

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0570

MANDATORY PENALTY
IN THE MATTER OF

EAST BAY MUNICIPAL UTILITY DISTRICT
CAMANCHE RESERVOIR SOUTH SHORE RECREATION AREA WATER TREATMENT
PLANT
CALAVERAS COUNTY

This Complaint is issued to East Bay Municipal Utility District (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes 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 Orders R5-2008-0081 (NPDES No. CAG995001) and R5-2008-0082 (NPDES No. CAG995002).

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

1. On 16 June 2000, the Central Valley Water Board adopted Waste Discharge Requirements Order 5-00-175 to regulate dewatering and other low threat discharges to surface waters.
2. On 28 October 2003, the Executive Officer of the Central Valley Water Board granted the Discharger coverage under Order 5-00-175, for filter backwashing related to the Camanche Reservoir South Shore Recreation Area Water Treatment Plant. The project consisted of the discharge of filter backwash water and excess raw water from the water treatment plant to an unnamed creek, which flows to Camanche Reservoir.
3. On 12 June 2008, the Central Valley Water Board adopted Waste Discharge Requirements Order R5-2008-0081 (Low Threat General Order) to regulate dewatering and other low threat discharges to surface waters. The Low Threat General Order rescinded and replaced Order 5-00-175. On 12 June 2008, the Central Valley Water Board also adopted Waste Discharge Requirements Order R5-2008-0082 (Limited Threat General Order) to regulate treated/untreated groundwater from cleanup sites, wastewater from superchlorination projects, and other limited threat wastewaters to surface water.
4. The Discharger was automatically granted coverage under the Low Threat General Order until 9 December 2008 (180 days following adoption) because the Discharger had been enrolled in Order 5-00-175. The Discharger was required to submit a Notice of Intent (NOI) prior to 9 December 2008 to extend coverage under the Low Threat General Order.

5. The Discharger submitted an NOI dated 11 September 2008, intending to continue coverage under the Low Threat General Order. However, in reviewing the Discharger's NOI, Board staff determined that the Discharger should instead receive coverage under the Limited Threat General Order, rather than the Low Threat General Order, due to the characteristics of the discharge. Board staff responded in a letter dated 20 November 2008, which directed the Discharger to apply for coverage under the Limited Threat General Order.
6. In addition, the Board administratively extended the Discharger's coverage under the Low Threat General Order until 27 April 2009, because the Discharger had submitted an NOI in a timely manner but had not applied for the appropriate permit. By complying with the terms of the Low Threat General Order until the Discharger obtained coverage under the Limited Threat General Order, the Discharger avoided potential liability for discharging without a permit.
7. The Discharger submitted an NOI dated 19 November 2008, seeking coverage under the Limited Threat General Order. On 28 April 2009, the Executive Officer of the Central Valley Water Board granted the Discharger coverage under the Limited Threat General Order for filter backwashing related to the Camanche Reservoir South Shore Recreation Area Water Treatment Plant.
8. This Complaint covers the period from 12 June 2008 through 30 September 2009. On 10 June 2009, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations (ROV) that included effluent limitation violations. Board staff subsequently re-evaluated the alleged violations in the draft ROV and have removed some entries that were listed in error.
9. CWC section 13385(h) requires assessment of mandatory penalties and states, in part, the following:

CWC section 13385(h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

CWC section 13385 (h)(2) states:

For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

10. CWC section 13323 states, in part:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

11. The Low Threat General Order, Paragraph V.A.1.a states, in part:

a. The discharge of pollutants from dewatering and other low threat discharges shall not exceed the following effluent limitations:

Parameter	Units	Effluent Limitations		
		Average Monthly	Weekly Average	Maximum Daily
Total Suspended Solids	mg/L	10	15	30

12. The Limited Threat General Order, Paragraph V.C.1 states:

1. Total Residual Chlorine. In addition to the effluent limitations contained in Sections V.A. and V.B. above, the discharge from a superchlorination project shall not exceed the following effluent limitations for total residual chlorine:

- a. 0.011 mg/L, as a 4-day average; and
- b. 0.019 mg/L, as a 1-hour average.

The Limited Threat General Order, Compliance Determination Provision VIII.B states:

Any excursion above the 1-hour average or 4-day average total residual chlorine effluent limitations and greater than or equal to a reporting level of 0.08 mg/L or a future reporting level included in a state-wide policy adopted by the State Water Board is a violation.

13. According to the Discharger's self-monitoring reports, the Discharger committed one (1) serious Group I violation of the above effluent limitations contained in the Low Threat General Order during the period from 12 June 2008 through 27 April 2009. This violation is defined as serious because the measured concentration of the Group I constituent exceeded maximum prescribed levels by more than 40 percent on this occasion. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.

14. According to the Discharger's self-monitoring reports, the Discharger committed three (3) serious Group II violations of the above effluent limitations and compliance determination contained in the Limited Threat General Order during the period from 28 April 2009 through 30 September 2009. These violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels by more than 20 percent on these occasions. The mandatory minimum penalty for these serious violations is **nine thousand dollars (\$9,000)**.
15. The total amount of the mandatory penalties assessed for the cited violations is **twelve thousand dollars (\$12,000)**. A detailed list of the cited violations is included in Attachment A, a part of this Complaint.
16. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

EAST BAY MUNICIPAL UTILITY DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **twelve thousand dollars (\$12,000)**.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **27/28/29 January 2010**, unless either of the following occurs by **14 December 2009**:
 - a) The Discharger waives the hearing by completing the attached form (checking off the box next to Option #1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **twelve thousand dollars (\$12,000)**; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
 - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
3. If a hearing on this matter 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.

If this matter proceeds to hearing, the Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not

limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

original signed by Joe Karkoski for

PAMELA C.CREEDON, Executive Officer

12 November 2009

Date

Attachment A: Record of Violations

SMJ: 5 November 2009

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent East Bay Municipal Utility District (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2009-0570 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

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

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **twelve thousand dollars (\$12,000)** by check that references "ACL Complaint R5-2009-0570." made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **14 December 2009**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

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

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

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0570

East Bay MUD

Camanche S Shore Recreation Area WTP

RECORD OF VIOLATIONS (12 June 2008 to 30 September 2009) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs R5-2008-0081 and R5-2008-0082)

#	Date	Violation Type	Units	Limit	Measured	Period Type	Remarks	CIWQS ID
1	9-Oct-2008	Total Suspended Solids	mg/L	10	15	average monthly	1	822252
2	12-Jun-2009	Total Residual Chlorine	mg/L	0.019	0.11	1-hour average	2	846093
3	15-Jun-2009	Total Residual Chlorine	mg/L	0.019	0.17	1-hour average	2	846094
4	15-Jun-2009	Total Residual Chlorine	mg/L	0.011	0.14	4-day average	2	846095

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.

VIOLATIONS FROM 12 JUNE 2008 TO 30 SEPTEMBER 2009

Group I Serious Violations:	1
Group II Serious Violations:	3
Non-serious Violations Subject to MPs:	0
Non-serious Violations Exempt from MPs:	0
<u>TOTAL VIOLATIONS SUBJECT TO MPS:</u>	<u>4</u>

Mandatory Minimum Penalty = (4 serious violations + 0 non-serious violations) × \$3,000 = \$12,000.