

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2004-0535
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

CITY OF STOCKTON
SAN JOAQUIN COUNTY

This complaint is issued to the City of Stockton, (hereafter Discharger) based on a finding of the discharge of pollutants without waste discharge requirements, a violation of Clean Water Act (CWA) Section 301 and California Water Code (CWC) Section 13376, pursuant to CWC Section 13385, which authorizes the imposition of Administrative Civil Liability, and CWC Section 13323, which authorizes the Executive Officer to issue this complaint.

The Executive Officer of the Regional Water Quality Control Board, Central Valley Region (Regional Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. The City of Stockton (hereafter Discharger) provides water service to the residents of the City of Stockton. The Discharger contracts with OMI/Thames Water Stockton (OMI) for operation and maintenance of the service, including water supply well installation and development. OMI subcontracts some of its work to other companies.
2. The Discharger had completed construction of a municipal water well (adjacent to a lot identified as 3871 Ivano Lane) within a new housing development. On 17 March 2004, Humbolt Drilling & Pump Co., a contractor for OMI, pumped a 12.5% sodium hypochlorite solution into the well as a routine process to disinfect the well after construction. Once the disinfection process was complete, the Discharger needed to remove and dispose of the chlorinated wastewater and did so by discharging from 0730 hrs to 1130 hrs into Woodbridge Irrigation District South Main Canal, which has been determined to be waters of the United States.
3. On 18 March 2004, at 1310 hrs, the Discharger notified the Office of Emergency Services (OES Report # 04-1508) that 480,000 gallons of chlorinated water had been discharged by a contractor into an irrigation canal maintained by Woodbridge Irrigation District, and that a fish kill had occurred. At that time the Discharger reported 10 dead fish had been observed.
4. The Department of Fish and Game inspected the discharge location on 18 March 2004, over 24-hours after the incident had taken place. The warden reported the South Main Canal water to be very clear with a pH approximately 8.0 and also noted the presence of four dead fish with no signs of living aquatic life.
5. On 23 March 2004, the Regional Board received a report from OMI providing details of the discharge that occurred on 17 March 2004. OMI reported that approximately 480,000 gallons of groundwater containing approximately 40 gallons of 12.5% sodium hypochlorite solution was discharged to Woodbridge Irrigation District South Main Canal. The calculated average chlorine dose for the entire discharge is 11.4 mg/l. However, the majority of chlorine would have been expelled in the first few well volumes discharged. The USEPA National Ambient Water Quality Criteria to prevent acute (lethal) effects from chlorine is 0.019 mg/l, a 1-hour average. The

calculated average dose is about six hundred (600) times higher than the acute criterion. The OMI report states that the discharge caused significant mortality to aquatic life (342 dead aquatic organisms including crayfish, mosquito fish, tadpoles, catfish, and perch) in the canal over a distance of 2,800 feet. Chlorine was measured in the canal at up to 0.3 mg/l (15 times the acute criteria) at 1608 hrs on 18 March 2004, a day after the spill.

6. Downstream of the discharge, the South Main Canal traverses Mosher Slough and the Calaveras River. At Mosher Slough the crossing has an overflow structure that allows continuous discharges when water is being supplied to irrigation district users. At the Calaveras River the canal crossing has an overflow structure that is gated. The canal is tributary to Mosher Slough, and may also be tributary to the Calaveras River. The South Main Canal meets the definition of waters of the United States pursuant to 40 CFR Part 122.2.
7. The Discharger did not apply for or receive Waste Discharge Requirements for the discharge of pollutants to surface waters.
8. CWA Section 301 and CWC Section 13376 prohibit the discharge of pollutants to surface waters except in compliance with an NPDES permit.
9. CWC Section 13385(a) states, in part:

“(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(5) Any requirements of Section 301, 302, 306, 307,308, 318, 401, or 405 of the Clean Water Act, as amended.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to

the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation."

10. The Discharger derived an economic benefit estimated to be not less than \$3,000 for not collecting and hauling the wastewater to the treatment plant for processing. The maximum statutory liability is \$4,800,000 (\$10,000 for one day of discharge plus approximately \$4,790,000; \$10 times 479,000 gallons).
11. Issuance of this Administrative Civil Liability Order to enforce CWC 13376 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, Enforcement Actions by Regulatory Agencies, Section 15321(a)(2).

THE CITY OF STOCKTON IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes the assessment of Administrative Civil Liability in the amount of **one hundred and twenty five thousand dollars (\$125,000)**, which includes estimated economic savings and Regional Board staff costs. The amount of the liability proposed is based upon a review of the factors cited in California Water Code Section 13385 and the State Water Resources Control Board's water quality enforcement policy.
2. A hearing on this matter will be held at the Regional Board meeting scheduled on **2-3 December 2004**, unless the Discharger agrees to waive the hearing and pay the proposed civil liability in full.
3. If a hearing on this matter is held, the 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. The Discharger may waive the right to a hearing. If you wish to waive the hearing, sign the waiver and return it, with a check made payable to the State Water Resources Control Board in the amount of the civil liability, to the Regional Board's office **within 30 days** of the date of this complaint. Any waiver will not be effective until 30 days from the date of this complaint to allow interested persons to comment on this action.

THOMAS R. PINKOS, Executive Officer

Date

**WAIVER OF HEARING 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 Stockton (hereinafter “Discharger”) in connection with Administrative Civil Liability Complaint No. R5-2004-0535 (hereinafter the “Complaint”);
2. I am informed of the right provided by Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint;
3. I hereby waive the Discharger’s right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of issuance of the Complaint; and
4. Without admitting liability for the matters alleged in the Complaint, I certify that the Discharger will remit payment for the civil liability imposed in the amount of **\$125,000** by check, which contains a reference to “ACL Complaint No. R5-2004-0535” and is made payable to the “*State Water Resources Control Board Cleanup and Abatement Account.*”
5. I understand the payment of the above amount constitutes a settlement of violations alleged in the Complaint that will not become final until after a public comment period.
6. I understand that the Executive Officer has complete discretion to modify or terminate this settlement during the 30-day public comment period, which began on the date of the Complaint.
7. 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.

(Print Name and Title)

(Signature)

(Date)