

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R7-2015-0038
IN THE MATTER OF
PETER M. ORMOND, OWNER
DATE GARDENS MOBILE HOME PARK, WWTP
EL CENTRO – IMPERIAL COUNTY

PETER M. ORMOND, IS HEREBY GIVEN NOTICE THAT:

1. Peter M. Ormond (Discharger) is alleged to have violated effluent limitations and monitoring and reporting requirements of Waste Discharge Requirements (WDRs) Orders R7-2003-0054, R7-2008-0010, and R7-2013-0009 (NPDES No. CA0104841) for which the Regional Water Quality Control Board, Colorado River Basin (Regional Water Board or Board) may impose civil liability pursuant to California Water Code section 13385.
2. Water Code section 13323 authorizes the Executive Officer of the Regional Water Board to issue this Administrative Civil Liability Complaint (Complaint); and Water Code section 7 authorizes the Executive Officer to delegate these powers and duties to the Assistant Executive Officer. The Executive Officer of this Regional Water Board has delegated the issuance of complaints to the Assistant Executive Officer.
3. Peter M. Ormond owns the Date Gardens Mobile Home Park (MHP) Wastewater Treatment Plant (hereinafter WWTP) located at 1020 West Even Hewes Highway, El Centro in Imperial County. The treatment system consists of two activated sludge treatment plants operated in parallel. One of the package plants has a design capacity of 0.005 MGD (Unit 1) and the other plant has a design capacity of 0.015 MGD (Unit 2). Wastewater exits the activated sludge treatment basin(s) through a pipe into a circular clarifier. Clarifier effluent, e.g. overflow, is then directed through two dual media filters, and then through an ultraviolet (UV) disinfection system prior to being directed through a final effluent channel and weir box. Wastewater is discharged from Discharge Point 001 to Rice Drain No. 3, an Imperial Valley Drain, a water of the United States. Rice Drain No. 3 flows for a distance of approximately 7 miles before entering the New River at a point approximately 30 miles to the Salton Sea.
4. The Regional Water Board adopted WDRs Order R7-2003-0054 on May 7, 2003. The purpose of this order is to regulate discharges of wastewater from the WWTP. This Order includes effluent limitations, receiving water limitations, specifications, and provisions necessary to protect the beneficial uses of surface and ground waters within the Colorado River Basin Region.
5. WDRs Order R7-2003-0054 section A (page 4) contains, in part, the following effluent limitations with which the Discharger is required to maintain compliance at Rice Drain No. 3:

Constituent	Units	Effluent Limitations	
		30-Day Arithmetic Mean Discharge Rate*	7-Day Arithmetic Mean Discharge Rate**
Biochemical Oxygen Demand 5-day @ 20°C (BOD)	mg/L	30	45
	lbs/day	5.3	7.9
Total Suspended Solids (TSS)	mg/L	30	45
	lbs/day	5.3	7.9
Total Dissolved Solids (TDS)	mg/L	2,000	2,500

* 30-Day Mean = the arithmetic mean of pollutant parameter values of samples collected in a calendar month as specified in the Monitoring and Reporting Program.

** 7-Day Mean = The arithmetic mean of pollutant parameter values of samples collected in a calendar week (Sunday through Saturday) as specified in the Monitoring and Reporting Program.

- a. The 30-day monthly average percent removal of the pollutant parameters BOD and suspended solids shall not be less than 85 percent.
 - b. The hydrogen ion (pH) of the effluent shall be maintained within the limits of 6.0 to 9.0.
 - c. Beginning on June 30, 2003, unless otherwise approved by the Regional Board's Executive Officer, wastewater effluent discharged to the Rice Drain No. 3 shall not have a geometric mean *Escherichia coli* (E. Coli) concentration in excess of 126 Most Potable 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 a location acceptable to the Regional Board's Executive Officer or his designee.
 - d. There shall be no acute or chronic toxicity in the treatment plant effluent nor shall the treatment plant effluent cause any acute or chronic toxicity in the receiving water. All waters shall be maintained free of toxic substances in concentration which are toxic to, or which produce detrimental physiological responses in human, plant, animal, or indigenous aquatic life. Compliance with the objective will be determined by use of indicator organisms, analyses of species diversity, population density, growth anomalies, or bioassays of appropriate duration or other appropriate methods specified by the Regional Board.
6. WDRs Order R7-2003-0054 section B.1 (page 6) contains receiving water limitations based on water quality objectives contained in the Colorado River Basin Water Quality Control Plan (Basin Plan) with which the Discharger is required to maintain compliance at Rice Drain No. 3.

7. WDRs Order R7-2003-0054 section D.1 (page 7) states, "[t]he permitted effluent discharge flow shall not exceed 0.021 MGD (30-day monthly average daily dry weather discharge)."
8. WDRs Order R7-2003-0054 section D.5 (page 7) requires bioassays to be performed to evaluate the toxicity of the discharged wastewater in accordance with the procedures set forth in section D.5.a (page 8). This bioassay test must be performed as specified in the Monitoring and Reporting Program.
9. WDRs Order R7-2003-0054 sections D.6 to D.10 (pages 8-9) contain chronic and acute toxicity tests with which the Discharger must comply.
10. WDRs Order R7-2003-0054 section E.2 (page 9) states:

The discharger shall comply with all conditions of this Board Order. Noncompliance constitutes a violation of the Federal Clean Water Act and Porter-Cologne Water Quality Control Act, and is grounds for enforcement action; for Permit termination, revocation and reissuance, or modification of WDRs; or denial of a Permit renewal application.

11. WDRs Order R7-2003-0054 section E.5 (page 10) states, "[t]he discharger shall comply with Monitoring and Reporting Program No. R7-2003-0054 and future revisions thereto, as specified by the Regional Board's Executive Officer."
12. Monitoring and Reporting Program No. R7-2003-0054 (2003 MRP) contains, in part, monitoring requirements for the following discharges:

Constituent	Unit	Type of Sample	Sampling Frequency	Reporting Frequency
Daily Effluent Discharge	MGD	Average Daily*	Daily	Monthly
Suspended Solids	mg/L	24-Hr. Composite	Monthly	Monthly
Biochemical Oxygen Demand	mg/L	24-Hr. Composite	Monthly	Monthly
E. Coli	MPN/100 ml	Grab	Five Samples Per Month**	Monthly
Total Dissolved Solids	mg/L	Grab	Quarterly	Quarterly

* Reported for each day with average monthly flow calculated

** Five samples equally spaced over a 30-day period with a minimum of one sample per week

13. The 2003 MRP contains receiving water monitoring requirements at two locations (page 2). The Discharger must collect samples of and submit quarterly reports on Dissolved Oxygen, pH, Chlorine Residual, and E. Coli in the following manner:

All receiving water samples shall be grab samples. Sampling stations shall be as follows:

<u>Station</u>	<u>Description</u>
R-1	Not to exceed 100 feet upstream from the point of discharge. A greater distance may be acceptable provided the discharger submits proper justification that the prescribed distance is inaccessible.
R-2	Not to exceed 25 feet downstream of the discharge pipe outlet.

"In conducting the receiving water sampling, a log shall be kept of the receiving water conditions at stations R-1 and R-2 . . . Notes on receiving water conditions shall be summarized in the monitoring report." (2003 MRP, page 3.)

14. The 2003 MRP contains effluent toxicity testing requirements. The discharger shall test and report the results of acute and chronic toxicity, Toxicity Reduction Evaluations (TRE) and Toxicity Identification Evaluations (TIE) as required in the 2003 MRP section entitled, "Effluent Toxicity Testing" (pages 5-6).
15. The Regional Water Board rescinded WDRs Order R7-2003-0054 and adopted WDRs Order R7-2008-0010 on June 25, 2008.
16. WDRs Order R7-2008-0010 section IV.A.1 (page 13) contains the following final effluent limitations with which the Discharger is required to maintain compliance at Discharge Point 001 as described in the Monitoring and Reporting Program, Attachment E of the WDRs Order R7-2008-0010 (2008 MRP):

Parameter	Units	Effluent				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Daily Effluent Flow	MGD	0.02	-	-	-	-
Biochemical Oxygen Demand 5-day @ 20°C	mg/L	30	45	-	-	-
	lbs/day ¹	5.0	7.5	-	-	-
Total Suspended Solids	mg/L	30	45	-	-	-
	lbs/day ¹	5.0	7.5	-	-	-
pH	standard units	-	-	-	6.0	9.0

¹ The mass-based effluent limitations are based on a design capacity of 0.02 MGD (Million Gallon per Day).

- a. **Percent Removal:** The average monthly percent removal of BOD 5-Day 20°C and total suspended solids shall not be less than 85 percent.
- b. **Toxicity:** There shall be no acute or chronic toxicity in the treatment plant effluent nor shall the treatment plant effluent cause any acute or chronic toxicity in the receiving water, as defined in Section V.E of the MRP. All waters shall be maintained free of toxic

substances in concentrations which are toxic to, or which produce detrimental physiological responses in human, plant, animal, or indigenous aquatic life. Compliance with this objective will be determined by use of indicator organisms, analyses of species diversity, population density, growth anomalies, or bioassays of appropriate duration or other appropriate methods specified by the Regional Water Board.

c. **Bacteria:** The bacterial density in the wastewater effluent discharged to Rice Drain No. 3 shall not exceed the following values, as measured by the following bacterial indicators:

- i. **E. Coli.** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a Most Probable Number (MPN) of 126, nor shall any sample exceed the maximum allowable bacterial density of 400.
- ii. **Enterococci.** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a MPN of 33, nor shall any sample exceed the maximum allowable bacterial density of 100.
- iii. **Fecal Coliform.** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a MPN of 200, nor shall more than ten percent of the total samples during any 30-day period exceed 400 MPN per 100 milliliters.

d. **Total Dissolved Solids:** Discharges of wastes or wastewater shall not increase the total dissolved solids content of receiving waters, unless it can be demonstrated to the satisfaction of the Regional Water Board that such an increase in total dissolved solids does not adversely affect beneficial uses of receiving waters.

17. WDRs Order R7-2008-0010 section V (page 15) contains receiving water limitations based on water quality objectives contained in the Basin Plan with which the Discharger must comply.

18. WDRs Order No. R7-2008-0010 section VI.B (page 18) requires the Discharger to comply with the 2008 MRP, and future revisions thereto.

19. WDRs Order No. R7-2008-0010 section VII.A (page 27) states:

Compliance with effluent limitations for priority pollutants shall be determined using sample reporting protocols defined in the [2008 MRP] and Attachment A and Attachment H of this Board Order. For purposes of reporting and administrative enforcement by the Regional and State Water Boards, the Discharger shall be deemed out of compliance with effluent limitations if the concentration of the priority pollutant in the monitoring sample is greater than the effluent limitation and greater than or equal to the reporting level (RL).

20. Attachment D of WDRs Order R7-2008-0010 (Standard Provisions), section I.A (page D-1) states:

The Discharger must comply with all of the conditions of this Board Order. Any noncompliance constitutes a violation of the Clean Water Act and the California Water Code and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. (40 C.F.R. § 122.41(a).)

21. Standard Provisions section VI.A (page D-8) states, “[t]he Regional Water Board is authorized to enforce the terms of this permit under several provisions of the Water Code, including, but not limited to, sections 13385, 13386, and 13387.”
22. Standard Provisions section V.C.1 (page D-7) requires the Discharger to report monitoring results at the intervals specified in the 2008 MRP as required by the Code of Federal Regulations (40 C.F.R. § 122.22(l)(4).)
23. 2008 MRP section X.A (page E-13) requires, in part, the following general monitoring and reporting requirements:
 - a. The Discharger shall comply with all Standard Provisions in Attachment D related to monitoring, reporting, and recordkeeping.
 - b. The Discharger shall report the results of acute and chronic toxicity testing, TRE, and TIE as required in Section V, “Whole Effluent Toxicity Testing Requirements.”
24. 2008 MRP section IV (page E-4) contains the following effluent monitoring requirements for effluent discharged at Monitoring Location EFF-001 (Discharge Point 001), as follows:

Table E-3. Effluent Monitoring

Parameter	Units	Sample Type	Minimum Sampling Frequency	Required Analytical Test Method	Minimum Levels, units
Daily Effluent Discharge	MGD ¹	Flow Meter Reading	1x/Day ²	See Footnote 3	N/A
Escherichia Coli	MPN ¹ /100 ml	Grab	5x/Month ⁵	See Footnote 3	N/A
Enterococci	MPN/100 ml	Grab	5x/Month ⁵	See Footnote 3	N/A
Fecal Coliform	MPN/100 ml	Grab	5x/Month ⁵	See Footnote 3	N/A
Total Suspended Solids (TSS)	mg/L	24-Hour Composite ⁶	1x/Month	See Footnote 3	N/A
	lbs/day				
Biochemical Oxygen Demand (BOD) (5-day @ 20 Deg. C)	mg/L	24-Hour Composite ⁶	1x/Month	See Footnote 3	N/A
	lbs/day				
pH	pH units	Grab	1x/Month	See Footnote 3	N/A
Total Dissolved Solids	mg/L	Grab	1x/Month	See Footnote 3	N/A
Priority Pollutants ⁶	µg/L	Grab	1x/Year	See Footnote 3	See Footnote 3

1 MGD = Million Gallons per Day
 2 Reported for each day with average monthly flow calculated

- 3 Pollutants shall be analyzed using the analytical methods described in 40 CFR Part 136; for priority pollutants the methods must meet the lowest minimum levels (MLs) specified in Attachment 4 of the SIP, included as Attachment H. Where no methods are specified for a given pollutant, the methods must be approved by this Regional Water Board or the State Water Board
- 4 MPN = Most Probable Number
- 5 Five samples equally spaced over a 30-day period with a minimum of one sample per week
- 6 Priority Pollutants as defined by the California Taxies Rule (CTR) defined in Finding II.I of the Limitations and Discharge Requirements of this Board Order, and included as Attachment G. For priority pollutants the methods must meet the lowest minimum levels (MLs) specified in Attachment 4 of the SIP. Where no methods are specified for a given pollutant, the methods must be approved by this Regional Water Board or the State Water Board.

25. 2008 MRP section VIII (page E-10) contains receiving water monitoring requirements at two locations with which the Discharger must comply. In conducting the receiving water sampling, a log must be kept of the receiving water conditions at the two locations. Notes on receiving water conditions must be summarized in the monitoring report.

26. 2008 MRP section X.B.1 (page E-13) states, in part, the following requirements for self-monitoring reports (SMRs):

- a. At any time during the term of this permit, the State or Regional Water Board may notify the Discharger to electronically submit SMRs using the State Water Board's California Integrated Water Quality System (CIWQS) Program Web site (<http://www.waterboards.ca.gov/ciwqs/index.html>). Until such notification is given, the Discharger shall submit hard copy SMRs. The CIWQS Web site will provide additional directions for SMR submittal in the event there will be service interruption for electronic submittal.
- b. The Discharger shall report in the SMR the results for all monitoring specified in this MRP under sections III through IX. The Discharger shall submit monthly, quarterly and annual SMRs including the results of all required monitoring using USEPA-approved test methods or other test methods specified in this Board Order. If the Discharger monitors any pollutant more frequently than required by this Board Order, the results of this monitoring shall be included in the calculations and reporting of the data submitted in the SMR.
- c. Monitoring periods and reporting for all required monitoring shall be completed according to the following schedule:

Table E-9. Monitoring Periods and Reporting Schedule

Sampling Frequency	Monitoring Period	Monitoring Period	SMR Due Date
1x/Day	June 25, 2008	(Midnight through 11:59 PM) or any 24-hour period that reasonably represents a calendar day for purposes of sampling.	Submit with monthly SMR
1x/Month	July 1, 2008	1 st day of calendar month through last day of calendar month	First day of second month following month
1x/Quarter	July 1, 2008	January 1 through March 31 April 1 through June 30 July 1 through September 30 October 1 through December 31	May 1 August 1 November 1 February 1
1x/Year	January 1, 2009	January 1 through December 31	February 1

27. 2008 MRP section X.B.6.a (page E-15), in part, requires the Discharger to submit SMRs to the Regional Water Board, signed and certified as required by the Standard Provisions in Attachment D.
28. In a certified letter dated June 7, 2011, the Regional Water Board exercised its authority to require the Discharger to electronically submit SMRs (eSMRs) to CIWQS starting on August 1, 2011.
29. The Regional Water Board rescinded WDRs Order R7-2008-0010 and adopted WDRs Order R7-2013-0009 on May 16, 2013. WDRs Order R7-2013-0009 names Hector Orozco as the WWTP Operator and authorized person to sign and submit reports as required under this Order.
30. WDRs Order R7-2013-0009 section II.B (page 5) states that Attachment F (2013 Fact Sheet) is incorporated into and constitutes Findings for this Order. The 2013 Fact Sheet (page F-26) carries over the effluent limitations for pH, TSS, BOD, E. Coli, enterococci, and fecal coliform set forth in WDRs Order R7-2008-0010. The removal efficiency for BOD and TSS are also carried over to WDRs Order R7-2013-0009. The Discharger is required to maintain compliance with these effluent limitations at Discharge Point 001, with compliance measured at Monitoring Location EFF-001 as described in the MRP, Attachment E of WDRs Order R7-2013-0009 (2013 MRP).
31. Excluding Total Dissolved Solids, the 2013 MRP carries over the effluent monitoring requirements for effluent discharged at Monitoring Location EFF-001 (Discharge Point 001) from the 2008 MRP as set forth in Paragraph 24 above. 2013 MRP requires a minimum sampling frequency of 1x/Year for Total Dissolved Solids.
32. WDRs R7-2013-0009 carries over the receiving water limitations, standard provisions, and MRP requirements from WDRs R7-2008-0010 (cited above).
33. WDRs R7-2013-0009 carries over the Standard Provisions for duty to comply (page D-1), monitoring reports (page D-7), and enforcement (page D-9) from WDRs R7-2008-0010 (cited above).
34. Attachment D of WDRs Order R7-2013-0009 section V.B (page D-6), in part, requires the following signatory and certification requirements:
 - a. All reports required by this Order shall be signed by a general partner or the proprietor (40 C.F.R. § 122.22(a)(2)), or by a duly authorized representative of that person.
 - b. A person is a duly authorized representative only if:
 - i. The authorization is made in writing by a general partner or the proprietor (40 C.F.R. § 122.22(b)(1));
 - ii. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, or an individual or position having overall

responsibility for environmental matters for the company (40 C.F.R. § 122.22(b)(2); and

- iii. The written authorization is submitted to the Regional Water Board and State Water Board (40 C.F.R. § 122.22(b)(3).
- c. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the above requirements must be submitted to the Regional Water Board and the State Water Board prior to or together with any reports, information, or applications, to be signed by an authorized representative. (40 C.F.R. § 122.22(c).)
- d. Any person signing a report required by the 2013 MRP must make the certification set forth in Attachment D, section V.B.5.

35. 2013 MRP section X.B (page E-17) states:

- a. The Discharger shall electronically submit SMRs using [CIWQS]. The CIWQS Web site will provide additional directions for SMR submittal in the event there will be service interruption for electronic submittal. The Discharger shall maintain sufficient staffing and resources to ensure it submits SMRs for the duration of the term of this permit including any administrative extensions. This includes provision of training and supervision of individuals (e.g., Discharger personnel or consultant) on how to prepare and submit SMRs.
- b. The Discharger shall report in the SMR the results for all monitoring specified in this MRP under sections III through IX. The Discharger shall submit monthly, quarterly, and annual SMRs including the results of all required monitoring using U.S. EPA-approved test methods or other test methods specified in this Order. If the Discharger monitors any pollutant more frequently than required by this Order, the results of this monitoring shall be included in the calculations and reporting of the data submitted in the SMR.
- c. Monitoring periods and reporting for all required monitoring shall be completed according to the following schedule:

Table E-10. Monitoring Periods and Reporting Schedule

Sampling Frequency	Monitoring Period Begins On...	Monitoring Period	eSMR Due Date
1/Day	June 1, 2013	(Midnight through 11:59 PM) or any 24-hour period that reasonably represents a calendar day for purposes of sampling.	Submit with monthly eSMR
5/Month	June 1, 2013	Sunday through Saturday	Submit with monthly eSMR
1/Month	June 1, 2013	First day of calendar month through last day of calendar month	First day of second month from end of

1/Quarter	July 1, 2013	January 1 through March 31 April 1 through June 30 July 1 through September 30 October 1 through December 31	May 1 August 1 November 1 February 1
1/Year	June 1, 2013	January 1 through December 31	First day of February

36. The Operator history for the WWTP is as follows. Rocky Vandergriff, the Operator named in WDRs Orders R7-2003-0054 and R7-2008-0010, operated the WWTP from 2003 to June 30, 2011. Francisco Hector Orozco, the Operator named in WDRs Order R7-2013-0009, operated the WWTP from July 1, 2001 to on or about August 2014. The current Operator, Matt Hartnett, has operated the WWTP from on or about September 2014 to date.
37. Regional Water Board staff records indicate that from on or about September 2014 to June 2015, the Discharger was without an accurate duly authorized representative (or legally responsible official) (LRO), authorized to submit reports as required by WDRs R7-2013-0009. The eSMRs during this time period were neither signed nor certified by the Discharger or a LRO and therefore, the Discharger did not timely submit eSMRs into CIWQS for 8 months.
38. On May 29, 2015, the Discharger granted limited power of attorney authority to David Heitz and Susan Ormond. Mr. Heitz and Mrs. Ormond may act for and in the Discharger's name for any duties and obligations of whatever nature and extent with respect to the Date Gardens MHP, including Date Gardens MHP compliance with State entities, regulations, and legal matters.
39. On the Discharger's behalf, Mr. Heitz mailed a written authorization form to the Regional Water Board, naming himself a LRO for the WWTP. Regional Water Board staff received the authorization form on or about June 8, 2015, as a result of the investigation that has led to the issuance of this Complaint.

ALLEGATIONS:

40. Self-monitoring reports submitted by the Discharger show that the wastewater discharged from the WWTP exceeded the effluent limitations for total suspended solids (TSS) set forth in WDRs Orders R7-2003-0054, R7-2008-0010, R7-2013-0009 on thirty-five (35) occasions, of which 25 violations are subject to mandatory minimum penalties (MMPs) under Water Code section 13385, as identified in Exhibit A.
41. Self-monitoring reports submitted by the Discharger show that the wastewater discharged from the WWTP exceeded the effluent limitations for bacteria set forth in WDRs Orders R7-2003-0054, R7-2008-0010, and R7-2013-0009 on 21 occasions, of which 12 violations are subject to MMPs under Water Code section 13385, as identified in Exhibit B.
42. The Discharger submitted late SMRs in May 2011 and from September 2014 to April 2015. Collectively, the Discharger submitted these SMRs a total of 30 complete periods of 30 days following the deadline for submitting the reports and each complete period is subject to a

MMP under Water Code section 13385, as identified in Exhibit C. Each 30-day period is subject to an MMP.

43. Self-monitoring reports submitted by the Discharger show that the wastewater discharged from the WWTP exceeded the effluent limitations set forth in WDR Orders R7-2003-0054, R7-2008-0010, and R7-2013-0009 on 14 occasions, which are violations subject to discretionary penalties (non-MMP effluent violations) under Water Code section 13385, as identified in Exhibit E. None of the non-MMP effluent violations identified in Exhibit E were used as a supporting violation for the assessment of MMPs identified in Exhibit A and B.
44. The Discharger failed to meet the monitoring requirements set forth in WDRs Orders R7-2003-0054, R7-2008-0010, and R7-2013-0009 on 95 occasions, which are subject to discretionary penalties (non-MMP failure to monitor violations) under Water Code section 13385, as identified in Exhibit D and Exhibit E.

LEGAL PROVISIONS UPON WHICH LIABILITY IS BASED:

45. Water Code section 13376 prohibits the discharge of pollutants in violation of effluent limitations set forth in waste discharge requirements.
46. Under Water Code section 13385, subdivision (a)(2), a person who violates a waste discharge requirement issued for compliance with the provisions of the Clean Water Act shall be liable civilly.
47. Water Code section 13385, subdivision (h)(1) requires the Regional Water Board to assess a MMP of three thousand dollars (\$3,000) for each serious violation.
48. Water Code section 13385, subdivision (h)(2) defines a "serious violation" as "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."
49. The removal efficiency requirement for TSS is expressed as a minimum effluent limitation, in terms of percent solids removal (i.e., 85 percent removal). To facilitate the determination of whether violations of this limitation are "serious" pursuant to California Water Code section 13385, subdivision (h)(2), the limitation is converted to its equivalent maximum limit, in terms of percent solids remaining (i.e., 15 percent remaining), as shown and noted in Exhibit A.
50. For the purposes of Water Code section 13385, subdivision (h), Water Code section 13385.1, subdivision (a) further defines a "serious violation" to include "a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations."
51. Water Code section 13385, subdivision (i)(1) also requires the Regional Water Board to assess a 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 a period of six consecutive months (hereinafter chronic violation):

- 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 waste discharge requirements where the waste discharge requirements do not contain pollutant specific effluent limitations for toxic pollutants.

52. Water Code section 13385, subdivision (i)(2) defines a "period of six consecutive months" to mean "the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date."

53. Pursuant to Water Code section 13385, subdivision (c), the Regional Water Board may impose administrative civil liability of up to ten thousand dollars (\$10,000) for each day in which the violation occurs for non-discharge violations.

VIOLATIONS EXEMPTED BASED ON COMPLIANCE WITH A TIME SCHEDULE ORDER

54. Water Code section 13385, subdivision (j)(3), states, in pertinent part, the following:

[Subdivisions (h) and (i) do not apply to] a violation of an effluent limitation where the waste discharge is in compliance with . . . a time schedule order issued pursuant to Section 13300 or 13308, if all of the following requirements are met:

(A) The . . . time schedule order is issued on or after July 1, 2000, and specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivision (h) and (i).

(B) The regional board finds that, for one of the following reasons, the discharger is not able to consistently comply with one or more of the effluent limitations established in the waste discharge requirements applicable to the waste discharge:

(i) The effluent limitation is a new, more stringent, or modified regulatory requirement that has become applicable to the waste discharge after the effective date of the waste discharge requirements and after July 1, 2000, new or modified control measures are necessary in order to comply with the effluent limitation, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days . . .

(C)(i) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation. Except as provided in clause (ii), for the purposes of this subdivision, the time schedule shall not exceed five years in length . . .

(C)(iii) If the time schedule exceeds one year from the effective date of the order, the schedule shall include interim requirements and the dates for their achievement . . .

(D) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plant pursuant to Section 13263.3.

55. The Regional Water Board issued a time schedule order R7-2003-0015 (TSO) under Water Code section 13300 against the Discharger on July 31, 2003. The Regional Water Board adopted WDRs Order R7-2003-0054, which contained a new effluent limitation for E. Coli as set forth above in Paragraph 5, subsection (c). The Regional Water Board issued the TSO because the Discharger was unable to consistently comply with this effluent limitation as the limitation was a new, more stringent or modified regulatory requirement. The TSO (page 2) states that the Discharger will be exempt for MMPs for violation of the new E. Coli effluent limitation if it complies with the TSO.
56. The TSO requires actions the Discharger must take to correct or prevent discharges of waste that may be in violation of WDRs Order R7-2003-0054. The TSO (page 3) requires the Discharger to prepare and implement a pollution prevention plan under Water Code section 13263.3 and must address all of the issues specified in section 13263.3, subdivision (d)(3).
57. The TSO (page 3) requires compliance with the following milestones:
- a. Milestone 1: Complete a pollution prevention plan and submit it to the Regional Water Board by October 1, 2003.
 - b. Milestone 2: Complete a final design of a new wastewater disinfection system and submit a copy of the final design drawings to the Regional Water Board by December 1, 2003.
 - c. Milestone 3: Complete installation of the new wastewater disinfection system and submit a summary and verification of installation completion to the Regional Water Board by February 1, 2004.
 - d. Milestone 4: The disinfection system must be functional and in compliance with the E. Coli effluent limitation by April 1, 2004.
58. The TSO satisfied the requirements in Water Code section 13385, subdivision (j)(3) because: a) the TSO was issued after January 1, 2000; b) specified the action the Discharger must take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i); c) the Regional Water Board issued the TSO because the Discharger was not able to consistently comply with one or more effluent limitations established in the waste discharge requirements; d) the TSO required a pollution prevention plan; and e) the Regional Water Board established a time schedule for bringing the waste discharge into compliance with the effluent limitation less than one year after the TSO's effective date.

59. The Discharger complied with the TSO. The new wastewater disinfection system became operational in February 2004, before the deadline established in the TSO.
60. 28 violations of WDRs Order R7-2003-0054 that would otherwise be subject to MMPs under Water Code section 13385 are exempted therefrom based on compliance with the TSO, as identified in Exhibit F.

PROPOSED CIVIL LIABILITY ASSESSMENT

61. The Assistant Executive Officer of the Regional Water Board proposes that the Discharger be assessed an MMP of **two-hundred and one thousand dollars (\$201,000)** for exceeding the effluent limitations for bacteria and total suspended solids specifically identified in Exhibits A and B, and for late self-monitoring reports specifically identified in Exhibit C.
62. The Assistant Executive Office of the Regional Water Board proposes that the Discharger be assessed administrative civil liability in the amount of **four-hundred and eight thousand and eighty-two dollars (\$408,082)** for the violations subject to discretionary penalties specifically identified in Exhibit D, **plus fourteen thousand and three hundred and seventy-five dollars (\$14,375) in staff costs.** The methodology and rationale for the proposed penalty for these violations is contained in Exhibit E.
63. Pursuant to Water Code section 13323, subdivision (b), the Regional Water Board will hold a Public Hearing on this matter within 90 days after service of this Complaint, unless the Discharger chooses either of the following two options:
 - a. Waive the right to a Hearing before the Regional Water Board and pay the total proposed liability amount of **\$623,457** in full; or
 - b. Waive the right to a Hearing before the Regional Water Board within 90 days after service of this Complaint to engage the Regional Water Board Prosecution Team in settlement discussions.
64. If the Discharger chooses to waive the right to a hearing and pay the proposed penalty, an authorized representative shall within 30-days of this Complaint, sign the enclosed Waiver and make out a check for the full amount of the proposed liability, payable to the "State Water Pollution Cleanup and Abatement Account." The check shall be remitted to the following address:

State Water Resources Control Board
Accounting Office, Attn: ACL Payment
PO Box 1888
Sacramento, California, 95812-1888

The signed Waiver and a copy of the check shall be sent to the following address:

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

65. If a Hearing on this matter is held, the Regional Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability (up to the maximum penalty provided for by law), or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
66. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act. Accordingly, interested persons will be given thirty (30) days to comment on any proposed settlement of this Complaint.
67. Issuance of this Complaint is an enforcement action and is, therefore, exempt from the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), pursuant to California Code of Regulations, title 14, section 15321, subdivision (a)(2). This is an action to enforce the laws and regulations administered by the Regional Water Board. The method of compliance with this enforcement action consists entirely of payment of an administrative penalty. As such, the Regional Water Board finds that issuance of this Complaint is not considered subject to the provisions of the California Environmental Quality Act (CEQA) as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project" (Public Resources Code 21065, 21080(a); 15060(c)(2),(3); 15378(a), Title 14, of the California Code of Regulations). In addition, the Regional Water Board finds that issuance of this Order is also exempt from the provisions of CEQA in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations as an enforcement action by a regulatory agency and that there are no exceptions that would preclude the use of this exemption. Should the Discharger propose a supplemental environmental project, compliance with the California Environmental Quality Act will be revisited for the appropriate lead agency to address CEQA requirements prior to implementing a supplemental environmental project that may have a significant impact on the environment.

Jose L. Angel, P.E.

JOSE L. ANGEL
Assistant Executive Officer

7/1/2015

Date