

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2010-0528

MANDATORY PENALTY
IN THE MATTER OF
SACRAMENTO SUBURBAN WATER DISTRICT
WATER DISTRIBUTION MAINTENANCE
SACRAMENTO COUNTY

This Complaint is issued to Sacramento Suburban Water 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 Order R5-2008-0081-028 (NPDES No. CAG995001).

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 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 The Low Threat General Order rescinded and replaced Order 5-00-175.
3. The Discharger was previously covered under Order 5-00-175. On 15 April 2009, the Discharger submitted a Notice of Intent for coverage under Order R5-2008-0081. On 8 May 2009 Board staff issued a Notice of Applicability and assigned the project General Order No. R5-2008-0081-028.
4. This Complaint covers the period from 1 July 2008 through 31 March 2010. On 13 May 2010, Central Valley Water Board staff issued the Discharger a Notice of Violation for the above time period. During a meeting on 25 May, the Discharger provided copies of the missing monitoring reports. The listing of violations (Attachment A to this Order) was then revised to delete the monitoring report violations and include additional effluent violations discovered during review of the missing reports. In a letter dated 3 June 2010, the Discharger states that the violations were administrative oversights and did not harm or degrade the environment or public health.
5. CWC sections 13385(h) and (i) require assessment of mandatory penalties and state, 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 II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

CWC 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.

6. 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.

7. The Low Threat General Order, Paragraph V.A.1.a states:

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

Table 3. Effluent Limitations

Parameter	Units	Effluent Limitations		
		Average Monthly	Weekly Average	Maximum Daily
Total Suspended Solids	mg/L	10	15	30
Settleable Solids	mL/L	--	--	0.1

8. According to the Discharger's self-monitoring reports, the Discharger committed nine (9) serious Group I violation of the above effluent limitations contained in the Low Threat General Order during the period from 1 July 2008 through 31 March 2010. These violations are defined as serious because measured concentrations of the Group I constituents exceeded maximum prescribed levels by more than 40 percent. The mandatory minimum penalty for these serious violations is **twenty-seven thousand dollars (\$27,000)**.
9. According to the Discharger's self-monitoring reports, the Discharger committed two (2) serious Group II violation of the above effluent limitations contained in the Low Threat General Order during the period from 1 July 2008 through 31 March 2010. These violations are defined as serious because measured concentrations of the Group II constituents exceeded maximum prescribed levels by more than 20 percent. The mandatory minimum penalty for these serious violations is **six thousand dollars (\$6,000)**.
10. According to the Discharger's self-monitoring reports, the Discharger committed four (4) non-serious violations of the above effluent limitations contained in the Low Threat General Order during the period from 1 July 2008 through 31 March 2010. Three of these violations are subject to mandatory penalties under CWC section 13385(i)(1) because they were preceded by three three similar violations within a 180-day period. The mandatory minimum penalty for these non-serious violations is **nine thousand dollars (\$9,000)**.
11. The total amount of the mandatory penalties assessed for the cited violations is **forty-two thousand dollars (\$42,000)**. A detailed list of the violations is included in Attachment A, a part of this Complaint.
12. 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).

SACRAMENTO SUBURBAN WATER 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 **forty-two thousand dollars (\$42,000)**.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **22/23/24 September 2010**, unless any of the following occurs by **26 July 2010**:
 - 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 **forty-two thousand dollars (\$42,000)**; 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 Frederick Moss for

PAMELA C.CREEDON, Executive Officer

25 June 2010

Date

Attachment A: Record of Violations

BLH: 23 June 2010

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent Sacramento Suburban Water District (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2010-0528 (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 **forty-two thousand dollars (\$42,000)** by check that references "ACL Complaint R5-2010-0528." made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **26 July 2010**.
- 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 R5-2010-0528**

**Sacramento Suburban Water District
Water Distribution System Maintenance
RECORD OF VIOLATIONS FOR MANDATORY PENALTIES
(Data and reports submitted under Monitoring and Reporting Program R5-2008-0081-028)**

Effluent Limitations Violations (1 July 2008 – 31 March 2010)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
1	9-Aug-08	TSS	mg/L	15	22	weekly average	1	871697
2	13-Nov-08	SS	mL/L	0.1	0.2	maximum daily	1	871698
3	7-Feb-09	TSS	mg/L	15	18	weekly average	3	871699
4	11-Feb-09	SS	mL/L	0.1	0.3	maximum daily	1	871700
5	12-Feb-09	SS	mL/L	0.1	0.2	maximum daily	1	871701
6	28-Feb-09	TSS	mg/L	10	12	average monthly	4	871702
7	4-May-09	SS	mL/L	0.1	0.5	maximum daily	1	871703
8	13-May-09	SS	mL/L	0.1	0.4	maximum daily	1	871704
9	23-May-09	TSS	mg/L	15	17	weekly average	4	871705
10	14-Nov-09	Residual Chlorine	mg/L	0.08	0.1	1-hour average	2	864522
11	19-Nov-09	Residual Chlorine	mg/L	0.08	0.1	1-hour average	2	864523
12	6-Feb-10	TSS	mg/L	15	28	weekly average	1	869895
13	20-Mar-10	TSS	mg/L	15	25	weekly average	1	869896
14	28-Feb-10	TSS	mg/L	10	12	average monthly	4	869897
15	31-Mar-10	TSS	mg/L	10	24	average monthly	1	869898

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 violation falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory minimum penalties.

<u>VIOLATIONS AS OF:</u>	<u>3/31/2010</u>
Group I Serious Violations:	9
Group II Serious Violations:	2
Non-Serious Exempt from MMPs:	1
Non-serious Violations Subject to MMPs:	3
<u>Total Violations Subject to MMPs:</u>	<u>14</u>

Mandatory Minimum Penalty = (11 serious Violations + 3 Non-Serious Violations) x \$3,000 = \$42,000