

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2017-0547

MANDATORY PENALTY
IN THE MATTER OF

CITY OF DAVIS
WASTEWATER TREATMENT PLANT
YOLO COUNTY

This Complaint is issued to the City of Davis (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) Order R5-2013-0127-01 (NPDES No. CA0079049).

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 a municipal wastewater collection, treatment, and disposal system, and provides sewerage service within the City of Davis (Discharger). Treated municipal wastewater is discharged to either the Willow Slough Bypass or the Conaway Ranch Toe Drain, both waters of the United States, and tributary to the Yolo Bypass.
2. In order to regulate discharges from the wastewater treatment plant, on 4 October 2013, the Central Valley Water Board adopted Waste Discharge Requirements (WDRs) Order R5-2013-0127. On 9 October 2014, the Board amended WDRs by adopting WDRs Order R5-2013-0127-01, which allows for participation in the Delta Regional Monitoring Program.
3. On 4 October 2013, the Board adopted Time Schedule Order (TSO) R5-2013-0128, which includes interim effluent limitations for copper and aluminum when discharging to Willow Slough Bypass and interim effluent limitations for aluminum when discharging to Conaway Ranch Toe Drain. TSO R5-2013-0128 also provides a time schedule to comply with final effluent limitations for copper and aluminum by 25 October 2017. On 5 December 2014, the Board adopted TSO R5-2014-0159, which includes interim effluent limitations for selenium and cyanide when discharging to Willow Slough Bypass and interim effluent limitations for copper and selenium when discharging to Conaway Ranch Toe Drain. TSO R5-2014-0159 also provides a time schedule to comply with final effluent limitations for selenium and copper by 25 October 2017, and cyanide by 25 October 2019. This Complaint considers the exemption from mandatory minimum penalties (MMPs) provided by the TSOs.
4. On 7 September 2016, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2016-0555 for mandatory minimum penalties for effluent violations occurring between 1 January 2016 and 30 June 2016. The Discharger paid the civil liability and the Board considers those effluent violations specifically listed in Attachment A to ACLC R5-2016-0555 to be resolved.
5. This Complaint addresses administrative civil liability for effluent violations that occurred between 1 July 2016 and 30 June 2017. These violations are specifically identified in Attachment A to this

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

6. On 1 August 2017, Central Valley Water Board staff issued the Discharger a draft Record of Violations for the period 1 July 2016 through 31 May 2017. The Discharger responded on 29 August 2017 and agreed with the violations. Board staff has extended the period through 30 June 2017; other than those cited in the ROV, no additional violations were found.
7. Water Code section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

Water Code section 13385(h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

Water Code section 13385 (h)(2) states:

For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

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

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- (A) Violates a waste discharge requirement effluent limitation.
- (B) Fails to file a report pursuant to Section 13260.
- (C) Files an incomplete report pursuant to Section 13260.
- (D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

8. Water Code section 13323 states, in part:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

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

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

- 3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or 13308 if all of the following requirements are met:
 - C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible....For the purposes of this subdivision, the time schedule may not exceed five years in length The interim requirements shall include both of the following:
 - i) Effluent limitations for the pollutant or pollutants of concern.
 - ii) Actions and milestones leading to compliance with the effluent limitation.
10. WDRs Order R5-2013-0127-01, Effluent Limitations IV.A.1.d, Discharge Point No. 001 (Willow Slough Bypass) include, in part, the following effluent limitations:
 - d. **Total Residual Chlorine**¹. Effluent total residual chlorine shall not exceed:
 - i. 0.011 mg/L, as a 4-day average; and
 - ii. 0.019 mg/L, as a 1-hour average.
11. According to the Discharger's self-monitoring reports, the Discharger committed seven (7) serious Group II violations and two (2) serious Group II violations exempt from MMPs of the above effluent limitations contained in WDRs Order R5-2013-0127-01 as shown in Attachment A. Two (2) serious Group II violations are not subject to MMPs per SB 709 and SB 2165 as shown in Attachment A. The other seven (7) violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2013-0127-01 by 20 percent or more. The mandatory minimum penalty for the serious violations is **twenty-one thousand dollars (\$21,000)**.
12. The total amount of the mandatory penalties assessed for the alleged effluent violations is **twenty-one thousand dollars (\$21,000)**. As stated herein, a detailed list of the alleged effluent violations is included in Attachment A. This Complaint addresses administrative civil liability for violations that are specifically identified in Attachment A as subject to mandatory minimum penalties.
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 DAVIS 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 **twenty-one thousand dollars (\$21,000)**.

¹ Compliance to be determined at Monitoring Location EFF-A, as described in the Monitoring and Reporting Program.

2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **7/8 December 2017**, unless the Discharger does one of the following 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 **twenty-one thousand dollars (\$21,000)** 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 Central Valley Water 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 Central Valley Water 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.

Original signed by

ANDREW ALTEVOGT, Assistant Executive Officer

9/11/2017

DATE

**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 Davis (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2017-0547 (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 **twenty-one thousand dollars (\$21,000)** by check that references "ACL Complaint R5-2017-0547" 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 Howard Hold, Central Valley Water Board 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.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A TO ACLC R5-2017-0547

City of Davis Wastewater Treatment Plant

RECORD OF VIOLATIONS (1 July 2016 – 30 June 2017) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2013-0127-01)

	<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	19-Jan-17	Chlorine, total residual	mg/L	0.019	5.0	1-Hour Average	2	1028229
2	19-Jan-17	Chlorine, total residual	mg/L	0.019	0.25	1-Hour Average	5	1028228
3	19-Jan-17	Chlorine, total residual	mg/L	0.019	4.4	1-Hour Average	5	1028227
4	19-Jan-17	Chlorine, total residual	mg/L	0.011	0.10	4-Day Average	2	1028230
5	20-Jan-17	Chlorine, total residual	mg/L	0.019	0.021	1-Hour Average	2	1028231
6	20-Jan-17	Chlorine, total residual	mg/L	0.011	0.10	4-Day Average	2	1028377
7	21-Jan-17	Chlorine, total residual	mg/L	0.011	0.10	4-Day Average	2	1028378
8	22-Jan-17	Chlorine, total residual	mg/L	0.019	0.36	1-Hour Average	2	1028226
9	22-Jan-17	Chlorine, total residual	mg/L	0.011	0.10	4-Day Average	2	1028379

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.
5. Not subject to a mandatory minimum penalty per SB 709 and SB 2165 Questions and Answers.

<u>VIOLATIONS AS OF:</u>	<u>6/30/17</u>
Group I Serious Violations:	0
Group II Serious Violations:	7
Group II Serious Violations Exempt from MMPs:	2
Non-Serious Violations Not Subject to MMPs:	0
<u>Non-Serious Violations Subject to MMPs:</u>	<u>0</u>
Total Violations Subject to MMPs:	7

Mandatory Minimum Penalty = (7 Group II Serious Violations) x \$3,000 = \$21,000