

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ACL COMPLAINT R5-2011-0589

ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF  
CITY OF ANGELS  
WASTEWATER TREATMENT FACILITY  
CALAVERAS COUNTY

This Complaint is issued to the City of Angels (hereafter Discharger or City) pursuant to California Water Code (CWC) sections 13350 and 13385, which authorize 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 98-110 and Cleanup and Abatement Order 5-01-535.

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

**Background**

1. The Discharger owns and operates the domestic wastewater collection, treatment and disposal system (WWTF) that serves a population of approximately 3,400.
2. On 17 April 1998, the Central Valley Water Board issued Waste Discharge Requirements (WDRs) Order 98-110, which prescribed requirements for the discharge of domestic wastewater from the WWTF. The WDRs contain, among other items, prohibitions, effluent limitations, and monitoring and reporting requirements with which the Discharger must comply.
3. The treatment facility consists of influent flow equalization, mechanical screening, grit removal, biological treatment with nitrification/denitrification, chemical addition, flocculation, sand filtration, sedimentation, and UV disinfection. Sludge is anaerobically digested and then dewatered in sludge drying beds. Treated wastewater is pumped approximately three-quarters of a mile to a storage reservoir (Holman Reservoir), and is then spray irrigated on 61 acres of pasture land owned by the City. Treated wastewater is also used to irrigate 110 acres of the Greenhorn Creek Golf Course. The discharge to Greenhorn Creek is regulated by Water Reclamation Requirements Order 98-098, which is issued to a party other than the Discharger.
4. On 3 May 2007, the Central Valley Water Board adopted National Pollutant Discharge Elimination System (NPDES) Order R5-2007-0031. After the Discharger submitted a mixing zone study and a request to re-open the permit, on 13 August 2009, the Board adopted NPDES Order 2009-0074 amending Order R5-2007-0031. The NPDES permit allows seasonal discharge (November 15 through May 15) to Angels Creek when (a) the average daily Angels Creek flows are at least 12 million gallons per day, (b) the creek flows provide a downstream dilution ratio of at least 20:1, and (c) the wastewater flows

exceed the land disposal and storage capacity of the facility.

5. This Administrative Civil Liability Complaint only addresses violations of the WDR Order 98-110 and Cleanup and Abatement Order 5-01-535 (described below).

### **Previous Major Enforcement Items**

6. The Discharger has had a history of spills at this facility. On 5 October 2001, the Executive Officer issued Cleanup and Abatement Order (CAO) 5-01-535, which requires (among other items) that the discharge of wastewater to Six Mile Creek and Angels Creek cease immediately and that the Discharger come into compliance with WDRs Discharge Prohibition A.1, which states “*Discharge of waste to surface waters or surface water drainage courses is prohibited.*”
7. The CAO addresses a number of issues at the facility, and requires that a number of studies be completed and implemented, including: documentation of the measures taken to stop discharges to surface water; a Title 22 Engineering Report for the distribution and reuse of recycled water; a water balance and capacity calculation report; a feasibility study describing alternatives for increasing the effluent storage capacity; documentation of the completion of construction of the selected alternative for increasing effluent storage capacity; and monthly status reports documenting the progress of all the items required under the CAO. In addition, the CAO requires that the Discharger maintain two feet of freeboard in the equalization basin and that objectionable odors be confined within the boundaries of the land application area.
8. The Discharger has substantially complied with the majority of the CAO, except as described in Findings 9-12.

### **Recent Violations**

9. On 2 December 2010, a Notice of Violation and Water Code Section 13267 Order for Technical Reports was issued for six spills that occurred between September 2008 and April 2010, as found in Attachment A to this Order. During these spills, treated wastewater was spilled from the spray irrigation area, resulting in discharges of waste in violation of the WDRs. The Order for Technical Reports requires that the Discharger submit a *Recycled Water Spill Assessment and Control Plan*, including a plan and schedule for site improvements to keep the reclaimed water within the designated disposal area at all times. The plan was submitted, and includes a schedule which shows that improvements will be completed by April 2013.

The six spills are outlined below:

- a. On 12 September 2008, **1,000 gallons** of tertiary treated wastewater was spilled from the land application area to a surface water drainage channel. The Discharger reported that the spill was caused by a broken riser pipe at the irrigation fields, and

that the spill duration was approximately 20 days.

- b. On 24 October 2008, **25,000 gallons** of tertiary treated wastewater was spilled from the land application area to a surface water drainage channel, which discharges into a creek that feeds into Angels Creek and then New Melones Reservoir. The spill was caused by a broken 12-inch mainline at the sprayfield. The Discharger reported that the spill duration was 22 hours.
  - c. On 30 December 2008, **7,000 gallons** of tertiary treated wastewater was spilled to the land application irrigation area. The Discharger reported that the spill did not reach the drainage channel or surface water. The spill was caused by a goat that damaged a valve box and solenoid valve. The spill duration was approximately 2.5 hours.
  - d. On 26 July 2009, **2,500,000 gallons** of tertiary treated wastewater was spilled from the land application area to a surface water drainage channel, which discharges into a creek that feeds into Angels Creek and then New Melones Reservoir. The Discharger estimated that the duration of the spill was 22 hours, and was caused by the failure of an 8-inch PVC tee on the irrigation line force main.
  - e. On 27 October 2009, **111,600 gallons** of tertiary treated wastewater was spilled from the land application area to a surface water drainage channel, which discharges into a creek that feeds into Angels Creek and then New Melones Reservoir. The spill duration was approximately 16.5 hours, and was reportedly caused by the failure of a 6-inch irrigation pipe near an isolation valve.
  - f. On 7 April 2010, **450,000 gallons** of tertiary treated wastewater was spilled from the land application area to a surface water drainage channel, which discharges into a creek that feeds into Angels Creek and then New Melones Reservoir. The Discharger estimated the spill duration as 22.5 hours, and reported that the spill was caused by an electrical outage which resulted in loss of pump control.
10. On 14 January 2011, **350,000 gallons** of tertiary treated wastewater was discharged from the spray irrigation fields to a surface water drainage channel which discharges to a creek that enters Angels Creek and then New Melones Reservoir. The Discharger reported that the spill was the result of a cracked air release valve in the irrigation pipeline. The Discharger reported the spill to the California Emergency Management Agency on 15 January 2011 at 4:30 pm, and indicated that the incident occurred on 14 January 2011 at 5:00 pm. Therefore, Water Board staff estimated the spill duration as one day.
  11. On 29 June 2011, **100,000 gallons** of tertiary treated wastewater was discharged from the spray irrigation fields to a surface water drainage channel which discharges to a creek that enters Angels Creek and then New Melones Reservoir. The Discharger reported that the spill was the result of a rupture in a main irrigation pipeline. The Discharger reported the spill to the California Emergency Management Agency on 29

June 2011 at 11:17 am, and indicated that the incident occurred on 29 June 2011 at 8:30 am. Therefore, Water Board staff estimated the spill duration as one day.

12. In summary, between September 2008 and June 2011, the Discharger spilled 7,000 gallons of wastewater to land over a one day period, and 3,537,600 gallons of wastewater to surface water over a 26 day period. These spills are a violation of WDR Discharge Prohibition A.1 and of the CAO.

### **Regulatory Considerations**

13. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (hereafter Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board.
14. Surface water drainage from the irrigation fields is to a creek which feeds Angels Creek, which is a tributary to the Stanislaus River.
15. The present and potential uses for the Stanislaus River, to which Angels Creek is tributary are as follows: municipal and domestic supply; agricultural supply, including stock watering; hydropower generation; water contact recreation, including canoeing and rafting; non-contact water recreation, including aesthetic enjoyment; commercial and sport fishing; aquaculture; warm freshwater habitat; cold freshwater habitat; and wildlife habitat.
16. An administrative civil liability may be imposed pursuant to the procedures described in CWC section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
17. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)
18. 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 § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

### Calculation of Penalties Under CWC section 13350

19. Administrative civil liability may be imposed for violations of WDRs Order 98-110 pursuant to CWC section 13350(a) which states, in relevant part,

(a) Any person who ... in violation of any waste discharge requirement ... or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state... shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

CWC section 13350(e) states, in relevant part,

(e) The state board or a regional board may impose civil liability administratively ... either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(a) When there is a discharge, and a cleanup and abatement order is issued...the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and the cleanup and abatement order is violated.

(2) The civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged.

20. Discharge Prohibition A.2 of WDRs Order 98-110 states:

Bypass or overflow of untreated or partially treated waste is prohibited.

21. Item 2 of Cleanup and Abatement Order 5-01-535 states:

The Discharger shall comply with all requirements of WDRs Order 98-110, except as described in Item No. 10 (below) forthwith. [Item No. 10 refers to the BOD effluent limit].

22. The spill of treated wastewater to the sprayfield described in Finding 9.c is considered a bypass because it was not properly applied to the disposal area. Therefore it is a violation of Discharge Prohibition A.2 and of the CAO.

23. **Maximum Civil Liability for Bypass:** Per CWC section 13350, the maximum liability is either \$5,000 per day or \$10 per gallon. For this particular spill event, the duration was one day and the volume was 7,000 gallons. Of the two values, the per-gallon liability is highest, and therefore the maximum liability for this spill event is \$7,000.

24. **Minimum Civil Liability for Bypass:** Per CWC section 13350, the minimum civil liability is \$500.

### Calculation of Penalties Under CWC section 13385

25. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and CWC section 13376 prohibits discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.
26. CWC section 13376 states, in part:

Any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States ... shall file a report of the discharge in compliance with the procedures set forth in Section 13260..." and "The discharge of pollutants...except as authorized by waste discharge requirements [NPDES permit]...is prohibited.
27. WDRs Order 5-01-535 is not an NPDES permit. Therefore, by failing to file a report of waste discharge as set forth in CWC section 13260 and failing to obtain an NPDES permit prior to the discharges described in the above Findings, the Discharger has violated CWC section 13376.
28. CWC section 13385 states, in relevant part:
  - (a) Any person who violates any of the following shall be liable civilly in accordance with this section:
    - (5) Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended.
    - (c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:
      - (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.
      - (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
    - (e) ...At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.
29. Discharge Prohibition A.1 of WDRs Order 98-110 states:

Discharge of wastes to surface waters or surface water drainage courses is prohibited.
30. The spills to surface water described in Findings 9-12 are a violation of Discharge Prohibition A.1 and CAO 5-01-535. In addition, WDRs Order 98-110 does not authorize the discharge of waste to surface waters. Any discharge of waste to surface waters, except those that are in accordance with an NPDES permit, is a violation of the Clean Water Act, section 301. CWC section 13385 authorizes the imposition of administrative civil liability for such violations.

31. **Maximum Civil Liability for Discharge to Surface Waters:** Per CWC section 13385, civil liability administratively imposed by the Central Valley Water Board may not exceed \$10,000 per violation per day, plus \$10 per gallon for each gallon of waste discharged over 1,000 gallons. Seven of the discharges described in the Findings above entered surface waters. At \$10 per gallon for discharges in excess of 1,000 gallons, and at \$10,000 per day for each day of the discharge, the maximum liability is \$35,566,000, as shown in Attachment B of this Complaint.
32. **Minimum Civil Liability for Discharge to Surface Waters:** Pursuant to CWC section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. In general, the discharges were due to inadequate maintenance of an old and deteriorated pipe system. The Discharger has estimated that it will cost approximately \$1.1 million to upgrade and improve the system. Any economic benefit gained by non-compliance would be the interest on a loan to complete the work, which was calculated at approximately \$109,000 using an interest rate of 3.5% compounded annually from September 2008 (the date of the first spill subject to this complaint) through April 2013 (the date the Discharger proposes to complete all improvements).

#### **Total Maximum and Minimum Penalties**

33. Adding together the total maximum penalties that could be assessed under CWC sections 13350 and 13385 (described in Findings 23 and 31), the maximum penalty for the discharge is **thirty five million five hundred and seventy three six thousand dollars (\$35,573,000)**.
34. Adding together the total minimum penalties that could be assessed under CWC sections 13350 and 13385 (described in Findings 24 and 32), the minimum penalty is at least \$109,500.

#### **Proposed Administrative Civil Liability**

35. Pursuant to CWC sections 13327 and 13385, subdivision (e), in determining the amount of any civil liability imposed under CWC sections 13305 and 13385(c), the Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require.
36. On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are

required to be considered when imposing a civil liability as outlined in CWC sections 13327 and 13385(e). The entire Enforcement Policy can be found at:

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final11179.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11179.pdf)

37. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment C. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
38. As described above, the maximum penalty for the violations is \$35,573,000 and the minimum penalty is \$109,500. The Enforcement Policy requires that the minimum liability imposed be at least 10% higher than the economic benefit so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations. In this case, the economic benefit amount, plus 10%, is \$120,450. Based on consideration of the above facts and after applying the penalty methodology, the Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **\$125,000**. The specific factors considered in this penalty are detailed in Attachment C.
39. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.

**CITY OF ANGELS IS HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Central Valley Water Board charges the Discharger with an administrative civil liability in the amount of **one hundred and twenty-five thousand dollars (\$125,000)**. The amount of the proposed liability is based upon a review of the factors cited in CWC sections 13327 and 13385, as well as the State Water Resources Control Board's 2010 Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **30 November and 1/2 December 2011**, unless one of the following occurs by **6 October 2011**:
  - a) The Discharger waives the hearing by completing the attached form (checking off the box next to Option #1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **one hundred and twenty-five thousand dollars (\$125,000)**; or
  - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or

- c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
3. If a hearing 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

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PAMELA C. CREEDON, Executive Officer

6 September 2011

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Date

Attachment A: 2 December 2010 Notice of Violation and Water Code Section 13267 Order for Technical Reports  
Attachment B: Maximum Liability Calculation  
Attachment C: Specific Factors Considered for Civil Liability

MLB/WSW: 6-Sep-11

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the City of Angels (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2011-0589 (hereafter Complaint). 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. The person who has been issued a complaint may waive the right to a hearing."

**(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)**

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **one hundred and twenty-five thousand dollars (\$125,000)** by check that references "ACL Complaint R5-2011-0589" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **6 October 2011**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant 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. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. 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.

**(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

**(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)