

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0525

MANDATORY PENALTY
IN THE MATTER OF

MANDATORY PENALTY
IN THE MATTER OF
TOWN OF DISCOVERY BAY
DISCOVERY BAY WASTEWATER TREATMENT PLANT
CONTRA COSTA COUNTY

This Complaint is issued to the Town of Discovery Bay (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. This complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2003-0067 (NPDES No. CA0078590).

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

1. The Town of Discovery Bay owns the Discovery Bay Wastewater Treatment Plant (WWTP), which provides sewerage service to the town of Discovery Bay in Contra Costa County. Treated domestic, commercial and industrial wastewater is discharged to Old River, a water of the United States
2. On 25 April 2003, the Central Valley Water Board issued WDRs R5-2003-0067 to regulate discharges of waste from the wastewater treatment plant.
3. On 18 March 2008, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2008-0511 for mandatory minimum penalties for effluent violations from 1 April 2004 through 31 December 2007. The Discharger has paid the penalty and the Central Valley Water Board considers this matter settled.
4. On 24 February 2009, the Central Valley Water Board sent the Discharger a draft Record of Violations (ROV). The Discharger responded on 9 March 2009. The Discharger provided comments regarding interpretation of the WDRs and requested deletion of several violations listed in the ROV. Central Valley Water Board staff discussed the changes with the Discharger and has prepared a technical memorandum, included as Attachment B and discussed in Finding 8 of this Complaint, which explains adjustments made to the ROV.
5. CWC section 13385(i) requires assessment of mandatory penalties and states, in part:
Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times

in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

6. CWC section 13323 states, in part:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

7. WDRs Order R5-2003-0067 Effluent Limitations No. B. 2 includes, in part, the following effluent limitations which are in effect after the outfall and diffuser for direct discharge to Old River has been constructed, or 1 June 2004, whichever is earlier:

<u>Constituent</u>	<u>Unit</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>7-day Median</u>	<u>Daily Maximum</u>
TSS ²	mg/L	30	40		50
	lbs/day ³	525	700		875
<u>Total Coliform</u>	MPN/100mL			23	240

² To be ascertained by a 24-hour composite.

³ Based upon a design treatment capacity of 2.1 mgd.

8. As described in the technical memorandum mentioned in Finding No. 4, Central Valley Water Board staff made the following adjustments to the draft Record of Violations (all violation numbers reference those contained in the draft Record of Violations).

- Alleged violations not cited in ACLC R5-2008-0511. The Discharger correctly stated that the copper violations cited in the draft ROV and the CIWQS database were incorrectly interpreted and were not effluent limitation violations. The Discharger is correct. After removing the alleged June 2004 copper violations, there were no additional unresolved violations prior to 1 January 2008.
- One total suspended solids violation cited in the ROV had been incorrectly calculated on the self-monitoring reports. This violation was deleted.
- Violations 45-51 (new Violations 13-20). The ROV incorrectly listed these as chronic violations not subject to MMPs. However, these were chronic violations subject to MMPs because there were three or more violations during the previous 180 days. The violations were corrected.

9. According to the Discharger's self-monitoring reports, the Discharger committed twenty (20) non-serious violations of the above effluent limitations contained in Order R5-2003-0067 during the period beginning 1 January 2008 and ending 31 December 2008. Eighteen (18) of the non-serious violations are subject to mandatory penalties under CWC section 13385(i)(1) because these violations were preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for these non-serious violations is **fifty-four thousand dollars (\$54,000)**.
10. The total amount of the mandatory penalties assessed for the cited effluent violations is **fifty-four thousand dollars (\$54,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
11. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

THE TOWN OF DISCOVERY BAY IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **fifty-four thousand dollars (\$54,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **11/12 June 2009**, unless the Discharger does either of the following by **29 April 2009**:
 - a) Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **fifty-four thousand dollars (\$54,000)**; or
 - b) Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board along with a letter describing the issues to be discussed.

3. If a hearing on this matter is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

PAMELA C. CREEDON, Executive Officer

30 March 2009

Attachment A: Record of Violations
Attachment B: Memorandum
BLH: 30-Mar-09

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent the Town of Discovery Bay (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2009-0525 (hereinafter the "Complaint");
2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint; and
4. **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
 - a. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **fifty-four thousand dollars (\$54,000)** by check, which contains a reference to "ACL Complaint R5-2009-0525" and is made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **29 April 2009** or this matter will be placed on the Central Valley Water Board's agenda for adoption as initially proposed in the Complaint.
 - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Central Valley Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

5. **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0525**

**Town of Discovery Bay
Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 January 2008 – 31 December 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2003-0003)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period</u> <u>Type</u>	<u>CIWQS</u> <u>Number</u>	<u>Remarks</u>
1	2-Jan-08	Coliform	MPN/100mL	23	>1600	7-day	790220	4
2	8-Jan-08	Coliform	MPN/100mL	23	801	7-day	790221	4
3	29-Jan-08	Coliform	MPN/100mL	23	42	7-day	790222	4
4	30-Jan-08	Coliform	MPN/100mL	23	41	7-day	790224	4
5	12-Feb-08	Coliform	MPN/100mL	240	>1600	Daily	790225	4
6	12-Feb-08	Coliform	MPN/100mL	23	865	7-day	805121	4
7	13-Feb-08	Coliform	MPN/100mL	23	804	7-day	805123	4
8	26-Feb-08	Coliform	MPN/100mL	23	97	7-day	790229	4
9	27-Feb-08	Coliform	MPN/100mL	23	97	7-day	805124	4
10	10-Jun-08	Coliform	MPN/100mL	240	>1600	Daily	805125	4
11	16-Sep-08	TSS	mg/L	50	68	Daily	805126	3
12	20-Sep-08	TSS	mg/L	40	41	Weekly	805127	3
13	14 Oct 08	TSS	mg/L	50	55	Daily	808410	4
14	12-Nov-08	Coliform	MPN/100mL	23	46	7-day	805130	4
15	29-Dec-08	TSS	mg/L	50	57	Daily	805131	4
16	29-Dec-08	TSS	lbs/day	875	899	Daily	805134	4
17	30-Dec-08	TSS	mg/L	50	51	Daily	805132	4
18	30-Dec-08	Coliform	MPN/100mL	23	840	7-day	805136	4
19	31-Dec-08	TSS	mg/L	40	54	Weekly	805133	4
20	31-Dec-08	TSS	lbs/day	700	853	Weekly	805135	4

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.

<u>VIOLATIONS AS OF:</u>	<u>12/31/2008</u>
Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	2
Non-serious Violations Subject to MPs:	18
<u>Total Violations Subject to MPs:</u>	<u>18</u>

Mandatory Minimum Penalty = (0 Serious Violations + 18 Non-Serious Violations) x \$3,000 = \$54,000



Linda S. Adams
Secretary for
Environmental Protection

ATTACHMENT B

California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair



Arnold
Schwarzenegger
Governor

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>

TO: Wendy Wyels, Supervisor
NPDES Compliance and Enforcement

FROM: Barry Hilton, WRCE
NPDES Compliance and Enforcement

DATE: 17 March 2009

SIGNATURE: _____

SUBJECT: TOWN OF DISCOVERY BAY WWTP ASSESSMENT OF MMPs

On 24 February 2009, Central Valley Water Board staff sent the Discharger a draft Record of Violations (ROV) for the period 1 April 2004 through 31 December 2008. The Discharger responded on 9 March 2009. The following discusses the changes I made to the ROV during my preparation of the Administrative Civil Liability Complaint.

Violations not Assessed MMPs in Administrative Civil Liability Complaint R5-2008-0511

The Draft ROV included three copper violations shown in CIWQS database which had not been included in ACLC R5-2008-0511. In addition, the Draft ROV included five chronic violations (numbers 4-6, 8, and 9) which had been exempted from MMPs in R5-2008-0511 but because of the addition of violations 1-3, were now subject to MMPs.

Copper

Violations 1-2. Violations 1-2 were entered into the CIWQS database. The Discharger correctly pointed out that, based upon footnote 6 in Attachment E in the WDRs, the limitation was 75 µg/L, not 10 µg/L. I deleted these violations.

Violation 3. Violation 3 was entered into the CIWQS database as a 4-day average violation. The Discharger correctly pointed out there is no 4-day average in the WDRs. I deleted the violation.

Violation 6. With the addition of the above three violations, Violation 6 was changed from a Remark 3 in ACLC R5-2008-0511 to Remark 4 in the draft ROV. The Discharger correctly stated that with the deletion of violations 1-3, this no longer should have been listed as a violation subject to an MMP. I deleted the violation.

Coliform

Violation 8, 10. The Discharger correctly stated that these violations had been included in the calculations for MMPs in ACLC R5-2008-0511. I deleted these violations.

Based upon the Discharger's comments and our subsequent corrections to the ROV, there are no longer any violations that occurred prior to 1 January 2008 that were not addressed in ACLC R5-2008-0511. Therefore, this ACLC will only address violations from 1 January 2008 through December 2008.

Violations from 1 January 2008 to 31 December 2008.

Coliform

Violation 31. The Discharger stated that the violation should have been for a daily "period type" instead of 7-day. Violation 32 addresses the violation of the 7-day median. I changed violation 31 from a 7-day to daily period and changed the limitation to 240 MPN/100 mL. With these corrections, a non-serious violation subject to MMPs still occurred.

Total Suspended Solids

New Violation 12. The ROV did not include the 14 October 2008 daily 55 mg/L TSS violation. I added the violation.

Violation 42. The self-monitoring report stated 1191 lbs/day. The Discharger showed that it had made an incorrect calculation on the self-monitoring report and should have reported 633 lbs/day which was not a violation. I deleted the violation.

Violation 43. The ROV shows the date of the violation as the last day of the week (20 September 2008). The Discharger states that there was no plant data taken on 20 September 2008 and that presumably the date was 2 September 2008. This is not correct. Our procedure is to consider a week to be comprised of Sunday through Saturday. 20 September 2008 was a Saturday, the last day of the week. I retained the violation.

Violation 44. The ROV shows the date of the violation as the last day of the week (20 September 2008). The Discharger states that there was no plant data taken on 20 September 2008 and that presumably the date was 2 September 2008. This is not correct. Our procedure is to consider a week to be comprised of Sunday through Saturday. 20 September 2008 was a Saturday, the last day of the week. For the week, the average flow was 1.34 mgd. For an average TSS of 40 mg/L, the mass discharge of TSS was $40 * 8.345 * 1.34 = 447$ lbs/day. The weekly effluent limitation was 700 lbs/week. I deleted the violation because the weekly average of 447 lbs/day is less than the weekly effluent limitation of 700 lbs/day.

Violations 45-51. The ROV indicated that these violations were Remark 3, fewer than three violations during the preceding 180 days. Properly, these were Remark 4, more than three violations during the preceding 180 days. I changed the violations to Remark 4. I have discussed this with the Discharger.

**Discovery Bay
Wastewater Treatment Plant**

RECORD OF VIOLATIONS (~~1 April 2004~~ 1 Jan 2008 – 31 December 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program No. R5-2003-0067)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period</u> <u>Type</u>	<u>CIWQS</u> <u>Number</u>	<u>Remarks</u>
1	9-Jun-04	Copper	µg/L	10	20	Daily	257244	2
2	23-Jun-04	Copper	µg/L	10	26	Daily	257245	2
3	23-Jun-04	Copper	µg/L	20	26	4-day	257246	2
14	6-Jul-04	Coliform	MPN/100 mL	240	1600	Daily	257745	34
25	27-Jul-04	TSS	mg/L	50	56	Daily	257774	34
36	13-Oct-04	Copper	µg/L	96	110	Daily	257775	34
47	31-Oct-04	Copper	µg/L	52	90	Monthly	257776	2
58	23-Feb-05	Coliform	MPN/100 mL	240	500	Daily	258037	34
69	12-Apr-05	Coliform	MPN/100 mL	240	300	Daily	258039	3
710	13-Apr-05	Coliform	MPN/100 mL	240	1600	Daily	258038	34
911	27-Apr-05	Coliform	MPN/100 mL	240	500	Daily	258040	4
812	27-Apr-05	Coliform	MPN/100 mL	23	305	7-day	258044	4
101								
3	28-Apr-05	Coliform	MPN/100 mL	23	110	7-day	258071	4
111								
4	3-May-05	Coliform	MPN/100 mL	23	30	7-day	258041	4
121								
5	31-Jul-05	Copper	µg/L	25	35	Monthly	258043	2
131								
6	30-Apr-06	Copper	µg/L	22	25	Monthly	258072	3
141								
7	30-Jun-06	Copper	µg/L	11	20	Monthly	263580	2
151								
8	5-Jul-06	Copper	µg/L	21	40	Daily	263582	2
161								
9	12-Jul-06	Copper	µg/L	21	40	Daily	263583	2
172								
0	31-Jul-06	Copper	µg/L	17	40	Monthly	263581	2
182								
1	31-Jul-06	Copper	lbs/day	0.3	0.4	Monthly	264239	2
192								
2	7-Feb-07	Coliform	MPN/100mL	240	1600	Daily	264237	3
202								
3	12-Feb-07	Coliform	MPN/100mL	240	1600	Daily	264240	3
212								
4	10-Oct-07	Coliform	MPN/100mL	240	1600	Daily	264238	3
232								
5	10-Oct-07	Coliform	MPN/100mL	23	802	7-day	267222	3
222								
6	24-Oct-07	Coliform	MPN/100mL	240	1600	Daily	267218	3
27	24-Oct-07	Coliform	MPN/100mL	23	801	7-day	267619	4
28	25-Oct-07	Coliform	MPN/100mL	23	130	7-day	267618	4
29	26-Oct-07	Coliform	MPN/100mL	23	69	7-day	267632	4

	Date	Violation Type	Units	Limit	Measure d	Period Type	CIWQS Number	Remarks
30	30-Oct-07	Coliform	MPN/100mL	23	69	7-day	268832	4
134	2-Jan-08	Coliform	MPN/100mL	240	>1600	Daily	790220	4
232	8-Jan-08	Coliform	MPN/100mL	23	801	7-day	790221	4
333	29-Jan-08	Coliform	MPN/100mL	23	42	7-day	790222	4
434	30-Jan-08	Coliform	MPN/100mL	23	41	7-day	790224	4
535	12-Feb-08	Coliform	MPN/100mL	240	>1600	Daily	790225	4
636	12-Feb-08	Coliform	MPN/100mL	23	865	7-day	805121	4
737	13-Feb-08	Coliform	MPN/100mL	23	804	7-day	805123	4
838	26-Feb-08	Coliform	MPN/100mL	23	97	7-day	790229	4
939	27-Feb-08	Coliform	MPN/100mL	23	97	7-day	805124	4
104								
0	10-Jun-08	Coliform	MPN/100mL	240	>1600	Daily	805125	4
114								
4	16-Sep-08	TSS	mg/L	50	68	Daily	805126	3
42	16-Sep-08	TSS	lbs/day	875	1194	Daily	805128	3
124								
3	20-Sep-08	TSS	mg/L	40	41	Weekly	805127	3
44	20-Sep-08	TSS	lbs/day	700	710	Weekly	805129	4
13								
144	14 Oct 08	TSS	mg/L	50	55	Daily	808410	4
5								
154	12-Nov-08	Coliform	MPN/100mL	23	46	7-day	805130	3
6								
164	29-Dec-08	TSS	mg/L	50	57	Daily	805131	3
7								
174	29-Dec-08	TSS	lbs/day	875	899	Daily	805134	3
8								
184	30-Dec-08	TSS	mg/L	50	51	Daily	805132	3
9								
195	30-Dec-08	Coliform	MPN/100mL	23	840	7-day	805136	3
0								
205	31-Dec-08	TSS	mg/L	40	54	Weekly	805133	3
4								
	31-Dec-08	TSS	lbs/day	700	853	Weekly	805135	3

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.

ADDED/DELETED VIOLATIONS FROM 4/1/2004 THROUGH 12/31/2007

Group I Serious Violations:	0
Group II Serious Violations:	3
Non-serious Violations Not Subject to MPEs:	(3)
Non-serious Violations Subject to MPEs:	3
<u>Total Additional Violations Subject to MPEs:</u>	<u>6</u>

Additional Mandatory Minimum Penalty (2004-2007) = (3 Serious Violations + 3 Non-Serious Violations) x \$3,000 = \$18,000

VIOLATIONS FROM 1/1/2008 THROUGH 12/31/2008

Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	102
Non-serious Violations Subject to MPs:	4118
<u>Total Violations Subject to MPs:</u>	<u>4118</u>

Mandatory Minimum Penalty (2008) = (0 Serious Violations + ~~4118~~ Non-Serious Violations) x \$3,000 =
~~\$3354,000~~

~~Total Mandatory Minimum Penalty Due = \$18,000 + \$33,000 = \$51,000~~

Deleted violations are shown in strikethrough font.
Added violations are shown in bold font.

Central Valley Regional Water Quality Control Board

PROPOSED DRAFT HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R5-2009-0525

ISSUED TO
THE TOWN OF DISCOVERY BAY
CONTRA COSTA COUNTY

SCHEDULED FOR 11/12 JUNE 2009

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Executive Officer has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (CWC) section 13323 to the Town of Discovery Bay ("Discharger") alleging that it has violated CWC section 13385 by exceeding effluent limitations contained in Waste Discharge Requirements (WDRs) Order R5-2003-0067 (NPDES No. CA0078590). The Complaint proposes that a mandatory minimum penalty in the amount of fifty-four thousand dollars (\$54,000) be imposed. A hearing is currently scheduled to be held before the Central Valley Water Board during its 11/12 June 2009 meeting.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Central Valley Water Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on 11/12 June 2009 will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Central Valley Water Board meeting agenda. The meeting will be held at
11020 Sun Center Drive, Suite 200, Rancho Cordova, California.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Central Valley Water Board's web page at:

http://www.waterboards.ca.gov/centralvalley/board_info/meetings.

Hearing Procedures

The hearing will be conducted in accordance with this Hearing Procedure. This proposed draft version of the Hearing Procedure has been prepared by the Prosecution Team, and is subject to revision and approval by the Central Valley Water Board's Advisory Team. A copy of the general procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Gov't Code § 11500) does not apply to this hearing.

THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. **ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE CENTRAL VALLEY WATER BOARD'S ADVISORY TEAM NO LATER THAN 10 APRIL 2009, OR THEY WILL BE WAIVED.** FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participants

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the Central Valley Water Board, staff or others, at the discretion of the Central Valley Water Board.

The following participants are hereby designated as parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. The Town of Discovery Bay, referred to as the Discharger

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received no later than 5 p.m. on **13 April 2009** to Lori Okun (contact information listed below). The request shall include an explanation of the basis for status as a designated party (i.e., how the issues to be addressed in the hearing and the potential actions by the Central Valley Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties

designated above do not adequately represent the person's interest. Any opposition to the request must be received by the Advisory Team, the person requesting party status, and all other parties by 5 p.m. on **17 April 2009**. The parties will be notified by 5 p.m. on 24 April 2009 whether the request has been granted or denied.

Primary Contacts

Advisory Team:

Ken Landau, Assistant Executive Officer
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
Phone: (916) 464-4726; fax: (916) 464-4758
klandau@waterboards.ca.gov

Lori Okun, Senior Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
1001 I Street
Sacramento, CA 95814
Phone: (916) 341-5165; fax: (916) 341-5199
lokun@waterboards.ca.gov

Prosecution Team:

Pamela Creedon, Executive Officer
Joe Karkoski, Acting Assistant Executive Officer
Wendy Wyels, Environmental Program Manager
Barry Hilton, Water Resources Control Engineer
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Patrick Pulupa, Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
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ppulupa@waterboards.ca.gov

Discharger:

Virgil Koehne
General Manager
Town of Discovery Bay CSD
1800 Willow Lake Road
Discovery Bay, CA 94505-9376
(925) 634-1131

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Central Valley Water Board (Prosecution Team) have been separated from those who will provide advice to the Central Valley Water Board (Advisory Team). Members of the Advisory Team are: Ken Landau, Assistant Executive Officer; and Lori Okun, Senior Staff Counsel. Members of the Prosecution Team are: Pamela Creedon, Executive Officer; Joe Karkoski, Acting Assistant Executive Officer; Wendy Wyels, Environmental Program Manager; Barry Hilton, Water Resources Control Engineer; and Patrick Pulupa, Staff Counsel. Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Central Valley Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested person on the one hand, and a Central Valley Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined 25 minutes to present evidence (including evidence presented by witnesses called by the designated party), cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than ten days after all of the evidence has been received. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Central Valley Water Board Chair (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Central Valley Water Board to consider. Evidence and exhibits already in the public files of the Central Valley Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

The evidence upon which the Complaint is based will have been entered into the administrative file at the time the Complaint is issued. However, the Prosecution Team may submit additional evidence into the administrative file until 5 p.m. on **20 April 2009**. The Board's Advisory Team, all other Designated Parties, and all Interested Parties will be notified if additional evidence is added to the file, and will be provided with copies of the additional evidence. Should the Prosecution Team require witnesses to provide direct testimony at the Hearing, the Prosecution Team will provide the Board's Advisory Team, all other Designated Parties, and all Interested Parties with the information contained in items 3 and 4, above, by 5 p.m. on **20 April 2009**.

The remaining designated parties shall submit 11 hard copies and one electronic copy of the information described in items 1 through 4 above to Ken Landau so that they are received no later than 5 p.m. on **4 May 2009**. In addition to the foregoing, each designated party shall send (1) one copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above. The Designated Parties should submit all rebuttal evidence to Ken Landau no later than 5 p.m. on **1 June 2009**, in order to allow all parties to consider all evidence prior to the hearing. "Rebuttal evidence" is limited to evidence that is offered to disprove or contradict evidence presented by an opposing party.

If the total amount of information submitted by any party is less than 15 pages, that party may submit the information by email, rather than in writing. In addition to the foregoing, each designated party shall send (1) one copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing

of good cause and lack of prejudice to the parties, the Central Valley Water Board may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the Central Valley Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 11020 Sun Center Drive, Suite 200, Rancho Cordova. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Central Valley Water Board's Chair. Many of these documents are also posted on-line at <http://www.waterboards.ca.gov/centralvalley/>. Although the web page is updated regularly, to assure access to the latest information, you may contact Barry Hilton at (916) 464-4762.

Questions

Questions concerning this proceeding may be addressed to Lori Okun at (916) 341-5165.

IMPORTANT DEADLINES

(Note: the Central Valley Water Board is required to provide a hearing within 90 days of issuance of the Complaint (CWC § 13323). The Advisory Team will generally adhere to this schedule unless the discharger submits a waiver and it is accepted.)

30 March 2009	Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice
10 April 2009	Objections due on proposed Hearing Procedure
13 April 2009	Deadline for submission of request for designated party status.
17 April 2009	Deadline for opposition to request for designated party status.
20 April 2009	Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.
24 April 2009	Advisory Team issues decision on requests for designated party status, if any.

- 29 April 2009 Discharger's deadline for submitting signed form to waive right to hearing within 90 days.
- 4 May 2009 Remaining Designated Parties' (including the Discharger) Deadline for submission of all information required under "Evidence and Policy Statements," above.
- 1 June 2009 All Designated Parties' should submit all rebuttal evidence (if any) and evidentiary objections by this date.
- 11/12 June 2009 Hearing