

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BASIN REGION**

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R7-2008-0025  
AND MANDATORY MINIMUM PENALTY  
IN THE MATTER OF  
SEELEY COUNTY WATER DISTRICT, OWNER/OPERATOR  
SEELEY, IMPERIAL COUNTY

This complaint is issued to Seeley County Water District, based on a finding of violations of Waste Discharge Requirements (WDRs) Order No. R7-2002-0126 (NPDES Permit No. CA0105023) pursuant to California Water Code (CWC) Section 13385, which authorizes the imposition of Administrative Civil Liability (ACL); Section 13323, which authorizes the Executive Officer of the Colorado River Basin Regional Water Quality Control Board (Regional Board) to issue this Complaint; and Section 7, which authorizes the Executive Officer to delegate these powers and duties to the Assistant Executive Officer.

**General Findings**

The Assistant Executive Officer of the Regional Board finds the following:

1. The Seeley County Water District (hereafter the Discharger) owns and operates a municipal wastewater treatment plant (WWTP) and corresponding collection and disposal systems, located at 1989 West Main Street, Seeley, CA 92273. The treatment system consists of a lift station, a drum screen, a bar screen, a "Clemson" aerated pond system with surface aerators, pressure sand filters, and an ultraviolet (UV) disinfection system.
2. The Discharger's WWTP is a publicly owned treatment works (POTW), and provides sewerage service to the town of Seeley. Wastewater is discharged from the Discharging Point 001 of the plant to the New River, a water of the United States, tributary to the Salton Sea, and within the Salton Sea Transboundary watershed.
3. CWC Section 13323(b) provides that the Regional Board shall conduct a hearing within 90 days after issuance of an administrative civil liability complaint (ACL). It provides further that the party served with the complaint may waive the right to a hearing.
4. CWC Section 13385(a) states, in part, that:

"Any person who violates any of the following shall be liable civilly in accordance with this section:...(4) Any order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5,..."

5. CWC Section 13385(c) states that:

"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.”

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

7. CWC Section 13385 (h) (2) states, in part, the following:

“For the purpose of this section, a ‘serious violation’ means any waste discharge that violates the effluent limitations ... 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.”

8. CWC Section 13385(i) (1) requires the Regional Board to assess MMP 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:

- 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; or
- d. Violates a toxicity effluent limitation contained in the applicable WDRs where the WDRs do not contain pollutant specific effluent limitations for toxic pollutants.

9. CWC Section 13385(i) (2) states that:

“For the purposes of this section a ‘period of six consecutive months’ means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.”

10. CWC Section 13385(k) states:

“In lieu of assessing all or a portion of the MMP pursuant to subdivisions (h) and (i) against a POTW serving a small community, as defined by subdivision (b) of Section 79084, the State Board or the Regional Board may elect to require the POTW to spend an equivalent amount toward the completion of a compliance project (CP) proposed by the POTW, if the State or Regional Board finds all of the following:

- (1) The CP is designed to correct the violations within five years.
- (2) The CP is in accordance with the enforcement policy of the State Board.
- (3) The POTW has demonstrated that it has sufficient funding to complete the CP.”

11. On February 19, 2002, the State Water Resources Control Board adopted Resolution No. 2002-0040 amending the Water Quality Enforcement Policy (Policy). The Policy was approved by the Office of Administrative Law and became effective on July 30, 2002. In accordance with Section X of the Policy, among other requirements, CPs proposed by the POTW must be designed to correct the violations in five years and also comply with the general conditions specified for CPs in the Policy.

**Violations of WDR Board Order No. R7-2002-0126**

12. On June 26, 2002, the Regional Board adopted WDR Order No. R7-2002-0126 (NPDES Permit No. CA0105023), for Seeley County Water District, to regulate discharges of waste from the WWTP.

13. WDR Board Order No. R7-2002-0126 contains the following effluent discharge limitations:

a. Effluent Limitation A.1.

Representative samples of wastewater discharged to the New River shall not contain constituent in excess of the limits indicated below:

30-Day Arithmetic Mean Discharge Rate for BOD<sub>5</sub> is 45 mg/L.

7-Day Arithmetic Mean Discharge Rate for BOD<sub>5</sub> is 65 mg/L.

b. Effluent Limitation A.3.

“The hydrogen ion (pH) of the effluent shall be maintained within the limits of 6.0 to 9.0”

c. Effluent Limitation A.4.

“Beginning on June 30, 2003, unless otherwise approve by the Regional Board’s Executive Officer, wastewater discharged to the New River shall not have a geometric mean *Escherichia coli* (E. coli) concentration in excess of 126 Most Probable Number (MPN) per 100 milliliters [based on a minimum of not less than five (5) samples for any 30-day period] nor shall any sample exceed 400 MPN per 100 milliliters. The compliance point for this effluent limitation shall be at location acceptable to the Regional Board’s Executive Officer or his designee.”

14. Provision E.5 of WDR Board Order No. R7-2002-0126 states the following:

“The Discharger shall comply with Monitoring and Reporting Program (MRP) No. R7-2002-0126, and future revision thereto, as specified by the Regional Board’s Executive Officer.”

15. MRP No. R7-2002-0126 includes, in relevant part, the following effluent monitoring requirements for E. coli:

<b>Constituent</b>	<b>Unit</b>	<b>Type of Sample</b>	<b>Sampling Frequency</b>	<b>Reporting Frequency</b>
<i>Escherichia coli</i> (E. coli)	MNP/100 ml	Grab	Five Samples per Month <sup>1</sup>	Monthly

<sup>1</sup> Five Samples equally spaced over 30-day period with a minimum of one sample per week

16. MRP No. R7-2002-0126 specifies that the Discharger submit quarterly sampling results of receiving waters.
17. On May 7, 2003, the Regional Board Executive Officer issued ACLC No. R7-2003-0024 proposing that the Discharger pays \$27,000 for violations from April 10, 2001 to June 30, 2002. On May 29, 2003, the Discharger proposed the implementation of a CP by using the grant money of \$44,000 and a loan amount of 633,300 from US Department of Agriculture Agency (USDA). Ultimately, the CP was approved on June 30, 2003 with a secured funding amount of \$719,000 from USDA.
18. On February 2, 2004, the Regional Board Executive Officer issued ACLC No. R7-2004-0027 proposing that the Discharger pays \$27,000 for violations from April 10, 2001 to June 30, 2002. This ACLC superseded ACLC No. R7-2003-0024. The said ACLC was finalized in ACL Order No. R7-2004-0023 adopted on March 30, 2004. The CP phases included the construction of a new WWTP to be completed by December 31, 2006.
19. On January 10, 2005, ACLC No. R7-2005-0013 was drafted for BOD and pH violations of Board Order R7-2002-0126 from January 6, 2004 to June 30, 2004. The ACL amount was assessed at \$27,000. The draft was sent to the Discharger on request.
20. On February 17, 2005, the Discharger requested that the entire assessed liability amount be waived due to financial hardship.
21. On February 23, 2005, Regional Board responded to the Discharger's request that a waiver due to financial hardship cannot be granted. ACLC-MMP provisions are required by CWC Section 13385(h) and (i) for specific violations of NPDES permits. Upon receiving an ACLC-MMP the Discharger(s) may waive its rights to a public hearing and pay the liability or appear at the Regional Board meeting to dispute the Complaint. There are no other provisions to authorize the Regional Board to waive the penalties. Exceptions to the imposition of the MMPs are provided for NPDES permit violations that are caused by act of war, by grave natural disasters or by intentional set of a third party (CWC Section 13385(j)).
22. In a letter on March 18, 2005, the Discharger proposed to use its investment funds for the CP. Without settling the ACLC the Discharger went ahead on its own to implement the proposal to install an Ultraviolet (UV) system, rather than an emergency stand-by generator as required to be completed by the ACL Order No. R7-2004-0023. Based on the foregoing, the violations and their corresponding MMP addressed by ACL Complaint No. R7-2005-0013 remains outstanding.
23. Further, subsequent self-monitoring reports submitted by the Discharger for the period covering from July 1 to 31, 2004 show that Discharger violated the effluent limitations of BOD cited in No. 13, above, which also subject the Discharger to MMP liability and remain outstanding.
24. From January 2003 to June 2005, the Discharger submitted quarterly reports of receiving waters either late or incomplete. Notices of Noncompliance were sent on 5/29/2003, 6/6/2003, 8/11/2004, 9/7/2004, and 3/23/2005. These MRP violations are not subject to a MMP and will therefore not be included in Attachment "A"; however, the maximum liability available to the Regional Board per CWC 13385(c) for the incomplete reporting violation is \$10,000 per day.

25. This Complaint addresses all of the outstanding MMP violations. Attachment "A," which is made part of this ACLC by reference, contains a summary of the violations of Board Order R7-2002-0126 that are outstanding and are addressed in this Complaint.
26. The total amount of the MMP for the violations of Board Order No. R7-2002-0126 specified in Finding No.13, above, is forty-eight thousand dollars (\$48,000). The Board has not assessed the required MMP liability for those violations. Therefore, this complaint addresses those violations.

**Violation of Cease and Desist Order (CDO) No. R7-2003-0072**

27. On September 3, 2003, the Regional Board adopted Cease and Desist Order (CDO) No. R7-2003-0072, requiring the Discharger to complete construction of a new WWTP to correct the violations of Board Order No. R7-2002-0126 in accordance with a series of tasks and time schedule. CDO No. R7-2003-0072 provides in substantive relevant part for the Discharger to comply with the as following:

Milestone	Milestone Description	Milestone Submittal	Completion Date
1.	Complete Final Design of New Wastewater Treatment Plant	Submit a Copy of Final Design Drawings to the Regional Board	May 1, 2004
2	Complete the Pollution Prevention Plan	Submit a Copy of the Pollution Prevention Plan to the Regional Board	December 1, 2004
3	Complete Construction of the Wastewater Treatment Plant	Submit Summary and Verification of Construction Completion	December 1, 2005 (Actual: 3/30/2005)
4	Disinfection System shall be Functional and in Compliance with Effluent Limitation No. A.4 of Board Order No. R7-2002-0126	Submit a Summary and Verification of Compliance with Effluent Limitation No. A.4 of Board Order No. R7-2002-0126	January 1, 2006 (Actual: 5/15/2007)

28. CDO No. R7-2003-0072 also states on Page 5 that:

"If in the opinion of the Regional Board's Executive Officer, the Discharger fails to comply with this Order, the Regional Board's Executive Officer may issue a complaint against the Discharger under Article 2.5 Chapter 5, Division 7 of the California Water Code, and seek the appropriate administrative civil liability and/or request the Attorney General to take appropriate actions against the Discharger including injunction and civil monetary liability as deemed appropriate."

29. The Discharger completed the construction of the WWTP (Milestone No. 3) on March 30, 2005, eight months early than the required completion date (December 1, 2005), but failed to submit verification of compliance with Effluent Limitation No. A.4 of Board Order No. R7-2002-0126 (Milestone Submittal No. 4), by the deadline imposed by the CDO. Each day the milestone was late constitutes a daily violation of the CDO No. R7-2003-0072.

30. Pursuant to CWC Section 13385(c), the maximum liability available for the Regional Board for assessment for Milestone report 4 that was submitted 500 days late by the Discharger is \$5,000,000 (500 days x \$10,000 per day). This Complaint addresses the CDO violations.

## **SUMMARY**

31. The Regional Board has the option of assessing liability to the Discharger using the MMPs pursuant to CWC Section 13385(h) and (i) for violations of the NPDES permit, or it may consider a wider array of factors pursuant to CWC Section 13385(c) for violations of the both the NPDES permit and the 2003 CDO.
32. The minimum liability the Regional Board must assess against the Discharger for each chronic violation of Board Order No. R7-2002-0126 shown in Attachment "A", which is made a part of this ACL Complaint by reference, is forty-eight thousand dollars (\$48,000).
33. CWC Section 13327 states:

"In determining the amount of civil liability, the regional board, and the state board upon review of any order pursuant to Section 13320, shall take into consideration the nature, circumstance, 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 ability to continue in 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 as justice may require."
34. Issuance of this Complaint is exempt from the provision of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000, et seq.), in accordance with Section 15321(a)(2), Title 14, California Code of Regulations.

## **SEELEY COUNTY WATER DISTRICT IS HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Regional Board proposes that the Discharger be assessed an ACL (MMP) in the amount of \$63,000, which consists of an MMP of \$48,000, \$5,000 for violation of the CDO and the self-monitoring and reporting program, and staff costs of \$10,000 (80 hours x \$125 per hour). The amount of liability proposed is based upon a review of the factors cited in Finding No. 32 above, and the Enforcement Policy.
2. The Regional Board will hold a public hearing on this matter within 90 days of the date of this complaint, unless the Discharger chooses either of the following options:
  - a. Waives the right to a hearing and pays the proposed civil liability of \$63,000 in full; or
  - b. Waives the 90 day hearing requirement, but will not pay \$63,000 at the current time until the Discharger submits a settlement proposal within 30 days of the date of this complaint that includes an agreement to implement a CP designed to correct the violations in five (5) years in lieu of a portion or the entire amount of the assessed liability.
3. If a hearing on this matter is held, the Regional Board will consider whether to affirm, reject, or modify the ACL, including the MMP, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

4. If the Discharger chooses Option 2.a., above, an authorized representative must sign the attached Waiver and return it along with the bottom portion of the ACL Complaint Invoice form and a check for the full amount of the proposed liability, made and payable to the "State Water Pollution Cleanup and Abatement Account" within thirty (30) days of the date of this complaint. Payment will be deemed settlement of this complaint, but the settlement shall not become final until 30 days from the date of the Public Notice No. 7-08-07 to allow interested persons to comment on this action. The waiver and payment must be mailed to:

California Regional Water Quality Control Board  
Colorado River Basin Region  
Attn.: Hilda Vasquez  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260

5. If the Discharger chooses Option 2.b., above, the Discharger shall not be obligated to pay any portion of the proposed ACL until the settlement becomes final. The settlement shall not become final until 30 days from the date of Public Notice No. 7-08-07 to allow interested persons to comment on this action. In order for Regional Board staff to have time to fully evaluate any settlement proposal, it will be necessary for the settlement proposal to be accompanied by a statement that the Discharger is waiving its right to have a hearing conducted within 90 days of the date of the complaint. Payment of any proposed ACL not suspended by the CP shall be handled in accordance with the procedures described in Paragraph 4 above.

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JOSE ANGEL, Assistant Executive Officer

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Date