



California Regional Water Quality Control Board Central Valley Region

Alan Lloyd, Ph.D.
Agency Secretary

Robert Schneider, Chair



Arnold
Schwarzenegger
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5 January 2005

CERTIFIED MAIL
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Mr. Steven Bayley
City of Tracy
Department of Public Works
520 Tracy Boulevard
Tracy, CA 95376

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2005-0500; CITY OF TRACY WASTEWATER TREATMENT PLANT, SAN JOAQUIN COUNTY,

Enclosed is an Administrative Civil Liability Complaint issued pursuant to Section 13385 of the California Water Code for violations of Waste Discharge Requirements Order No. 96-104 (NPDES No. CA0079154) by the City of Tracy. The Complaint proposes an administrative civil liability of \$120,000.

You may agree to pay the civil liability and waive a hearing before the Regional Water Quality Control Board, Central Valley Region ("Regional Board") on the matter. If you waive a hearing, a duly authorized person must sign the waiver and submit it to this office, along with a check payable to the "State Water Resources Control Board Cleanup and Abatement Account" in the full amount of the civil liability. However, any waiver will not be effective until 30 days from the date of this Complaint to allow other interested persons to comment on this action. If the Regional Board does not receive a waiver and a check for the full amount by **4 February 2005**, a hearing will be scheduled at the 10/11 March 2005 Regional Board Meeting in Sacramento. Persons wishing to submit comments on this action should submit written comments within 30 days from the date of this letter to the Regional Board, attention: Jim Marshall.

If you have any questions or comments, please contact Jim Marshall at (916) 464-4772 or jdmarshall@waterboards.ca.gov.

THOMAS R. PINKOS
Executive Officer

Enclosure

cc: See Attached List

APPROVED

STAFF

SENIOR

California Environmental Protection Agency



cc: Ms. Kathi Moore, U.S. Environmental Protection Agency, Region IX, San Francisco
Ms. Lisa Brown, CalEPA, Sacramento
Mr. Mark Bradley, State Water Resources Control Board, Sacramento
Ms. Frances McChesney, State Water Resources Control Board, Sacramento
Mr. Phil Isorena, State Water Resources Control Board, Sacramento
Mr. Joe Spano, Department of Health Services, Office of Drinking Water, Stockton
Department of Health Services, Environmental Management Branch, Sacramento
Ms. Janna Herren, Department of Fish & Game, Region II, Rancho Cordova
Delta Protection Commission, Walnut Grove
Department of Environmental Health, San Joaquin County, Stockton
Mr. Steve Macaulay, California Urban Water Agencies, Sacramento
Mr. Richard Denton, Contra Costa Water District, Concord
Mr. Dante Nomellini, Jr., Central Delta Water Agency, Stockton
Mr. John Herrick, South Delta Water Agency, Stockton
Mr. Eric Parfrey, Sierra Club, Stockton
Mr. Bill Jennings, Delta Keeper, Stockton

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2005-0500
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

CITY OF TRACY
SAN JOAQUIN COUNTY

This complaint is issued to the City of Tracy, (hereafter Discharger) based on a finding of violations of NPDES Waste Discharge Requirements Order No. 96-104, 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.

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 Discharger owns and operates the City of Tracy Wastewater Treatment Plant and accompanying collection and disposal systems, which provide sewerage service to the City of Tracy. Treated municipal wastewater is discharged to Old River, a water of the United States, and part of the Sacramento-San Joaquin Delta.
2. On 3 May 1996 the Regional Board adopted Waste Discharge Requirements Order No. 96-104 prescribing waste discharge requirements for the City of Tracy Wastewater Treatment Plant.
3. On 21 October 2003 the City of Tracy Wastewater Treatment Plant experienced a failure of the sulfur dioxide (SO₂) feed system, which facilitates dechlorination of the effluent prior to final discharge to Old River. This resulted in the discharge estimated to be approximately 585,000 gallons of chlorinated effluent to Old River, over a 95 minute period, with an average chlorine residual of 6.7 mg/L.
4. The Discharger failed to properly document the nature and impact of the chlorine release on the receiving water. Although the Discharger reported that no adverse effects to aquatic life were observed and their monitoring indicated a chlorine residual of <0.1 mg/L in Old River, the Discharger waited 13 hours after the discovery of the release before visually inspecting the receiving water and waited 19 hours to collect in-stream samples for total chlorine residual. Due to the slow response and inadequate monitoring, the effect of the release on aquatic life is not known.
5. The discharge violated Section B.1 of the Effluent Limitations of Order No. 96-104, which includes a daily maximum effluent limitation for chlorine residual of 0.1 mg/L. The discharge was reported to contain 6.7 mg/L total residual chlorine.
6. The discharge violated Sections E.4 and E.12 of the Receiving Water Limitations of Order No. 96-104. Section E.4 states, "*the discharge shall not cause concentrations of any*

materials in the receiving waters which are deleterious to human, aquatic, or plant life". Section E.12 states, *"the discharge shall not cause a violation of any applicable water quality standard for receiving waters adopted by the Board or the State Water Resources Control Board as required by the Clean Water Act and regulations adopted thereunder"*. The USEPA National Ambient Water Quality Criteria to prevent acute (lethal) effects from chlorine is 0.019 mg/l, on a 1-hour average. The effluent had a concentration more than three hundred fifty (350) times the acute criterion. The discharge would have caused the receiving water to greatly exceed the acute criterion at the outfall, and potentially a considerable distance downstream, because given the concentration of the effluent it could not have mixed with the receiving water quickly enough to have been diluted below the acute criterion.

7. The Discharger violated Standard Provision A.17 of Order No. 96-104, which states:

"The discharger shall take all reasonable steps to minimize any adverse effects to waters of the State or users of those waters resulting from any discharge or sludge use or disposal in violation of this Order. Reasonable steps shall include such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge or sludge use or disposal."

The Discharger failed to properly document the nature and impact of the chlorine release by not acting immediately after discovery of the release.

- a) The Discharger waited 13 hours after the release to visually inspect the receiving water;
 - b) The Discharger waited 19 hours after the release to collect in-stream samples for total chlorine residual.
8. The discharge violated Provision F.1 and Standard Provision A.22 of Order No. 96-104, which require that neither the discharge nor its treatment shall create a nuisance or pollution as defined in CWC Section 13050. The discharge of the highly chlorinated effluent at levels that exceed the effluent limitations constitutes pollution.

9. CWC Section 13385 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".

(2) Any waste discharge requirements...issued pursuant to this chapter..."

"(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 from the acts that constitute the violation, which is estimated to be not less than \$10,000. The Discharger failed to include necessary safety measures and redundant systems to prevent or minimize the release of chlorinated effluent, which is highly toxic. The maximum statutory liability is \$5,850,000 (\$10,000 for each day of violation plus approximately \$5,840,000; \$10 times 584,000 gallons).
11. The violation of Effluent Limitations B.1, for chlorine residual, is subject to mandatory minimum penalties pursuant to CWC Section 13385(h). However, due to the severity of the violation a more substantial penalty was calculated using the State Water Resources Control Board’s Water Quality Enforcement Policy.
12. Issuance of this Administrative Civil Liability Order 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, Enforcement Actions by Regulatory Agencies, Section 15321(a)(2).

THE CITY OF TRACY IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes to assess Administrative Civil Liability in the amount of **one hundred twenty thousand dollars (\$120,000)**, which would recover the economic benefit derived from the acts that constitute the violation and would recover Regional Board staff costs. The amount of the liability proposed is based upon a review of the factors cited in CWC 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 **10-11 March 2005**, unless the Discharger agrees to:
 - a. Waive the hearing and pay the proposed civil liability in full; or
 - b. Waive the right to a hearing in 90 days, and submit a settlement proposal within 30 days of the date of this Complaint that includes an agreement to conduct a Supplemental Environmental Project (SEP) and also includes payment of monetary liability. The Discharger may preserve its right to a hearing pending approval of the settlement proposal.
3. If a hearing on this matter is held, the Regional 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, **within 30 days of the date of this complaint**, sign and return the waiver to the Regional Board's office with a check in the amount of the civil liability made payable to the "State Water Resources Control Board Cleanup and Abatement Account." 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

5 January 2005

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 Tracy (hereinafter “Discharger”) in connection with Administrative Civil Liability Complaint No. R5-2005-0500 (hereinafter the “Complaint”);
2. I am informed of the right provided by California 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 **\$120,000** by check, which contains a reference to “ACL Complaint No. R5-2005-0500” 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)