

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0509

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 (hereafter Discharger) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability, and Water Code 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) Order R5-2007-0113 (NPDES No. CA0079243).

The 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 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 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Valley Water Board issued WDRs Order R5-2007-0113, effective 3 November 2007, which contained new requirements and rescinded WDRs Order 5-00-031 except for enforcement purposes.
3. On 14 September 2007, the Board also 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.
4. On 16 July 2009, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2009-0555 for mandatory minimum penalties (MMPs) for effluent violations from 1 January 2008 through 31 March 2009. The Discharger paid the civil liability and the Board considers those effluent violations specifically listed in Attachment A to ACLC R5-2009-0555 to be resolved.
5. This Complaint addresses administrative civil liability for effluent violations that occurred during the period from 1 April 2009 through 30 September 2012. These violations are specifically identified in Attachment A to this Complaint as subject to mandatory minimum penalties. Attachment A to this Complaint is attached hereto and incorporated herein by this reference.

6. On 8 November 2012, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations for effluent limitation violations from 1 April 2009 through 30 September 2012. On 3 December 2012, the Discharger responded and agreed with the violations.
7. Water Code section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

Water Code 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.

Water Code 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.

Water Code section 13385 subdivision (i)(1) states, in part:

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.

8. Water Code 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.

9. Water Code section 13385(j) exempts certain violations from the mandatory minimum penalties, and states, in relevant part:

Subdivisions (h) and (i) do not apply to any of the following:

- 3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or 13308 if all of the following requirements are met:
 - C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible....For the purposes of this subdivision, the time schedule may not exceed five years in length The interim requirements shall include both of the following:
 - i) Effluent limitations for the pollutant or pollutants of concern.
 - ii) Actions and milestones leading to compliance with the effluent limitation.

10. WDRs Order R5-2007-0113 Effluent Limitations IV.A.1, include, in part, the following effluent limitations:

- a. Effectively immediately...the Discharger shall maintain compliance with the effluent limitations specified in Table 6:

Parameter	Units	Effluent Limitations	
		Average Monthly	Maximum Daily
Ammonia (as N) ²	mg/L	1.3	4.3
	lbs/day ¹	75.9	251
¹ Based on a design flow of 7.0 mgd. ² This Order includes interim effluent limitations for... ammonia... Effective immediately, the interim effluent limitations shall apply in lieu of the respective final effluent limitation. The final effluent limitations for ... ammonia... become[s] effective when the Discharger complies with Special Provisions VI.CI.7.b. or 18 May 2010, whichever is sooner.			

11. WDRs Order R5-2007-0113 Effluent Limitations IV.A.1., include, in part, the following effluent limitations:

- a. The Discharger shall maintain compliance with the effluent limitations specified in Table 6:

Constituents	Units	Instantaneous Minimum	Instantaneous Maximum
Total Coliform	MPN/100 mL	--	240

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 WDRs Order R5-2007-0113, as shown in Attachment A. These violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels in WDRs Order R5-2007-0113 by 40 percent or more. 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 two (2) non-serious violations of the above effluent limitations contained in Order R5-2007-0113, as shown in Attachment A. Neither of the non-serious violations is subject to mandatory penalties under Water Code section 13385 subdivision (i)(1) because these violations were not preceded by three or more effluent limit violations within a six-month period.
14. The total amount of the mandatory penalties assessed for the alleged effluent violations is **nine thousand dollars (\$9,000)**. As stated herein, a detailed list of the alleged effluent violations is included in Attachment A. This Complaint addresses administrative civil liability for violations that are specifically identified in Attachment A as subject to mandatory minimum penalties.
15. Issuance of this Administrative Civil Liability Complaint to enforce Water Code 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 **nine thousand dollars (\$9,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **11/12 April 2013**, unless the Discharger does one of the following by **11 February 2013**:
 - a) Waives the hearing by completing the attached form (checking off the box next to Option 1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **nine thousand dollars (\$9,000)**; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
 - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the 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.
4. If this matter proceeds to hearing, the Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

Original Signed by

PAMELA C. CREEDON, Executive Officer

11 January 2013

DATE

Attachment A: Record of Violations

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent the City of Lodi (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2013-0509 (hereafter Complaint). 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. The person who has been issued a complaint may waive the right to a hearing."

(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **nine thousand dollars (\$9,000)** by check that references "ACL Complaint R5-2013-0509" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **11 February 2013**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant 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. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. 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.

(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2012-0509**

**City of Lodi
White Slough Water Pollution Control Facility
RECORD OF VIOLATIONS (1 April 2009 - 30 September 2012) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2007-0113)**

	<u>Date</u>	<u>Parameter</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
1	25-Feb-11	Total Ammonia (as N)	mg/L	4.3	7	Daily Maximum	1	894883
2	25-Feb-11	Total Ammonia (as N)	lbs/day	251	315	Daily Maximum	3	894881
3	28-Feb-11	Total Ammonia (as N)	mg/L	1.3	3.7	Monthly Average	1	894880
4	28-Feb-11	Total Ammonia (as N)	lbs/day	75.9	164	Monthly Average	1	894882
5	21-Jan-12	Total Coliform	MPN/100mL	240	1600	Instantaneous Maximum	3	919829

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 violation falls within the first three violations in a 180-day period, thus is not subject to mandatory minimum penalties.
4. Non-serious violation subject to mandatory minimum penalties.

	<u>VIOLATIONS AS OF:</u>	<u>9/30/12</u>
	Group I Serious Violations:	3
	Group II Serious Violations:	0
	Non-Serious Violations Not Subject to MMPs:	2
	Non-serious Violations Subject to MMPs:	0
	<u>Total Violations Subject to MMPs:</u>	<u>3</u>

Mandatory Minimum Penalty = (3 serious Violation) x \$3,000 = \$9,000