

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0521
IN THE MATTER OF
THE OAKS COMMUNITY ASSOCIATION
WASTEWATER TREATMENT FACILITY
AMADOR COUNTY

This Complaint is issued to The Oaks Community Association (hereafter Discharger) pursuant to California Water Code (CWC) sections 13350 and 13268, 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 92-080.

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

Background

1. The Discharger owns and contracts for the operation of a wastewater collection, treatment, and disposal system, and provides sewerage service to The Oaks Community, south of Lone in Amador County.
2. On 24 April 1992, the Central Valley Water Board issued WDRs Order 92-080 to The Oaks Community Association. The WDRs address the collection, treatment and disposal of domestic wastewater from approximately 200 homes in The Oaks Community and the Buena Vista store in Amador County. The WDRs contain, among other items, prohibitions, effluent limitations, and monitoring and reporting requirements with which the Discharger must comply.
3. The wastewater treatment facility (WWTF) consists of a gravity collection system, grinder pump station, an aerated pond, two storage ponds, and an 11-acre spray field. The aerated pond is equipped with four surface mechanical aerators, which provide aeration for the treatment of the wastewater and to prevent nuisance conditions. The WWTF is not equipped with backup electric power or remote communication alarm systems.
4. The Discharger was aware of potential consequences to the WWTF of a power outage as evidenced in its 13 June 2001 letter to Pacific Gas and Electric Company that requested an exemption from the potential rolling black. The letter states:

“Our facility has a wet well with two (2) large grinder pumps in it. The pumps grind solids into a slurry which is pumped into a pond for settling. Six thousand gallons of sewage will be spilling on the ground each hour that the grinder pumps are inoperable. Within the first thirty (30) minutes, the wet well will fill with solids. From that time, sewage will start flowing out of the manhole into the street and into the storm drain, eventually ending in Jackson Creek... Our sewer plant does not have any generators nor any backup means of power.”

Violation Chronology

5. Beginning on 29 December 2008, Central Valley Water Board staff received several verbal and written reports regarding a spill from a lift station at the WWTF. These reports are summarized in the following Findings.
6. On 29 December 2008, the Discharger's staff contacted Central Valley Water Board staff by telephone to report a spill from the lift station that transfers sewage from the collection system to the WWTF. According to this report, the spill resulted from a pump failure at the lift station. The spill was discovered on 24 December 2008, continued for a few days, and was estimated by Amador County Environmental Health staff to be about 100,000 to 125,000 gallons. According to the Discharger's staff, the spill was contained on 26 December 2008. A septage hauler pumped standing wastewater from the spill on the afternoon of 29 December 2008. The Discharger's staff also stated that County Environmental Health staff had recommended that Water Board staff be notified.
7. A verbal report was also provided on 29 December 2008 by Amador County Environmental Health staff and was followed by a written report dated 31 December 2008. The reports were based on a tour of the spill site on 29 December 2008 and verbal communications with members of the Discharger's Board of Directors, including the individual who initially identified the spill and subsequently reported it to Environmental Health. According to these reports, at some point on 24 December 2008, both pumps in the lift station had failed. Discharger staff procured and put into use a portable pump, which required re-fueling every 3 to 5 hours, to ensure that sewage was properly transferred to the treatment ponds. Based on verbal reports provided to Environmental Health staff, Discharger staff were authorized to leave the workplace because it was Christmas Eve. The discharge of raw sewage reportedly continued until some time on 27 December 2008, when one or both lift station pumps were made operational. A spill volume of 100,000 to 125,000 gallons was estimated based on the reported spill duration and average daily flows of 26,000 to 29,000 gallons per day. The report stated that the discharge appeared to have been confined to a broad drainage swale overgrown with cattails and that the area of standing water potentially affected by the spill appeared to be 10 – 20 yards in width by about 300 yards in length. Environmental Health staff observed no readily apparent evidence of recent flow to Jackson Creek and noted that some of the liquid observed in the drainage swale was likely the remains of recent rains.
8. A written report from the Discharger, prepared by the property management company that operates the WWTF, was received on 27 January 2009. That report stated that a pump in the lift station had failed on the afternoon of 24 December 2008. After repair of an electric switch to the pump, maintenance staff determined that the non-functioning pump was also 'jammed', put a portable pump into service, and left the area. Maintenance staff checked the pump on 25 and 26 December 2008. On 26 December 2008, maintenance staff determined that raw sewage had overflowed the lift station area. Maintenance staff then remained nearby for the rest of the day to ensure that the portable pump functioned properly and diverted any further overflow into the treatment ponds. On 27 December

2008, maintenance staff repaired one of the non-functioning lift station pumps. On 29 December 2008, a member of the Discharger's Board of Directors contacted Amador County Environmental Health and requested a site visit. A septage hauler was contacted and began pumping the affected area around mid-day. The septage hauler pumped 6,800 gallons from the spill area.

9. On 17 February 2009, Central Valley Water Board staff met with Environmental Health and Discharger staff and inspected the site of the December 2008 spill. During the inspection, Discharger and maintenance staff stated that the individual who had contacted Environmental Health regarding the spill had called out maintenance staff to address the problem of the non-functioning pumps in the lift station on 24 December 2008. The lift station is reportedly connected to an audible (*i.e.*, siren) and visual (*i.e.*, flashing light) alarm system; however, the alarm system did not function properly during the spill. Maintenance staff stated that a portable pump was then put into service. Sewage reportedly spilled from the lift station on 26 and 27 December 2008. Discharger staff stated that the alarm system had been repaired and that two new pumps had been purchased and installed in the lift station.
10. On 18 February 2009, Central Valley Water Board staff contacted the individual who both initially identified the spill on 24 December 2008 and contacted Amador County Environmental Health regarding the Discharger's response to the spill on 29 December 2008. This individual stated that there was a power outage on 24 December 2008 and that he went out to check the lift station because the WWTF has no backup power supply. He found that one of the pumps in the lift station to be non-functional and the other pump to be plugged with solids and debris from the incoming sewage. He called out one of the operations staff to get a temporary pump in place. The temporary pump required periodic re-fueling; however, the pump was not refueled over Christmas. He checked on the spill site again after Christmas, and contacted Environmental Health on the morning of Monday, 29 December 2008.
11. On 3 March 2009, Central Valley Water Board staff spoke with one of the Discharger's water treatment plant operators. The operator called to report an estimate of the volume of spilled sewage based on potable water produced on 24 and 25 December 2008—about 90,000 gallons. The operator stated that he learned of the lift station failure on 24 December 2008, helped to place a sump pump in the lift station, and advised maintenance staff to call the Central Valley Water Board. He also reported that the second pump in the lift station had been non-functional for at least three months as of late December 2008. The operator reported that a new pump was installed in the lift station on 27 December 2008 and that no spilling occurred on that date.
12. While various accounts have been provided regarding the details of the spill, including duration, dates, times, and quantities, it is apparent that raw sewage was overflowing from the lift station for no less than two, and likely three, days between 24 and 29 December 2008. Based on the information provided, the volume of raw sewage discharged is estimated to have been no less than 90,000 gallons and up to 125,000 gallons.

Regulatory Considerations

13. The *Water Quality Control Plan Central Valley Region—Sacramento River and San Joaquin River Basins, Fourth Edition* (hereafter Basin Plan), designates beneficial uses, establishes water quality objectives, and contains implementation plans and policies for all waters of the Basin. The beneficial uses of the underlying groundwater, which is a water of the State, are municipal and domestic water supply, agricultural supply, industrial service supply, and industrial process supply.
14. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 *et seq.*), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

Violations under CWC section 13350

15. Administrative civil liability may be imposed for violations of WDRs Order 92-080 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).

16. 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.

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

17. CWC section 13327 states,

In determining the amount of civil liability, the regional board ... shall take into consideration the nature, circumstance, 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 ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.

18. WDRs Order 92-080 includes Prohibition A.2, which states the following: “*Bypass or overflow of untreated or partially treated waste is prohibited.*” As noted in Finding 12, it is apparent that raw sewage was overflowing from the lift station for no less than two, and likely three, days between 24 and 29 December 2008. Based on the information provided, the volume of raw sewage discharged is estimated to have been no less than 90,000 gallons and up to 125,000 gallons. The discharge(s) of raw sewage from the lift station that occurred between 24 and 29 December 2008 violated Prohibition A.2.
19. WDRs Order 92-080 includes Provision C.6, which states the following: “*A copy of this Order shall be kept at the discharge facility for reference by operating personnel. Key operating personnel shall be familiar with its contents.*” As confirmed through telephone conversations and the 17 February 2009 inspection, neither the Discharger nor the property management company had a copy of the WDRs. Central Valley Water Board staff faxed a copy to both parties on 18 February 2009.
20. WDRs Order 92-080 includes Provision C.4, which requires the Discharger to comply with the “Standard Provisions and Reporting Requirements for Waste Discharge Requirements”, dated 1 March 1991. The Standard Provisions were attached to the WDRs and made a part of the WDRs by reference.
21. Standard Provisions, at General Provision A.7, requires the Discharger to “*maintain in good working order and operate as efficiently as possible any facility, control system, or monitoring device installed to achieve compliance with the waste discharge requirements.*” The Discharger violated this requirement by failing to properly maintain the lift station pumps, resulting in loss of control of the transfer of wastewater from the collection system to the WWTF. According to at least one report, the Discharger had been aware that the second lift-station pump had been non-functional for at least three months prior to the spill, and had not taken any action to repair or replace the pump.
22. Standard Provisions, at General Provision A.9, requires the following: “*For any electrically operated equipment at the site, the failure of which would cause loss of control or containment of waste materials, or violation of this Order, the discharger shall employ safeguards to prevent loss of control over wastes. Such safe guards may include alternate power sources, standby generators, retention capacity, operating procedures, or other means.*” The Discharger violated this requirement by failing to equip the electrically operated pumps in the lift station with backup power, remote communication alarm systems, or adequate retention capacity. The Discharger failed to provide any means of preventing the loss of control and containment of raw sewage resulting from a power failure.
23. Pursuant to CWC section 13350, up to \$10 may be assessed per gallon of waste discharged contrary to waste discharge requirements. Therefore, the maximum penalty for these violations under CWC section 13350 ranges between **nine hundred thousand dollars (\$900,000)** (if the spill volume was 90,000 gallons) **and one million two hundred fifty thousand dollars (\$1,250,000)** (if the spill volume was 125,000 gallons).

Violations under CWC section 13268

24. CWC section 13267(b)(1) states, in relevant part:

... the regional board may require that any person who ... discharges ... or who proposes to discharge waste within its region ... shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires.

25. CWC section 13268(a)(1) states, in part:

Any person failing or refusing to furnish technical...reports as required by subdivision (b) of Section 13267,...is guilty of misdemeanor and may be liable civilly in accordance with subdivision (b).

26. CWC section 13268(b)(1) states, in part:

Civil liability may be administratively imposed by a regional board... for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

27. Standard Provisions, at General Reporting Requirement B.1, require, in pertinent part, the following: *"In the event the discharger does not comply or will be unable to comply with any prohibition or limitation of this Order for any reason, the discharger shall notify the [Central Valley Water] Board by telephone...as soon as it or its agents have knowledge of such noncompliance or potential for noncompliance, and shall confirm this notification in writing within **two weeks**. The written notification shall state the nature, time and cause of noncompliance, and shall include a timetable for corrective actions."*

The Discharger failed to notify the Central Valley Water Board of the failure of the lift station and the discharge of raw sewage to land until 29 December 2008—three to five days after notification was required. The written report was not received from the Discharger until 27 January 2009—18 to 20 days after written notification was required. The written report did not include the time(s) of noncompliance, nor did it include a timetable for corrective actions.

28. Standard Provisions, at General Reporting Requirement B.4, states the following:

"Technical and monitoring reports specified in this Order are requested pursuant to Section 13267 of the Water Code. Failing to furnish the reports by the specified deadlines and falsifying information in the reports, are misdemeanors that may result in assessment of civil liabilities against the discharger."

29. The Discharger failed to report the spill pursuant to the California Water Code section 13267 requirement contained in Standard Provision B.4. The verbal report was due at the latest by 26 December 2008 and was not provided until 29 December 2008, which was at least three days late. The written report was due at the latest by 9 January 2009 and was not received until 27 January 2009, which was at least 18 days late. The written report was incomplete, as it did not contain the required timetable for corrective actions. To date, no timetable for corrective actions has been submitted.
30. As of 9 March 2009, the Discharger is subject to penalties of \$1,000 per day for 59 days for late or incomplete submittal of reports required pursuant to CWC section 13267. Therefore, a maximum liability of **fifty-nine thousand dollars (\$59,000)** may be assessed pursuant to CWC section 13268.

Total Maximum Penalty

31. Added together, the total maximum penalties that could be assessed under CWC sections 13350 and 13268, assuming that the spill was 90,000 gallons, is **nine hundred fifty-nine thousand dollars (\$959,000)**.

THE OAKS COMMUNITY ASSOCIATION 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 **twenty-four thousand, seven hundred and fifty dollars (\$24,750)**. The amount of the proposed liability is based upon a review of the factors cited in California Water Code sections 13268, 13327 and 13350, as well as the State Water Resources Control Board's 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 held at the Central Valley Water Board meeting scheduled on **11/12 June 2009**, unless the Discharger does either of the following by **30 April 2009**:
 - a) Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **twenty-four thousand, seven hundred and fifty dollars (\$24,750)**; or
 - b) Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board along with a letter describing the issues to be discussed.

3. If a hearing 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.

PAMELA C. CREEDON, Executive Officer

16 March 2009

Date

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent The Oaks Community Association (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2009-0521 (hereinafter the "Complaint");
2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint; and
4. (***Check here if the Discharger will waive the hearing requirement and will pay the fine***)
 - a. I certify that the Discharger will remit payment for the proposed civil liability in the amount of **twenty-four thousand, seven hundred and fifty dollars (\$24,750)** by check, which will contain a reference to "ACL Complaint R5 2009-0521" and will be made payable to the "*Waste Discharge Permit Fund*." Payment must be received by the Central Valley Water Board by **30 April 2009** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **11/12 June 2009** Central Valley Water Board meeting.
 - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period expires. Should the Central Valley Water Board receive 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. New information or comments include those submitted by personnel of the Central Valley Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

5. (***Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.***) I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)