

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2009-0587

MANDATORY PENALTY  
IN THE MATTER OF

CITY OF LIVE OAK  
WASTEWATER TREATMENT PLANT  
SUTTER COUNTY

This Order 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. This Order is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Orders 99-008 and R5-2004-0096 (NPDES No. CA0079022).

The 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 issued 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 issued 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 On 9 July 2004 the Central Valley Water Board issued WDRs Order R5-2004-0096 which contained new requirements and rescinded WDRs Order 99-008. At the same time, the Board also issued CDO R5-2004-0097. CDO R5-2004-0097 rescinded CDO 99-009 and provided protection from mandatory minimum penalties for violations of effluent limitations for aluminum, ammonia, diazinon, and organochlorine pesticides and required the Discharger to achieve full compliance by 1 April 2009. On 24 April 2009, the Central Valley Water Board issued CDO R5-2009-0012-01. CDO R5-2009-0012-01 rescinded CDO R5-2004-0097, established new requirements, and provided a 30 September 2012 final compliance date. This Complaint considers the protection from mandatory minimum penalties provided by CDOs 99-009, R5-2004-0097, and CDO R5-2009-0012-01.
4. The Executive Officer previously issued Administrative Civil Liability Complaint (ACLC) 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 Board considers this prior matter resolved.

5. On 10 November 2008, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability (ACL) Complaint R5-2008-0605. The ACL Complaint charged the Discharger with civil liability in the amount of \$66,000, which represented the sum of the statutory Mandatory Minimum Penalties (MMPs) for effluent limitation violations that occurred at the WWTP from 1 July 2003 through 31 March 2008. This Order resolves the violations alleged in ACL Complaint R5-2008-0605, as well as additional violations that occurred through 30 June 2009. A listing of all violations subject to MMPs from 1 July 2003 through 30 June 2009 is found in Attachment A, a part of this Order.
6. 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.

7. 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 <sup>1</sup>	mg/L	30 <sup>2</sup>	45 <sup>2</sup>	--	60 <sup>2</sup>	--
<u>Total Suspended Solids</u>	mg/L	30 <sup>2</sup>	45 <sup>2</sup>	--	60 <sup>2</sup>	--

<sup>1</sup> 5-day, 20°C biochemical oxygen demand (BOD)

<sup>2</sup> To be ascertained by a 24-hour composite

8. 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).

9. 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 <sup>2</sup>	--	110 <sup>2</sup>	140 <sup>2</sup>	--
<u>Total Coliform Organisms</u>	MPN/100 mL	--	23	--	--	500

<sup>2</sup> To be ascertained by a 24-hour composite

10. WDRs Order R5-2004-0096 Effluent Limitations B.2. states, in part:

The effluent shall not exceed the following limitations (from 1 April 2009 forward):

<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>
BOD <sup>1</sup>	mg/L	10 <sup>2</sup>	--	15 <sup>2</sup>	20 <sup>2</sup>	--
Total Suspended Solids	mg/L	10 <sup>2</sup>	--	15 <sup>2</sup>	20 <sup>2</sup>	500
	lbs/day	120	--	180	230	--

<sup>1</sup> 5-day, 20°C biochemical oxygen demand (BOD)

<sup>2</sup> To be ascertained by a 24-hour composite

11. According to the Discharger's self-monitoring reports, the Discharger committed fourteen (14) 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 30 June 2009. 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 **forty-two thousand dollars (\$42,000)**.

12. According to the Discharger's self-monitoring reports, the Discharger committed twenty-eight (28) 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 30 June 2009. Twenty-two (22) 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 **sixty-six thousand dollars (\$66,000)**.
13. The total amount of the mandatory penalties assessed for the cited effluent violations is **one hundred eight thousand dollars (\$108,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
14. CWC section 13385 (k) states:
  - (1) In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works, if the state board or the regional board finds all of the following:
    - (A) The compliance project is designed to correct the violations within five years.
    - (B) The compliance project is in accordance with the enforcement policy of the state board, excluding any provision in the policy that is inconsistent with this section.
    - (C) The publicly owned treatment works has prepared a financing plan to complete the compliance project.
  - (2) For the purposes of this subdivision, "a publicly owned treatment works serving a small community" means a publicly owned treatment works serving a population of 10,000 persons or fewer or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works.
15. On 4 November 2008, the Executive Director of the State Water Resources Control Board transmitted a memorandum determining that the City of Live Oak Wastewater Treatment Plant is a publicly owned treatment works serving a small community within the meaning of CWC section 13385(k)(2).

16. On 1 September 2009, the Discharger submitted a compliance project update letter which indicated it is in the process of spending approximately \$20,000,000 to construct an upgraded wastewater treatment plant designed to bring the facility into compliance with its NPDES permit and CDO R5-2009-0012-01. The funding consists of a \$10 million grant (which cannot be applied towards Mandatory Minimum Penalties), a \$6 million loan from the Clean Water State Revolving Fund Program, and \$4 million of City funds. The project retains the existing flow capacity, includes a new process control and laboratory building, odor control improvements at the existing headworks, a new process feed pump station, a selector basin and two oxidation ditches, blowers, two secondary clarifiers, a return activated sludge (RAS) pump station, rapid mix, flocculation basins, cloth media filters, an ultraviolet disinfection system, a solids storage basin, filter drying beds, a plant drain pump station and a stormwater retention basin. The compliance project will allow full compliance with CDO R5-2009-0012-01 by 30 September 2012.
17. The oxidation ditches, blowers, secondary clarifiers, rapid mix, flocculation basins, cloth media filters, will directly address the BOD and TSS violations. The rapid mix, flocculation basins, cloth media filters, and ultraviolet disinfection system will directly correct future coliform violations.
18. The Division of Financial Assistance of the State Water Board issued a Facility Plan Approval dated 9 July 2009 to the Discharger requiring 30 December 2011 as the date of construction completion and initiation of operations.
19. When the compliance project is completed, the Discharger will have expended in excess of the mandatory minimum penalties that have been assessed pursuant to CWC sections 13385(h) and (i). The Central Valley Water Board finds the Compliance Project has been designed to correct the violations that have led to the issuance of this Administrative Civil Liability Order within five years; the project is in accordance with the State Water Board *Water Quality Enforcement Policy*; and the Discharger has developed an appropriate financing plan to complete the project.
20. 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).
21. On 23 April 2009, the Central Valley Water Board delegated the authority to issue Administrative Civil Liability Orders, where the matter is not contested by the Discharger, to the Executive Officer (Resolution R5-2009-0027).
22. This Order constitutes a settlement of the violations herein mentioned. Notice of this settlement was published on the Central Valley Water Board's website, in a newspaper of general circulation in the community, and was provided to all interested parties. The 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) has expired.

**IT IS HEREBY ORDERED THAT:**

1. The City of Live Oak, its agents, successors and assigns, shall be assessed an Administrative Civil Liability in the amount of **one hundred-eight thousand dollars (\$108,000)**.
2. The \$108,000 penalty shall be satisfied through the expenditure of an equivalent or greater amount on the completion of the compliance project described in Findings 16 and 17, if the Discharger complies with the following time schedule:

<u>Task</u>	<u>Compliance Date</u>
Complete construction and commence operation of the new wastewater treatment plant	30 December 2011
Submit final documentation of Compliance Project costs	31 January 2012
Achieve Full Compliance	29 March 2012

3. A progress report shall be submitted on or before each of the above compliance dates. The report shall describe the work undertaken to comply with this Order.
4. The Discharger must obtain explicit approval from the Executive Officer for any significant departures from the project outline and project schedule in the Facility Plan Approval dated 9 July 2009. Failure to obtain approval for any significant departures will result in the assessment of the full amount of the suspended mandatory minimum penalty.
5. The Executive Officer may extend the abovementioned deadlines if the Discharger demonstrates that unforeseeable contingencies have created delays, provided that the Discharger continues to undertake all appropriate measures to meet the deadlines. The Discharger shall make any deadline extension request in writing. Under no circumstances may the completion of the Compliance Project extend past five (5) years from the issuance of this Order.
6. If, in the judgment of the Executive Officer, the Discharger fails to complete the compliance project in accordance with the specified time schedule or fails to construct the Compliance Project in accordance with the Proposal without obtaining Central Valley Water Board approval, the suspended mandatory minimum penalty **(\$108,000)** must be paid within 30 days of notification by the Executive Officer of such failure.
7. This Order is final upon signature.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this Order becomes final, except that if the

thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

Original signed by  
\_\_\_\_\_  
PAMELA C. CREEDON, Executive Officer

9 December 2009  
\_\_\_\_\_  
DATE

Attachment A: Record of Violations  
BLH: 9-Dec-09

**ATTACHMENT A  
ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R5-2009-0587**

**City of Live Oak  
Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 July 2003 – 30 June 2009) 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>Measured</u>	<u>Period Type</u>	<u>Remarks</u>	<u>CIWQS</u>
1	1-Jul-03	TSS	mg/L	45	55	Weekly Avg	4	366062
2	16-Jul-03	TSS	mg/L	60	62	Daily Max	4	366066
3	16-Jul-03	BOD	mg/L	45	52	Weekly Avg	4	366301
4	16-Jul-03	TSS	mg/L	45	62	Weekly Avg	4	366315
5	29-Jul-03	BOD	mg/L	45	46	Weekly Avg	4	366331
6	29-Jul-03	TSS	mg/L	45	56	Weekly Avg	4	366335
7	31-Jul-03	BOD	mg/L	30	42	Monthly Avg	1	366317
8	31-Jul-03	BOD	% removal	85	78	Monthly Avg	4	366325
9	31-Jul-03	TSS	mg/L	30	50	Monthly Avg	1	366328
10	26-Aug-03	TSS	mg/L	60	73	Daily Max	4	366337
11	26-Aug-03	BOD	mg/L	45	54	Weekly Avg	4	366338
12	26-Aug-03	TSS	mg/L	45	73	Weekly Avg	1	366339
13	31-Aug-03	BOD	mg/L	30	38	Monthly Avg	4	366340
14	31-Aug-03	BOD	% removal	85	62	Monthly Avg	4	366341
15	31-Aug-03	TSS	mg/L	30	46	Monthly Avg	1	366342
16	23-Dec-03	BOD	mg/L	45	46	Weekly Avg	4	366347
17	30-Dec-03	BOD	mg/L	45	52	Weekly Avg	4	366351
18	31-Dec-03	BOD	mg/L	30	36	Monthly Avg	4	366345
19	25-Feb-04	TSS	mg/L	60	70	Daily Max	4	366353
20	25-Feb-04	TSS	mg/L	45	70	Weekly Avg	1	366354
21	29-Feb-04	TSS	mg/L	30	33	Monthly Avg	4	366357
22	1-Jun-04	TSS	mg/L	45	46	Weekly Avg	4	366359
23	31-Aug-04	TSS	mg/L	30	31	Monthly Avg	3	793587
24	27-Apr-05	Total Coliform	MPN/100mL	500	1601	Inst Max	3	793590
25	15-Jul-05	Total Coliform	MPN/100mL	500	1601	Inst Max	3	793828
26	18-Dec-06	Total Coliform	MPN/100mL	500	1300	Inst Max	3	773592
27	6-Jun-07	Total Coliform	MPN/100mL	500	1600	Inst Max	3	793827
28	30-Mar-09	Total Coliform	MPN/100ml	500	1600	Inst Max	3	821820
28	1-Apr-09	TSS	mg/L	20	34	Daily	1	824452
30	4-Apr-09	BOD	mg/L	15	16	Weekly	4	824454
31	4-Apr-09	TSS	mg/L	15	34	Weekly	1	824459
32	4-Apr-09	TSS	lbs/day	180	187	Weekly	4	824460
33	15-Apr-09	BOD	mg/L	20	22	Daily	4	824461
34	15-Apr-09	TSS	mg/L	20	36	Daily	1	824462
35	16-Apr-09	BOD	mg/L	20	24	Daily	4	824466
36	16-Apr-09	TSS	mg/L	20	35	Daily	1	824467
37	17-Apr-09	BOD	mg/L	20	25	Daily	4	824472
38	17-Apr-09	TSS	mg/L	20	35	Daily	1	824474

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>	<u>CIWQS</u>
39	18-Apr-09	BOD	mg/L	15	24	Weekly	1	824484
40	18-Apr-09	TSS	mg/L	15	35	Weekly	1	824485
41	20-Apr-09	TSS	mg/L	20	40	Daily	1	824490
42	22-Apr-09	TSS	mg/L	20	31	Daily	1	824495

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 violation falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.

<b><u>VIOLATIONS AS OF:</u></b>	<b><u>6/30/2009</u></b>
Group I Serious Violations:	14
Group II Serious Violations:	0
Non-Serious Violations Exempt from MPs:	6
Non-serious Violations Subject to MPs:	22
<b><u>Total Violations Subject to MPs:</u></b>	<b><u>36</u></b>

**Mandatory Minimum Penalty = (14 Serious Violations + 22 Non-Serious Violations) x \$3,000 = \$108,000**