

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0555

MANDATORY PENALTY  
IN THE MATTER OF

CITY OF LODI  
WHITE SLOUGH WATER POLLUTION CONTROL FACILITY  
SAN JOAQUIN COUNTY

This Complaint is issued to the City of Lodi, White Slough Water Pollution Control Facility, (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 (WDRs) Orders 5-00-031 and R5-2007-0113 (NPDES No. CA0079243).

The 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 for the City of Lodi. Treated wastewater is discharged to Dredger Cut, tributary to White Slough, tributary to Bishop Cut, tributary to the Sacramento-San Joaquin Delta, a water of the United States.
2. On 28 January 2000, the Central Valley Water Board issued WDRs Order 5-00-031 to regulate discharges of waste from the water pollution control facility (WPCF).
3. On 10 September 2004, the Central Valley Water Board issued Resolution R5-2004-0125, which extended certain compliance deadlines contained in WDRs Order 5-00-031 from 1 May 2004 to 21 January 2005.
4. On 14 September 2007, the Central Valley Water Board issued WDRs Order R5-2007-0113, effective 3 November 2007, which contained new requirements and rescinded WDRs Order 5-00-031. Although this matter was petitioned to the State Water Resources Control Board, and an Order is currently being finalized that will remand portions of these WDRs to the Central Valley Water Board for re-consideration, the subject of this petition was unrelated to the effluent limit violations that are charged in this Complaint.
5. On 14 September 2007, the Central Valley Water Board issued Time Schedule Order (TSO) R5-2007-0114, providing a time schedule and establishing interim effluent limits until 17 May 2010 for nitrate, nitrite, and manganese.
6. On 14 August 2008, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2008-0562 for mandatory minimum penalties (MMPs) for effluent violations from 1 January 2000 through

31 December 2007. The Discharger paid the Complaint and the Central Valley Water Board considers the matter resolved regarding the cited violations.

7. On 13 May 2009, Central Valley Water Board staff sent the Discharger a draft Record of Violations (ROV). The ROV included violations not included in ACLC R5-2008-0562 as well as violations accrued since issuance of that Order. On 15 June 2009, the Discharger responded. The Discharger agreed with the violations not previously assessed MMPs and the additional new violations. In addition, staff have determined that violation 34 on the draft Record of Violations is subject to MMPs because it was the fourth violation within the preceding 180-day period.
8. The Discharger requested clarification regarding the five-year statute of limitations in the federal Clean Water Act (CWA). This statute of limitations in the CWA only applies to actions by the federal government and does not apply to this type of administrative proceeding.
9. The Discharger requested clarification regarding the three-year statute of limitations in the California Code of Civil Procedures, section 338(i). The Code section of which section 338 is a part makes it clear that section 338 applies only to time limits on the commencement of civil suits in the courts. Title 2 is intended to prescribe time periods for the bringing of civil law suits. This administrative complaint falls outside the scope of section 338. (See also *Bernd v. Eu* (1979) 100 Cal.App.3d 511, 161 Cal.Rptr. 58; *Rudolph v. Athletic Commission* (1960) 177 Cal.App.2d 1, 22, 1 Cal.Rptr. 898).
10. CWC sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

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.

11. 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.

12. WDRs Order 5-00-031 Effluent Limitations No. B.1, states, in part: *“The effluent shall not exceed the following limits.”*

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Average</u>	<u>Daily Maximum</u>
<u>Total Suspended Solids</u>	mg/L	20 <sup>2</sup>	40 <sup>2</sup>	--	50 <sup>2</sup>

<sup>2</sup> To be ascertained by a flow proportional 24-hour composite sample.

13. WDRs Order 5-00-031 Effluent Limitations No. B.2. states, in part: *“Interim total coliform organism and BOD wastewater effluent limits shall be in effect through 30 April 2004. The interim effluent limits are as follows.”*

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>
<u>Total Coliform</u>	MPN/100m L	23 <sup>1</sup>	--	500

<sup>1</sup> Monthly median value.

This deadline was extended by Resolution R5-2004-0125 to 21 January 2005.

14. WDRs Order 5-00-031 Effluent Limitations No. B.3., states, in part: *“The effluent shall not exceed the following limits in accordance with the time schedule in Provision H.2.”*

<u>Constituents</u>	<u>Units</u>	<u>Daily Average</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>
<u>Total Coliform Organisms</u>	MPN/100m L	--	--	2.2 <sup>4</sup>	23

<sup>4</sup> As a 7-day median.

Provision H.2 was amended by Resolution R5-2004-0125 to extend the time schedule for full compliance to 21 January 2005 from 30 April 2004.

15. WDRs Order 5-00-031 Effluent Limitations B.7., requires, in part, *“The discharge shall not have a pH less than 6.5 nor greater than 8.5.”*
16. WDRs Order R5-2007-0113 Effluent Limitations No. IV.A.1.e., Total Coliform Organisms, states: *“Effluent total coliform organisms shall not exceed:*
- i. 2.2 most probable number (MPN) per 100 mL, as a 7-day median; and
  - ii. 23 MPN/100 mL, more than once in any 30-day period.

17. According to the Discharger's self-monitoring reports, the Discharger committed thirty-five (35) non-serious violations of the above effluent limitations contained in Orders 5-00-031 and R5-2007-0113 during the period beginning 1 January 2000 and ending 31 March 2009. Fourteen (14) of the non-serious violations are subject to mandatory penalties (MMPs) under CWC section 13385(i)(1) because these violations were preceded by three or more similar violations within a six-month period. Seven (7) of these were assessed MMPs under ACLC R5-2008-0562. The mandatory minimum penalty for the **seven (7) additional** non-serious violations is **twenty-one thousand dollars (\$21,000)**.
18. The total amount of the mandatory penalties assessed for the cited effluent violations is **twenty-one thousand dollars (\$21,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
19. 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 LODI 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 **twenty-one thousand dollars (\$21,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **7/8/9 October 2009**, unless the Discharger does either of the following by **17 August 2009**:
  - 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-one thousand dollars (\$21,000)**; 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.

ORIGINAL SIGNED BY  
\_\_\_\_\_  
PAMELA C. CREEDON, Executive Officer

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2009-0555  
MANDATORY PENALTY  
CITY OF LODI  
WHITE SLOUGH WATER POLLUTION CONTROL FACILITY  
SAN JOAQUIN COUNTY

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16 July 2009  
DATE

Attachment A: Record of Violations  
BLH: 16-Jul-09

**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 Lodi (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2009-0555 (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 civil liability imposed in the amount of **twenty-one thousand dollars (\$21,000)** by check, which contains a reference to "ACL Complaint No. R5-2009-0555" and is made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **17 August 2009** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **7/8/9 October 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 Regional Water Board's 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. R5-2009-0555**

**City of Lodi**

**White Slough Water Pollution Control Facility**

RECORD OF VIOLATIONS (1 January 2000 – 31 March 2009) MANDATORY PENALTIES  
(Data reported under Monitoring and Reporting Program Nos. 5-00-031 and R5-2007-0113)

New violations are in **boldface** type.

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period Type</u>	<u>Remarks</u>	<u>CIWQS</u>
1	24-Feb-00	pH	pH units	6.5	6.4	Instantaneous	3*	174274
2	21-Oct-00	Coliform	MPN/100mL	500	1600	Daily	3*	185932
3	28-Oct-00	Coliform	MPN/100mL	500	1600	Daily	3*	185933
4	11-Nov-00	Coliform	MPN/100mL	500	1600	Daily	3*	185934
5	28-Jan-01	pH	pH units	6.5	6.3	Instantaneous	4*	185877
6	<b>1-Feb-01</b>	<b>pH</b>	<b>pH units</b>	<b>6.5</b>	<b>6.4</b>	<b>s</b>	<b>4</b>	<b>185930</b>
7	22-Feb-01	Coliform	MPN/100mL	500	1600	Daily	4*	185931
8	26-Feb-01	pH	pH units	6.5	6.4	Instantaneous	4*	185936
9	22-Oct-01	TSS	mg/L	50	51	Daily	3*	205118
10	7-Feb-02	Coliform	MPN/100mL	500	1600	Daily	3*	205119
11	13-Nov-02	TSS	mg/L	50	67	Daily	3*	205334
12	24-Dec-02	Coliform	MPN/100mL	500	900	Daily	3*	205335
13	6-Mar-03	Coliform	MPN/100mL	500	1600	Daily	3*	247230
14	8-Nov-05	Coliform	MPN/100mL	23	50	Daily	3*	368528
15	11-Nov-05	pH	pH units	6.5	6.4	Instantaneous	3*	756451
16	12-Nov-05	Coliform	MPN/100mL	2.2	8	7-day	3*	368534
17	29-Nov-05	Coliform	MPN/100mL	23	50	Daily	4*	368529
18	<b>31-Jan-06</b>	<b>Coliform</b>	<b>L</b>	<b>23</b>	<b>30</b>	<b>Daily</b>	<b>4</b>	<b>368545</b>
19	<b>20-Feb-06</b>	<b>Coliform</b>	<b>L</b>	<b>23</b>	<b>240</b>	<b>Daily</b>	<b>4</b>	<b>368555</b>
20	<b>24-Feb-06</b>	<b>Coliform</b>	<b>L</b>	<b>23</b>	<b>300</b>	<b>Daily</b>	<b>4</b>	<b>368556</b>
21	3-Apr-06	Coliform	MPN/100mL	23	50	Daily	4*	756463
22	13-Oct-06	Coliform	MPN/100mL	23	30	Daily	3*	756464
23	30-Oct-06	Coliform	MPN/100mL	23	30	Daily	3*	756465
24	12-Mar-07	Coliform	MPN/100mL	23	50	Daily	3*	756502
25	4-Sep-07	Coliform	MPN/100mL	23	50	Daily	3*	756506
26	15-Sep-07	Coliform	MPN/100mL	23	80	Daily	3*	756526
27	15-Sep-07	Coliform	MPN/100mL	2.2	3	7-day	3*	756532
28	22-Sep-07	Coliform	MPN/100mL	2.2	7	7-day	4*	756548
29	29-Sep-07	Coliform	MPN/100mL	2.2	7	7-day	4*	756563
30	<b>2-Feb-08</b>	<b>Coliform</b>	<b>L</b>	<b>2.2</b>	<b>4</b>	<b>7-day median</b>	<b>4</b>	<b>756568</b>
31	<b>30-Sep-08</b>	<b>BOD</b>	<b>mg/L</b>	<b>10</b>	<b>11</b>	<b>Monthly</b>	<b>3</b>	<b>824450</b>
32	<b>5-Nov-08</b>	<b>Manganese</b>	<b>µg/L</b>	<b>119</b>	<b>130</b>	<b>Daily Max</b>	<b>3</b>	<b>817498</b>
33	<b>8-Nov-08</b>	<b>Coliform</b>	<b>L</b>	<b>2.2</b>	<b>11</b>	<b>7-day median</b>	<b>3</b>	<b>817493</b>
34	<b>10-Jan-09</b>	<b>Coliform</b>	<b>L</b>	<b>2.2</b>	<b>4</b>	<b>7-day median</b>	<b>4</b>	<b>817500</b>
35	<b>27-Feb-09</b>	<b>Coliform</b>	<b>L</b>	<b>23</b>	<b>27</b>	<b>s</b>	<b>4</b>	<b>817489</b>

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.

**ADDITIONAL VIOLATIONS FROM 1/1/2000 THROUGH 12/31/2007**

Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	0
Non-serious Violations Subject to MPs:	4
<b><u>Total Additional Violations Subject to MPs:</u></b>	<b><u>4</u></b>

**Additional Mandatory Minimum Penalty (2000-2007) = (0 Serious Violations + 4 Non-Serious Violations) x \$3,000 = \$12,000**

**VIOLATIONS FROM 1/1/2008 THROUGH 3/31/2009**

Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	3
Non-serious Violations Subject to MPs:	3
<b><u>Total Violations Subject to MPs:</u></b>	<b><u>3</u></b>

**Mandatory Minimum Penalty (2008) = (0 Serious Violations + 3 Non-Serious Violations) x \$3,000 = \$9,000**

**Total Mandatory Minimum Penalty Due= \$12,000 + \$9,000 = \$21,000**

\* Violations assessed Mandatory Minimum Penalties in Administrative Civil Liability Complaint R5-2008-0562.

Central Valley Regional Water Quality Control Board

PROPOSED DRAFT HEARING PROCEDURE  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
R5-2009-0555

ISSUED TO  
THE CITY OF LODI  
WHITE SLOUGH WATER POLLUTION CONTROL FACILITY  
SAN JOAQUIN COUNTY

SCHEDULED FOR 7/8/9 OCTOBER 2009

**PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.**

**Background**

The Executive Officer has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (CWC) section 13323 to the City of Lodi, alleging violations of CWC section 13385 by exceeding effluent limits at the White Slough Water Pollution Control Facility.

The Complaint proposes that an administrative civil liability in the amount of \$21,000 be imposed. A hearing is currently scheduled to be conducted before the Central Valley Water Board during its 7/8/9 October 2009 meeting.

**Purpose of Hearing**

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Central Valley Water Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on 7/8/9 October 2009 will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Central Valley Water Board meeting agenda. The meeting will be held at:

11020 Sun Center Drive, Suite 200, Rancho Cordova, California.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Central Valley Water Board's web page at:

[http://www.waterboards.ca.gov/centralvalley/board\\_info/meetings](http://www.waterboards.ca.gov/centralvalley/board_info/meetings)

## **Hearing Procedures**

The hearing will be conducted in accordance with this Hearing Procedure. This proposed draft version of the Hearing Procedure has been prepared by the Prosecution Team, and is subject to revision and approval by the Central Valley Water Board's Advisory Team. A copy of the general procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Gov't Code § 11500) does not apply to this hearing.

THESE PROCEDURES HAVE BEEN PROPOSED BY THE CENTRAL VALLEY WATER BOARD'S PROSECUTION TEAM FOR USE IN THE ADJUDICATION OF THIS ADMINISTRATIVE CIVIL LIABILITY ACTION. THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. **ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE CENTRAL VALLEY WATER BOARD'S ADVISORY TEAM NO LATER THAN 27 JULY 2009, OR THEY WILL BE WAIVED.** THESE DRAFT HEARING PROCEDURES WILL BECOME FINAL AT 5:00 P.M. ON 27 JULY 2009 IF NO PARTY SUBMITS TIMELY OBJECTION(S), OR AS OTHERWISE DIRECTED BY THE ADVISORY TEAM. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

## **Hearing Participants**

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the Central Valley Water Board, staff or others, at the discretion of the Central Valley Water Board.

The following participants are hereby designated as parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. The City of Lodi

## **Requesting Designated Party Status**

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received no later than 5 p.m. on 3 August 2009 to Lori Okun (contact information listed below).

The request shall include an explanation of the basis for status as a designated party (i.e., how the issues to be addressed in the hearing and the potential actions by the Central Valley Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be received by the Advisory Team, the person requesting party status, and all other parties by 5 p.m. on 3 August 2009. The parties will be notified by 5 p.m. on 17 August 2009 whether the request has been granted or denied.

### **Primary Contacts**

#### **Advisory Team:**

Kenneth Landau, Assistant Executive Officer  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670

Lori Okun, Senior Staff Counsel  
State Water Resources Control Board, Office of Chief Counsel  
1001 I Street  
Sacramento, CA 95814  
Phone: (916)341-5165; fax: (916) 341-5199  
lokun@waterboards.ca.gov

#### **Prosecution Team:**

Pamela Creedon, Executive Officer  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670

Wendy Wyels, Environmental Program Manager  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670  
Phone: (916)464-4835; fax: (916)464-4645  
wwyels@waterboards.ca.gov

Patrick Pulupa, Staff Counsel  
State Water Resources Control Board, Office of Chief Counsel  
1001 I Street  
Sacramento, CA 95814  
Phone: (916)341-5189; fax: (916) 341-5199  
ppulupa@waterboards.ca.gov

#### **Discharger Representative:**

F. Wally Sandelin  
Public Works Director  
City of Lodi  
P.O. Box 3006  
Lodi, CA 95241-1910

### **Separation of Functions**

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Central Valley Water Board (Prosecution Team) have been separated from those who will provide advice to the Central Valley Water Board (Advisory Team). Members of the Advisory Team are: Kenneth Landau, Assistant Executive Officer; and Lori Okun, Senior Staff Counsel. Members of the Prosecution Team are: Pamela Creedon, Executive Officer; Wendy Wyels, Environmental Program Manager; Victor Vasquez, Senior Water Resources Control Engineer; Barry Hilton, Water Resources Control Engineer; and Patrick Pulupa, Staff Counsel. Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

### **Ex Parte Communications**

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Central Valley Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested person on the one hand, and a Central Valley Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

### **Hearing Time Limits**

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined 25 minutes to present evidence (including evidence presented by witnesses called by the designated party), cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than ten days after all of the evidence has been received. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Central Valley Water Board Chair (at the hearing) upon a showing that additional time is necessary.

### **Submission of Evidence and Policy Statements**

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Central Valley Water Board to consider. Evidence and exhibits already in the public files of the Central Valley Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

The evidence upon which the Complaint is based has been entered into the administrative file by time this Complaint is issued. However, the Prosecution Team may submit additional evidence into the administrative file until 5 p.m. on 24 August 2009. The Board's Advisory Team, all other Designated Parties, and all Interested Parties will be notified if additional evidence is added to the file, and will be provided with copies of the additional evidence. Should the Prosecution Team require witnesses to provide direct testimony at the Hearing, the Prosecution Team will provide the Board's Advisory Team, all other Designated Parties, and all Interested Parties with the information contained in items 3 and 4, above, by 5 p.m. on 24 August 2009.

The remaining designated parties shall submit 11 hard copies and one electronic copy of the information described in items 1 through 4 above to Ken Landau so that they are received no later than 5 p.m. on 8 September 2009. In addition to the foregoing, each designated party shall send (1) one copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above. The Designated Parties should submit all rebuttal evidence to Ken Landau no later than 5 p.m. on 17 September 2009, in order to allow all parties to consider all evidence prior to the hearing. "Rebuttal evidence" is limited to evidence that is offered to disprove or contradict evidence presented by an opposing party.

If the total amount of information submitted by any party is less than 15 pages, that party may submit the information by email, rather than in writing. In addition to the foregoing, each designated party shall send (1) one copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Central Valley Water Board may exclude

evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the Central Valley Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

### **Evidentiary Documents and File**

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 11020 Sun Center Drive, Suite 200 in Rancho Cordova. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Central Valley Water Board's Chair. Many of these documents are also posted on-line at:

<http://www.waterboards.ca.gov/centralvalley/>

Although the web page is updated regularly, to assure access to the latest information, you may contact Barry Hilton at (916) 464-4762 or bhilton@waterboards.ca.gov.

### **Questions**

Questions concerning this proceeding may be addressed to Lori Okun at (916)341-5165.

**IMPORTANT DEADLINES**

(Note: the Central Valley Water Board is required to provide a hearing within 90 days of issuance of the Complaint (CWC § 13323). The Advisory Team will generally adhere to this schedule unless the discharger submits a waiver and it is accepted.)

16 July 2009	Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice
27 July 2009	Objections due on proposed Hearing Procedure; Hearing Procedure becomes final if no Objections
3 August 2009	Deadline for submission of request for designated party status.
10 August 2009	Deadline for opposition to request for designated party status.
17 August 2009	Advisory Team issues decision on requests for designated party status, if any.
17 August 2009	Discharger's deadline for submitting signed form to waive right to hearing within 90 days.
24 August 2009	Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.
8 September 2009	Remaining Designated Parties' (including the Discharger) Deadline for submission of all information required under "Evidence and Policy Statements," above.
17 September 2009	All Designated Parties' should submit all rebuttal evidence (if any) and evidentiary objections by this date.
7/8/9 October 2009	Hearing



# 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  
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<http://www.waterboards.ca.gov/centralvalley>

Linda S. Adams  
Secretary for  
Environmental Protection

<b>APPROVED</b>
_____
Staff
_____
Supervisor

16 July 2009

F. Wally Sandelin  
Public Works Director  
City of Lodi  
P.O. Box 3006  
Lodi, CA 95241-1910

CERTIFIED MAIL  
7006 2150 000 7132 2453

## **ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2009-0555 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, CITY OF LODI WHITE SLOUGH WATER POLLUTION CONTROL FACILITY, SAN JOAQUIN COUNTY**

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code section 13385, for violations of Waste Discharge Requirements (WDRs) Order Nos. 5-00-031 and R5-2007-0113 (NPDES No. CA0079243) by the City of Lodi White Slough Water Pollution Control Facility. The Complaint charges the City of Lodi (Discharger) with civil liability in the amount of **twenty-one thousand dollars (\$21,000)**. This represents the sum of accrued Mandatory Minimum Penalties for effluent limitation violations not addressed in Complaint R5-2008-0562 (violations 6, 18-20) plus violations which occurred from 1 January 2008 through 31 March 2009.

On 13 May 2009, Central Valley Water Board staff issued a draft Record of Violations (ROV). On 15 June 2009, the Discharger responded and agreed with the violations. This Complaint increases the civil liability from \$18,000 to \$21,000 because violation 34, the fourth violation during the preceding 180 days, was incorrectly coded as exempt from MMPs.

The Discharger requested consideration of the statute of limitations pursuant to the Federal Clean Water Act (CWA) and in the California Code of Civil Procedure, section 338(i). The statute of limitations in the CWA does not apply to this type of administrative proceeding because it only applies to actions by the federal government. This administrative action falls outside the scope of California Code of Civil Procedure, section 338(i) because it only applies to time limits on the commencement of civil suits in the courts.

Pursuant to CWC section 13323, the Discharger may:

- Pay the assessed civil liability and waive its right to a hearing before the Central Valley Water Board by signing the enclosed waiver (checking off the box next to item #4) and submitting it to this office by **17 August 2009**, along with payment for the full amount;
- Agree to enter into settlement discussions with the Central Valley Water Board and request that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and submitting it to this office by **17 August 2009**; **or**
- Contest the Complaint and/or enter into settlement discussions with the Central Valley Water Board without signing the enclosed waiver.

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations in the Complaint. This settlement will be considered final pending a 30-day period, starting from the date of this Complaint, during which time interested parties may comment on this action by submitting information to this office, attention Barry Hilton. Should the Central Valley Water Board receive 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. If the Central Valley Water Board does not hold a hearing on the matter, and if the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement.

If the Central Valley Water Board does not receive a signed waiver within 30 days of the date of this Complaint (**by 17 August 2009**), then a hearing will be scheduled for the **7/8/9 October 2009** Central Valley Water Board meeting in Rancho Cordova. The Central Valley Water Board's Prosecution Team has prepared the enclosed draft Hearing Procedure to govern the conduct of such a hearing. Any objections to this draft Hearing Procedure must be received by Lori Okun, whose contact information is listed in the draft Hearing Procedure, by **5 p.m. on 27 July 2009**.

Any comments or evidence concerning the enclosed Complaint must be submitted in accordance with the deadlines contained in the draft Hearing Procedure, unless these deadlines are changed by the Central Valley Water Board's Adjudicatory Team, either on their own accord or upon request.

In order to conserve resources, this letter transmits paper copies of the documents to the Discharger only. Interested persons may download the documents from the Central Valley Water Board's Internet website at:

[http://www.waterboards.ca.gov/centralvalley/tentative\\_orders/](http://www.waterboards.ca.gov/centralvalley/tentative_orders/).

Copies of these documents can also be obtained by contacting or visiting the Central Valley Water Board's office weekdays between 8:00 AM and 5:00 PM.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Barry Hilton at (916) 464-4762 or bhilton@waterboards.ca.gov.

WENDY WYELS

Supervisor

Compliance and Enforcement Section

Enclosure: ACLC No. R5-2009-0555  
Draft Hearing Procedures  
Hearing Waiver

cc w/ encl: Mr. Kenneth Landau, Central Valley Water Board, Rancho Cordova  
Mr. Kenneth Greenberg, USEPA, Region 9, San Francisco  
Mr. Reed Sato, Office of Enforcement, SWRCB, Sacramento  
Mr. Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento  
Ms. Lori Okun, Office of Chief Counsel, SWRCB, Sacramento  
Ms. Emel Wadhvani, Office of Chief Counsel, SWRCB, Sacramento  
Ms. Carol Oz, Department of Fish and Game, Region 2, Rancho Cordova  
San Joaquin County Environmental Health Department, Stockton  
Mr. Bill Jennings, California Sportfishing Protection Alliance, Stockton