

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0599

MANDATORY PENALTY
IN THE MATTER OF

CITY OF AUBURN
WASTEWATER TREATMENT PLANT
PLACER COUNTY

This Complaint is issued to the City of Auburn, Wastewater Treatment Plant (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) Orders 98-189 and R5-2005-0030 (NPDES No. CA0077712).

The Assistant 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 Auburn area. The City discharges treated municipal wastewater to Auburn Ravine, and the Sacramento River, waters of the United States.
2. On 11 September 1998, the Central Valley Water Board adopted WDRs Order 98-189 to regulate discharges of waste. On 17 March 2005, the Central Valley Water Board adopted WDRs Order R5-2005-0030 which contained new requirements and rescinded WDRs Order 98-189. On 17 March 2005, the Central Valley Water Board also adopted Cease and Desist Order (CDO) R5-2005-0031. CDO R5-2005-0031 provides a time schedule until 1 December 2009 to comply with final effluent limitations for aluminum, ammonia, chloroform, manganese, methyl tert butyl ether (MTBE), nitrite, nitrate + nitrite, and organochlorine pesticides. This Complaint considered the interim effluent limitations in WDRs Order R5-2005-0030 and the protection from Mandatory Minimum Penalties provided by CDO R5-2005-0031.
3. On 22 August 2008, Central Valley Water Board staff sent the Discharger a draft Record of Violations. The Discharger responded on 10 September 2008. In response, Board staff prepared a technical memorandum, included as Attachment B to this Complaint, and discussed in Finding No. 11 of this Complaint.
4. 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 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.

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.

5. 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.

6. WDRs Order 98-189 Effluent Limitations No. B.1. states, "*Category A: Except as described in Category B (next paragraph), effluent shall not exceed the following limits:*"

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Hourly Average</u>	<u>Weekly Average</u>	<u>Monthly Median</u>	<u>Daily Maximum</u>
Chlorine Residual	mg/L		0.02	0.01		
Total Coliform Organisms	MPN/100 mL				2.2	23

7. WDRs Order R5-2005-0030 Effluent Limitations No. B.1 B., include, in part, the following: *"Effluent Limitations – Discharge to Auburn Ravine (001). 1. Effluent shall not exceed the following limits when less than 20:1 dilution is available."*

<u>Constituents</u>	<u>Units</u>	<u>Average Monthly</u>	<u>Monthly Median</u>	<u>Average Weekly</u>	<u>Average Daily</u>	<u>Instantaneous Maximum</u>
<u>Turbidity</u>	NTU	--	--	--	2	5 ⁵

⁵ The turbidity shall not exceed 5 NTU more than 5 percent of the time within a 24-hour period. At no time shall the turbidity exceed 10 NTU.

8. WDRs Order R5-2005-0030 Effluent Limitations No. B.3., include, in part, the following effluent limitations: "Effluent shall not exceed the following limits (from adoption until 30 November 2009): "

<u>Constituents</u>	<u>Units</u>	<u>Average Monthly</u>	<u>Average 4-Day</u>	<u>Average Daily</u>	<u>Average 1-Hour</u>
Chlorine, Total Residual	mg/L	--	0.01	--	0.02
	lbs/day ²	--	0.15	--	0.26

² Based upon a design treatment capacity of 1.67 mgd [x µg/L x (1 mg/1000 µg) x 8.345 x 1.67 mgd = y lbs/day]

Interim Average Daily Limitations for Priority Pollutants¹

<u>Constituents</u>	<u>µg/L</u>	<u>lbs/day²</u>
<u>Silver (total recoverable)</u>	1.4 ³	--

¹ Interim Limitations are the maximum of the values in this table and the Effluent Limitations contained in B.4.

² Based upon a design treatment capacity of 1.67 mgd [x µg/L x (1 mg/100 µg) x 8.345 x 1.67 mgd = y lbs/day]

³ Instantaneous maximum

9. WDRs Order R5-2005-0030 Effluent Limitations No. B.7. states: "The discharge shall not have a pH less than 6.5 nor greater than 8.5."
10. Cease and Desist Order R5-2005-0031 Item No. 2 states, in part: "The City of Auburn shall comply with the following time schedule to assure compliance with the aluminum, ammonia, chloroform, manganese, methyl tert butyl ether (MTBE), nitrite, nitrate + nitrite, and organochlorine pesticides Effluent Limitations contained in Waste Discharge Requirements Order No. R5-2005-00030...Achieve Full Compliance: 1 December 2009."
11. As described in the technical memorandum mentioned in Finding No. 3, Central Valley Water Board staff has made the following adjustments to the draft Record of Violations (all violation numbers reference those contained in the draft Record of Violations).
- pH, Violations 13, 16-21, 28. These violations were deleted because the Discharger documented that the violations resulted from a laboratory error.

- Turbidity, Violation 1. This discharge was not subject to turbidity effluent limitations because it was an “Extreme Flow Partially Unfiltered Discharge Event” as defined in WDRs Order 98-189. This violation was deleted.
 - Turbidity, Violation 22. This event was not subject to turbidity effluent limitations because there was more than a 20:1 dilution ratio at the time of the discharge. This violation was deleted.
 - Turbidity, Violations 23-27. The Discharger provided information that there was a high wet weather flow into the WWTP. However, the Discharger did not present evidence that there was greater than a 20:1 dilution ratio that would have eliminated the effluent turbidity limitations. These violations were retained.
 - Total Coliform Organisms, Violations 5, 6. The Discharger provided evidence that the results were erroneous and the result of sampler contamination from construction activity. These violations were deleted.
12. According to the Discharger’s self-monitoring reports, the Discharger committed three (3) serious Group I violations of the above effluent limitations contained in Orders 98-189 and R5-2005-0030 during the period beginning 1 January 2000 and ending 30 April 2008. The violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels by more than 40 percent on these occasions. The mandatory minimum penalty for these serious violations is **nine thousand dollars (\$9,000)**.
 13. According to the Discharger’s self-monitoring reports, the Discharger committed twelve (12) serious Group II violations of the above effluent limitations contained in Orders 98-189 and R5-2005-0030 during the period beginning 1 January 2000 and ending 30 April 2008. These violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels by more than 20 percent on this occasion. The mandatory minimum penalty for these serious violations is **thirty-six thousand dollars (\$36,000)**.
 14. According to the Discharger’s self-monitoring reports, the Discharger committed ten (10) non-serious violations of the above effluent limitations contained in Orders 98-189 and R5-2005-0030 during the period beginning 1 January 2000 and ending 30 April 2008. Five (5) of the non-serious violations are subject to mandatory penalties under CWC section 13385(i)(1) because these violations were preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for these non-serious violations is **fifteen thousand dollars (\$15,000)**.
 15. The total amount of the mandatory penalties assessed for the cited effluent violations is **sixty thousand dollars (\$60,000)**. A detailed list of the cited effluent 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 (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

THE CITY OF AUBURN 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 **sixty thousand dollars (\$60,000)**.
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 **10 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 **sixty thousand dollars (\$60,000)**; 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.
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.

JACK E. DEL CONTE, Assistant Executive Officer

10 November 2008

**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 City of Auburn (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0599 (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 **sixty thousand dollars (\$60,000)** by check, which will contain a reference to "ACL Complaint R5 2008-0599" and will be made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **10 December 2008** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **5/6 February 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 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 NO. R5-2008-0599**

City of Auburn

Wastewater Treatment Plant

RECORD OF VIOLATIONS (1 January 2000 – 30 April 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program 98-189 and R5-2005-0030)

#	Date	Violation Type	Units	Limit	Measure		Period Type	Remarks
					d			
1	20-Jul-00	Total Coliform Organisms	MPN/100 mL	23	500		Daily Maximum	3
2	7-Aug-00	Chlorine Residual	mg/L	0.02	4.9		Hourly Average	2
3	13-Aug-00	Chlorine Residual	mg/L	0.01	0.7		Weekly Average	2
4	30-Oct-02	Total Coliform Organisms	MPN/100 mL	23	300		Daily Maximum	3
5	8-Jun-03	Chlorine Residual	mg/L	0.02	0.07		Hourly Average	2
6	2-Jul-03	Total Coliform Organisms	MPN/100 mL	23	50		Daily Maximum	3
7	28-Jun-04	Total Coliform Organisms	MPN/100 mL	23	110		Daily Maximum	3
8	19-Aug-04	Chlorine Residual	mg/L	0.02	0.03		Hourly Average	2
9	8-Jul-05	Silver	µg/l	1.4	63		Instantaneous Maximum	2
10	4-Dec-05	Chlorine, Total Residual	mg/L	0.02	1.88		Average 1-Hour	2
11	4-Dec-05	Chlorine, Total Residual	lbs/day	0.26	23		Average 1-Hour	2
12	3-Jan-06	Turbidity	NTU	2	7		Average Daily	1
13	3-Jan-06	Turbidity	NTU	5	>5		Daily	4
14	4-Jan-06	Turbidity	NTU	2	5		Average Daily	1
15	4-Jan-06	Turbidity	NTU	5	>5		Daily	4
16	5-Jan-06	Turbidity	NTU	2	3		Average Daily	1
17	20-Dec-06	Chlorine, Total Residual	mg/L	0.02	2.73		Average 1-Hour	2
18	20-Dec-06	Chlorine, Total Residual	lbs/day	0.26	1.4		Average 1-Hour	2
19	20-Dec-06	Chlorine, Total Residual	mg/L	0.01	0.04		Average 4-Day	2
20	20-Dec-06	Chlorine, Total Residual	lbs/day	0.15	0.34		Average 4-Day	2
21	20-Dec-06	pH	pH units	6.5	6.4		Instantaneous	4
22	28-Dec-06	Chlorine, Total Residual	mg/L	0.02	0.45		Average 1-Hour	2
23	28-Dec-06	Chlorine, Total Residual	lbs/day	0.26	0.27		Average 1-Hour	4
24	28-Dec-06	pH	pH units	6.5	6.4		Instantaneous	4
25	9-Dec-07	pH	pH units	6.5	6.4		Instantaneous	3

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.

<u>VIOLATIONS AS OF:</u>	<u>04/30/2008</u>
Group I Serious Violations:	3
Group II Serious Violations:	12
Non-serious Violations, Exempt from MPs:	5
Non-serious Violations, Subject to MPs:	5
<u>Total Violations Subject to MPs:</u>	<u>20</u>

Mandatory Minimum Penalty = (15 Serious Violations + 5 Non-Serious Violations) × \$3,000 = \$60,000



Linda S. Adams
Secretary for
Environmental Protection

ATTACHMENT B

California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair



Arnold
Schwarzenegger
Governor

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>

TO: Patricia Leary, Senior Engineer
NPDES Compliance and Enforcement

FROM: Barry Hilton, WRCE
NPDES Compliance and Enforcement

DATE: 14 October 2008

SIGNATURE: _____

SUBJECT: CITY OF AUBURN WASTEWATER TREATMENT PLANT, RESPONSE TO NOV AND ASSESSMENT OF MMPS

On 22 August 2008, Central Valley Water Board staff sent the City of Auburn (Discharger) a draft Record of Violations (ROV) for the period of 1 January 2000 through 30 September 2007. The Discharger responded by letter dated 10 September 2008. The following discusses the comments and any changes I made to the Record of Violations based on the Discharger's comments.

pH

Violations 13, 16-21, 28. The Discharger provided extensive documentation showing that the transient spikes were due to instrumentation errors and not effluent violations. I deleted the violations.

Turbidity

Violation 1. The Discharger provided information that this was an "Extreme Flow Partially Unfiltered Discharge Event" that is not subject to turbidity effluent limitations. I deleted the violation.

Violation 22. The Discharger demonstrated that there was a 20:1 dilution ratio at the time of discharge. There was no violation. I deleted the violation.

Violations 23-27. The Discharger provided information that there was a high wet weather flow into the WWTP. However, the Discharger did not present evidence that there was greater than a 20:1 dilution factor that would have eliminated the effluent turbidity limitation. I retained the violations.

Total Coliform Organisms

Violations 5, 6. The Discharger provided evidence that the results were erroneous and the result of sampler contamination from construction activity.

California Environmental Protection Agency

Summary

The total number of Group 1 violations is reduced from 4 to 3.

The total number of Group 2 violations remains at 12.

The total number of non-serious violations is reduced from 25 to 10; 5 are subject to MMPs.

The ACL reduces from \$90,000 to \$60,000.

**City of Auburn
Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 January 2000 – 30 April 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program Nos. 98-189 and R5-2005-0030)

#	Date	Violation Type	Units	Limit	Measure	Period Type	Remarks
4	25-Jan-00	Turbidity	none	5	≥5	Daily	3
2	20-Jul-00	Total Coliform Organisms	MPN/100 mL	23	500	Daily Maximum	3
3	7-Aug-00	Chlorine Residual	mg/L	0.02	4.9	Hourly Average	2
4	13-Aug-00	Chlorine Residual	mg/L	0.01	0.7	Weekly Average	2
5	16-Aug-00	Total Coliform Organisms	MPN/100 mL	23	80	Daily Maximum	4
6	17-Aug-00	Total Coliform Organisms	MPN/100 mL	23	34	Daily Maximum	4
7	30-Oct-02	Total Coliform Organisms	MPN/100 mL	23	300	Daily Maximum	3
8	8-Jun-03	Chlorine Residual	mg/L	0.02	0.07	Hourly Average	2
9	2-Jul-03	Total Coliform Organisms	MPN/100 mL	23	50	Daily Maximum	3
10	28-Jun-04	Total Coliform Organisms	MPN/100 mL	23	110	Daily Maximum	3
11	19-Aug-04	Chlorine Residual	mg/L	0.02	0.03	Hourly Average	2
12	8-Jul-05	Silver	µg/l	1.4	63	Instantaneous Maximum	2
13	4-Dec-05	pH	pH units	6.5	6.0	Instantaneous	3
14	4-Dec-05	Chlorine, Total Residual	mg/L	0.02	1.88	Average 1-Hour	2
15	4-Dec-05	Chlorine, Total Residual	lbs/day	0.26	23	Average 1-Hour	2
16	5-Dec-05	pH	pH units	6.5	6.4	Instantaneous	4
17	15-Dec-05	pH	pH units	6.5	6.4	Instantaneous	4
18	19-Dec-05	pH	pH units	6.5	6.2	Instantaneous	4
19	23-Dec-05	pH	pH units	6.5	5.5	Instantaneous	4
20	29-Dec-05	pH	pH units	6.5	5.2	Instantaneous	4
21	30-Dec-05	pH	pH units	6.5	5.0	Instantaneous	4
22	31-Dec-05	Turbidity	NTU	2	5	Average Daily	4
23	3-Jan-06	Turbidity	NTU	2	7	Average Daily	1
24	3-Jan-06	Turbidity	NTU	5	>5	Daily	4
25	4-Jan-06	Turbidity	NTU	2	5	Average Daily	1
26	4-Jan-06	Turbidity	NTU	5	>5	Daily	4
27	5-Jan-06	Turbidity	NTU	2	3	Average Daily	1
28	4-Feb-06	pH	pH units	6.5	5.7	Instantaneous	4
29	20-Dec-06	Chlorine, Total Residual	mg/L	0.02	2.73	Average 1-Hour	2
30	20-Dec-06	Chlorine, Total Residual	lbs/day	0.26	1.4	Average 1-Hour	2
31	20-Dec-06	Chlorine, Total Residual	mg/L	0.01	0.04	Average 4-Day	2
32	20-Dec-06	Chlorine, Total Residual	lbs/day	0.15	0.34	Average 4-Day	2
33	20-Dec-06	pH	pH units	6.5	6.4	Instantaneous	4
34	28-Dec-06	Chlorine, Total Residual	mg/L	0.02	0.45	Average 1-Hour	2
35	28-Dec-06	Chlorine, Total Residual	lbs/day	0.26	0.27	Average 1-Hour	4
36	28-Dec-06	pH	pH units	6.5	6.4	Instantaneous	4
37	9-Dec-07	pH	pH units	6.5	6.4	Instantaneous	3

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.

<u>VIOLATIONS AS OF:</u>	<u>04/30/2008</u>
Group I Serious Violations:	<u>34</u>
Group II Serious Violations:	12
Non-serious Violations, Exempt from MPs:	<u>544</u>
Non-serious Violations, Subject to MPs:	<u>544</u>
<u>Total Violations Subject to MPs:</u>	<u>2030</u>

Mandatory Minimum Penalty = (~~1546~~ Serious Violations + 544 Non-Serious Violations) × \$3,000 = \$960,000