

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R7-2013-0028  
ISSUED TO  
CITY OF BRAWLEY, OWNER/OPERATOR  
MUNICIPAL WASTEWATER TREATMENT PLANT  
City of Brawley — Imperial County

**THE CITY OF BRAWLEY IS HEREBY GIVEN NOTICE THAT:**

1. The City of Brawley, California (hereinafter Discharger), is alleged to have violated effluent limitations of Waste Discharge Requirements (WDRs) Orders R7-2005-0021 and R7-2010-0022 (NPDES Permit CA7000009) and Cease and Desist Order R7-2008-0008 for which the Regional Water Quality Control Board, Colorado River Basin (Regional Board) may impose civil liability pursuant to California Water Code (CWC) sections 13350 and 13385.
2. CWC section 13323 authorizes the Executive Officer of the Regional Board to issue this Administrative Civil Liability Complaint (Complaint), and CWC section 7 authorizes the Executive Officer to delegate these powers and duties to the Assistant Executive Officer.
3. The Discharger owns and operates a Wastewater Treatment Plant (WWTP) located at 1550 Best Road, Brawley, California 92227. The WWTP services the City of Brawley. According to a Report of Waste Discharge submitted by the Discharger, dated December 28, 2009, the WWTP has a design capacity of 5.9 million gallons per day (mgd). The Discharger's WWTP is a publicly owned treatment works (POTW), as defined in Title 40 of the Code of Federal Regulations (40 CFR) section 403.3, and discharges its effluent into the New River via Discharge Point 001, which is tributary to the Salton Sea. The New River and the Salton Sea are waters of the United States.
4. Section 303(d) of the federal Clean Water Act (CWA) (33 U.S.C. section 1251 et seq.) requires states to identify those surface waters for which effluent limitations required by the CWA are not stringent enough to implement any applicable water quality standard and to develop Total Maximum Daily Loads (TMDLs) for those pollutants causing the impairment. (33 U.S.C. section 1313(d).) The list of impaired waters, referred to as the Section 303(d) List, is then required to be submitted to the United States Environmental Protection Agency (USEPA) for its review and approval. The Section 303(d) List is combined with other surface water quality information required to be reported biennially to USEPA pursuant to CWA section 305(b). Because USEPA guidance requires the two reports to be integrated, the combined report is called the California 303(d)/305(b) Integrated Report. On October 11, 2011, the USEPA approved the 2010 Integrated Report, the most current report, and its 2010 Section 303(d) List, which replaces the 2006 Section 303(d) List.
5. For the New River, the Section 303(d) List identifies the following pollutants: various pesticides, various metals, nutrients, organic enrichment (low dissolved oxygen), PCBs, pathogens, sediment, toxaphene, toxicity, and trash. Given the number and severity of pollutants impairing the New River, the Regional Board has made the development of

TMDLs for the New River a priority. In addition, cleanup of the New River is also a priority for Cal/EPA under the New River Improvement Project Strategic Plan.

- For the Salton Sea, the Section 303(d) List identifies the following pollutants: arsenic, chlorpyrifos, DDT, enterococcus, nutrients, and salinity. As with the New River, cleanup of the Salton Sea is a Regional Board priority.

**City of Brawley Wastewater Treatment Facilities and their Governing Discharge Permits**

- From 1999 to approximately February 2012, the Discharger owned and operated various configurations of a WWTP whose main treatment system has been wastewater treatment ponds. During this time period, the Regional Board adopted four different waste discharge requirements (WDRs) for the WWTP. Table 1, below, identifies the Regional Board WDRs and describes the WWTP processes governed by the WDRs during this period:

| WDRs Order (NPDES Permit CA7000009) | Effective Date         | Description of WWTP   | WWTP Design Capacity (mgd)   |
|-------------------------------------|------------------------|---|--|
| 95-014                              | 3/29/1995 to 6/27/2000 | Two bar screens, an aerated grit chamber, two primary clarifiers, two aeration ponds with floating aerators, three stabilization ponds, two anaerobic digesters, and sludge drying beds               | 3.9  |
| 00-087                              | 6/28/2000 to 6/28/2005 | Two bar screens, an aerated grit chamber, two primary clarifiers <sup>1</sup> , two aeration ponds with floating aerators, three stabilization ponds, two anaerobic digesters, and sludge drying bed. | 3.9 (until expansion completed)<br><br>5.9 (after expansion completed) |
| R7-2005-0021                        | 6/29/2005 to 5/19/2010 | Two bar screens, an aerated grit chamber, five treatment lagoons, and Ultraviolet light disinfection system, sludge drying beds.  | 5.9  |
| R7-2010-0022                        | 5/20/2010 to present   | Headworks, five treatment lagoons, and Ultraviolet light disinfection system, sludge drying beds (5/20/2010 to 2/2012).   | 5.9  |

1. According to Regional Board records, the Discharger stopped using the clarifiers in 2002.

**Regulatory Overview (1999-2008)**

- Table 2, below, summarizes the Regional Board enforcement Orders issued against the Discharger from 1999 to 2010. Attachment “A,” hereto made a part of this Complaint by reference, summarizes the Discharger noncompliance record with Regional Board WDRs

and enforcement orders. As shown in Table 2, below, and Attachment “A,” the Discharger has had chronic noncompliance problems with every set of WDRs the Regional Board has adopted since 1999 and has also violated Regional Board enforcement orders. The specific violations and other relevant factors leading to the enforcement orders are described below.

| Year | Enforcement Order  |
|------|--|
| 1999 | Time Schedule Order 99-054   |
| 2004 | Cleanup and Abatement Order 2004-0079  |
| 2008 | Cease and Desist Order R7-2008-0008<br>Special Order R7-2008-0069 amending CDO |
| 2009 | Time Schedule Order R7-2009-0035   |
| 2010 | Special Order R7-2010-0003 amending CDO  |

\* Table does not include the eight Regional Board Administrative Civil Liability Orders issued in this time period.

9. In April 1999, the Regional Board issued Time Schedule Order (TSO) 99-054, pursuant to CWC section 13300, because flow data reported by the Discharger showed that the WWTP was running at 80% of its design capacity and because average daily flows into the WWTP violated and threatened to violate the 3.9 mgd flow limit established by WDRs Order 95-014. TSO 99-054 required the Discharger to complete expansion of the treatment capacity of the WWTP from 3.9 to 5.9 mgd by March 1, 2002. In response to the TSO, the Discharger removed accumulated sludge from one of its ponds and from its anaerobic digesters, added to the WWTP an ultraviolet (UV) disinfection system, and added aeration to one of its ponds. However, the Discharger did not complete the WWTP expansion until June 2002 due to delays during construction of the upgrades. As a result, the Discharger violated the March 1, 2002 plant expansion deadline requirement in TSO 99-054, but no enforcement action was taken by the Regional Board for the violation of the TSO.
  
10. In spite of the increase in treatment capacity to 5.9 mgd achieved in June 2002, the Discharger continued to be in chronic noncompliance with the toxicity limitations contained in Effluent Limitation A.6 of WDRs Order 00-087 because: (a) its treatment ponds were inherently inadequate because those types of ponds were not designed to effectively deal with the ammonia load into the WWTP and (b) the Discharger failed to establish and implement adequate institutional controls to ensure proper management of industrial discharges into its WWTP.
  
11. Brawley Beef Company, a slaughterhouse that began discharging its wastewater into the City’s sewage collection system in 2001 and that was later sold to National Beef Company, has been a main source of the ammonia and other compliance problems at the WWTP. Regional Board records of communications between Regional Board staff and the Discharger indicate that the Discharger has also been aware that institutional controls (i.e., a pretreatment program) were required to properly handle the wastes from this industrial discharger since on or about late 2001/early 2002. Moreover, WDRs Order 00-087, section F., “Pretreatment”, required the Discharger to comply with all federal pretreatment requirements specified in 40 CFR Part 403 “[i]n the event that significant industrial wastewater is being discharged to the wastewater treatment facility.” In the event a pretreatment program was required, Pretreatment F.1.b. required the Discharger to seek and obtain formal approval of its Pretreatment Plan from the Regional Board’s Executive

Officer. In addition, Pretreatment F.2 required the Discharger to submit annual reports to USEPA, the State Water Board and the Regional Board describing the Discharger's pretreatment activities over the previous 12 months, including a summary of analytical results of pollutants USEPA has identified are known or suspected to be discharged by industrial users; a discussion of upset, interference, or pass through incidents which the Discharger knows, or suspects, were caused by industrial users; a summary of inspection and sampling activities conducted by the Discharger together with information and data regarding industrial users; and a summary of the compliance and enforcement activities taken against industrial users. Because of the Discharger's chronic noncompliance with the toxicity limitations contained in WDRs Order 00-087, the Discharger was required to comply with all of the Pretreatment provisions of Section F. of WDRs Order 00-087, including preparation and submittal of a Pretreatment Plan to the Regional Board's Executive Officer for approval. The Discharger's failure to timely comply with these Pretreatment requirements led the Regional Board's Executive Officer to take enforcement action by issuing Cleanup and Abatement Order (CAO) R7-2004-0079, which is described in more detail below.

12. From 2000 to 2004, the Regional Board assessed \$75,000 in mandatory minimum penalties (MMPs) for the Discharger's violations of WDRs Order Nos. 95-014 and 00-087, with 17 of the 25 violations being toxicity violations (\$51,000 of the \$75,000 total MMPs assessed). Further, in an effort to bring the Discharger into compliance with its NPDES permit, and following issuance of ten (10) Notices of Noncompliance that failed to bring the Discharger into compliance, in June 2004 the Regional Board Executive Officer issued CAO R7-2004-0079. The CAO required the Discharger to address the cause of toxicity and complete WWTP upgrades by January 31, 2006, to bring the discharge from the WWTP into compliance with the NPDES permit.
13. In response to CAO R7-2004-0079, the Discharger hired a consultant, Nolte Associates, Inc. (Nolte), for the research, design, and construction of improvements to the existing WWTP. These improvements included the reconfiguration of the existing treatment facility's flow distribution system and the installation of flow return pumps. The new pumping and piping system was to be configured to optimize nitrification and denitrification of the wastewater flowing through the treatment system. The Discharger also contracted with the Citizens Congressional Task Force for the New River and Nolte to build a "Free Water Surface" constructed wetland in an attempt to address the continuing toxicity issue and enhance the quality of the Discharger's undisinfected WWTP effluent. The Free Water Surface constructed wetland would provide physical, chemical, and biological treatment that would polish the effluent to further decrease the biochemical oxygen demand (BOD), total suspended solids (TSS), and ammonia levels in the treatment wastewater. Effluent from the wetland would then be redirected to the existing WWTP's UV disinfection system prior to the discharge to the New River.
14. WDRs Order R7-2005-0021, page 10, Effluent Limitations IV.A.1.b, contains the following final effluent limitations with which the Discharger is required to maintain compliance:  
  
"Either beginning on February 1, 2007 or, if the commencement of discharges from the upgraded WWTP designed for nitrification and denitrification is completed prior to February 1, 2007 and as required by Provision VI.C.2.d the discharge of treated wastewater shall maintain compliance with the following limitations at Discharge Point M-

001 [sic], with compliance measured at monitoring location M-001A as described in the attached Monitoring and Reporting Program (Attachment E).”

| Constituents              | Units                | Effluent Limitations |               |
|---------------------------|----------------------|----------------------|---------------|
|                           |                      | Average Monthly      | Maximum Daily |
| Total Ammonia as Nitrogen | mg/L                 | 1.1                  | 12            |
|                           | lbs/day <sup>1</sup> | 54                   | 590           |

15. The Discharger did not complete the WWTP improvements described in Finding 13, above, until July 7, 2006. Moreover, the improvements failed to achieve their intended objectives. Subsequently, because of this failure and the lack of an approved pretreatment program, the Discharger found itself in chronic violation of Effluent Limitations IV.A.1.b of WDRs Order R7-2005-0021 cited in Finding 14, above, which required the Regional Board in 2008 to assess the Discharger \$369,000 in mandatory minimum penalties just for the ammonia violations. (See Administrative Civil Liability (ACL) Orders R7-2008-0043 (80 ammonia violations = \$240,000 in MMPs) and R7-2008-0064 (43 ammonia violations = \$129,000 in MMPs).) The Regional Board also assessed a \$45,000 penalty in discretionary administrative civil liability against the Discharger in ACL Order R7-2008-0043 because the Discharger was 157 days late in complying with the deadline specified in the CAO.

**Pretreatment Program, CDO R7-2008-0008, and Current NPDES Permit**

16. Under Federal Regulations, certain Publicly Owned Treatment Works (POTWs) are required to establish formal pretreatment programs approved by the agency overseeing pretreatment implementation, the “Approval Authority”. [40 CFR 403.8.] Any POTW with a total design flow greater than 5 million gallons per day (mgd) receiving pollutants from Industrial Users which Pass Through or Interfere with the operation of the POTW are required to establish a Pretreatment Program [40 CFR 403.8(a).] These programs must be approved by the appropriate Approval Authority. [40 CFR 403.11.] Under the NPDES Memorandum of Agreement between the USEPA and the California State Water Resources Control Board, the Regional Water Boards are the Approval Authority for purposes of implementation of a Pretreatment Program. The Pretreatment Program is also needed to protect the integrity of the POTW and safety of POTW personnel and other personnel who work on the sewage collection system [40 CFR 403.5, *Prohibited discharges*, et seq.].

17. Consistent with WDRs Order 00-87, Pretreatment Section F; Provisions VI.C.6.b of WDRs Order R7-2005-0021; Section 2233, Title 23, California Code of Regulations; 40 CFR parts 35 and 403 pretreatment requirements; and pretreatment standards under Section 307 of the Clean Water Act; the Discharger was required to submit a Pretreatment Program for approval. The Pretreatment Program was to address compliance with all prescriptive requirements under 40 CFR.

18. As shown in Finding Nos. 8 through 15, cited above, since 1999 the Discharger has struggled to comply with its previous NPDES permit limits for chronic and acute toxicity, Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS), and bacteria limits, and particularly with its current NPDES permit limits for ammonia. Based on the

<sup>1</sup> Based on a flow of 5.9 mgd.

Discharger's history of non-compliance with effluent limitations and actual and potential harm to water quality, Regional Board staff reasonably concluded that the Discharger's WWTPs did not have the necessary capacity to properly treat existing ammonia loads from domestic sewer users, let alone increased ammonia loads from new industrial users, including National Beef Company, even with the upgrades to flow and treatment capacity the Discharger completed in response to TSO 99-054 and CAO R7-2004-0079.

19. On November 20, 2001, the Discharger adopted Wastewater Pretreatment Ordinance 2001-08 to prevent the introduction of pollutants that will either pass through or interfere with the City of Brawley's treatment facilities and to enable the City of Brawley to comply with its NPDES permit, WDRs Order 00-087. The pretreatment ordinance contained limitations for concentrations of ammonia in pretreated wastewater. However, this ordinance has never been approved by the Regional Board, and the Ordinance's limits were not based on local limits that are required to be established in accordance with Federal Regulations. Further, the Discharger had the power to impose fines up to \$5,000 per violation per day against the National Beef Company for violation of its Ordinance, but it failed to do so before 2008.
20. On March 19, 2008, and based on the foregoing, the Regional Board adopted Cease and Desist Order (CDO) R7-2008-0008 to require the Discharger to cease and desist from discharging wastes in violation of WDRs Order R7-2005-0021 and to implement corrective actions in accordance with specified tasks and time schedules.
21. In pertinent part, these tasks required the Discharger to complete its additional proposed POTW upgrades, to achieve full compliance with WDRs Order R7-2005-0021 by December 31, 2010, to submit required design plans and specifications and long-term revenue plan for operation and maintenance of proposed upgrades, and to prepare and submit a Pretreatment Program for Regional Board approval and implementation in accordance with the following tasks, milestones, and deadlines:

| Task | Milestone Description   | Milestone Submittal  | Completion date   |
|------|---|--|-------------------|
| 2.A  | Develop proposed Pretreatment Program                             | Submit proposed Pretreatment Program   | December 15, 2008 |
| 2.B  | Complete Long-term revenue plan                                   | Submit copy of revenue plan  | December 15, 2008 |
| 2.C  | Develop and adopt local limits and revised Pretreatment Ordinance | Submit written certification that it has begun implementing Pretreatment Program | February 15, 2009 |
| 2.D  | Issue all pending CIU permits                                     | Submit written certification of issuance of CIU permits                          | May 15, 2009      |
| 2.E  | Achieve Full Compliance with approved Pretreatment Program        | Submit written certification of issuance of CIU permits for full compliance      | June 15, 2009     |

22. The above-referenced Pretreatment Program requirements were in part designed to improve water quality by decreasing total ammonia from the Discharger's industrial users, specifically National Beef. To that end, the Regional Board provided the Discharger with higher interim effluent limits pursuant to Special Board Order R7-2008-0069 adopted by

the Regional Board on November 19, 2008, with the expectation that compliance with the Pretreatment Program Requirements would ultimately improve water quality and facilitate the WWTP upgrades project's compliance with WDRs Order R7-2005-0021.

23. As noted in the finding above, the Regional Board adopted Special Board Order R7-2008-0069, which amended CDO R7-2008-0008 by establishing interim limits for ammonia, pursuant to CWC section 13385(j)(3)(C), to provide the Discharger an exemption from being assessed additional MMPs for violation of its ammonia NPDES Permit limits while it completed its new WWTP. Among other requirements, this statutory provision requires for any time schedule that exceeds one year from the effective date of the enforcement order that the time schedule include interim requirements and the dates for their achievement. (CWC section 13385(j)(3)(C)(iii).) In addition, CWC section 13385(j)(3) provides in relevant part that the MMP provisions of CWC section 13385, subdivisions (h) and (i), do not apply to any violation of an effluent limitation where the waste discharge is in compliance with a CDO issued pursuant to CWC section 13301. Thus, exemption from the MMPs is contingent on the Discharger complying with the CDO. The interim effluent limits for Total Ammonia as Nitrogen added by Special Board Order R7-2008-0069 are shown below:

| Constituents              | Units                | Interim Effluent Limitations |               |
|---------------------------|----------------------|------------------------------|---------------|
|                           |                      | Average Monthly              | Maximum Daily |
| Total Ammonia as Nitrogen | mg/L                 | 120                          | 120           |
|                           | lbs/day <sup>1</sup> | 5,900                        | 5,900         |

24. On January 21, 2010, and at the request of the Discharger, the Regional Board also adopted Special Board Order R7-2010-0003. This Special Board Order amended CDO R7-2008-0008 by extending the deadline to complete the new WWTP and to bring the discharge into compliance with Regional Board requirements from December 31, 2010, to June 30, 2012.
25. On May 20, 2010, the Regional Board adopted WDRs Order R7-2010-0022. WDRs Order R7-2010-0022 rescinded WDRs Order R7-2005-0021 (as amended by Order R7-2008-0027) except for enforcement purposes, for specific effluent limitations, prohibitions, specifications, and provisions necessary to protect the beneficial uses of the surface and ground waters within the Colorado River Basin Region. WDRs Order R7-2010-0022, pages 12-14, Effluent Limitations Nos. A.1.a and A.1.d, contains the following effluent discharge limitations:

“The Discharger shall maintain compliance with the following effluent limitations at Discharge Point 001, with compliance measured at Monitoring Location EFF-001 as described in the attached MRP (Attachment E) except as modified by any applicable interim Effluent Limitations specified in Section IV.A.2 and Table 8, below:

[Table 6. Summary of Final Effluent Limitations (Existing Facility)]

| Parameter | Units | Effluent Limitations |                |               |
|-----------|-------|----------------------|----------------|---------------|
|           |       | Average Monthly      | Maximum Weekly | Maximum Daily |

|                                 |                      |       |       |      |
|---------------------------------|----------------------|-------|-------|------|
| Biochemical Oxygen Demand (BOD) | mg/L                 | 45    | 65    | ---  |
|                                 | lbs/day <sup>1</sup> | 2,214 | 3,198 | ---  |
| Cyanide <sup>2</sup>            | µg/L                 | 3.0   | ---   | 9.2  |
|                                 | lbs/day <sup>1</sup> | 0.15  | ---   | 0.45 |

<sup>1</sup> The mass-based effluent limitations are based on a design capacity of 5.9 MGD

<sup>2</sup> Expressed as free cyanide. Non-distillation analysis methods for available cyanide, such as UEPA OIA-1677 or ASTM D6888-04, shall be used to measure compliance with the free cyanide effluent limitation.

**“Bacteria:** The bacterial density in the wastewater effluent discharged to the New River shall not exceed the following values, as measured by the following bacterial indicators:

- i. ***E. Coli.*** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a Most Probable Number (MPN) of 126 per 100 milliliters, nor shall any sample exceed the maximum allowable bacterial density of a MPN of 400 per 100 milliliters.
- ii. **Fecal Coliform.** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a MPN of 200 per 100 milliliters, nor shall more than ten percent of the total samples during any 30-day period exceed a MPN of 400 per 100 milliliters.
- iii. **Enterococci.** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a MPN of 33 MPN per 100 milliliters, nor shall any sample exceed the maximum allowable bacterial density of a MPN of 100 per 100 milliliters.”

### **Alleged New Violations of NPDES Permit Limits**

26. Because CDO R7-2008-0008 did not include interim limits for ammonia from the date it was adopted on March 19, 2008, until November 17, 2008, when Special Board Order R7-2008-0069 was adopted to add interim limits for ammonia, CDO R7-2008-0008 did not satisfy CWC section 13385(j)(3)(C)’s requirement that a time schedule exceeding one year in length include interim requirements. As a result, all of the requirements specified in CWC section 13385(j)(3) to qualify for exemption from MMPs were not satisfied. Therefore, the Discharger was not exempt from MMPs if it violated the NPDES permit limits for ammonia during this time period (3/19/2008 – 11/17/2008). Self-monitoring reports submitted by the Discharger show that the wastewater discharged from the WWTP exceeded the effluent limitations for ammonia as nitrogen set forth in WDRs Order R7-2005-0021 on sixty-seven (67) occasions during this time period. Attachment “B,” attached hereto and incorporated herein by this reference, identifies the violations. The total amount of the MMPs for the violations cited in Attachment “B” is \$216,000.
27. The self-monitoring reports submitted by the Discharger from May 10, 2010, to July 31, 2011, showed that the Discharger also violated the effluent limitations for cyanide, BOD, and bacteria referenced in Finding 25, above. A summary of each violation of WDRs

Order R7-2010-0022 is contained in Attachment "C," which is incorporated in and made a part of this ACL Complaint by reference. The total amount of the MMP for the violations cited in Attachment "C" is \$162, 000.

**Alleged Violations of Pretreatment Requirements of CDO R7-2008-0008**

28. The Discharger violated Cease and Desist Order R7-2008-0008, as amended by Special Board Orders R7-2008-0069 and R7-2010-0003.
29. Consistent with WDRs Order 00-0887, Pretreatment Section F; Provision VI.C.6.b. of WDRs Order R7-2005-0021; Section 2233, Title 23, California Code of Regulations; 40 CFR Parts 35 and 403 pretreatment requirements; and pretreatment standards under Section 307 of the Clean Water Act; the Discharger was required by CDO R7-2008-0008 to prepare, submit for approval, and implement a Regional Board approved Pretreatment Program as follows:

| Task | Milestone Description   | Milestone Submittal  | Completion date   |
|------|---|--|-------------------|
| 2.A  | Develop proposed Pretreatment Program                             | Submit proposed Pretreatment Program   | December 15, 2008 |
| 2.B  | Complete Long-term revenue plan                                   | Submit copy of revenue plan  | December 15, 2008 |
| 2.C  | Develop and adopt local limits and revised Pretreatment Ordinance | Submit written certification that it has begun implementing Pretreatment Program | February 15, 2009 |
| 2.D  | Issue all pending CIU permits                                     | Submit written certification of issuance of CIU permits                          | May 15, 2009      |
| 2.E  | Achieve Full Compliance with approved Pretreatment Program        | Submit written certification of issuance of CIU permits for full compliance      | June 15, 2009     |

30. The Discharger has violated all of the tasks specified above. However, the Discharger did submit a proposed Pretreatment Program to the Regional Board staff in January 2013, over four (4) years after it was due.
31. Specifically, the Discharger violated Task 2.C of Ordered Paragraph 3 in CDO R7-2008-0008 by failing to develop and adopt local limits by February 15, 2009. At this time, because the other tasks outlined above are related to the completion of Task 2.C., Regional Board staff is only seeking penalties for violation of Task 2.C. There are 1474 days of violation for the period beginning February 15, 2009 and ending the date the complaint was issued, February 28, 2013. These 1474 days of violation are subject to administrative civil liability pursuant to CWC section 13350, subdivision (a)(1). Although the Discharger
32. In the alternative, Regional Board staff believes the Discharger's failure to comply with key requirements of CDO R7-2008-0008 could result in mandatory minimum penalties totaling \$504,000. These penalties are based on violation of the effluent limitations for

ammonia as set forth in the permit. Essentially, because the Discharger violated the CDO, it should not be afforded the exemption it was ostensibly granted in the CDO. Without the exemption, the Discharger would have incurred the mandatory minimum penalties set forth in Attachment "D," which is incorporated in and made a part of this ACL Complaint by reference.

33. As stated above, violation of CDO R7-2008-0008 with respect to implementation of the Pretreatment Program by the Discharger has significant impacts on water quality. The effluent from the WWTP causes toxicity. The Discharger was allowed interim effluent limitations based in part on its commitment to comply with the Pretreatment Program requirements as set forth in the CDO. Had Regional Board staff known that such requirements would not be met, staff would never have allowed or agreed to Regional Board approval of interim effluent limits or exemption from MMPs for ammonia violations in the CDO. Because the Discharger has not implemented its Pretreatment Program, however, the threat and actual impact to water quality continues.
34. In addition, because the Discharger has not implemented its Pretreatment Program, National Beef Company is currently using all of the Discharger's new WWTP treatment capacity (see also Finding 46, below).
35. Based on the Discharger's extensive history of violations, impact to water quality, and other punitive factors, Regional Board staff is asking the Regional Board to impose discretionary penalties related to violation of Task 2.C of Ordered Paragraph 3 in CDO R8-2008-0008.

### **Water Code Sections which Provide for Assessment of Administrative Civil Liability**

36. CWC section 13385(h)(1) requires the Regional Board to assess a mandatory minimum penalty (MMP) of three thousand dollars (\$3,000) for each serious violation.
37. CWC section 13385(h)(2) states, in part, the following:

"For the purpose of this section [13385], a 'serious violation' means any waste discharge that violates the effluent limitations ... 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."
38. CWC section 13385, subdivision (i)(1), also requires the Regional Board to assess an MMP of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the Discharger does any of the following four or more times in a six-month period (hereafter "chronic violation"):
  - i. Violates a waste discharge requirement effluent limitation;
  - ii. Fails to file a report pursuant to Section 13260;
  - iii. Files an incomplete report pursuant to Section 13260; or

- iv. 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.

39. CWC section 13385 subdivision (i)(2) states:

“For the purpose of this section [13385], a ‘period of six consecutive months’ means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.”

40. CWC section 13350 subdivision (a) states:

“A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or a state board, .....shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

41. CWC section 13350 subdivision (e)(1) states:

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

42. The violations of requirements Tasks 2.C-2.E of Ordered Paragraph 3 in CDO R7-2008-0008, as they relate to the pretreatment requirements, are subject to Water Code section 13350.

### **Factors Considered in Determining Administrative Civil Liability**

43. Pursuant to CWC section 13385, subdivision (e), and section 13327, in determining the amount of any civil liability, the Regional 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. In addition, with respect to violations based on CWC section 13385, subdivision (e) of CWC section 13385 further requires that 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.

44. On November 17, 2009, the State Water Board adopted Resolution 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. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385, subdivision (e), and section 13327. The entire Enforcement Policy can be found at:

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf)

45. The Discharger has the worst record of compliance for POTWs in the Imperial Valley. This weighs heavily against the Discharger.
46. The Discharger has accepted wastewater from National Beef and its predecessors since 2001 under contracts instead of using a pretreatment permitting system as it would be required to do under an approved Pretreatment Program. The wastewater from a slaughterhouse plant, in spite of the slaughterhouse's attempt to pretreat it before discharging it into the Discharger's collection system, contains high concentrations of ammonia as nitrogen, which causes the WWTP effluent to be toxic. According to a wastewater rate study prepared by the Discharger in 2008, the average ammonia concentration discharged by National Beef to the Brawley WWTP was 53.9 mg/l, which is significantly higher than typical concentrations seen in domestic sewage (< 30 mg/L). National Beef Company has also discharged wastes into the Discharger's WWTP with unusually high concentrations of BOD and TSS (i.e., discharged slugs of inadequately pretreated wastewater), which also hinder the WWTP's ability to comply with WDR permit requirements. In short, the Discharger put itself in a predicament by having to accept the wastes from the slaughterhouse, essentially regardless of waste quality, so long as National Beef Company paid whatever surcharges were applicable under the terms of the contracts with the Discharger. Consequently, not only this has resulted in adverse water quality impacts, it has also threatened and continues to threaten the integrity of the WWTP, the sewage collection system, and the safety of WWTP and collection system personnel. This weighs heavily against the Discharger.
47. Between 2001 and February 2008, the Discharger violated its effluent limitation for ammonia no less than **eighty-four (84) times**. During this same time period, National Beef was discharging pretreated wastewater with high concentrations of ammonia to the WWTP, resulting in "Pass Through" of the wastewater treatment plant system as defined by federal regulations and in the Brawley Pretreatment Ordinance. In spite of the shortcomings of its Ordinance, the Discharger had the ability to impose fines of up to \$5,000 per violation per day against the National Beef Company for violation of the Ordinance to curb the extent of violations, but it failed to do so before 2008.
48. In 2008, the Discharger recognized that it was undercharging National Beef Company for the cost of accepting the slaughterhouse wastewater at its WWTP. The Discharger established a surcharge system to bill National Beef based on the concentrations of ammonia, BOD, TSS, and total flow of pretreated wastewater discharged to the WWTP. The Discharger also began issuing fines to National Beef Company for exceedances of pretreatment limits of the Ordinance in late 2008.
49. Water quality data collected by the Discharger and reported to the Regional Board pursuant to the Discharger's self-monitoring program permit requirements shows that National Beef has continuously discharged wastewater with high concentrations of ammonia to the WWTP. Prior to the completion of the new WWTP, these discharges were causing Pass Through of ammonia at the WWTP.

50. From November 19, 2008 through June 2012, the Discharger violated the effluent limits contained in its NPDES Permit limits for total ammonia as nitrogen at least two hundred forty-one (241) times. As stated in Finding 32, above, these violations may be subject to mandatory minimum penalties because the Discharger was not in full compliance with the CDO. The Discharger was only in compliance with the interim CDO ammonia limits. Essentially, because the Discharger violated the CDO, it should not be afforded the exemption it was granted in the CDO. The amount of MMPs for the 241 violations would be \$504,000, as shown in Attachment D. However, for the purposes of this Complaint, Regional Board staff is not electing to pursue that legal theory (that MMPs apply for noncompliance with the CDO), and instead Regional Board staff is pursuing penalties for the violations of the CDO Pretreatment Program provisions.
51. From November 2008 to the present time, the Discharger has sought penalties against National Beef Company of \$5,000/day for violations of its Pretreatment Ordinance. These penalties total \$678,000. The issuance of penalties has not resulted in any discernible improvements in the quality of pretreated wastewater being discharged by National Beef Company. The Discharger deposited the fines collected under the Pretreatment Ordinance into its General Fund towards projects not associated with the wastewater treatment plant.
52. Had Regional Board staff known that the Discharger would not comply with the Pretreatment Program requirements specified in CDO R7-2008-0008 and the apparent accounting scheme the Discharger followed to have the National Beef Company fines paid going into the City's General Fund for non-WWTP uses, Regional Board staff would never have presented to the Regional Board for consideration of adoption Special Board Order R7-2008-0069, which provided the Discharger with interim effluent limits for Total Ammonia as Nitrogen and thus, an exemption from MMPs for future violations of its ammonia permit limits. Instead, Regional Board staff would have recommended the Regional Board take additional enforcement action against the Discharger at that time, including referral to the Attorney General for injunctive relief, for its failure to take meaningful action toward developing an approved Pretreatment program to address instances of Pass Through resulting from discharges of pretreated wastewater from National Beef Company, and for investigation of its apparent accounting scheme.
53. On July 21, 2009, the City of Brawley received \$24,595,000 in financial assistance from the State Water Resources Control Board (State Board) Revolving Fund to build its new WWTP. Of this amount, \$10,000,000 is principal forgiveness (i.e., a grant) from the American Recovery and Reinvestment Act of 2009. The breakdown of the State Board financial package is as follows:

|   |
|---|
| \$14,343,188 – Loan from repayment money        |
| \$ 251,812 – Loan using Federal Cap Grant money |
| \$10,000,000 – Principal Forgiveness            |
| <hr/>   |
| \$24,595,000                                    |

In March 2012, the Discharger completed construction and put into operation its new WWTP. However, the discharge from the National Beef Company's slaughterhouse is currently using over 80% of the treatment capacity of the new WWTP, in part because the

Discharger has failed to develop and implement an approved Pretreatment Program, as required by federal regulations and Board orders. In essence, the Discharger is inappropriately using public funds to subsidize this industrial user. This is a matter that is beyond the scope of this Complaint, but may warrant further investigation.

54. Staff time to investigate this matter and prepare Administrative Civil Liability Complaint (ACLC) R7-2013-0028 and supporting information is estimated to be 420 Hours as of February 28, 2013. Based on an average cost to the State of \$150 per hour, the total cost is \$63,000.
55. It is important to note that the effluent discharged by the Discharger was toxic and that its discharge had a significant effect on the water quality of the New River, whose cleanup has been designated a priority by Cal/EPA and the Regional Board. This has been accounted for in the application of the discretionary penalty assessment methodology set forth in the Enforcement Policy.
56. The required factors, including Finding Nos. 43 through 55, above, have been considered for the violations alleged herein using the discretionary penalty assessment methodology in the Enforcement Policy, as explained in detail in Attachments "E" (Brawley WWTP ACLC Methodology) and "F" (Penalty Calculation), which are incorporated herein and made a part of this ACL Complaint by reference.

#### **Maximum Administrative Civil Liability Available to the Regional Board**

57. Pursuant to CWC sections 13350 and 13385, the total maximum administrative civil liability that may be imposed for the violations alleged in this Complaint is **\$7,370,000**. This is comprised of \$378,000 in mandatory minimum penalties, as described in Attachments A and B, and \$7,748,000 in penalties for violations of the Pretreatment Program Requirements set forth in Ordered Paragraph 3 in CDO R7-2008-0008.

#### **Minimum Administrative Civil Liability the Regional Board Must Assess**

58. The Enforcement Policy requires that the **minimum liability** for non-mandatory minimum penalties imposed must 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 addition, the penalty imposed must include staff costs.
59. The economic benefit of non-compliance for the Discharger's violation of the CDO is \$1,176,162. Accounting for the 10% markup, the minimum liability that must be assessed for violation of the CDO is \$1,293,778 plus staff costs.
60. In this matter the economic benefit of non-compliance related to the Discharger's failure to comply with the CDO's Pretreatment requirements, the staff costs, together with the mandatory minimum penalties of \$378,000, result in a total **minimum liability of \$1,671,778 plus staff costs. The staff costs are \$63,000**, as of February 28, 2013.

### **Proposed Administrative Civil Liability the Regional Board Assess**

61. Based on consideration of the above facts, application of the penalty methodology, and the Discharger's ability to pay, the Assistant Executive Officer of the Regional Water Quality Control Board, Colorado River Basin, proposes that civil liability be imposed administratively on the Discharger in the amount of **\$1,671,778 plus \$63,000 in staff costs**. The specific factors considered in this penalty are detailed in Attachments "E" and "F."
62. Notwithstanding the issuance of this Complaint, the Regional Water Quality Control Board, Colorado River Basin, 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 occur subsequent to the issuance of this Complaint.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT**

63. Issuance of this Complaint is an enforcement action and is, therefore, exempt from the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.), pursuant to title 14, California Code of Regulations, section 15321, subsection (a)(2).

### **THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Regional Board proposes that the Discharger be assessed:
  - a. A mandatory minimum penalty of three hundred seventy-eight thousand dollars (\$378,000) for each of the effluent limit violations of cyanide, BOD and bacteria identified in Attachments "B" and "C".
  - b. A penalty of \$1,293,778 for violation of the Pretreatment Program Requirements specified in Ordered Paragraph 3 in CDO R7-2008-0008, to recover the economic benefit the Discharger derived from noncompliance with Regional Board orders as required by the Enforcement Policy and \$63,000 to recover staff costs for prosecuting this matter.
  - c. This results in a total penalty in the amount of \$1,734,778. This penalty represents the minimum liability that the Board can impose on the Discharger.
2. CWC section 13323(b) provides that the Regional Board shall conduct a hearing within 90 days after issuance of this Complaint. Such a hearing shall be held unless the Discharger chooses either of the following two options:
  - a. Waive the right to a Hearing before the Regional Board and pays the proposed penalty of \$1,734,778 in full; or

- b. Waive the right to a Hearing before the Regional Board within 90 days after service of this Complaint to engage the Regional Board Prosecution Team in settlement discussions. Waiver of the right to a Hearing before the Region Board within 90 days does not preclude the Regional Board Prosecution Team from proceeding to hearing within 90 days.
3. If the Discharger chooses Option 2.a, above, an authorized representative must sign the enclosed waiver and return it along with a check for the full amount of the proposed liability, made payable to the "State Water Pollution Cleanup and Abatement Account" within thirty (30) days of the date of this Complaint. Payment will be deemed settlement of this Complaint, but the settlement shall not become final until thirty (30) days from the date of Public Notice 7-13-14 to allow the public and other interested persons to comment on this action. The waiver and payment must be mailed to:  
  

California Regional Water Quality Control Board  
Colorado River Basin Region  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260
4. If the Discharger chooses Option 2.b, above, an authorized representative must sign the enclosed waiver and submit it within thirty (30) days of this Complaint. The Discharger must also submit a settlement proposal to the Regional Board within sixty (60) days of this Complaint. The waiver and settlement proposal must be mailed to the address listed above.
5. If a hearing on this matter is held, the Regional 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.
6. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.

  
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JOSE ANGEL, Assistant Executive Officer  
  
2/28/2013  
\_\_\_\_\_  
Date