

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0568

MANDATORY PENALTY

IN THE MATTER OF

CITY OF MANTECA
WOODWARD AVENUE UTILITY AND STREET IMPROVEMENT PROJECT
SAN JOAQUIN COUNTY

This Complaint is issued to the City of Manteca (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 alleges that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Orders R5-2008-0081 (NPDES No. CAG995001) and R5-2008-0082 (NPDES No. CAG995002).

The Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds the following:

1. Beginning in 2011, the City of Manteca constructed sewer and storm water pipeline infrastructure improvements along Woodward Avenue. As part of this process, the Discharger constructed 25 extraction wells to pump and discharge groundwater associated with the construction activities. The project also included discharging dechlorinated potable water from hydrostatic testing of the newly installed pipelines. Groundwater and dechlorinated potable water was discharged to the local irrigation drainage which is tributary to French Camp Slough and the San Joaquin River, within the Sacramento-San Joaquin Delta, a water of the United States.
2. On 12 June 2008, the Central Valley Water Board adopted *Waste Discharge Requirements for Dewatering and Other Low Threat Discharges to Surface Waters, Order R5-2008-0081* (Low Threat General Order). On this same date, the Board also adopted *Waste Discharge Requirements for Limited Threat Discharges of Treated/Untreated Groundwater from Cleanup Sites, Wastewater From Superchlorination Projects, and Other Limited Threat Wastewaters to Surface Water, Order R5-2008-0082* (Limited Treat General Order).
3. The Discharger applied for coverage under the Low Threat General Order, and on 24 June 2011, the Executive Officer issued Notice of Applicability (NOA) R5-2008-0081-098 for coverage under the Low Threat General Order. On 17 February 2012, this NOA was rescinded and replaced by NOA R5-2008-0082-025 for coverage under the Limited Treat General Order. On 26 February 2013, Board staff issued a Notice of Termination upon completion of the Project.
4. This Complaint addresses administrative civil liability for effluent violations that occurred between 24 June 2011 and 26 February 2013. These violations are specifically identified

in Attachment A to this Complaint as subject to mandatory minimum penalties. Attachment A is attached hereto and incorporated herein by reference.

5. On 8 July 2013, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations (ROV) for effluent limitation violations that occurred between 24 June 2011 and 26 February 2013. On 30 July 2013, the Discharger responded to the ROV, agreed with the violations and requested minor corrections. Board staff made the applicable corrections. Board staff also reassessed the violations and added the 5 October 2011 one-hour average total chlorine residual violation, as listed in Attachment A to the Complaint.
6. 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.

7. 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.

8. WDRs Order R5-2008-0081, Effluent Limitations IV.A.1. includes, in part, the following effluent limitations:

a. The discharge of pollutants from dewatering and other low threat discharges shall not exceed the following effluent limitations:

Parameter	Units	Effluent Limitations		
		Average Monthly	Weekly Average	Maximum Daily
Total Suspended Solids	mg/L	10	15	30

9. WDRs Order R5-2008-0081, Effluent Limitations IV.A.1. includes, in part, the following effluent limitations:

b. **Total Residual Chlorine.** Effluent total residual chlorine shall not exceed:
i. 0.011 mg/L, as a 4-day average; and
ii. 0.019 mg/L, as a 1-hour average.

10. WDRs Order R5-2008-0082, Effluent Limitations V.B.4., include, in part, the following effluent limitation:

4. The pH of all limited threat discharges within the Sacramento and San Joaquin River Basins (except Goose Creek) shall at all times be within the range of 6.5 and 8.5.

11. According to the Discharger’s self-monitoring reports, the Discharger committed six (6) serious Group I violations of the above effluent limitations contained in WDRs Order R5-2008-0081. These violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0081 by 40 percent or more. The mandatory minimum penalty for these serious violations is **eighteen thousand dollars (\$18,000)**.

12. According to the Discharger’s self-monitoring reports, the Discharger committed two (2) serious Group II violations of the above effluent limitations contained in WDRs Order R5-2008-0081. These violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0081 by 20 percent or more. The mandatory minimum penalty for these serious violations is **six thousand dollars (\$6,000)**.

13. According to the Discharger’s self-monitoring reports, the Discharger committed eleven (11) non-serious violations of the above effluent limitation contained in Orders R5-2008-0081 and R5-2008-0082. All eleven non-serious violations are subject to mandatory penalties under Water Code section 13385 subdivision (i)(1) because these violations were preceded by three or more similar violations within a 180-day period. The

mandatory minimum penalty for this non-serious violation is **thirty three thousand dollars (\$33,000)**.

14. The total amount of the mandatory penalties assessed for the alleged effluent violations is **fifty seven thousand dollars (\$57,000)**. 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.
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 MANTECA 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 **fifty seven thousand dollars (\$57,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **5/6 December 2013**, unless the Discharger does one of the following by **8 October 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 **fifty seven thousand dollars (\$57,000)**; 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.

PAMELA C. CREEDON, Executive Officer

10 September 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 Manteca (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2013-0568 (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 **fifty seven thousand dollars (\$57,000)** by check that references "ACL Complaint R5-2013-0568" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **8 October 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 R5-2013-0568**

**City of Manteca
Woodward Avenue Utility and Street Improvement Project
RECORD OF VIOLATIONS (24 June 2011 - 26 February 2013) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs R5-2008-0081 and R5-2008-0082)**

	<u>Date</u>	<u>Parameter</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
<i>Violations under NPDES Order R5-2008-0081</i>								
1	19-Aug-11	Total Suspended Solids	mg/L	30	62	Daily Maximum	1	949442
2	20-Aug-11	Total Suspended Solids	mg/L	15	62	Weekly Average	1	949443
3	31-Aug-11	Total Suspended Solids	mg/L	10	62	Monthly Average	1	949447
4	17-Sep-11	Total Suspended Solids	mg/L	15	20	Weekly Average	4	949445
5	30-Sep-11	Total Suspended Solids	mg/L	10	12.9	Monthly Average	4	949450
6	5-Oct-11	Total Residual Chlorine	mg/L	0.019*	0.19	1-hour Average	2	952463
7	5-Oct-11	Total Residual Chlorine	mg/L	0.011*	0.19	4-day Average	2	950765
8	4-Jan-12	Total Suspended Solids	mg/L	30	67	Daily Maximum	1	949845
9	7-Jan-12	Total Suspended Solids	mg/L	15	67	Weekly Average	1	949846
10	31-Jan-12	Total Suspended Solids	mg/L	10	34	Monthly Average	1	949847
<i>Violations under NPDES Order R5-2008-0082</i>								
11	15-May-12	pH	S.U.	6.5	6.3	Instantaneous Minimum	4	949892
12	16-May-12	pH	S.U.	6.5	6.4	Instantaneous Minimum	4	949893
13	17-May-12	pH	S.U.	6.5	6.1	Instantaneous Minimum	4	949894
14	18-May-12	pH	S.U.	6.5	6.3	Instantaneous Minimum	4	949895
15	18-May-12	pH	S.U.	6.5	6.4	Instantaneous Minimum	4	949896
16	20-May-12	pH	S.U.	6.5	6.4	Instantaneous Minimum	4	949897
17	20-May-12	pH	S.U.	6.5	6.2	Instantaneous Minimum	4	949898
18	21-May-12	pH	S.U.	6.5	6.4	Instantaneous Minimum	4	949899
19	25-May-12	pH	S.U.	6.5	6.4	Instantaneous Minimum	4	949900

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.

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0568

<u>VIOLATIONS AS OF:</u>	<u>2/26/2013</u>
Group I Serious Violations:	6
Group II Serious Violations:	2
Non-Serious Violations Not Subject to MMPs:	0
Non-serious Violations Subject to MMPs:	11
<u>Total Violations Subject to MMPs:</u>	<u>19</u>

Mandatory Minimum Penalty = (6 Group I Violations + 2 Group II Violation+ 11 Non-Serious Violations) x \$3,000 = \$57,000

* WDRs Provision VIII includes, in part, the following: "...Any excursion above the 1-hour average or 4-day average effluent limitation and greater than or equal to a reporting level of 0.08 mg/L is a violation..."