WDRs Order No. R5-2003-0130 and WDRs Order No. R5-2010-0096 incurred by exceeding the effluent limitations, as shown in Attachment A.
28. The maximum penalty for the chlorine residual effluent limitation violation described above is \$1,856,640 based on a calculation of the total number of gallons discharged times the statutory maximum, plus the total number of per-day violations times the statutory maximum penalty (183,164 gallons at \$10/gallon plus 1 day at \$10,000/day). However, based on consideration of the factors in Finding 23 and after applying the penalty methodology, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **\$200,000** for the violations of CWC section 13385. The specific factors considered in this penalty are detailed in Attachment B.
29. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)

30. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
31. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a)(2).

THE CITY OF REDDING CLEAR CREEK WASTEWATER TREATMENT PLANT IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed a penalty in the amount of **two hundred thousand dollars (\$200,000)**.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled **on 12/13/14 October 2011**, unless the Discharger does one of the following by **1 August 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 **two hundred thousand dollars (\$200,000)**;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.
 - a. 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.

ROBERT A. CRANDALL
Assistant Executive Officer

(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 City of Redding, Clear Creek Wastewater Treatment Plant (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2011-0587 (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 **two hundred thousand dollars (\$200,000)** by check that references "ACL Complaint R5-2011-0587" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **3 August 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)