

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0539

MANDATORY PENALTY
IN THE MATTER OF

CITY OF VACAVILLE EASTERLY WASTEWATER TREATMENT PLANT
SOLANO COUNTY

This Complaint is issued to the City of Vacaville (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL), CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7 which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order No. 5-01-044 (NPDES No. CA0077691).

The Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) finds the following:

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system and provides sewerage service to the City of Vacaville and the unincorporated community of Elmira in Solano County. Treated municipal wastewater is discharged to Old Alamo Creek, a water of the United States and a tributary to Cache Slough, a water of the United States.
2. On 15 March 2001, the Regional Water Board adopted WDRs Order No. 5-01-044 (NPDES No. CA0077691) to regulate discharges of waste from the WWTP. The WDRs include effluent limitations and other requirements regarding the wastewater discharges. The Regional Water Board adopted WDRs Order No. R5-2008-0055 on 25 April 2008, effective on 14 June 2008. Order No. R5-2008-0055 rescinds Order No. 5-01-044 and includes new requirements.
3. On 3 October 2002, the State Water Resources Control Board adopted Order WQO 2002-0015. WQO 2002-0015, in part, stayed the final coliform limits in Effluent Limitations B.1 from the effective date of WQO 2002-0015 (3 October 2002) until the Central Valley Regional Board acted on the remand. The Regional Water Board acted on the remand when it adopted WDRs No. R5-2008-0055 and Resolution No. R5-2005-0053.
4. WQO 2002-0015 also stayed the compliance schedule for final effluent limitations for bromodichloromethane and dibromochloromethane for a 3-year period beginning 3 October 2002. The compliance schedule included interim performance-based effluent limitations for bromodichloromethane and dibromochloromethane in accordance with the State Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP). The interim and final effluent limitations were based on protecting the MUN use for Old Alamo Creek. In issuing the three-year stay,

the State Water Board anticipated that the Regional Water Board would undertake basin plan amendments to dedesignate the MUN use for Old Alamo Creek and revise the interim and final limits in the permit accordingly.

5. Administrative Civil Liability Complaint No. R5-2008-0536, issued by the Assistant Executive Officer of the Regional Water Board on 18 June 2008, proposed administrative fines for many of the violations catalogued in this Complaint. However, Administrative Civil Liability Complaint No. R5-2008-0536 also addressed violations for the interim effluent limits for bromodichloromethane and dibromochloromethane. This Complaint removes those allegations, and also rescinds Administrative Civil Liability Complaint No. R5-2008-0536.
6. CWC section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC 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."

CWC 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."

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."*

7. 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."

8. The Executive Officer previously issued Administrative Civil Liability Complaint No. R5-2004-0522 for mandatory minimum penalties for effluent violations from 1 April 2001 through 31 March 2004. The City paid the Complaint and the Regional Water Board considers the matter resolved.
9. WDRs Order No. 5-01-044 Effluent Limitations No. B.1. include, in part, the following effluent limitations:

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>	<u>4-Day Average</u>	<u>1-Hour Average</u>
Settleable Solids	mL/L	0.1	0.2		
Chlorine Residual	mg/L			0.01	0.02
	lbs/day ³			0.84	1.67
	lbs/day ⁴			1.25	2.50

³ Based upon a design treatment capacity of 10 mgd (applicable May-Oct) prior to expansion.

⁴ Based upon a design treatment capacity of 15 mgd (applicable May-Oct) after expansion.

10. WDRs Order No. 5-01-044 Effluent Limitations No. B.2. states, in part, the following:

...Total Coliform ...wastewater effluent limits shall be in effect through 28 February 2006. The interim effluent limits are as follows:

<u>Constituent</u>	<u>Unit</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Monthly Median</u>	<u>Daily Maximum</u>
<u>Total Coliform Organisms</u>	MPN/100mL			23	240

⁴ Based upon max full treatment wet weather flow (Nov-Apr) of 17 mgd prior to expansion.

11. State Board Water Quality Order No. 2002-0015 stayed the final effluent limitations contained in WDRs Order No. 5-01-044 for bromodichloromethane and dibromochloromethane, pending consideration of a basin plan amendment de-designating certain beneficial uses of the receiving water, Old Alamo Creek. In Resolution No. R5-2005-0053, the Regional Water Board approved the de-designation of the beneficial uses of COLD, MIGR, SPWN and MUN for Old Alamo Creek. Although the Discharger has reported violations of the interim performance-based limits for bromodichloromethane and dibromochloromethane contained in WDRs Order No. 5-01-044 during the reporting period covered by this Complaint, State Board Water Quality Order No. 2002-0015 did not intend for the interim limits for bromodichloromethane and dibromochloromethane to be enforceable pending full resolution of the appropriate limits for trihalomethanes. Full resolution may require additional amendment to the Basin Plan to adopt site-specific objectives for New Alamo Creek and/or Ulatis Creek, in accordance with the SIP.
12. WDRs Order No. 5-01-044 Effluent Limitations No. B.5. requires that:

“The discharge shall not have a pH less than 6.5 nor greater than 8.5.”

13. According to the Discharger's self-monitoring reports, the Discharger committed four (4) serious Group I violations of the above effluent limitations contained in Order No. 5-01-044 during the period beginning 1 April 2004 and ending 31 December 2007. The violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels by more than 40 percent on these occasions. The mandatory minimum penalty for these serious violations is **twelve thousand dollars (\$12,000)**.
14. According to the Discharger's self-monitoring reports, the Discharger committed thirteen (13) serious Group II violations of the above effluent limitations contained in Order No. 5-01-044 during the period beginning 1 April 2004 and ending 31 December 2007. The violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels by more than 20 percent on these occasions. The mandatory minimum penalty for these serious violations is **thirty-nine thousand dollars (\$39,000)**.
15. According to the Discharger's self-monitoring reports, the Discharger committed ten (10) non-serious violations of the above effluent limitations contained in Order No. 5-01-044 during the period beginning 1 April 2004 and ending 31 December 2007. Seven (7) of the non-serious violations are subject to mandatory penalties under CWC section 13385(i)(1) because these violations were preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for these non-serious violations is **twenty-one thousand dollars (\$21,000)**.
16. The total amount of the mandatory penalties assessed for the cited effluent violations is **seventy-two thousand dollars (\$72,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
17. 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 § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

THE CITY OF VACAVILLE IS HEREBY GIVEN NOTICE THAT:

1. Administrative Civil Liability Complaint No. R5-2008-0536 is rescinded.
2. The Assistant Executive Officer of the Regional Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **seventy-two thousand dollars (\$72,000)**.
3. A hearing on this matter will be held at the Regional Water Board meeting scheduled on **11/12 September 2008**, unless the Discharger agrees to complete the following by **23 July 2008**:
 - a) Waive the hearing by completing the attached form and returning it to the Regional Water Board; and

- b) Pay the proposed civil liability of **seventy-two thousand dollars (\$72,000)** in full.
4. If a hearing on this matter is held, the Regional 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.

JACK E. DEL CONTE, Assistant Executive Officer

23 June 2008

Attachment A: Record of Violations
BLH: 06/23/08

**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 Vacaville (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0539 (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 service 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 service of the Complaint; and
4. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **seventy-two thousand dollars (\$72,000)** by check, which contains a reference to "ACL Complaint No. R5-2008-0539" and is made payable to the "*State Water Pollution Cleanup and Abatement Account.*"
5. 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 Regional Board receive new information during this comment period, the Regional Board may withdraw the complaint, return payment, and issue a new complaint.
6. 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)

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0539**

**City of Vacaville
Easterly Wastewater Treatment Plant**

**RECORD OF VIOLATIONS (1 April 2004-31 December 2007) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program No. 5-01-044)**

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period Type</u>	<u>Flow</u>	<u>Remarks</u>
1	17-Jun-04	Chlorine Residual	lbs/day	1.67	2.4	Daily	7.6	2
2	17-Jun-04	Chlorine Residual	mg/L	0.02	0.8	Daily		2
3	17-Jun-04	pH	pH Units	6.5	6.4	Instantaneous		3
4	25-Jul-04	Chlorine Residual	lbs/day	1.67	8.2	Daily	7.3	2
5	25-Jul-04	Chlorine Residual	mg/L	0.02	0.2	Daily		2
6	13-Oct-04	Settleable Solids	mL/L	0.2	0.4	Daily		1
7	22-Oct-04	Chlorine Residual	lbs/day	1.67	38.2	Daily	7.3	2
8	22-Oct-04	Chlorine Residual	mg/L	0.02	0.5	Daily		2
9	12-Jan-05	Chlorine Residual	lbs/day	6.5	39	1-hr	13.4	2
10	12-Jan-05	Chlorine Residual	mg/L	0.2	0.5	1-hr		2
11	2-May-05	Chlorine Residual	lbs/day	2.5	5.6	1-hr	8.4	2
12	2-May-05	Chlorine Residual	mg/L	0.02	0.1	1-hr		2
13	25-Jul-05	Chlorine Residual	lbs/day	2.5	3.2	1-hr	8.1	2
14	4-Oct-05	pH	pH Units	6.5	5.8	Instantaneous		4
15	27-Oct-05	pH	pH Units	6.5	6.4	Instantaneous		4
16	18-Dec-05	Total Coliform	MPN/100m L	240	300	Daily		4
17	27-Feb-06	Settleable Solids	mL/L	0.2	0.3	Daily		1
18	5-May-06	Chlorine Residual	lbs/day	2.5	10.8	1-hr	10.2	2
19	5-May-06	Chlorine Residual	mg/L MPN/100m	0.02	0.1	1-hr		2
20	7-Jun-06	Total Coliform	L	240	500	Daily		4
21	6-Sep-06	Settleable Solids	mL/L	0.2	1.2	Daily		1
22	18-Sep-06	pH	pH Units	6.5	6.3	Instantaneous		4
23	19-Sep-06	pH	pH Units	6.5	6.2	Instantaneous		4
24	23-Feb-07	Total Coliform	MPN/100m L	240	300	Daily		4
25	10-May-07	Total Coliform	MPN/100m L	240	900	Daily		3
26	24-Jun-07	Total Coliform	L	240	500	Daily		3
27	26-Jul-07	Settleable Solids	mL/L	0.2	0.5	Daily		1

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.

<u>VIOLATIONS AS OF:</u>	<u>12/31/2007</u>
Group I Serious Violations:	4
Group II Serious Violations:	13
Non-Serious Exempt from MPs:	3
Non-serious Violations Subject to MPs:	7
Mass Limit Violations Not Subject to MPs:	0
<u>Total Violations Subject to MPs:</u>	<u>24</u>

Mandatory Minimum Penalty = (17 Serious Violations + 7 Non-Serious Violations) x \$3,000 = \$72,000