

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BASIN REGION**

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R7-2010-0049

IN THE MATTER OF  
CITY OF EL CENTRO, OWNER/OPERATOR  
WASTEWATER TREATMENT PLANT  
El Centro – Imperial County

The Colorado River Basin Regional Water Quality Control Board (Regional Board), having held a hearing on November 18, 2010 to hear evidence and comments on the allegations contained in Administrative Civil Liability Complaint No. R7-2010-0012, and having deliberated on evidence presented at the hearing and in the record, finds the following:

1. The City of El Centro (Discharger) owns and operates a municipal wastewater treatment plant (WWTP) located at 2255 La Brucherie Road, El Centro CA 92243 and provides sewerage service to the City of El Centro. The WWTP has a treatment capacity of eight (8) million gallons-per-day (MGD). Wastewater from the WWTP is discharged to the Central Main Drain, tributary to the Alamo River, and ultimately to the Salton Sea. The Central Main Drain, the Alamo River and Salton Sea are waters of the United States.
2. On March 30, 2004, the Regional Board adopted Waste Discharge Requirements (WDRs) Order No. R7-2004-0004 (NPDES Permit No. CA0104426) for the Discharger to regulate discharges of treated wastewater from the WWTP.
3. WDRs Order No. R7-2004-0004 (page 5, Section A.4.) contains the following effluent limitations:

“Wastewater effluent discharged to Central Main Drain shall not have an Escherichia Coli (E. coli) concentration in excess of a log mean of Most Probable Number (MPN) of 126 MPN per 100 milliliters (based on a minimum of not less than five samples for any 30-day period) nor shall any sample exceed 400 MPN per 100 milliliters. The compliance point for this effluent limitation shall be at a location acceptable to the Regional Board’s Executive Officer or his designee.”

4. WDRs Order No. R7-2004-0004 (page 11, Provision E.10) states:

“Unless otherwise approved by the Regional Board’s Executive Officer, all analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services. All analyses shall be conducted in accordance with the latest edition of ‘Guidelines Establishing Test Procedure for Analysis of Pollutants’ promulgated by the USEPA.”<sup>1</sup>

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<sup>1</sup> This requirement is reiterated in Paragraph 1 of Monitoring and Reporting Program No. 2004-0004 associated with WDRs Order No. 2004-0004.

5. Beginning July 1 July 2008 and continuing through January 29 2009, the Discharger used an uncertified laboratory to perform E. coli analyses on sixty-one occasions, in violation of WDRs Order No. R7-2004-0004. Exhibit "A" to this Order shows the specific dates on which the violations occurred.
6. Because the Discharger submitted effluent monitoring data for E. coli from a laboratory that did not possess certification for analysis of bacteria constituents, the Regional Board is unable to determine whether the Discharger is in compliance with the Effluent Limitations of Board Order No. R7-2004-0004 for E. coli for those dated on which the violations occurred.
7. California Water Code (CWC) Section 13385 states:

"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 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."
8. The maximum administrative civil liability that may be imposed pursuant to CWC Section 13385 for the violations described above is six hundred ten thousand dollars (\$610,000).
9. CWC Section 13385(e) requires the Regional Board, in determining the amount of any liability, to consider the nature, circumstances, extent and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, 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, results from the violation, and other matters as justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the act that constitutes the violation.
10. On November 19, 2009, the State Water Resources Control Board (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 May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in CWC Section 13385(e).
11. Exhibit "B" to this Order describes the Regional Board's consideration and use of the Enforcement Policy penalty methodology in its determination of the appropriate liability in this matter. As described in Exhibit B, the appropriate liability is forty-one thousand, nine hundred fifty three dollars (**\$41,953**).

12. Issuance of this Administrative Civil Liability Order 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 Section 15321(a)(2) (“Enforcement Actions by Regulatory Agencies”), Title 14, California Code of Regulations.
13. Any person aggrieved by this action of the Regional 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 no later than 5:00 p.m., thirty (30) days after the date of this Order, except that if the thirtieth day following the date of this Order 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). Copies will also be provided upon request.

**IT IS HEREBY ORDERED**, pursuant to CWC Section 13385, the Discharger is assessed forty-one thousand nine hundred fifty three dollars (**\$41,953**) in administrative civil liability. In accordance with CWC Sections 13323(d) and 13385(n)(1), payment shall be made within 30 days from the date of this Order by check or money order, payable to the “State Water Pollution Cleanup and Abatement Account”.

I, Robert Perdue, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order adopted by the California Regional Water Quality Control Board, Colorado River Basin Region, on November 18, 2010.

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ROBERT PERDUE, Executive Officer

**EXHIBIT "A"**  
Summary of Violations of WDRs Order No. R7-2004-0004  
for City of El Centro WWTP

	<b>Violation Type</b>	<b>Violation Date</b>	<b>Violation Description</b>
1	<i>E. Coli</i>	07/01/2008	Used uncertified laboratory
2	<i>E. Coli</i>	07/07/2008	Used uncertified laboratory
3	<i>E. Coli</i>	07/09/2008	Used uncertified laboratory
4	<i>E. Coli</i>	07/14/2008	Used uncertified laboratory
5	<i>E. Coli</i>	07/16/2008	Used uncertified laboratory
6	<i>E. Coli</i>	07/21/2008	Used uncertified laboratory
7	<i>E. Coli</i>	07/23/2008	Used uncertified laboratory
8	<i>E. Coli</i>	07/28/2008	Used uncertified laboratory
9	<i>E. Coli</i>	07/30/2008	Used uncertified laboratory
10	<i>E. Coli</i>	08/04/2008	Used uncertified laboratory
11	<i>E. Coli</i>	08/06/2008	Used uncertified laboratory
12	<i>E. Coli</i>	08/11/2008	Used uncertified laboratory
13	<i>E. Coli</i>	09/13/2008	Used uncertified laboratory
14	<i>E. Coli</i>	08/18/2020	Used uncertified laboratory
15	<i>E. Coli</i>	08/20/2008	Used uncertified laboratory
16	<i>E. Coli</i>	08/25/2008	Used uncertified laboratory
17	<i>E. Coli</i>	08/27/2008	Used uncertified laboratory
18	<i>E. Coli</i>	09/02/2008	Used uncertified laboratory
19	<i>E. Coli</i>	09/03/2008	Used uncertified laboratory
20	<i>E. Coli</i>	09/08/2008	Used uncertified laboratory
21	<i>E. Coli</i>	09/10/2008	Used uncertified laboratory
22	<i>E. Coli</i>	09/15/2008	Used uncertified laboratory
23	<i>E. Coli</i>	09/17/2008	Used uncertified laboratory
24	<i>E. Coli</i>	09/22/2008	Used uncertified laboratory
25	<i>E. Coli</i>	09/24/2008	Used uncertified laboratory
26	<i>E. Coli</i>	09/29/2008	Used uncertified laboratory
27	<i>E. Coli</i>	10/01/2008	Used uncertified laboratory
28	<i>E. Coli</i>	10/06/2008	Used uncertified laboratory
29	<i>E. Coli</i>	10/08/2008	Used uncertified laboratory
30	<i>E. Coli</i>	10/13/2008	Used uncertified laboratory
31	<i>E. Coli</i>	10/15/2008	Used uncertified laboratory
32	<i>E. Coli</i>	10/20/2008	Used uncertified laboratory
33	<i>E. Coli</i>	10/22/2008	Used uncertified laboratory
34	<i>E. Coli</i>	10/27/2008	Used uncertified laboratory

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35	<i>E. Coli</i>	10/29/2008	Used uncertified laboratory
36	<i>E. Coli</i>	11/03/2008	Used uncertified laboratory
37	<i>E. Coli</i>	11/05/2008	Used uncertified laboratory
38	<i>E. Coli</i>	11/10/2008	Used uncertified laboratory
39	<i>E. Coli</i>	11/12/2008	Used uncertified laboratory
40	<i>E. Coli</i>	11/17/2008	Used uncertified laboratory
41	<i>E. Coli</i>	11/19/2008	Used uncertified laboratory
42	<i>E. Coli</i>	11/24/2008	Used uncertified laboratory
43	<i>E. Coli</i>	11/25/2008	Used uncertified laboratory
44	<i>E. Coli</i>	12/01/2008	Used uncertified laboratory
45	<i>E. Coli</i>	12/03/2008	Used uncertified laboratory
46	<i>E. Coli</i>	12/08/2008	Used uncertified laboratory
47	<i>E. Coli</i>	12/10/2008	Used uncertified laboratory
48	<i>E. Coli</i>	12/15/2008	Used uncertified laboratory
49	<i>E. Coli</i>	12/17/2008	Used uncertified laboratory
50	<i>E. Coli</i>	12/22/2008	Used uncertified laboratory
51	<i>E. Coli</i>	12/23/2008	Used uncertified laboratory
52	<i>E. Coli</i>	12/29/2008	Used uncertified laboratory
53	<i>E. Coli</i>	12/30/2008	Used uncertified laboratory
54	<i>E. Coli</i>	01/05/2009	Used uncertified laboratory
55	<i>E. Coli</i>	01/07/2009	Used uncertified laboratory
56	<i>E. Coli</i>	01/12/2009	Used uncertified laboratory
57	<i>E. Coli</i>	01/14/2009	Used uncertified laboratory
58	<i>E. Coli</i>	01/20/2009	Used uncertified laboratory
59	<i>E. Coli</i>	01/21/2009	Used uncertified laboratory
60	<i>E. Coli</i>	01/26/2009	Used uncertified laboratory
61	<i>E. Coli</i>	01/28/2009	Used uncertified laboratory

**EXHIBIT “B”**  
Calculation of Liability

1. Step 1 - Potential for Harm for Discharge Violations

The submission of effluent monitoring data for E. coli from a laboratory that did not possess certification for analysis of bacteria constituents is a “non-discharge violation.” Therefore this step does not apply.

2. Step 2 – Assessments for Discharge Violations

The submission of effluent monitoring data for E. coli from a laboratory that did not possess certification for analysis of bacteria constituents is a “non-discharge violation.” Therefore this step does not apply.

3. Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the Enforcement Policy’s penalty calculation methodology directs the Regional Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

The Potential for Harm is minor because while the Discharger’s failure to use a certified laboratory as required by WDRs Order No R7-2004-0004 undermines the Regional Board’s ability to determine whether the Discharger is in compliance with Effluent Limitation A.4 for E. coli, there is no evidence to suggest that the results analyzed by the uncertified lab were inaccurate. However, lack of certification for the analyses performed raises the question of reliability. Environmental Laboratory Accreditation Program (ELAP) certification is the State Department of Health Services method of verification that the Lab is qualified to perform the analyses. Without the proper certification, the quality and validity of the data is indeterminate.

The Extent of Deviation from applicable requirements is moderate because a laboratory was used to analyze the samples, rather than no laboratory at all.

Using “TABLE 3 – Per Day Factor” and applying a Potential for Harm of minor and an Extent of Deviation of moderate results in a factor of **0.25**. As a result, the Initial Base Liability is:

$$\text{Initial Base Liability} = (0.25) \times (61 \text{ days of violation}) \times (\$10,000) = \$152,500$$

4. Step 4 – Adjustment Factors

The Enforcement Policy describes three factors related to the violator’s conduct that should be considered for modification of the amount of initial liability: the violator’s culpability, the violator’s efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator’s compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

a. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case a culpability multiplier of 0.5 has been selected. This value is based on the fact that the Discharger had no knowledge that the laboratory it had been using was not properly certified.

b. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation.

The Discharger's cleanup and cooperation factor is 0.75. This value is based on the fact that the Discharger contracted with a certified laboratory immediately after it became aware that the laboratory it had been using was not properly certified.

c. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. In this case, a multiplier of 1.1 is proposed because the Discharger has been issued several Orders for noncompliance with WDRs Order No. R7-2004-0004: R7-2005-0107 adopted on September 8, 2005 for \$18,000; R7-2006-0075 adopted on September 21, 2006 for \$12,000; and R7-2008-0065 on September 15, 2008 for \$24,000.

5. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by adding the initial liability amounts (from Steps 1-3) for each applicable violation and applying the adjustment factors from Step 4. Accordingly, the Total Base Liability Amount for submission of effluent monitoring data for E. coli from a laboratory that did not possess certification for analysis of bacteria constituents is calculated as follows:

$$\text{(Total Base Liability Amount)} = \text{(Initial Liability)} \times \text{(Culpability Adjustment)} \times \text{(Cleanup and Cooperation Adjustment)} \times \text{(History of Violations Adjustment)}$$

$$\text{Total Base Liability Amount} = (\$152,500) \times (0.5) \times (0.75) \times (1.1) = \mathbf{\$62,906}$$

6. Step 6 – Ability to Pay and Ability to Continue in Business

The Enforcement Policy provides that if the Regional Board has sufficient financial information necessary to assess the violator's ability to pay the Total Base Liability or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability Amount may be adjusted downward.

The Regional Board has sufficient information to suggest that the Discharger does not have the ability to pay the Total Base Liability Amount, based on the following information:

- a. In 2009, El Centro's population was about 44,000 with a median household income lower than the state's average.

- b. The percentage of the population below the poverty line and unemployment are above the state averages. El Centro currently has one of the highest unemployment rates in the country, over 25%.
- c. The 7.2 Mexicali earthquake that occurred on April 4, 2010 caused an estimated \$2.5 million in damages to the City of El Centro's infrastructure, including \$655,000 at the wastewater treatment plant. Facilities needing repair are exterior concrete walls severely damaged, exterior baffle collapsed, primary and secondary clarifiers, and aeration tanks.

Therefore, the Regional Board determines that the ability to pay factor is 0.5.

#### 7. Step 7 – Other Factors As Justice May Require

The Enforcement Policy provides that if the Regional Board believes that the amount determined using the above factors is inappropriate, the liability amount may be adjusted under the provision for "other factors as justice may require," if express findings are made. In addition, the costs of investigation should be added to the liability amount according to the Enforcement Policy.

The Regional Board's Prosecution Team has incurred \$10,500 in investigative costs to date associated with all of the violations described in the Complaint. This is based on staff time of 70 hours, at a rate of \$150 per hour. These costs should be added to the liability amount.

#### 8. Step 8 – Economic Benefit

The Enforcement Policy directs the Regional Board to determine any economic benefit of the violations based on the best available information and suggests that the amount of the administrative civil liability should exceed this amount whether or not economic benefit is a statutory minimum.

The economic benefit of the violation was estimated to be \$12,945.

The Discharger was in violation of WDRs Order No. R7-2004-0004 from July 1, 2008 through January 28, 2009. During this time period, the Discharger conducted E. coli sampling on 61 occasions. Therefore, there would have been 61 instances when the Discharger should have sent its samples to a certified laboratory. If the Discharger had transported its samples to a certified laboratory in San Diego, California, that distance represents approximately 226 miles and a 4-hour roundtrip from El Centro, California to San Diego California. The United States Internal Revenue Service's standard mileage rates of reimbursement indicate that the business mileage rate was 58.5 cents in the second half of 2008. Assuming 226 miles per sampling event multiplied by 58.5 cents for mileage multiplied by 61 sampling events from July 1, 2008 through January 18, 2009 equates to \$8,065 in travel expenses for transporting the samples from El Centro, California to San Diego, California.

In addition to the travel expenses explained above, there are also associated staff costs with transporting samples. One trip from El Centro, California to San Diego, California would take approximately 4 hours roundtrip. Again, this trip would have to be made 61 times during the period from July 1, 2008 through January 28, 2009. One 4-hour roundtrip commute multiplied by 61 trips is 244 hours total. Because there is a limited time period for transporting the samples to San Diego, California, it is likely that staff would need to transport the samples directly to the laboratory rather than sending them through a courier service. If we assume a

conservative staff cost of \$20 an hour multiplied by 244 hours, the total staff costs associated with transporting the samples is \$4,880.

Therefore, the total calculated economic benefit is \$12,945. The Enforcement Policy requires that the adjusted total Base Liability Amount be at least 10% higher than the economic benefit amount, or \$14,240.

In this case, the adjusted total base liability amount recovers the economic benefit.

9. Step 9 – Maximum and Minimum Liability Amounts

The Enforcement Policy directs the Regional Board to consider and maximum or minimum liability amounts set forth in the applicable statutes.

As described in Paragraph 8 of the Order, the maximum liability that may be imposed for the violations is \$610,000. The minimum liability, as described above, is \$14,240.

The liability imposed falls within the range of the maximum and minimum liability amounts.

10. Step 10 – Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts. The final liability amount calculation for the violation of failing to pay the annual fee was performed as follows:

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(Total Base Liability Amount) x (Ability to Pay Adjustment) x (Adjustment for Other Factors as Justice May Require [including addition of staff costs]) = (Final Liability Amount)

$$(\$62,906) \times (0.5) + (\$10,500) = \$41,953$$

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