

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

MEETING OF NOVEMBER 12 AND 13, 2008
BARSTOW, CALIFORNIA

ITEM: 5

SUBJECT: **PUBLIC HEARING – CONSIDERATION OF A SETTLEMENT OF CLAIMS FOR AN ADMINISTRATIVE CIVIL LIABILITY ORDER FOR ADELANTO PUBLIC UTILITY AUTHORITY, FOR VIOLATION OF CEASE AND DESIST ORDER NO. R6V-2007-24, FOR FAILURE TO SUBMIT A QUARTERLY STATUS REPORT BY THE REQUIRED DATE, SAN BERNARDINO COUNTY**

CHRONOLOGY: August 1, 2008 The Executive Officer issued a Notice of Proposed Settlement for Administrative Civil Liability Complaint No. R6V-2008-0012.

April 4, 2008 The Executive Officer issued Complaint No. R6V-2008-0012.

August 29, 2007 The Water Board adopted Cease and Desist Order No. R6V-2007-24.

ISSUE: Should the Regional Board adopt or reject the proposed ACL Order effectuating a settlement of claims? Does the proposed administrative civil liability of \$6,500 sufficiently address the alleged violations?

DISCUSSION: The Adelanto Public Utility Authority (Discharger) is authorized to discharge treated wastewater to percolation ponds under Waste Discharge Requirements (WDRs) - Board Order No. R6V-2002-050. The facility's design capacity is an average daily flow of 1.5 million gallons per day (mgd), but the current average flow to the facility is 2.2. mgd. The Water Board adopted Cease and Desist Order (CDO) No. R6V-2007-24 requiring the Authority to correct flow, Biochemical Oxygen Demand (BOD) and Dissolved Oxygen violations at the facility.

The CDO requires the Discharger to submit quarterly status reports to keep the Water Board informed of the Discharger's progress in correcting the violations at the facility. The quarterly status report is one of the primary tools that Water Board staff has to evaluate the Discharger's compliance with the CDO. The first report was due on or before October 15, 2007. Water Board staff notified the Discharger's

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City Engineer Wilson So (So & Associates, Inc.) on November 6, 2007 by phone, that the Water Board had not received the report. The Discharger submitted the report to the Water Board's Victorville office on November 7, 2007. The report was received 23 days late, which is a violation of the CDO. The Discharger did not request a time extension to accommodate a late submission.

For failure to furnish a technical report pursuant to section 13267 of the Water Code, the Water Board may impose civil liability in amount up to that specified by Water Code section 13268, subdivision (b)(1), which is \$1,000 per day for each day of violation. For 23 days of violation the maximum liability is \$23,000. Water Code section 13327 requires the Water Board to consider certain factors when determining an appropriate civil liability amount for the alleged violation. The Water Board's Assistant Executive Officer considered these factors and recommended that the administrative civil liability be \$15,000. After the ACL complaint was issued, the Discharger provided additional information to Water Board's Prosecution Team that the person with the responsibility to submit the report was ill for an extended period of time. Based on this information, the Water Board's prosecution team reached a settlement with the Authority agreeing to a reduced civil liability of \$6,500. Water Board staff received a signed waiver of hearing form from the Authority on May 9, 2008, waiving it's right to a public hearing and agreeing to settle the complaint with a cash payment for \$6,500. This action constitutes a proposed settlement of the complaint.

A thirty-day public comment period was provided and noticed in the local newspaper and the internet, for the proposed settlement agreement, which ended September 5, 2008. No comments were received.

RECOMMENDATION: Adoption of the Administrative Civil Liability Order as proposed.

Enclosures: 1. ACL Order R6V-2008-(Proposed),
Attachment A. ACL Complaint No. R6V-2008-0012, and
Attachment B. Signed Waiver of Hearing Form.
2. Notice of Proposed Settlement

JM/rp/EO2008/AdelantoACL-R6V-2008-Pro GS

05-0002

ENCLOSURE 1

05-0003

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R6V-2008-(PROPOSED)

ADELANTO PUBLIC UTILITY AUTHORITY, FOR VIOLATION OF CEASE AND
DESIST ORDER NO. R6V-2007-24, FOR FAILURE TO SUBMIT QUARTERLY
STATUS REPORT BY REQUIRED DUE DATE, SAN BERNARDINO COUNTY,
WDID NO. 6B369805001

INTRODUCTION

1. By this Order, the Regional Water Quality Control Board, Lahontan Region (Water Board) imposes administrative civil liability on the Adelanto Public Utility Authority (hereafter referred to as the "Discharger") pursuant to a settlement agreement. The issuance of an order pursuant to a settlement agreement is authorized by Government Code section 11415.60.

BACKGROUND

2. Pursuant to Water Code section 13323, the Assistant Executive Officer of the Water Board issued Administrative Civil Liability Complaint No. R6V-2008-0012 (Complaint) to the Adelanto Public Utility Authority on April 4, 2008, (Attachment A, which is made part of this Order). The Complaint alleged that the Discharger violated Cease and Desist Order (CDO) No. R6V-2007-24, Requirement III, when the Discharger submitted the CDO-required quarterly status report 23 days after the due date. The Complaint proposed that the Discharger be assessed \$15,000 in administrative civil liability pursuant to Water Code section 13268.
3. After the Complaint was issued, the Discharger provided additional information regarding staff illnesses, which caused its staff who was responsible for preparing the CDO-required report, to be absent from work for a significant time period. Based upon this information, the Water Board's Prosecution Team agreed to settle the Complaint for a reduced civil liability of \$6,500.
4. On May 9, 2008, the Discharger provided a signed waiver of public hearing form and agreement to pay an administrative civil liability of \$6,500 (Attachment B, which is made a part of this Order).
5. Together, the Complaint and waiver represent a Settlement Agreement.
6. Notice of the Settlement Agreement was provided to the public and the public received no less than 30 days to comment. The Water Board has considered all the comments that have been received.
7. The Water Board accepts the Settlement Agreement.

8. The adoption of this Order accepting the Settlement Agreement is exempt from the provisions of the California Environmental Quality Act, in accordance with the California Code of Regulations, title 14, section 15321, subdivision (a)(2) (Enforcement Actions by Regulatory Agencies).
9. Any aggrieved person may petition the State Water Resources Control Board (State Board) to review the action in accordance with Water Code section 13320 and the State Board's regulations. The petition must be received by the State Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions are available at www.waterboards.ca.gov/wqpetitions/index.html and will also be provided upon request.
10. State Board and Water Board staff have spent time responding to the alleged violation and preparing this enforcement action. Estimated staff costs for investigation and preparation of enforcement documents, communications with the Discharger and interested parties, and preparation of materials for public review and the Water Board meeting are \$4,290.

IT IS HEREBY ORDERED THAT:

1. The Water Board imposes administrative civil liability against the Discharger in the amount of \$6,500.
2. The Discharger must provide payment in the amount of \$6,500 to the California State Water Resources Control Board, Waste Discharge Permit Fund by **December 11, 2008.**
3. If the Discharger fails to make the specified payment to the California State Water Resources Control Board, Waste Discharge Permit Fund within the time limits specified in this Order, the Water Board may enforce this Order by applying for a judgment pursuant to Water Code section 13328. The Water Board's Executive Officer is hereby authorized to pursue a judgment pursuant to Water Code section 13328 if the criterion specified in this paragraph is satisfied.

I, Harold J. Singer, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of an Order adopted by the California Regional Water Quality Control Board, Lahontan Region, on November 12, 2008.

HAROLD J. SINGER
EXECUTIVE OFFICER

- Attachments: A. Administrative Civil Liability Complaint No. R6V-2008-0012
B. Signed Waiver of Hearing Form



California Regional Water Quality Control Board Lahontan Region



Linda S. Adams
Secretary for
Environmental Protection

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150
(530) 542-5400 • Fax (530) 544-2271
www.waterboards.ca.gov/lahontan

Arnold Schwarzenegger
Governor

STATE OF CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD LAHONTAN REGION

ATTACHMENT A

In the Matter of the Adelanto Public Utility Authority:) COMPLAINT NO.
Violation of Reporting Requirements Prescribed in Cease) R6V-2008-0012 FOR
and Desist Order No. R6V-2007-24 for failure to submit) ADMINISTRATIVE
required report by required due date, San Bernardino County,) CIVIL LIABILITY
WDID No. 6B369805001)

ADELANTO PUBLIC UTILITY AUTHORITY, YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are charged with violating provisions of law and regulations for which the California Regional Water Quality Control Board, Lahontan Region (Water Board) may impose administrative civil liability pursuant to California Water Code (Water Code) section 13268, subdivision (b)(1).
2. Unless waived, a hearing on this matter will be held before the Water Board within 90 days following the issuance of this Complaint. The Adelanto Public Utility Authority, or its representatives, will have an opportunity to address and contest the allegations in this Complaint and the imposition of civil liability by the Water Board.
3. At the hearing, the Water Board will consider whether to affirm, reject, or modify (either increase or decrease) the proposed civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.

ALLEGATIONS

4. The Adelanto Public Utility Authority ("Discharger") is the owner of the Adelanto Domestic Wastewater Treatment Facility ("Facility"), located at the northeast corner of Auburn Ave. and Jonathan St., in Adelanto. The Discharger is authorized to discharge treated wastewater to percolation ponds under Waste Discharge Requirements — Board Order No. R6V-2002-050.
5. The Facility receives and treats domestic wastewater from the Discharger's sewer service area. The Facility's design capacity is an average daily flow of 1.5 million gallons per day (mgd), but in 2007 the Facility treated an annual average flow of 1.9 mgd. The Facility provides secondary treatment using an activated sludge – extended aeration process. On August 29, 2007, the Water Board adopted Cease and Desist Order No. R6V-2007-24 (CDO) to correct flow, Biochemical Oxygen Demand (BOD), and Dissolved Oxygen violations at the Facility.

6. The CDO requires the Discharger to submit quarterly status reports to keep the Board informed of the Discharger's progress in correcting the Waste Discharge Requirements violations at the Facility. The first report was due on or before October 15, 2007. Water Board staff notified the Discharger's City Engineer (Wilson So of So & Associates) on November 6, 2007 by phone, that the Water Board had not received the report. The Discharger submitted the report to the Water Board's Victorville office on November 7, 2007. The report was received 23 days late. The Discharger did not request a time extension to accommodate a late submission.
7. Violation – Cease and Desist Order No. R6V-2007-24.

The Discharger violated the following requirement in Cease and Desist Order No. R6V-2007-24:

"III. Pursuant to Section 13267 of the California Water Code, beginning October 15, 2007, and every three months, on or before January 15, April 15, July 15, and October 15, the Adelanto Public Utility Authority must submit the following Cease and Desist Order quarterly status reports until final compliance is achieved."

The Discharger violated CDO Requirement III when it submitted the quarterly report on November 7, 2007, 23 days after the due date of October 15, 2007.

8. Administrative Civil Liability Authority – Water Code Section 13268

The Water Board may impose civil liability pursuant to Water Code section 13268, subdivision (a). Water Code section 13268, subdivision (a) states:

"(1) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor, and may be liable civilly in accordance with subdivision (b)."

The CDO requires the Discharger to submit, by October 15, 2007, a quarterly technical report pursuant to Section 13267 of the Water Code. The Discharger failed to furnish the report on or before October 15, 2007. Therefore, the Water Board is authorized to impose civil liability pursuant to Water Code section 13268 subdivision (a).

PROPOSED CIVIL LIABILITY

9. Civil Liability – California Water Code

For failure to furnish a technical report pursuant to Section 13267 of the Water Code, the Water Board may impose civil liability in an amount up to that specified by Water Code section 13268, subdivision (b)(1):

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"(b) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs."

In this matter, the maximum amount of civil liability under Water Code section 13268, subdivision (b)(1) is \$23,000 because the Discharger submitted the required technical report on November 7, 2007, 23 days past the due date. This civil liability is based upon:

$$23 \text{ days} \times \$1,000/\text{day} = \$23,000$$

10. Factors Affecting the Amount of Civil Liability

Water Code section 13327 requires the Water Board to consider enumerated factors when it determines the amount of civil liability for a discharge covered by Water Code section 13268. The Assistant Executive Officer of the Water Board considered those factors in recommending the amount of the administrative civil liability:

- a. The nature, circumstances, extent, and gravity of the violations;

Violating a Water Board Cease and Desist Order, classified as a "formal" enforcement action by the Water Quality Enforcement Policy, is a serious offense. The CDO was issued to correct flow and BOD violations and bring the Discharger into compliance with the Waste Discharge Requirements prescribed by Board Order No. R6V-2002-0050. The CDO requires the Discharger to provide a quarterly status report documenting the Discharger's actions and progress to achieve compliance with the CDO. This quarterly status report is one of the primary tools that Water Board staff has to evaluate the Discharger's compliance with the CDO. The Long-Term Action Plan due December 31, 2007, and the quarterly status report due January 15, 2008 were submitted on time.

- b. Whether the discharge is susceptible to cleanup or abatement;

This matter does not involve a violation caused by a discharge.

- c. The degree of toxicity of the discharge;

This matter does not involve a violation caused by a discharge.

- d. Ability to pay;

The estimated (2005) population of the City of Adelanto is 23,382 people (California State Department of Finance). The State Water Resources Control Board's (State Board's) May 2007 *Wastewater User Charge Survey for fiscal year 2006-2007* reported that the Discharger's monthly sewer user fee per connection was \$43.00. Therefore, Discharger's monthly fee is approximately

170 percent of the average monthly fee of \$24.69 for 236 wastewater agencies throughout California, including the Discharger, with populations ranging between 10,000 and 49,000. Using an assumption that 90% of Adelanto's population is connected to the public sewer, and that on an average each connection serves 3.5 people, the Discharger's annual revenue for wastewater services is $0.90 \times 23,382 + 3.5 \times \$24.46/\text{mo} \times 12 \text{ mo/yr} = \1.7 million. The Discharger now has the opportunity to provide additional financial data to the Water Board regarding its ability to pay the proposed liability.

- e. The effect on the Discharger's ability to continue its business;

Water Board staff is not aware of any reason that the Discharger's ability to continue its business would be affected by the proposed liability. The Discharger now has the opportunity to provide any information to the Water Board showing an inability to continue its business due to payment of the proposed liability.

- f. Any voluntary cleanup efforts undertaken by the violator;

The Discharger did not voluntarily submit the required technical report. The Discharger submitted the report only after telephone notification by Water Board staff.

- g. Prior history of violations;

The Discharger has nearly continuous violations of daily flow limits, daily maximum Biochemical Oxygen Demand (BOD) limits, monthly average BOD limits, daily maximum MBAS limits, and monthly average MBAS limits since January 2004. In 2004, the Discharger committed to correct the violations by implementing a facilities improvement project within one year. When the Discharger failed to develop a plan to correct effluent violations, Water Board staff followed up with a Notice of Violation letter on August 16, 2005 and again on January 10, 2007. The Discharger responded on January 31, 2007 and proposed to correct the violations with a facilities improvement project with construction to start by July 2007 and attain operational level by May-June 2008. According to the Discharger's Interim Action Plan of October 31, 2007, construction was planned to begin on March 15, 2008 and be completed November 15, 2008. The CDO requires final WDR compliance by December 31, 2008.

- h. Degree of culpability;

The Adelanto Public Utility Authority is identified as the "Discharger" in Cease and Desist Order No. R6V-2007-24 and Board Order No. R6V-2002-050 and thus, is responsible for compliance with Cease and Desist Order No. R6V-2007-24, Board Order No. R6V-2002-050, and applicable state laws and regulations. The Adelanto Public Utility Authority is ultimately responsible for its failure to submit the required quarterly status report under Cease and Desist Order No. R6V-2007-24.

- i. Economic savings resulting from the violation;

There is no appreciable economic savings to the Discharger by submitting the report 23 days late.

- j. Other matters as justice may require.

Staff Costs - Staff from the State Board and Water Board have spent time responding to the incident and preparing the Administrative Civil Liability Complaint. Estimated staff costs for complaint preparation are \$3,500.

The Discharger submitted subsequent reports required by the CDO on time.

11. Amount of Civil Liability

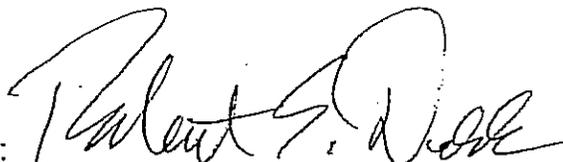
The Assistant Executive Officer of the Water Board considered the above factors and proposes that administrative civil liability be imposed by the Water Board in the amount of \$15,000, pursuant to Water Code section 13268.

WAIVER OF HEARING

You may waive the right to a hearing. Waiver of your right to a hearing constitutes acceptance of the assessment of civil liability in the amount set forth within the Complaint. If you wish to waive your right to a hearing, an authorized person must sign the Waiver of Hearing prepared for this Complaint, and submit it to the address below. Please note that any settlement will not be effective until reasonable opportunity for public participation has been provided pursuant to the State Water Board's 2002 Enforcement Policy. The Water Board will notify interested persons of any proposed settlement for the recommended liability and will solicit comments on the settlement for a period of thirty (30) days. Any settlement will not become final until after a public comment period.

Lahontan Water Board
Attn: Robert S. Dodds, Assistant Executive Officer
2501 Lake Tahoe Boulevard
South Lake Tahoe, CA 96150

Ordered by:



Robert S. Dodds
Assistant Executive Officer

Dated:

April 4, 2008

**WAIVER
OF RIGHT TO A
PUBLIC HEARING**

Charley Glasper, Mayor Pro Tem
City of Adelanto
11600 Air Expressway
Adelanto, CA 92301

Complaint No. R6V-2008-0012

For

Administrative Civil Liability

~~\$15,000~~

\$6,500
AS
RSD

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R6V-2008-0012 ISSUED TO
ADELANTO PUBLIC UTILITY AUTHORITY, FOR VIOLATION OF REPORTING
REQUIREMENTS IN CEASE AND DESIST ORDER NO. R6V-2007-24, SAN
BERNARDINO COUNTY, WDID NO. 6B369805001**

By signing below, the Adelanto Public Utility Authority (Authority) waives its right to a hearing before the California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board) with regard to the violation alleged in Complaint No. R6V-2008-0012 (the Complaint), and agrees to remit payment for the amount of the civil liability set forth above. The Authority has been informed of the right provided by Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of an Administrative Civil Liability (ACL) Complaint and herein waives that right.

The party signing below is a duly authorized representative of the Authority in connection with the Complaint. By signing below, the Authority neither admits nor denies the allegations contained in the Complaint.

Please note that the settlement of the Complaint, as provided above, will not be effective until reasonable opportunity for public participation has been provided pursuant to the State Water Resources Control Board 2002 Enforcement Policy (Enforcement Policy). In accordance with the Enforcement Policy, a 30-day public comment period will be required for a proposed settlement of administrative civil liability. The Lahontan Water Board will notify interested persons of any proposed settlement for the recommended liability and will solicit comments on the settlement for a period of 30 days.

During the period of public participation, which includes the 30-day comment period and a reasonable time thereafter for the Lahontan Water Board to review and evaluate any public comments received, the Lahontan Water Board retains complete discretion to terminate this settlement by withdrawing the Complaint and issuing a new ACL Complaint. This waiver is void if the Lahontan Water Board withdraws the Complaint.

Adelanto Public Utility Authority Representative

Jim Hart
Signature

City Manager
Title

5/9/08
Date

D. James Hart
Print your name

Send this signed form to:
California Regional Water Quality Control Board - Lahontan Region
Attn: Robert S. Dodds, Assistant Executive Officer
2501 Lake Tahoe Boulevard
South Lake Tahoe, CA 96150

5/9/08

Accepted *Robert S. Dodds* *5/9/08*

Robert Dodds
Assistant Executive Officer

Bob,

This will confirm our discussion this morning wherein we agreed to settle complaint no. RbV-2008-0012 originally levied at \$15,000 but the sum of \$6,500. I have changed the original figure on page 1 to \$6,500 and initialed it.

If this meets your approval, please initial page 1 also and sign this form.

Jim Hart
D. James Hart
City Manager

ENCLOSURE 2

05-0013

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

14440 Civic Center Drive, Suite 200, Victorville, California 92392-2306

NOTICE OF PROPOSED SETTLEMENT OF
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R6V-2008-0012

NOTICE IS HEREBY GIVEN that the California Regional Water Quality Control Board, Lahontan Region (Water Board) is soliciting comments on a proposed settlement of Administrative Civil Liability Complaint No. R6V-2008-0012 (Complaint). Written comments must be received at the address above, attention: Cindi Mitton, by September 5, 2008.

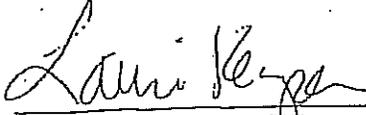
The Water Board Assistant Executive Officer issued the Complaint in the amount of \$15,000 to the Adelanto Public Utility Authority (Authority) on April 4, 2008. The Complaint alleges that the Authority violated Requirement III of Cease and Desist Order (CDO) No. R6V-2007-24 by submitting the first CDO-required quarterly status report 23 days past the October 15, 2007 due date.

The Water Board's Prosecution Team has reached a settlement with the Authority addressing the alleged violation. Water Board staff received a signed waiver of hearing form from the Authority on May 9, 2008, waiving its right to a public hearing and agreeing to settle the Complaint with a cash payment for \$6,500. This action constitutes a proposed settlement of the Complaint.

The Proposed Administrative Civil Liability Order, Complaint, and related documents pertaining to this issue may be inspected and copied at the Water Board office at the address above during regular business hours. These documents can also be viewed on the Water Board's web site: www.waterboards.ca.gov/lahontan.

The Water Board will consider the proposed settlement at its September 10-11, 2008 meeting. A meeting agenda with the time and location (to be determined) will be mailed to interested parties and will be made available on the Water Board web site approximately three weeks prior to the meeting. The Water Board will not be holding an adjudicatory proceeding or evidentiary hearing at the September 2008 meeting. Instead, the Water Board will decide whether to accept or reject the proposed settlement after considering the information presented by the Prosecution Team, the Authority, and written comments submitted by the September 5, 2008 deadline and oral comments presented at the meeting. The Water Board will either adopt or reject the proposed Administrative Civil Liability Order.

Please bring the above information to the attention of anyone you know who would be interested in this matter. Any questions concerning the details of the settlement should be directed to Cindi Milton at (760) 241-7413 (cmitton@waterboards.ca.gov) or John Morales at (760) 241-7366 (JMMorales@waterboards.ca.gov). Any questions on the Water Board process to consider this proposed settlement should be directed to Harold Singer at (530) 542-5412 or hsinger@waterboards.ca.gov.



HAROLD J. SINGER
EXECUTIVE OFFICER

Date: August 1, 2008