

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0532

MANDATORY PENALTY  
IN THE MATTER OF

CITY OF COLUSA  
WASTEWATER TREATMENT PLANT  
COLUSA COUNTY

This Complaint is issued to the City of Colusa (hereafter Discharger) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability, and Water Code 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 R5-2008-0184 (NPDES No. CA0078999).

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

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system, and provides sewerage service to the City of Colusa. Treated municipal wastewater is discharged to Powell Slough, tributary to the Colusa Trough, and to the Colusa Basin Drain, a water of the United States.
2. On 1 March 2002, the Central Valley Water Board issued WDRs Order R5-2002-0020. On 5 December 2008, the Board issued WDRs Order R5-2008-0184 (NPDES No. CA0078999), which rescinded Order R5-2002-0020 and included new effluent limitations and other requirements regarding the waste discharge. Order R5-2008-0184 became effective on 24 January 2009.
3. On 1 October 2008, the Executive Officer of the Central Valley Water Board issued ACL Order R5-2008-0535. The ACL Order assessed the Discharger a civil liability in the amount of \$486,000, which represented mandatory minimum penalties for effluent violations (identified in Attachment A to Order R5-2008-0535) that occurred from 1 January 2000 through 31 January 2008. The City of Colusa was determined to be a small community with financial hardship within the meaning of Water Code section 13385(k). ACL Order R5-2008-0535 allowed the Discharger to apply the \$486,000 penalty toward a compliance project consisting of construction of a new wastewater treatment plant that was designed to correct the violations. The Board considers payment of the mandatory minimum penalties specifically listed in Attachment A to ACL Order R5-2008-0535 satisfied through completion of the compliance project.
4. On 10 June 2010, the Assistant Executive Officer of the Central Valley Water Board issued ACL Order R5-2010-0518. The ACL Order assessed the Discharger a civil liability in the amount of \$78,000, which represented mandatory minimum penalties for effluent violations (identified in Attachment A to Order R5-2010-0518) that occurred from 1 January 2000 through 31 December 2008. ACL Order R5-2010-0518 assessed penalties

for 28 effluent limitations violations that were inadvertently overlooked in ACL Order R5-2008-0535 or that occurred after that ACLO was issued, but before the compliance project was completed. ACL Order R5-2010-0518 allowed the Discharger to apply the \$78,000 penalty toward the same compliance project allowed under ACL Order R5-2008-0535. The Board considers payment of the mandatory minimum penalties specifically listed in Attachment A to ACL Order R5-2010-0518 satisfied through completion of the compliance project.

5. On 10 June 2010, the Assistant Executive Officer of the Central Valley Water Board issued ACL Order R5-2010-0517. The ACL Order assessed the Discharger a civil liability in the amount of \$84,000 for effluent limitation violations from 1 January 2009 through 31 December 2009. The Order allowed the Discharger to apply the \$84,000 penalty toward a compliance project to perform viral bioassay testing, re-coat the UV Channel, expand the tertiary filters, and perform particle size testing. The Board considers payment of the mandatory minimum penalties specifically listed in Attachment A to ACL Order R5-2010-0517 satisfied through completion of the compliance project.
6. On 4 February 2011, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Order R5-2011-0519 for mandatory minimum penalties for one effluent violation that occurred during the period from 1 April 2004 through 31 May 2004 under WDRs Order R5-2002-0020 in the amount of \$3,000. This effluent violation was not addressed in either ACL Order R5-2008-0535 or R5-2010-0518. The Order allowed the Discharger to apply the \$3,000 penalty toward the same compliance project allowed under ACL Orders R5-2008-0535 and R5-2010-0518. The Board considers payment of the mandatory minimum penalties specifically listed in Attachment A to ACL Order R5-2011-0519 satisfied through completion of the compliance project.
7. On 14 February 2013, Central Valley Water Board staff sent the Discharger a draft Record of Violations (ROV) for the period of 1 January 2010 through 31 December 2012. The Discharger responded to the ROV on 11 March 2013 and agreed to the violations listed in the ROV.
8. This complaint addresses administrative civil liability for effluent violations that occurred during the period from 1 January 2010 through 31 December 2012. These violations are specifically identified in Attachment A to this Complaint as subject to mandatory minimum penalties. Attachment A to this Complaint is attached hereto and incorporated herein by this reference.
9. Water Code sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

Water Code 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.

Water Code 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.

Water Code section 13385(i)(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 violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) 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.

10. Water Code 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. WDRs Order R5-2008-0184 Effluent Limitations IV.A.1.n., include, in part, the following effluent limitations:

“Effective 18 May 2010, the Discharger shall maintain compliance with the following effluent limitations...”

Parameter	Units	Effluent Limitations	
		Average Monthly	Maximum Daily
Copper	µg/L	8.1	13

12. According to the Discharger’s self-monitoring reports, the Discharger committed one (1) serious Group II violation of the above effluent limitations contained in Order R5-2008-0184 during the period 1 January 2010 through 31 December 2012. This violation is defined as serious because the measured concentrations of a Group I constituent exceeded maximum prescribed levels by more than 20 percent on this occasion. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.

13. According to the Discharger's self-monitoring reports, the Discharger committed one (1) non-serious violations of the above effluent limitations contained in Order R5-2008-0184 during the period 1 January 2010 through 31 December 2012. This non-serious violation is not subject to mandatory penalties under Water Code section 13385(i)(1) because the violation was not preceded by three or more similar violations within a six-month period.
14. The total amount of the mandatory penalties assessed for the cited effluent violation is **three thousand dollars (\$3,000)**. The cited effluent violation is included in Attachment A, a part of this Complaint.
15. Issuance of this Administrative Civil Liability Complaint to enforce Water Code Division 7, Chapter 5.5 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).

**THE CITY OF COLUSA 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 **three thousand dollars (\$3,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **25/26 July 2013**, unless the Discharger does either of the following by **24 May 2013**:
  - a) 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 **three thousand dollars (\$3,000)**; 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.
  - 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.
4. 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

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PAMELA C. CREEDON, Executive Officer

26 April 2013

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Attachment A: Record of Violations  
LO: 24-Apr-13

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the City of Colusa (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2013-0532 (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 **three thousand dollars (\$3,000)** by check that references "ACL Complaint R5-2013-0532" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **24 May 2013**.
- 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 R5-2013-0532**

**City of Colusa  
Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 January 2010 – 31 December 2012) MANDATORY PENALTIES  
(Data reported under Monitoring and Reporting Program R5-2008-0184)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>	<u>CIWQS</u>
1	9/6/2011	Copper	ug/L	13	14	Daily Maximum	3	913726
2	9/30/2011	Copper	ug/L	8.1	14	Monthly Average	2	913727

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.

<b><u>VIOLATIONS AS OF:</u></b>	<b><u>12/31/2012</u></b>
Group I Serious Violations:	0
Group II Serious Violations:	1
Non-Serious Exempt from MPs:	1
Non-serious Violations Subject to MPs:	0
<b><u>Total Violations Subject to MPs:</u></b>	<b><u>1</u></b>

**Mandatory Minimum Penalty = (1 Serious Violations + 0 Non-Serious Violations) x \$3,000 = \$3,000**