



# California Regional Water Quality Control Board Lahontan Region



Linda S. Adams  
Secretary for  
Environmental Protection

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Arnold Schwarzenegger  
Governor

## STATE OF CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD LAHONTAN REGION

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):

“(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  $0.90 \times 23,382 \div 3.5 \times \$24.46/\text{mo} \times 12 \text{ mo}/\text{yr} = \$1.7 \text{ million}$ . 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**

**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**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
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