

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0587

MANDATORY PENALTY  
IN THE MATTER OF

CITY OF MERCED  
WASTEWATER TREATMENT FACILITY  
MERCED COUNTY

This Complaint is issued to the City of Merced (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order 00-246 (NPDES No. CA0079219) at its Wastewater Treatment Facility (WWTF or Facility) during the period from 1 August 2004 through 31 December 2007.

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or 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 Merced. Disinfected secondary treated municipal wastewater is discharged to an unlined ditch tributary to Hartley Slough, a water of the United States, and tributary to the San Joaquin River.
2. On 24 October 2000, the Central Valley Water Board issued WDRs Order 00-246 to regulate, in part, the discharge of up to 10 million gallons per day (mgd) to Hartley Slough.
3. On 5 October 2004, the Central Valley Water Board's Assistant Executive Officer issued the Discharger Administrative Civil Liability Complaint R5-2004-0537 in the amount of \$27,000 for violations subject to mandatory minimum penalties (MMPs) that occurred at the Facility during the period of 1 July 2000 to 31 July 2004.
4. On 14 March 2008, the Central Valley Water Board issued WDRs Order R5-2008-0028, which prescribed new requirements for discharge and rescinded WDRs Order 00-246.
5. CWC section 13385(h) requires the 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.

6. CWC section 13385(i) requires the assessment of mandatory penalties and states, in part, the following:

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.

7. CWC section 13323 states, in relevant 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.

8. WDRs Order 00-246 Effluent Limitation B.1 prescribes, in part, the following effluent limitations:

<u>Constituent</u>	<u>Units</u>	<u>7-Day Median</u>	<u>Daily Maximum</u>
Chlorine Residual	mg/L	—	0.5
<u>Total Coliform Organism</u>	MPN <sup>1</sup> /100 ml	23	240

<sup>1</sup> Most probable number

8. WDRs Order 00-246 Effluent Limitation B.5 prescribes the survival of aquatic organisms in 96-hour bioassays of undiluted waste shall be no less than:
  - a. Minimum for any one bioassay-----70%
  - b. Median for any three or more consecutive bioassays-----90%
9. On 6 August 2008, Board staff issued the Discharger a Notice of Violation and a draft Record of Violations identifying violations of WDRs Order 00-246 that are subject to MMPs. The draft Record of Violations covers the period from 1 August 2004 to 31 December 2007. According to the Discharger's self-monitoring reports, the Discharger committed two (2) serious violations of the effluent limitation for daily maximum chlorine residual, one (1) violation of the effluent limitation for acute toxicity and ten (10) violations of the effluent limitations for total coliform organisms, of which seven (7) are chronic violations subject to MMPs pursuant to CWC section 13385(i). By 23 August 2008 letter, the Discharger acknowledged these violations. Attachment A to this Complaint is the Record of Violations that identifies the violations subject to MMP addressed by this Complaint.
10. The total amount of the MMPs assessed for the cited effluent limitation violations is **twenty-seven thousand dollars (\$27,000)**.
11. 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 Title 14 California Code of Regulations, section 15321(a)(2).

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

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **twenty-seven thousand dollars (\$27,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **5/6 February 2009**, unless the Discharger does either of the following by **30 December 2008**:
  - 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-seven thousand dollars (\$27,000)**; 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 in settlement negotiations.

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.

---

LOREN J. HARLOW, Assistant Executive Officer

---

Attachment A: Record of Violations

JLK: 11/18/08

**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 City of Merced (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0587 (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 California Regional Water Quality Control Board, Central Valley Region (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 civil liability imposed in the amount of **twenty-seven thousand dollars (\$27,000)** by check, which contains a reference to "ACL Complaint R5-2008-0587" made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **30 December 2008** or this matter will be placed on the Central Valley Water Board's agenda for adoption as initially proposed in the Complaint.
  - 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 the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Assistant 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)

ATTACHMENT A  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0587

CITY OF MERCED  
WASTEWATER TREATMENT FACILITY  
RECORD OF VIOLATIONS (1 August 2004 – 31 December 2007) MANDATORY PENALTIES  
(Data reported under Monitoring and Reporting Program 00-246)

<u>Violation ID</u> <sup>1</sup>	<u>Violation Date</u>	<u>Violation Type</u> <sup>2</sup>	<u>Violation Description</u> <sup>3</sup>	<u>MMP Type</u> <sup>4</sup>
267148	8/3/04	ATOX	8M; Acute toxicity; 70; % survival; D; 65	EXEMPT
267144	8/12/04	OEV	8M; TCO; 23; MPN/100mL; 7-day median; 30	EXEMPT
267146	8/20/04	CAT2	8M; Chlorine residual; 0.5; mg/L; D; 0.94	SERIOUS
257016	9/10/04	OEV	9M; TCO; 240; MPN/100mL; D; > or = 1600	EXEMPT
260827	10/11/04	OEV	10M; TCO; 240; MPN/100mL; D; > or = 1600	CHRONIC
264934	12/5/04	CAT2	12M; Chlorine residual; 0.5; mg/L; D; 2.193	SERIOUS
249789	12/5/04	OEV	12M; TCO; 23; MPN/100mL; 7-day median; 30	CHRONIC
256434	12/6/04	OEV	12M; TCO; 23; MPN/100mL; 7-day median; 30	CHRONIC
265532	12/7/04	OEV	12M; TCO; 23; MPN/100mL; 7-day median; 30	CHRONIC
757927	12/8/04	OEV	12M; TCO; 23; MPN/100mL; 7-day median; 30	CHRONIC
757930	12/9/04	OEV	12M; TCO; 23; MPN/100mL; 7-day median; 30	CHRONIC
757931	12/10/04	OEV	12M; TCO; 23; MPN/100mL; 7-day median; 30	CHRONIC
758268	10/2/06	OEV	10M; TCO; 240; MPN/100 mL; D; 400	EXEMPT

<sup>1</sup> Violation ID in CIWQS

<sup>2</sup> Table of Abbreviations below defines abbreviations used in this table.

<sup>3</sup> Violation Descriptions are coded as follows: Reporting period (e.g., 2M = February); constituent or parameter (e.g., TCO); effluent limitation; units; limitation period; and reported result.

<sup>4</sup> Exempt non-serious violations fall within the first three violations in a six-month period, thus is exempt. Chronic violations subject to mandatory penalties.

<u>Abbreviation</u>	<u>Definition</u>
ATOX	Violation of acute toxicity effluent limitation
CAT2	Violation of Group II pollutant effluent limitation as defined in Enforcement Policy
CIWQS	California Integrated Water Quality System database
D	Daily
MMP	Mandatory Minimum Penalty
MPN/100 mL	Most Probable Number per 100 milliliters
OEV	Other Effluent Violation
TCO	Total Coliform Organisms

VIOLATION SUMMARY				
Violation Type	MMP Violation Type			Grand Total
	CHRONIC	EXEMPT	SERIOUS	
ATOX		1		1
CAT2			2	2
OEV	7	3		10
Grand Total	7	4	2	13

<u>MMP VIOLATION TYPE</u>	<u>VIOLATION PERIOD</u> <u>8/1/04 TO 12/31/07</u>
Serious Violations of Group II Pollutant Effluent Limitation Subject to MMPs:	2
Chronic Non-serious Violations Subject to MMPs:	7
<b>Total Violations Subject to MMPs:</b>	<b>9</b>
Non-serious Violations Exempt from MMPs:	4

Mandatory Minimum Penalty = (2 Serious + 7 Chronic Violations) x \$3,000 = \$27,000