

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION**

In the Matter of:

City of Vacaville

**Easterly Wastewater Treatment
Plant, Solano County**

~~XXXXXX~~ ORDER R5-2016-0553

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER**

INTRODUCTION

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulated Order” or “Order”) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (“Central Valley Water Board”), on behalf of the Central Valley Water Board Prosecution Team (“Prosecution Team”), and the City of Vacaville (collectively “Parties”) and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

RECITALS

2. The City of Vacaville owns and operates the Easterly Wastewater Treatment Plant (Easterly WWTP), located at 6040 Vaca Station Road, Elmira, Solano County, CA. The Easterly WWTP provides sewerage service for the City of Vacaville and treats wastewater before discharging it to Old Alamo Creek, a tributary to New Alamo Creek, which drains into Ulatis Creek.
3. The Easterly WWTP operates under a National Pollution Discharge Elimination System (“NPDES”) permit, adopted by the Central Valley Water Board as Waste Discharge Requirements Order No. R5-2014-0072-01 (NPDES No. CA0077691)(“Vacaville Permit”).
4. On 9 October 2015, the City of Vacaville violated Discharge Prohibition III.A of the Vacaville Permit by discharging 211,880 gallons of chlorinated

- wastewater to Old Alamo Creek, a water of the United States, over a period of 46 minutes on 9 October 2015 in a manner different than that described in the Vacaville Permit. Additionally, the City of Vacaville violated Effluent Limitations IV.A.1.d of the Vacaville Permit by exceeding the 1-hour average total residual chlorine limit of 0.019 mg/L (measured at 2.72 mg/L) and the 4-day average total residual chlorine limit of 0.011 mg/L (measured at 0.028 mg/L) when it discharged 211,880 gallons of chlorinated wastewater to Old Alamo Creek on 9 October 2015.
5. The Parties have engaged in confidential settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. To resolve the alleged violations by consent and without further administrative proceedings, the Parties have agreed to the imposition of \$6,000 in mandatory penalties (Attachment A to this Order) and \$164,578 in discretionary penalties (Attachment B to this Order), for a total of \$170,578 in liability against the City of Vacaville. The Parties agree to suspend a portion of the liability conditioned on successful completion of a supplemental environmental project as described in Paragraph 8. and Attachment C of this Stipulated Order.
 6. The Central Valley Water Board Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein, and that this Stipulated Order is in the best interest of the public.

STIPULATIONS

The Parties stipulate to the following:

7. **Administrative Civil Liability:** The City of Vacaville hereby agrees to the imposition of an administrative civil liability totaling ONE HUNDRED SEVENTY THOUSAND FIVE HUNDRED SEVENTY-EIGHT DOLLARS (\$170,578) to resolve the violations alleged in Paragraph 5, above.. Specifically:

- 7.1. Within thirty (30) days of issuance of the Order, the City of Vacaville agrees to remit, by check, EIGHTY-EIGHT THOUSAND TWO HUNDRED EIGHTY-NINE DOLLARS (\$88,289) payable to the *State Water Resources Control Board Cleanup and Abatement Account*, and shall indicate on the check the number of this Order. The City of Vacaville shall send the original signed check to the State Water Resources Control Board Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888. Copies of the check shall be sent to Susie Loscutoff, Staff Attorney, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812 and Wendy Wyels, Supervisor, Compliance/Enforcement Section, Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670.
 - 7.2. The Parties agree that EIGHTY TWO THOUSAND TWO HUNDRED EIGHTY-NINE DOLLARS (\$82,289) of the administrative civil liability shall be suspended (“Suspended Liability”) pending completion of a supplemental environmental project (“SEP”) as set forth herein and in Attachment C.
8. **Supplemental Environmental Project:** The Parties agree that this resolution includes a SEP. Detailed plans concerning how the project will be implemented, as well as an implementation schedule, milestone dates and budget are provided in the SEP proposal included herein as Attachment C.
 - 8.1. **SEP Definitions:**
 - a. “Designated Central Valley Water Board Representative” – the representative from the Central Valley Water Board responsible for oversight of the SEP. That individual is:

Wendy Wyels
Supervisor, Compliance/Enforcement Section
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
Telephone: (916) 464-4835

Email: Wendy.Wyels@waterboards.ca.gov

- b. “SEP Completion Date” – The date in which the SEP will be completed in its entirety.
- 8.2. **SEP Completion Dates:** The SEP shall be concluded, and a final report shall be provided to the Central Valley Water Board by the SEP Completion Date. Upon a showing of good cause and upon written agreement of the Parties, the Central Valley Water Board, or its delegee, may extend the SEP Completion Date.
- 8.3. **Agreement to Fund, Report and Guarantee Implementation of SEPs:** The City of Vacaville represents that: (1) it will fund the SEP in the amount as described in this Stipulated Order; (2) it will provide certifications and written reports to the Designated Central Valley Water Board Representative consistent with the terms of this Stipulated Order detailing the implementation of the SEP; and (3) it will guarantee implementation of the SEP by remaining liable for the Suspended Liability until the SEP is completed and approved by the Central Valley Water Board, or its delegee, in accordance with the terms of this Stipulated Order. The City of Vacaville agrees that the Central Valley Water Board has the right to require an audit of the funds expended by it to implement the SEP, in accordance with Paragraph 11.6., below.
- 8.4. **SEP Progress Reports:** As described in Exhibit B, the City of Vacaville shall provide quarterly reports of progress on the SEP to the Designated Central Valley Water Board Representative commencing 1 August 2016 and continuing through submittal of the Certification of Completion described below in Paragraph 10.5, below. If no activity occurred during a particular quarter, a quarterly report so stating shall be submitted.
- 8.5. **Final Report and Certification of Completion of SEP:** On or before the applicable SEP Completion Date, the City of Vacaville shall submit the Final Report as described in the SEP proposal (Attachment C) and a certified statement of completion of the SEP (“Certification of Completion”). The Certification of Completion shall be submitted,

under penalty of perjury, to the Designated Central Valley Water Board Representative by a responsible official representing the City of Vacaville. The Certification of Completion, in conjunction with the Final Report, shall include following:

- a. Certification that the SEP has been completed in accordance with the terms of this Stipulated Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Central Valley Water Board to evaluate the completion of the SEP and the costs incurred by the City of Vacaville.
- b. Certification documenting the expenditures by the City of Vacaville during the implementation period for the SEP. The City of Vacaville's expenditures may include external payments to outside vendors or contractors performing the SEP. In making such certification, the City of Vacaville may rely upon normal project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The certification need not address any costs incurred by the Central Valley Water Board for oversight. The City of Vacaville shall provide any additional information requested by the Central Valley Water Board staff, which is reasonably necessary to verify SEP expenditures.
- c. Certification, under penalty of perjury, that the City of Vacaville followed all applicable environmental laws and regulations in the implementation of the SEP including but not limited to the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act. To ensure compliance with CEQA where necessary, the City of Vacaville shall provide the Central Valley Water Board with one of the following documents from the lead agency prior to commencing SEP construction:
 - i. Categorical or statutory exemptions relied upon;

- ii. Negative Declaration if there are no potentially “significant” impacts;
 - iii. Mitigated Negative Declaration if there are potentially “significant” impacts but revisions to the project have been made or may be made to avoid or mitigate those potentially significant impacts; or
 - iv. Environmental Impact Report.
- 8.6. **Third Party Financial Audit:** In addition to the Certification of Completion and at the written request of the Central Valley Water Board Executive Officer, the City of Vacaville, at its sole cost, shall submit a report prepared by an independent third party acceptable to the Central Valley Water Board Executive Officer providing such party’s professional opinion that the City of Vacaville has expended money in the amounts claimed. The audit report shall be provided to the Designated Central Valley Water Board Representative within three (3) months of notice from the Central Valley Water Board Executive Officer to the City of Vacaville of the need for an independent third party financial audit. The audit need not address any costs incurred by the Central Valley Water Board for oversight.
- 8.7. **Central Valley Water Board Acceptance of Completed SEP:** Upon the City of Vacaville’s satisfaction of its SEP obligations under this Stipulated Order and completion of the SEP and any audit requested by the Central Valley Water Board Executive Officer, the Designated Central Valley Water Board Representative shall send the City of Vacaville a letter recognizing satisfactory completion of its obligations under the SEPs. This letter shall terminate any further SEP obligations of the City of Vacaville and result in the permanent stay of the Suspended Liability.
- 8.8. **Failure to Expend all Suspended Administrative Civil Liability Funds on the SEP:** In the event that the City of Vacaville is not able to demonstrate to the reasonable satisfaction of the Central Valley Water Board Executive Officer that the entire Suspended Liability has been spent to complete SEP, the City of Vacaville shall pay the

difference between the Suspended Liability and the amount the City of Vacaville can demonstrate was actually spent to complete the SEP, as an administrative civil liability. The City of Vacaville shall pay the additional administrative liability within 30 days of its receipt of notice of the Central Valley Water Board Executive Officer's determination that the City of Vacaville has failed to demonstrate that the entire Suspended Liability has been spent to complete the SEP components. In the event that payment is due pursuant to this Paragraph, the City of Vacaville shall send the original signed check to the State Water Resources Control Board Accounting Office, Attn: SEP Differential, P.O. Box 1888, Sacramento, CA 95812-1888. Copies of the check shall be sent to Susie Loscutoff, Staff Attorney, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812 and Wendy Wyels, Supervisor, Compliance and Enforcement Section, Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670.

- 8.9. **Failure to Complete the SEP:** If the SEP is not fully implemented by the SEP Completion Date required by this Stipulated Order, the Central Valley Water Board Executive Officer shall issue a Notice of Violation. As a consequence, the City of Vacaville shall be liable to pay the entire Suspended Liability or, if shown by the City of Vacaville, some portion thereof less the value of the completion of any milestone requirements as determined by the Motion for Payment of Suspended Liability, as described below, or as agreed in writing by the Parties. Unless otherwise agreed or determined by a Motion for Payment of Suspended Liability, the City of Vacaville shall not be entitled to any credit, offset, or reimbursement from the Central Valley Water Board for expenditures made on the SEP prior to the date of receipt of the Notice of Violation. The amount of the Suspended Liability owed shall be determined by agreement of the Parties or, if the Parties cannot reach agreement, via a "Motion for Payment of Suspended Liability" before the Central Valley Water Board, or its delegee. Upon a determination by the Central Valley Water Board, or its delegee, of the amount of the Suspended Liability assessed, the amount shall be paid to the *State Water Board Cleanup and Abatement Account* within

thirty (30) days after the service of the Central Valley Water Board's determination. In addition, the City of Vacaville shall be liable for the Central Valley Water Board's reasonable costs of enforcement, including but not limited to, reasonable legal costs and reasonable expert witness fees. Payment of the assessed amount will satisfy the City of Vacaville's obligations to implement the SEP. In the event that payment is due pursuant to this Paragraph, the City of Vacaville shall send the original signed check to the State Water Resources Control Board Accounting Office, Attn: ACL Payment/SEP Failure, P.O. Box 1888, Sacramento, CA 95812-1888. Copies of the check shall be sent to Susie Loscutoff, Staff Attorney, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812 and Wendy Wyels, Supervisor, Compliance and Enforcement Section, Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670.

- 8.10. **Publicity:** Should the City of Vacaville or its agents or contractors publicize one or more elements of the SEP, it shall state in a prominent manner that the project is being partially funded as part of the settlement of an enforcement action by the Central Valley Water Board against the City of Vacaville.
9. **Compliance with Applicable Laws:** The City of Vacaville understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject it to further enforcement, including additional administrative civil liability.

10. **Party Contacts for Communications related to Stipulated Order:**

For the Central Valley Water Board:

Wendy Wyels, Supervisor
Compliance and Enforcement Section
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Wendy.Wyels@waterboards.ca.gov

(916) 464-4835

For the City of Vacaville:

Royce Cunningham, Director of Utilities

6040 Vaca Station Road

P.O. Box 220

Elmira, CA 95625

Royce.Cunningham@cityofvacaville.com

(707) 469-6412

11. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
12. **Matters Addressed by Stipulation:** Upon adoption by the Central Valley Water Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations or causes of action alleged herein or which could have been asserted based on the specific facts alleged herein as of the effective date of this Stipulated Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the City of Vacaville's payment of the administrative civil liability by the deadline specified in Paragraph 8.8 and the City of Vacaville's successful completion of the SEP described in Paragraphs 8.1 through 8.10.
13. **Public Notice:** The City of Vacaville understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. The City of Vacaville agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
14. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Valley Water Board's adoption of the settlement by the Parties and review by the public,

as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

15. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or of the Central Valley Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Team or of the Central Valley Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.
16. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Prosecution Team or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
17. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
18. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Central Valley Water Board.
19. **If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegee, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing.

The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

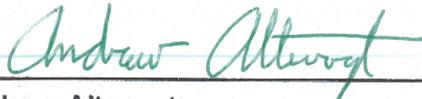
- a. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on a formal administrative civil liability complaint in this matter; or
 - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
20. **No Admission of Liability:** In settling this matter, the City of Vacaville does not admit to any of the allegations, or that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance; however, the City of Vacaville agrees that in the event of any future enforcement actions by the Central Valley Water Board, this Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 and 13385.
21. **Waiver of Hearing:** The City of Vacaville has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Central Valley Water Board prior to the adoption of this Stipulated Order.
22. **Waiver of Right to Petition:** The City of Vacaville hereby waives its right to petition the Central Valley Water Board's adoption of this Stipulated Order as written for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

23. **Covenant Not to Sue:** The City of Vacaville covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, board members, employees, representatives, agents, or attorneys arising out of or relating to Covered Matters.
24. **Central Valley Water Board is Not Liable:** Neither the Central Valley Water Board members nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the City of Vacaville, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Central Valley Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the City of Vacaville, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.
25. **The City of Vacaville is Not Liable:** Neither the City of Vacaville nor its directors, officers, employees, agents, representatives or contractors shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Central Valley Water Board members, or the Central Valley Water Board staff, attorneys, or representatives in carrying out activities pursuant to this Stipulated Order, nor shall the City of Vacaville, its directors, officers, employees, agents, representatives or contractors be held as parties to or guarantors of any contract entered into by the Central Valley Water Board, its members or staff, in carrying out activities pursuant to this Stipulated Order.
26. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
27. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.

28. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Central Valley Water Board, or its delegee, approves and enters the Order.
29. **Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.
30. **Incorporation of Exhibits:** Exhibits "A" and "B" are hereby incorporated by reference.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
Central Valley Region

By: 
Andrew Altevogt
Assistant Executive Officer

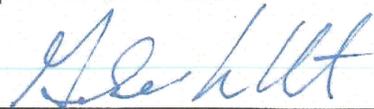
Date: 4/25/16

City of Vacaville

By: 
Laura C. Kuhn, City Manager

Date: 4-15-16

Approved as to form:



Gerald L. Hobrecht, City Attorney

Order of the Central Valley Water Board

1. In adopting this Stipulated Order, the Central Valley Water Board has considered, where applicable, each of the factors prescribed in Water Code sections 13327 and 13385, subdivision (e). The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations described in the Pre-Issuance Letter or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public.
2. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The method of compliance with this enforcement action consists entirely of payment of amounts for administrative civil liability. As such, the Central Valley Water Board finds that issuance of this Order is not considered subject to the provisions of the California Environmental Quality Act ("CEQA") as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project" (Public Resources Code sections 21065, 21080, subdivision (a); sections 15060, subdivisions(c)(2) and (3); 15378, subdivision (a), Title 14, of the California Code of Regulations). In addition, the Central Valley Water Board finds that issuance of this Order is also exempt from the provisions of CEQA in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations as an enforcement action by a regulatory agency and there are no exceptions that would preclude the use of this exemption.
3. The terms of the foregoing Stipulated Order are fully incorporated herein and made part of this Order of the Central Valley Water Board.

Pursuant to Water Code sections 13323 and 13385 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Central Valley Region.

~~UÜÖP OSÄÜP ÖÖÁYÄÖCE ŠCEJWZÄUÜ~~

Pamela Creedon
Assistant Executive Officer

~~JÄR } ^ ÄGEÍ~~

Date

- Attachment A: Mandatory Minimum Penalties
- Attachment B: Enforcement Policy Liability Methodology
- Attachment C: Supplemental Environmental Project

**ATTACHMENT A
TO STIPULATED ORDER R5-2016-0553
RECORD OF VIOLATIONS FOR ASSESSING MANDATORY MINIMUM PENALTIES**

**City of Vacaville
Easterly Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 January 2015 through 31 October 2015) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5--2014-0072-01)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
1	9-Oct-15	Total Residual Chlorine	mg/L	0.019	2.72	1-hour Average	1	999899
2	9-Oct-15	Total Residual Chlorine	mg/L	0.011	0.028	4-day Average	1	999900

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. Penalties that may be assessed for this violation are discretionary. This violation is not addressed or resolved in this ROV.
4. Non-serious violation subject to mandatory minimum penalties.

<u>VIOLATIONS AS OF:</u>	<u>10/31/2015</u>
Group I Serious Violations:	2
Group II Serious Violations:	0
Non-Serious Violations Exempt from MMPs:	0
<u>Non-serious Violations Subject to MMPs:</u>	<u>0</u>
Total Violations Subject to MMPs:	2

Mandatory Minimum Penalty = (2 Group I Violations) x \$3,000 = \$6,000

Attachment B to Stipulated Order R5-2016-0553
Specific Factors Considered for Administrative Civil Liability
City of Vacaville Easterly Wastewater Treatment Plant, Solano County

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining discretionary administrative civil liability by addressing the factors that are required to be considered under California Water Code (CWC) section 13385(e). Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

The City of Vacaville does not concede that the below facts are accurate or that the factors were accurately determined or consistent with the Enforcement Policy, but accepts the determination only for the purpose of settling this specific enforcement action.

Background

On 9 October 2015, the City of Vacaville (Discharger) spilled 211,880 gallons of super-chlorinated wastewater from its Easterly Wastewater Treatment Plant (Facility) over a 46-minute period. The spill occurred when the "uninterrupted power supply" receptacle faulted, causing the computer system to fail and the dechlorination facilities to stop working. In addition, the partially-treated waste was not automatically diverted to the emergency storage pond and instead flowed into Old Alamo Creek. The chlorinated effluent was 143 times over the 1-hour chlorine limit and 2.5 times over the 4-day chlorine limit. The Discharger is subject to \$6,000 in mandatory minimum penalties for the two chlorine effluent limit violations, as outlined in Attachment A. This Attachment describes the process to determine the additional discretionary penalty for the spill.

Step 1 – Potential for Harm for Discharge Violations

The "potential harm to beneficial uses" factor considers the harm that may result from exposure to the pollutants in the illegal discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) whether the discharge is susceptible to cleanup or abatement.

Factor 1: Harm or Potential Harm to Beneficial Uses.

A score between 0 (negligible) and 5 (major) is assigned based on a determination of the harm or potential for harm to beneficial uses. The Facility discharges treated municipal wastewater to Old Alamo Creek, a tributary to New Alamo Creek which drains into Ulatis Creek. Old Alamo Creek, New Alamo Creek, and Ulatis Creek are all waters of the United States located within the Sacramento-San Joaquin Delta.

As described in the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, Fourth Edition, the designated beneficial uses for Old Alamo Creek that could be impacted by the spill of super-chlorinated wastewater include agricultural supply (irrigation and stock watering); industrial (process supply, service supply); recreation (contact, non-contact); freshwater habitat (warm); wildlife habitat; and navigation. The most sensitive beneficial use for this discharge is freshwater habitat (warm), due to the potential exposure to elevated levels of super-chlorinated effluent to aquatic life.

ATTACHMENT B TO STIPULATED ORDER NO. R5-2016-0553
CITY OF VACAVILLE, EASTERLY WASTEWATER TREATMENT PLANT
SOLANO COUNTY

The Waste Discharge Requirements (WDRs) contain residual chlorine effluent limits; the low values for these limits reflect the highly toxic nature of chlorine to aquatic organisms. The Discharger did not sample Old Alamo Creek during or after the discharge, but did calculate the chlorine concentration in the discharge itself. The table below provides the calculated concentrations as compared to the WDRs' effluent limitations.

Calculated Chlorinated Values vs Effluent Limitations

Limitation Duration	Calculated Value	Effluent Limitation
1-hour average	2.72 mg/L	0.019 mg/L
4-day average	0.028 mg/L	0.011 mg/L

The Fact Sheet of the WDRs states that in the 1960's, Alamo Creek was realigned. *"Part of the original Alamo Creek channel was left in place and renamed Old Alamo Creek. The realignment of the creek cut off flows from the upper watershed to Old Alamo Creek leaving it dry with the exception of discharges from the Easterly WWTP, Kinder-Morgan groundwater remediation project, storm water runoff, and agricultural runoff."* At the time of the discharge, the Facility was the major source of water into Old Alamo Creek, and therefore there was little dilution to mitigate the super-chlorinated discharge.

The potential harm to beneficial uses was determined to be "moderate," which is defined as a "moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected and impacts to beneficial uses are moderate and likely to attenuate without appreciable acute or chronic effects)." A score of 3 is assigned for this factor because the super-chlorinated discharge was reasonably expected to impact beneficial uses to a moderate degree and the impacts were likely to attenuate without appreciable acute or chronic effects. Although the Discharger's 19 October 2015 incident report states that "[p]ost event creek observations made at the effluent outfall show [sic] were normal, with numerous fish and crawfish present[.]" the Discharger did not provide any analytical data to contradict staff's assessment regarding the discharge's potential impact. Further, it is not possible to determine how much time passed between the super-chlorinated discharge and the observation. Therefore, a score of 3 is appropriate.

Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge.

A score between 0 and 4 is assigned based on the characteristics of the discharge itself. In this case, the partially treated, super-chlorinated discharge was disinfected but had not been dechlorinated. The wastewater contained chlorine concentrations which exceeded the 1-hour and 4-day residual chlorine effluent limitations in the WDRs.

The Discharger is permitted by the WDRs to discharge tertiary treated wastewater to Old Alamo Creek, but is required to ensure that the discharge not be toxic to aquatic life. Toxicity is the degree to which a substance can damage a living or non-living organism. Toxicity can refer to the effect on a whole organism, such as an animal, bacterium, or plant, as well as the effect on a substructure of the organism, such as a cell or an organ.

Chlorine is a known toxicant to freshwater aquatic life; short-term acute exposure may result in biological harm or death while chronic exposure over an extended period of time may lead to irreversible side effects. The low effluent limits in the WDRs reflect the high toxicity of chlorine to aquatic organisms. The discharge was 143 times higher than the 1-hour average effluent limit and 2.5 times higher than the 4-day average limit. Because the discharged material

ATTACHMENT B TO STIPULATED ORDER NO. R5-2016-0553
CITY OF VACAVILLE, EASTERLY WASTEWATER TREATMENT PLANT
SOLANO COUNTY

“exceeded known risk factors and/or there is substantial concern regarding receptor protection,” a score of 3 was assigned for this factor.

Factor 3: Susceptibility to Cleanup or Abatement.

A score of 0 is assigned for this factor if 50% or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned if less than 50% of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated by the discharger. In this case, the unauthorized discharge was not discovered until after the Discharger learned of a communication failure with the Facility’s computer system, resulting in a direct discharge to Old Alamo Creek. It was not possible to clean up the discharge, and therefore, a factor of 1 is assigned.

Final Score – “Potential for Harm”

The scores of the three factors are added to provide a Potential for Harm score for each violation or group of violations. In this case, **a final score of 7** was calculated. The total score is then used in Step 2, below.

Step 2 – Assessment for Discharge Violations

This step addresses administrative civil liabilities for spills based on both a per-gallon and a per-day basis.

1. Per Gallon Assessment

When there is a discharge, the Central Valley Water Board is to determine an initial liability amount on a per gallon basis using the Potential for Harm score and the Deviation from Requirement. As stated above, the Potential for Harm Score is 7.

The Deviation from Requirement may be considered minor, moderate, or major, depending on the extent to which the violation deviates from the specific requirement. In this case, the Deviation from Requirement is determined to be “moderate” because the intended effectiveness of the permit requirement to dechlorinate the wastewater was completely compromised for 46 minutes. There were no backup systems in place to notify the operators that the uninterrupted power supply failed or that the waste was not being diverted to the emergency storage basin.

Table 1 of the Enforcement Policy (p. 14) is used to determine a “per gallon factor” based on the total score from Step 1 and the level of Deviation from Requirement. For this case, the factor is 0.2. This value is multiplied by the volume of discharge and the per-gallon civil liability, as described below.

The Enforcement Policy allows for a reduction in the maximum penalty amount of \$10 per gallon for high volume discharges. This particular spill of 211,880 gallons is considered “high volume” based on the total gallons discharged and therefore a per gallon reduction is appropriate. The Enforcement Policy suggests a reduction of \$2/gallon for sewage spills. However, the Prosecution Team has determined that a reduction to \$2/gallon would result in an inappropriately low penalty amount, insufficient to act as a deterrent. Therefore, the Prosecution Team is reducing the maximum penalty amount from the \$10/gallon found in the Water Code to \$3.50/gallon for this particular high volume discharge.

CWC section 13385(c)(2) states that the civil liability amount is to be based on the number of gallons discharged but not cleaned up, over 1,000 gallons for each spill event. Therefore, of the

ATTACHMENT B TO STIPULATED ORDER NO. R5-2016-0553
CITY OF VACAVILLE, EASTERLY WASTEWATER TREATMENT PLANT
SOLANO COUNTY

211,880 gallons that spilled on 9 October 2015, a total of 210,880 gallons were discharged in excess of 1,000 gallons into Old Alamo Creek.

The Per Gallon Assessment is calculated as follows:
0.20 factor from Table 1 x 210,880 gallons x \$3.50 per gallon = \$147,616

2. Per Day Assessment

When there is a discharge, the Central Valley Water Board is to determine an initial liability amount on a per day basis using the same Potential for Harm and the Extent of Deviation from Requirement that were used in the per-gallon analysis. The “per day” factor (determined from Table 2 of the Enforcement Policy) is 0.20. The spill took place during the course of one day.

The Per Day Assessment is calculated as follows:
0.20 factor from Table 2 x 1 day x \$10,000 per day = \$2,000.

Initial Liability Amount: The value is determined by adding together the per gallon assessment and the per day assessment. For this case, the total is \$147,616 + \$2,000 for a total initial liability amount of \$149,616.

Step 3 – Per Day Assessment for Non-Discharge Violation

The Enforcement Policy states that the Board shall calculate an initial liability for each non-discharge violation. In this case, this factor does not apply because all of the violations are related to the discharge of wastewater, and the liability was determined in Step 2.

Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator’s culpability, efforts to clean-up or cooperate with regulatory authority, and the violator’s compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The spill occurred when the “uninterrupted power supply” faulted, causing cascading effects: the computer system failed, the dechlorination pumps failed, and the partially treated effluent was not diverted to the emergency storage basin.

At the time of the event, the Facility’s computer system did not include an alarm to notify operators of a power loss or fault to the uninterrupted power supply receptacle, which serves as the Facility’s short-term backup power supply. Additionally, the emergency diversion gate was programmed to automatically divert only with the loss of the Facility’s main power source, not its backup power source. Since the 9 October 2015 incident, the Discharger has installed a transfer

ATTACHMENT B TO STIPULATED ORDER NO. R5-2016-0553
CITY OF VACAVILLE, EASTERLY WASTEWATER TREATMENT PLANT
SOLANO COUNTY

switch to ensure loss of power or fault to the uninterrupted power supply receptacle will not result in a Facility-wide power loss. An alarm has been installed for an uninterrupted power supply receptacle failure and the emergency diversion gate can now be closed through the Facility's computer system. The installation of the backup measures should help prevent future incidents such as these, however the fact they were not previously in place at the Facility justifies an elevated culpability. Therefore, the Discharger was assigned a multiplier value of 1.1.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. Although the Discharger was not able to clean up any of the super-chlorinated effluent once it reached Old Alamo Creek, the Discharger cooperated by providing prompt notification and two status updates. Therefore, the Discharger was assigned a neutral multiplier value of 1.0.

History of Violation

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1 to be used. The Discharger has not had previous violations caused by the power supply failure and computer operation system failure. Therefore, the Discharger was given a value of 1.0.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

Total Base Liability Amount: This value is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

<p>Total Base Liability Amount</p> <p>Initial Liability Amount x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability</p> <p>$\\$149,616 \times 1.1 \times 1.0 \times 1.0 = \\$164,578$</p>
--

Step 6 - Ability to Pay and Ability to Continue in Business

The Enforcement Policy provides that if the Central Valley Water Board has sufficient financial information to assess the violator's ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted downward. Similarly, if a violator's ability to pay is greater than similarly situated dischargers, it may justify an increase in the amount to provide a sufficient deterrent effect. The City of Vacaville has the ability to pay the penalty. The City's 2015-2016 *Operating Budget and Capital Improvement Program* was adopted on 23 June 2015 and states that the General Fund reserve is projected to be \$18.32 million.

Step 7 – Other Factors as Justice May Require

The costs of investigation and enforcement are “other factors as justice may require” and should be added to the liability amount. The Central Valley Water Board incurred over \$11,250 (75 hours at a statewide average of \$150/hour) in staff costs associated with the investigation and enforcement of the violations alleged herein. The Prosecution Team, in its discretion, is not recommending an increase in the Total Base Liability amount in consideration of these costs incurred as the proposed liability amount serves as a sufficient general and specific deterrent against future violations.

Step 8 – Economic Benefit

Pursuant to CWC section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The Enforcement Policy states (p. 21) that the total liability shall be at least 10% higher than the economic benefit, “so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations.”

The Discharger received little economic benefit from the spills. The economic benefit derived from the delay in installing a transfer switch and alarm for the uninterrupted power supply receptacle and an alternative method of closing the emergency diversion gate is assumed to be minimal. The proposed liability exceeds any economic benefit received by the Discharger.

Step 9 – Maximum and Minimum Liability Amounts

The maximum and minimum amounts for discharge violations must be determined for comparison to the amounts being proposed. These values are calculated in the Complaint, and the values are repeated here.

Water Code maximum liability amount: \$2,118,800

Water Code minimum liability amount: \$6,000 in mandatory minimum penalties; not discussed as part of this discretionary penalty calculation.

Enforcement Policy minimum liability amount: minimal, and assumed to be significantly less than the proposed penalty.

Step 10 – Final liability Amount

The final liability amount consists of the amount for the violation, with any allowed adjustments, provided amounts are within the statutory minimum and maximum amounts. Without further investigation of the discharge or calculation of specific economic benefits, the proposed Administrative Civil Liability is \$164,578.

ATTACHMENT C
TO STIPULATED ORDER R5-2016-0553
CITY OF VACAVILLE EASTERLY WASTEWATER TREATMENT PLANT
DESCRIPTION OF SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

Project Title: Concrete Lining of Emergency Storage Basin

Geographic Area of Interest: City of Vacaville, Easterly Wastewater Treatment Plant

Name and Contact Information for Responsible Entity:

Royce W. Cunningham, P.E.
Director of Utilities
City of Vacaville
650 Merchant Street
Vacaville, CA 95688
Tel: 707.469.6412; Fax: 707.469.6480
E-mail: royce.cunningham@cityofvacaville.com

Estimated Cost of Project: The total direct cost for construction to install a concrete liner on the existing unlined Emergency Storage Basin is estimated at \$1.0 million, which includes contract construction management services. Other costs, such as design, City staff labor for inspection, project tracking activities, and coordinating work with construction contractors, i.e. traffic control on-site, plant diversions and shut-downs necessary for construction tie-ins, etc. are not included in the SEP cost estimate.

Project Description: The proposed SEP consists of the concrete lining of the existing unlined Emergency Storage Basin (ESB) at the Easterly Wastewater Treatment Plant (Easterly WWTP, See Figure 1). The ESB has a surface area of 3.5 acres, and a storage capacity of approximately 30.0 acre-feet (See Figure 2). The ESB is used whenever it is suspected the effluent from the Easterly WWTP may not meet NPDES Permit requirements. Effluent is diverted into the ESB by closing a diversion gate on the Easterly WWTP discharge line, either automatically by the SCADA system when telemetry indicates the treatment process may not be treating wastewater to required standards, or manually when system conditions exist that prompt Operators to divert to protect the receiving waters of Old Alamo Creek. Once it has been confirmed the treatment process is again meeting discharge requirements, diversion is terminated, and diverted effluent in the ESB is returned to the headworks of the Easterly WWTP, and run through the treatment process again.

The project to concrete line the ESB is proposed to be performed as part of Phase 4 of the Easterly Tertiary Treatment Plant Project. Phase 4 of the Tertiary Project is currently in the design phase, and is proposed to begin construction in the fall of 2016, with completion anticipated in fall 2017. The concrete lining of the ESB will likely occur in 2017. The estimated

cost to line the ESB is \$1 million. The initial total estimated cost of the Easterly Tertiary Treatment Plant Project was \$150 million. After the completion of three of the four phases, the Project appears to be approximately \$8 million under the budgeted estimate. Therefore, it is the City's belief the cost to concrete line the ESB can be accommodated within the Project budget.

The scope of the proposed concrete lining project will consist of the removal of vegetation and excavation of poorer soils from the ESB using earthmoving equipment. Clean earth fill material will be placed in the excavated areas and compacted. Aggregate base rock and reinforcing steel will be installed in preparation for installation of the concrete liner. The concrete liner will be approximately 8-inches thick.

Water Body, Beneficial Use, or Pollutant Addressed by the Project: The concrete lining of the ESB will protect groundwater downgradient of the Easterly WWTP, by preventing any constituents in diverted effluent from infiltrating into the groundwater table. Groundwater is used by farmers in the vicinity of the Easterly WWTP for irrigation of crops, primarily alfalfa. The proposed SEP therefore directly benefits the protection of the beneficial uses of groundwater. The City of Vacaville's 2014 NPDES Permit for the Easterly WWTP includes additional groundwater monitoring requirements. These monitoring requirements will allow for direct measurement of the effectiveness of the proposed SEP in protecting groundwater.

Project Tasks, Budget, and Deliverables:

1. Project Design. The City is currently in design for Phase 4 - Closeout, of the Easterly Tertiary Treatment Project. Phase 1 - Denitrification, and Phase 3 - Filtration, of the Tertiary Project are complete. Phase 2 - Laboratory is over 90% complete, with completion anticipated in May 2016. Phase 4 - Closeout consists of demolition of the former North Plant (the circa 1980s predecessor to the 2007 South Plant), pavement repair and sealing of the sludge drying beds, construction of an equipment storage facility, and the addition of the proposed SEP. The total estimated cost for the Phase 4 – Closeout Project is \$12 million. Plans and specifications will be prepared to include the SEP as part of the Phase 4 construction contract.

Estimated Cost: The estimated cost for design is not part of this SEP.

Deliverable: The deliverable product of this task will be proof that the project design has been completed, in the form of a copy of advertisement of the project in a construction bidding journal or other publication, or a link to the project advertisement.

Due Date: **01 August 2016**

2. Competitively Bid and Award Construction Contract, Begin Project.

Estimated Cost: The cost of this task is not part of this SEP.

Deliverables: Provide evidence the construction contract has been awarded (City Council Resolution awarding the Project).

Due Date: **01 November 2016**

3. Implement Project. The construction contractor will develop a schedule for completion of the full Phase 4 - Closeout Project. The timing of the construction of the concrete liner in the Emergency Storage Basin will be set by the contractor. The overall schedule for the Phase 4 Project is estimated at 24 months.
Estimated Cost: The estimated cost to construct the SEP is \$1,000,000.
Deliverable: Provide evidence that the construction project has been completed (City Council Resolution accepting the Project as complete).
Due Date: 01 November 2018

4. Periodic Reporting. The City will submit quarterly reports on the progress of the SEP. Each Quarterly Progress Report will be submitted by the first day of the month following the month after the end of the quarter, i.e. by May 1st for the January 1st through March 31st quarter.
Estimated Cost: The cost of this task is not part of this SEP.
Deliverables: Provide quarterly reports summarizing work completed on the SEP within the quarter and costs incurred.
Due Date(s): 01 August 2016, 01 November 2016, 01 February 2017, 01 May 2017, etc.

5. Final Project Report. The final project report is to include a summary of the work completed on the Project and all funds expended on the Project. The report will include copies of contractor invoices, and documentation showing that the invoices were paid by the City. The accounting will clearly show whether the final cost of the SEP portion of the Phase 4 - Closeout Project is less than, equal to, or more than the suspended liability amount. The following statement must be included above the signature line of the report: "I certify under penalty of perjury that the foregoing is true and correct."
Estimated Cost: The cost of this task is not part of this SEP.
Deliverables: Provide the Final Report to RWQCB staff.
Due Date: 01 November 2018