

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0605

MANDATORY PENALTY
IN THE MATTER OF

CITY OF LIVE OAK
WASTEWATER TREATMENT PLANT
SUTTER COUNTY

This Complaint is issued to the City of Live Oak (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order 99-008 and R5-2004-0096 (NPDES No. CA0079022).

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

1. The Discharger owns and operates a wastewater collection, treatment and disposal system, which provides sewerage service for the City of Live Oak. Treated municipal wastewater is discharged to Reclamation District 777 Lateral Drain No. 1, a water of the United States and a tributary to Main Canal, which is tributary to the Sutter Bypass.
2. On 30 April 1999, the Central Valley Water Board adopted Waste Discharge Requirements (WDRs) Order 99-008 to regulate discharges of waste from the wastewater treatment plant (WWTP). At the same time, the Board also adopted Cease and Desist Order (CDO) 99-009. CDO 99-009 required the City to comply with effluent limitations for pH, chlorine residual, total coliform organisms, and acute toxicity by 1 March 2004.
3. On 9 July 2004 the Central Valley Water Board adopted WDRs Order R5-2004-0096 which contained new requirements and rescinded WDRs Order 99-008. At the same time, the Board also adopted CDO R5-2004-0097. This Order rescinded CDO 99-009 and provided protection from mandatory minimum penalties for violations of effluent aluminum, ammonia, diazinon, and organochlorine pesticides limitations only and required the Discharge to achieve full compliance by 1 April 2009. This Complaint considers the protection from mandatory minimum penalties provided by CDOs 99-009 and R5-2004-0097.
4. On 15 August 2008, Central Valley Water Board staff sent the Discharger a draft Record of Violations. The Discharger responded on 25 August 2008 and did not dispute the violations.
5. CWC sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) states:

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 serious violation.

CWC section 13385 (h)(2) states:

For the purposes of this section, a “serious violation” means 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.

CWC section 13385(i)(1) states:

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. The Executive Officer previously issued Administrative Civil Liability Complaint (ALCL) No. R5-2003-0511 to the Discharger for mandatory penalties for effluent limitation violations from 1 January 2000 to 30 June 2003 in the amount of \$879,000. The Executive Officer subsequently entered into a stipulated settlement agreement with the Discharger on 5 November 2003. This stipulated settlement agreement allowed the Discharger to apply the penalties towards completion of a compliance project, pursuant to CWC section 13385(k). On 8 April 2004, the Discharger’s engineer stated that the

compliance project was completed. The Assistant Executive Officer considers this prior matter resolved.

8. WDRs Order 99-008 Effluent Limitations No. B.1., include, in part, the following effluent limitations:

The wastewater effluent shall not exceed the following limits any time during the year:

| <u>Constituents</u> | <u>Units</u> | <u>Monthly Average</u> | <u>Weekly Average</u> | <u>Monthly Median</u> | <u>Daily Maximum</u> | <u>Hourly Average</u> |
|-------------------------------|--------------|------------------------|-----------------------|-----------------------|----------------------|-----------------------|
| BOD ¹ | mg/L | 30 ² | 45 ² | -- | 60 ² | -- |
| <u>Total Suspended Solids</u> | mg/L | 30 ² | 45 ² | -- | 60 ² | -- |

¹ 5-day, 20°C biochemical oxygen demand (BOD)

² To be ascertained by a 24-hour composite

9. WDRs Order 99-008 Effluent Limitations No. B.2., states:

The arithmetic mean of 20°C BOD (5-day) and total suspended solids in effluent samples collected over a monthly period shall not exceed 15 percent of the arithmetic mean of the values for influent samples collected at approximately the same times during the same period (85 percent removal).

10. WDRs Order R5-2004-0096 Effluent Limitations B.1. states, in part:

Effluent shall not exceed the following limits (from adoption until 31 March 2009):

| <u>Constituents</u> | <u>Units</u> | <u>Average Monthly</u> | <u>Monthly Median</u> | <u>Average Weekly</u> | <u>Average Daily</u> | <u>Instantaneous Maximum</u> |
|---------------------------------|--------------|------------------------|-----------------------|-----------------------|----------------------|------------------------------|
| Total Suspended Solids | mg/L | 70 ² | -- | 110 ² | 140 ² | -- |
| <u>Total Coliform Organisms</u> | MPN/100 mL | -- | 23 | -- | -- | 500 |

² To be ascertained by a 24-hour composite

11. According to the Discharger's self-monitoring reports, the Discharger committed five (5) serious Group I violations of the above effluent limitations contained in Orders 99-008 and R5-2004-0096 during the period beginning 1 July 2003 and ending 31 March 2008. The violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels by more than 40 percent on these occasions. The mandatory minimum penalty for these serious violations is **fifteen thousand dollars (\$15,000)**.
12. According to the Discharger's self-monitoring reports, the Discharger committed twenty-two (22) non-serious violations of the above effluent limitations contained in Orders 99-008 and R5-2004-0096 during the period beginning 1 July 2003 and ending 31 March 2008. Seventeen (17) 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-one thousand dollars (\$51,000)**.

13. The total amount of the mandatory penalties assessed for the cited effluent violations is **sixty-six thousand dollars (\$66,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
14. 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 CITY OF LIVE OAK WASTEWATER IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **sixty-six thousand dollars (\$66,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **5/6 February 2009**, unless the Discharger does either of the following by **10 December 2008**:
 - 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 **sixty-six thousand dollars (\$66,000)**; 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.

JACK E. DEL CONTE, Assistant Executive Officer

10 November 2008

**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 City of Live Oak (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0605 (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 proposed civil liability in the amount of **sixty-six thousand dollars (\$66,000)** by check, which will contain a reference to "ACL Complaint R5-2008-0605" and will be made payable to the "*State Water Pollution Cleanup and Abatement Account.*" Payment must be received by the Central Valley Water Board by **10 December 2008** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **5/6 February 2009** Central Valley Water Board meeting.
 - 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 Assistant 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 NO. R5-2008-0605**

**City of Live Oak
Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 July 2003 – 31 March 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program No. 99-008 and R5-2004-0096)

| | <u>Date</u> | <u>Violation Type</u> | <u>Units</u> | <u>Limit</u> | <u>Measure</u> <u>d</u> | <u>Period Type</u> | <u>Remarks</u> |
|----|-------------|-----------------------|--------------|--------------|----------------------------|--------------------|----------------|
| 1 | 1-Jul-03 | TSS | mg/L | 45 | 55 | Weekly Avg | 4 |
| 2 | 16-Jul-03 | TSS | mg/L | 60 | 62 | Daily Max | 4 |
| 3 | 16-Jul-03 | BOD | mg/L | 45 | 52 | Weekly Avg | 4 |
| 4 | 16-Jul-03 | TSS | mg/L | 45 | 62 | Weekly Avg | 4 |
| 5 | 29-Jul-03 | BOD | mg/L | 45 | 46 | Weekly Avg | 4 |
| 6 | 29-Jul-03 | TSS | mg/L | 45 | 56 | Weekly Avg | 4 |
| 7 | 31-Jul-03 | BOD | mg/L | 30 | 42 | Monthly Avg | 1 |
| 8 | 31-Jul-03 | BOD | % removal | 85 | 78 | Monthly Avg | 4 |
| 9 | 31-Jul-03 | TSS | mg/L | 30 | 50 | Monthly Avg | 1 |
| 10 | 26-Aug-03 | TSS | mg/L | 60 | 73 | Daily Max | 4 |
| 11 | 26-Aug-03 | BOD | mg/L | 45 | 54 | Weekly Avg | 4 |
| 12 | 26-Aug-03 | TSS | mg/L | 45 | 73 | Weekly Avg | 1 |
| 13 | 31-Aug-03 | BOD | mg/L | 30 | 38 | Monthly Avg | 4 |
| 14 | 31-Aug-03 | BOD | % removal | 85 | 69 | Monthly Avg | 4 |
| 15 | 31-Aug-03 | TSS | mg/L | 30 | 46 | Monthly Avg | 1 |
| 16 | 23-Dec-03 | BOD | mg/L | 45 | 46 | Weekly Avg | 4 |
| 17 | 30-Dec-03 | BOD | mg/L | 45 | 52 | Weekly Avg | 4 |
| 18 | 31-Dec-03 | BOD | mg/L | 30 | 36 | Monthly Avg | 4 |
| 19 | 25-Feb-04 | TSS | mg/L | 60 | 70 | Daily Max | 4 |
| 20 | 25-Feb-04 | TSS | mg/L | 45 | 70 | Weekly Avg | 1 |
| 21 | 29-Feb-04 | TSS | mg/L | 30 | 33 | Monthly Avg | 4 |
| 22 | 1-Jun-04 | TSS | mg/L | 45 | 46 | Weekly Avg | 4 |
| 23 | 31-Aug-04 | TSS | mg/L | 30 | 31 | Monthly Avg | 3 |
| 24 | 27-Apr-05 | Total Coliform | MPN/100mL | 500 | 1601 | Instantaneous Max | 3 |
| 25 | 15-Jul-05 | Total Coliform | MPN/100mL | 500 | 1601 | Instantaneous Max | 3 |
| 26 | 18-Dec-06 | Total Coliform | MPN/100mL | 500 | 1300 | Instantaneous Max | 3 |
| 27 | 6-Jun-07 | Total Coliform | MPN/100mL | 500 | 1600 | Instantaneous Max | 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.

| | |
|--|------------------|
| VIOLATIONS AS OF: | 3/31/2008 |
| Group I Serious Violations: | 5 |
| Group II Serious Violations: | 0 |
| Non-Serious Exempt from MPs: | 5 |
| Non-serious Violations Subject to MPs: | 17 |
| <u>Total Violations Subject to MPs:</u> | <u>22</u> |

Mandatory Minimum Penalty = (5 Serious Violations + 17 Non-Serious Violations) x \$3,000 = \$66,000