

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2017-0551

MANDATORY PENALTY  
IN THE MATTER OF

CITY OF MODESTO  
WATER QUALITY CONTROL FACILITY  
STANISLAUS COUNTY

This Complaint is issued to the City of Modesto (hereafter Discharger) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability, Water Code section 13323, which authorizes the Executive Officer to issue this Complaint and Water Code 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 allegations that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Orders R5-2012-0031 (NPDES CA0079103).

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

1. The Discharger owns and operates the City of Modesto Water Quality Control Facility (Facility), which provides sewerage service to the community of Modesto in Stanislaus County. Treated domestic, commercial and industrial wastewater is discharged to the San Joaquin River, a water of the United States.
2. On 7 June 2012, effective 27 July 2012, the Board issued WDRs Order R5-2012-0031, which contained new requirements and rescinded WDRs Order R5-2008-0059-01, except for enforcement purposes. On 7 June 2012, the Board also issued Time Schedule Order (TSO) R5-2012-0032, which provided a time schedule to comply with the effluent limitations for aluminum, iron, and copper.
3. On 9 June 2017, effective 1 August 2017, the Board issued WDRs Order R5-2017-0064, which contained new requirements and rescinded WDRs Order R5-2012-0031, except for enforcement purposes. WDRs Order R5-2017-0064 contains new requirements for tertiary treated effluent discharge to the San Joaquin River.
4. On 10 September 2013, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2013-0563 for mandatory minimum penalties (MMPs) for effluent violations from 1 December 2007 through 31 March 2013. The Discharger paid the civil liability and the Board considers those effluent violations specifically listed in Attachment A to ACLC R5-2013-0563 to be resolved.
5. This Complaint addresses administrative civil liability for effluent violations that occurred between 1 April 2013 and 30 June 2017. These violations are specifically identified as subject to MMPs in Attachment A to this Complaint, which is attached hereto and incorporated herein by reference.
6. On 7 August 2017, Central Valley Water Board staff issued the Discharger a draft Record of Violations (ROV) for the period 1 April 2013 through 30 June 2017. On 24 August 2017, the Discharger responded to the ROV and stated that the discharge of undisinfected secondary wastewater to the San Joaquin River occurred due to heavy rain events that occurred over the course of several days, and the collapse of a major sewer trunk line in the wake of the rising river

levels and equipment failure. In addition, the Discharger stated that it did not have the ability to chlorinate the effluent due to the construction of the North Valley Regional Recycle Water Program Project and made the executive decision to discharge the undisinfected secondary wastewater to the San Joaquin River to protect the Facility.

Board staff appreciate the Discharger's response to the unforeseen circumstances; however, Board staff expects the Discharger to fully comply with the prescribed final effluent limitation in the WDRs. As required by section 13385 of the California Water Code, the Central Valley Water Board must assess mandatory minimum penalties (MMPs) for violations of the effluent limitations contained in the WDRs.

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. WDRs Order R5-2012-0031 Effluent Limitations IV.A.1.e, includes, in part, the following effluent limitations:
  - e. **Total Coliform Organisms.** Effluent total coliform organisms shall not exceed:
    - i. 23 most probable number (MPN) per 100 mL, as 7-day median; and
    - ii. 240 MPN/100 mL, more than once in any 30-day period
10. WDRs Order R5-2012-0031 Effluent Limitations IV.A.2.d, includes, in part, the following effluent limitations:
  - d. **Total Coliform Organisms.** Effluent total coliform organisms shall not exceed:
    - i. 2.2 most probable number (MPN) per 100 mL, as 7-day median; and
    - ii. 23 MPN/100 mL, more than once in any 30-day period
    - ii. 240 MPN/100 mL, at any time
11. According to the Discharger's self-monitoring reports, the Discharger committed fifty-nine (59) non-serious violations of the above effluent limitations contained in Order R5-2012-0031, as shown in Attachment A. Fifty-five (55) of these non serious violations are subject to mandatory penalties under CWC section 13385 subdivision (i)(1) because these violations were preceded by three or more similar violations within 180-day period. The mandatory minimum penalty for these non-serious violations is **one hundred sixty five thousand dollars (\$165,000)**.
12. The total amount of the mandatory penalties assessed for the alleged effluent violations is **one hundred sixty five thousand dollars (\$165,000)**. 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 as subject to mandatory minimum penalties in Attachment A.
13. On 21 December 2015, the Executive Officer designated Andrew Altevogt, Assistant Executive Officer, as the Lead Prosecution Officer for all enforcement matters originating in the Central Valley Region. The 21 December 2015 Delegation of Authority also authorizes Andrew Altevogt to issue Administrative Civil Liability Complaints.
14. 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 MODESTO IS HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **one hundred sixty five thousand dollars (\$165,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **7/8 December 2017**, unless one of the following occurs by **5 October 2017**:
  - 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. In addition, submits payment for the

proposed civil liability of **one hundred sixty five thousand dollars (\$165,000)** to the State Water Board with a copy of the check to the Central Valley Water Board; or

- b) Requests to engage in settlement discussions by checking the box next to Option 2 on the attached form, and returning it to the Board along with a letter describing the issues to be discussed. The Central Valley Water Board must agree to the postponement; or
  - c) Requests to delay the hearing by checking off the box next to Option 3 on the attached form, and returning it to the Board along with a letter describing the proposed length of delay and the issues to be discussed. The Central Valley Water Board must agree to the postponement.
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 Assistant 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.

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ANDREW ALTEVOGT, Assistant Executive Officer

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11 September 2017

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 Modesto (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2017-0551 (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 **one hundred sixty five thousand dollars (\$165,000)** by check that references "ACL Complaint R5-2017-0551" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the State Water Resources Control Board, Accounting Office, Attn: ACL Payment at PO Box 1888, Sacramento, California, 95812-1888 by **5 October 2017**. The waiver and a copy of the check must be submitted to the Central Valley Water Board, Attn: Howard Hold at 11020 Sun Center Drive #200, Rancho Cordova, California, 95670 by **5 October 2017**.
- 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 Assistant 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.

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(Print Name and Title)

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(Signature)

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(Date)

**ATTACHMENT A TO ACLC R5-2017-0551**

**City of Modesto  
Water Quality Control Facility**

RECORD OF VIOLATIONS (1 April 2013 – 30 June 2017) MANDATORY PENALTIES  
(Data reported under Monitoring and Reporting Program R5-2012-0031)

*Violations Under WDRs R5-2012-0031*

	<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	28-Feb-15	Electrical Conductivity	µmhos/cm	1341	1350	Monthly Average	3	993954
2	26-Feb-17	pH	S.U	6.5	4.0	Inst. Minimum	3	1023733
3	2-Mar-17	Total Coliform	MPN/100 mL	23	170	7-Day Median	3	1029208
4	3-Mar-17	Total Coliform	MPN/100 mL	23	195	7-Day Median	3	1029209
5	4-Mar-17	Total Coliform	MPN/100 mL	23	170	7-Day Median	4	1029210
6	5-Mar-17	Total Coliform	MPN/100 mL	23	140	7-Day Median	4	1029211
7	6-Mar-17	Total Coliform	MPN/100 mL	23	170	7-Day Median	4	1029212
8	7-Mar-17	Total Coliform	MPN/100 mL	240	1100	> once in 30-day Period <sup>1</sup>	4	1029225
9	7-Mar-17	Total Coliform	MPN/100 mL	23	195	7-Day Median	4	1029213
10	8-Mar-17	Total Coliform	MPN/100 mL	240	540	> once in 30-day Period	4	1029226
11	8-Mar-17	Total Coliform	MPN/100 mL	23	220	7-Day Median	4	1029214
12	9-Mar-17	Total Coliform	MPN/100 mL	240	5400	> once in 30-day Period	4	1029227
13	9-Mar-17	Total Coliform	MPN/100 mL	23	540	7-Day Median	4	1029215
14	10-Mar-17	Total Coliform	MPN/100 mL	23	540	7-Day Median	4	1029216
15	11-Mar-17	Total Coliform	MPN/100 mL	240	1300	> once in 30-day Period	4	1029228
16	11-Mar-17	Total Coliform	MPN/100 mL	23	920	7-Day Median	4	1029217
17	12-Mar-17	Total Coliform	MPN/100 mL	240	790	> once in 30-day Period	4	1029229
18	12-Mar-17	Total Coliform	MPN/100 mL	23	920	7-Day Median	4	1029218
19	13-Mar-17	Total Coliform	MPN/100 mL	240	5400	> once in 30-day Period	4	1029230
20	13-Mar-17	Total Coliform	MPN/100 mL	23	1100	7-Day Median	4	1029219
21	14-Mar-17	Total Coliform	MPN/100 mL	240	3500	> once in 30-day Period	4	1029231
22	14-Mar-17	Total Coliform	MPN/100 mL	23	1300	7-Day Median	4	1029220
23	15-Mar-17	Total Coliform	MPN/100 mL	23	1300	7-Day Median	4	1029221
24	16-Mar-17	Total Coliform	MPN/100 mL	240	1400	> once in 30-day Period	4	1029232
25	16-Mar-17	Total Coliform	MPN/100 mL	23	1300	7-Day Median	4	1029222
26	17-Mar-17	Total Coliform	MPN/100 mL	240	460	> once in 30-day Period	4	1029233
27	17-Mar-17	Total Coliform	MPN/100 mL	23	1300	7-Day Median	4	1029223
28	18-Mar-17	Total Coliform	MPN/100 mL	23	920	7-Day Median	4	1029224
29	18-Mar-17	Total Coliform	MPN/100 mL	240	920	> once in 30-day Period	4	1029234
30	19-Mar-17	Total Coliform	MPN/100 mL	240	1700	> once in 30-day Period	4	1029249

**ATTACHMENT A TO ACLC R5-2017-0551**

*Violations Under WDRs R5-2012-0031*

	<u>Date</u>	<u>Parameter</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
31	19-Mar-17	Total Coliform	MPN/100 mL	23	1400	7-Day Median	4	1029235
32	20-Mar-17	Total Coliform	MPN/100 mL	240	1400	> once in 30-day Period	4	1029250
33	20-Mar-17	Total Coliform	MPN/100 mL	23	1400	7-Day Median	4	1029236
34	21-Mar-17	Total Coliform	MPN/100 mL	23	1300	7-Day Median	4	1029237
35	21-Mar-17	Total Coliform	MPN/100 mL	240	1300	> once in 30-day Period	4	1029251
36	22-Mar-17	Total Coliform	MPN/100 mL	240	920	> once in 30-day Period	4	1029252
37	22-Mar-17	Total Coliform	MPN/100 mL	23	1300	7-Day Median	4	1029238
38	23-Mar-17	Total Coliform	MPN/100 mL	240	2400	> once in 30-day Period	4	1029253
39	23-Mar-17	Total Coliform	MPN/100 mL	23	1300	7-Day Median	4	1029239
40	24-Mar-17	Total Coliform	MPN/100 mL	240	3500	> once in 30-day Period	4	1029254
41	24-Mar-17	Total Coliform	MPN/100 mL	23	1400	7-Day Median	4	1029240
42	25-Mar-17	Total Coliform	MPN/100 mL	240	790	> once in 30-day Period	4	1029255
43	25-Mar-17	Total Coliform	MPN/100 mL	23	1400	7-Day Median	4	1029241
44	26-Mar-17	Total Coliform	MPN/100 mL	240	1100	> once in 30-day Period	4	1029256
45	26-Mar-17	Total Coliform	MPN/100 mL	23	1300	7-Day Median	4	1029242
46	27-Mar-17	Total Coliform	MPN/100 mL	240	1700	> once in 30-day Period	4	1029257
47	27-Mar-17	Total Coliform	MPN/100 mL	23	1300	7-Day Median	4	1029243
48	28-Mar-17	Total Coliform	MPN/100 mL	240	3500	> once in 30-day Period	4	1029258
49	28-Mar-17	Total Coliform	MPN/100 mL	23	1700	7-Day Median	4	1029244
50	29-Mar-17	Total Coliform	MPN/100 mL	240	9200	> once in 30-day Period	4	1029259
51	29-Mar-17	Total Coliform	MPN/100 mL	23	2400	7-Day Median	4	1029245
52	30-Mar-17	Total Coliform	MPN/100 mL	240	3500	> once in 30-day Period	4	1029260
53	30-Mar-17	Total Coliform	MPN/100 mL	23	3500	7-Day Median	4	1029246
54	31-Mar-17	Total Coliform	MPN/100 mL	240	920	> once in 30-day Period	4	1029261
55	31-Mar-17	Total Coliform	MPN/100 mL	23	1700	7-Day Median	4	1029247
56	8-Apr-17	Total Coliform *	MPN/100 mL	23	33 <sup>2</sup>	> once in 30-day Period	4	1029262
57	20-May-17	Total Coliform *	MPN/100 mL	23	79 <sup>3</sup>	> once in 30-day Period	4	1029263
58	25 May-17	Total Coliform *	MPN/100 mL	23	79	> once in 30-day Period	4	1029264
59	1-Jun-17	Total Coliform †	MPN/100 mL	2.2	6.8	7-Day Median	4	1029248

## ATTACHMENT A TO ACLC R5-2017-0551

### 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.

<b><u>VIOLATIONS AS OF:</u></b>	<b><u>6/30/2017</u></b>
Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Violations Not Subject to MMPs:	4
<u>Non-serious Violations Subject to MMPs:</u>	<u>55</u>
<b>Total Violations Subject to MMPs:</b>	<b>55</b>

**Mandatory Minimum Penalty = (55 Non-Serious Violations Subject to MMPs) x \$3,000 = \$165,000**

1. First excursion occurred on 6 March 2017 with a reported value of 920 MPN/100 mL.
  2. First excursion occurred on 3 April 2017 with a reported value of 33 MPN/100 mL.
  3. First excursion occurred on 12 May 2017 with a reported value of 170 MPN/100 mL.
- \* Samples for total coliform were analyzed immediately following disinfection at monitoring location UVS-002A.  
† Samples for total coliform were analyzed immediately following disinfection at monitoring location UVS-001A.