

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION**

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R7-2011-0012
IN THE MATTER OF
NILAND SANITARY DISTRICT, OWNER/OPERATOR
MUNICIPAL WASTEWATER TREATMENT PLANT
Niland - Imperial County

The California Regional Water Quality Control Board, Colorado River Basin Region (hereinafter Regional Water Board), having held a public hearing in La Quinta, California on January 20, 2011, to hear evidence and comments on the allegations contained in Amended Administrative Civil Liability Complaint No. R7-2010-0044, dated September 9, 2010 (Complaint), having provided public notice thereof and not less than thirty (30) days for public comment, and on the recommendation for administrative assessment of mandatory minimum penalties and discretionary civil liability in the amount of \$73,828, finds as follows:

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system located at 125 West Alcott Street, Niland, CA 92257 and provides sewerage service to the City of Niland, a small community with a financial hardship as defined by California Water Code (CWC) Section 13385(k)(2). The wastewater treatment plant (WWTP) has a treatment capacity of 0.50 million gallons-per-day (MGD). Effluent from the WWTP system is discharged to Imperial Irrigation District's "R" Drain and ultimately to the Salton Sea. Imperial Irrigation District's "R" Drain and the Salton Sea are waters of the United States.
2. On June 25, 2003, the Regional Board adopted WDRs Order No. R7-2003-0049 (NPDES Permit No. CA0104451) for the Discharger to regulate discharges of treated wastewater from the WWTP.
3. WDRs Order No. R7-2003-0049 includes the following effluent discharge limitations:
 - a. Effluent Limitation A.2 (page 6): "The 30-day average percent removal of pollutant parameter BOD₅ and suspended solids shall not be less than 65 percent."
 - b. Effluent Limitation A.4 (page 6): "Wastewater effluent discharged to 'R' Drain shall not have an Escherichia coli (E. coli) concentration in excess of a log mean of Most Probable Number (MPN) of 126 MPN per 100 milliliters nor shall any sample exceed 400 MPN per 100 milliliters."
 - c. Effluent Limitation A.8 (pages 8-9): "Wastewater discharged to 'R' Drain shall not exceed these [the following] effluent limits. These limits are calculated based on monitoring results and using the California Toxic Rule and the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays and Estuaries of California for water quality based effluent limit:"

Constituents	Unit	Date Effluent Limit Becomes Effective	Effluent Limitations	
			Average Monthly Effluent Limit	Maximum Daily Effluent Limit
Copper (interim)	µg/L	July 5, 2003	29.0	29.0
Copper (final)	µg/L	June 25, 2008	2.39	4.80

4. WDRs Order No. R7-2003-0049 includes the following provisions:
 - a. Provision E.5 (page 12): “The discharger shall comply with Monitoring and Reporting Program No. R7-2003-0049 and future revisions thereto, as specified by the Regional Board's Executive Officer.”
 - b. Provision E.10 (page 12):“Unless otherwise approved by the Regional Board’s Executive Officer, all analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services [now known as the California Department of Public Health, Environmental Laboratory Accreditation Program]. All analyses shall be conducted in accordance with the latest edition of ‘Guidelines Establishing Test Procedures for Analysis of Pollutants’, as promulgated by the United States Environmental Protection Agency.”
5. On November 19, 2008, the Regional Board adopted WDRs Order No. R7-2008-0020 (NPDES Permit No. CA0104451) for the Discharger to regulate discharges of treated wastewater from its WWTP. WDRs Order No. R7-2008-0020 rescinded WDRs Order No. R7-2003-0049, except for enforcement purposes.
6. WDRs Order No. R7-2008-0020 includes the following effluent discharge limitations:
 - a. Effluent Limitation A.1.a (page 13): “The Discharger shall maintain compliance with the following effluent limitations at Discharge Point 001, with compliance measured at Monitoring Location EFF-001 as described in the ... Monitoring and Reporting Program (MRP):”

Constituents	Unit	Effluent Limitations	
		Average Monthly Effluent Limit	Maximum Daily Effluent Limit
Copper, Total Recoverable	µg/L	19	52
	lbs/day ¹	0.026	0.052

¹ The mass-based effluent limitations are based on a design capacity of 0.50 MGD.

- b. Effluent Limitation A.1.d.i (page 14): “E. Coli. The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a Most Probable Number (MPN) of 126, nor shall any sample exceed the maximum allowable bacterial density of 400.”
7. WDRs Order No. R7-2008-0020 (page 18, Provision B) states, “[t]he Discharger shall comply with the [Monitoring and Reporting Program], and future revisions thereto”
8. WDRs Order No. R7-2008-0020 Monitoring and Reporting Program (Attachment E, page E-2, General Monitoring Provision C) states:

“Unless otherwise approved by the Regional Water Board’s Executive Officer, all analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services. Laboratories analyzing monitoring samples shall be certified by the Department of Health Services, in accordance with the provision of Water Code section 13176, and must include quality assurance/quality control data with their reports. All analyses shall be conducted in accordance with the latest edition of “Guidelines Establishing Test Procedures for Analysis of Pollutants”, promulgated by the USEPA.”

9. Both WDRs Order No. R7-2003-0049 (page 12, Provision E.3) and WDRs Order No. R7-2008-0020 (page 16, Provision A.2) warn:

“The Discharger shall comply with all conditions of this Order. Noncompliance constitutes a violation of the Federal Clean Water Act and Porter-Cologne Water Quality Control Act, and is grounds for enforcement action”

10. The Discharger exceeded effluent limitations for BOD₅ and Copper in violation of WDRs Order Nos. R7-2003-0049 and R7-2008-0020, as identified in Exhibit “A” attached hereto and incorporated herein by this reference.
11. The Discharger used an uncertified laboratory to perform E. coli analyses in violation of WDRs Order No. R7-2003-0049, Provision E.10 on twenty-four (24) occasions and in violation of WDRs Order No. R7-2008-0020 Provision B and Monitoring and Reporting Requirements, General Monitoring Provision C, on eleven (11) occasions as identified in Exhibit “B” attached hereto and incorporated herein by this reference.
12. Because the Discharger submitted effluent monitoring data for E. coli from a laboratory that did not possess certification for analysis of E. coli, the Regional Board is unable to determine whether the Discharger is in compliance with the E. coli effluent limitations of WDRs Order No. R7-2003-0049 and WDRs Order R7-2008-0020.
13. On February 13, 2009, the Assistant Executive Officer issued Time Schedule Order (TSO) No. R7-2009-0033, requiring the Discharger to correct the violations of WDRs Order No. R7-2008-0020 associated with its failure to use a certified laboratory to analyze E. coli data.
14. More specifically, TSO No. R7-2009-0033 required the Discharger to comply with the following:
- a. The Discharger must be in full compliance with WDR Order No. R7-2008-0020, Monitoring and Reporting Program by July 1, 2009.
 - b. By March 14, 2009, the Discharger shall submit a technical report specifying the steps it will take to ensure that bacteria data is collected and analyzed as specified in Order No. R7-2008-0020.
15. CWC Section 13385(c) states:

“Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

“(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.”

“(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.”

16. CWC Section 13385(e) requires the Regional Water Board, in determining the amount of liability to impose pursuant to 13385(c), to consider the nature, circumstances, extent and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts taken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.
17. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in CWC section 13385(e).
18. CWC Section 13385(h)(1) requires the Regional Board to assess a mandatory minimum penalty (MMP) of three thousand dollars (\$3,000) for each serious violation.
19. CWC Section 13385(h)(2) states, in part, the following: "For the purpose of this section, a 'serious violation' means any waste discharge that violates the effluent limitations ...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."
20. CWC Section 13385(i)(1) requires the Regional Water Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if a discharger does any of the following four or more times in a six-month period:
 - 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; or
 - 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.

CWC Section 13385(i)(2) defines a 'period of six consecutive months' as the period commencing on the date that one of the violations described in CWC Section 13385(i) occurs and ending 180 days after that date."

21. Pursuant to CWC Section 13385(h) and (i), the Regional Board is required to assess a mandatory minimum penalty in the amount of fifty-seven thousand dollars (\$57,000) for violations of WDRs Order No. R7-2003-0049 and WDRs Order No. R7-2008-0020 incurred by exceeding effluent limitations for BOD₅ and copper as identified in Exhibit "A".
22. On September 9, 2010, the Assistant Executive Officer issued Amended Administrative Civil Liability Complaint No. R7-2010-0044 to the Discharger, recommending the imposition of administrative civil liability pursuant to CWC Section 13385 in the amount of \$73,828. That amount includes a mandatory minimum penalty of \$57,000 for violations of effluent

limitations set forth WDRs Order Nos. R7-2003-0049 and R7-2008-0020 identified in Exhibit "A", \$10,828 in discretionary civil liability for violations of WDRs Order Nos. R7-2003-0049 and R7-2008-0020 incurred by using an uncertified laboratory for E. coli analysis identified in Exhibit "B", and staff costs of \$6,000 (40 hours x \$150 per hour) incurred by the Regional Water Board to prosecute the enforcement action, including investigation, preparation of enforcement documents, communications with the Discharger, and preparation of materials for public review and hearing. The amount of discretionary administrative civil liability proposed is based upon a review of the factors cited in CWC Section 13385(e) and the State Water Resources Control Board's Water Quality Enforcement Policy.

23. Issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) pursuant to section 45321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This action is also exempt from the provisions of CEQA in accordance with section 15061(b)(3) of Chapter 3, Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

IT IS HEREBY ORDERED, pursuant to CWC Section 13385, that:

1. Civil liability is imposed on the Discharger in the amount of \$73,828. That amount includes a mandatory minimum penalty of \$57,000 for violations of WDRs Order Nos. R7-2003-0049 and R7-2008-0020 identified in Exhibit "A", \$10,828 in discretionary civil liability for violations of WDRs Order Nos. R7-2003-0049 and R7-2008-0020 incurred by using an uncertified laboratory for E. coli analysis identified in Exhibit "B", and staff costs of \$6,000 (40 hours x \$150 per hour) incurred by the Regional Water Board to prosecute the enforcement action, including investigation, preparation of enforcement documents, communications with the Discharger, and preparation of materials for public review and hearing. Exhibit "C" to this Order describes the Regional Water Board's consideration and use of the Enforcement Policy penalty methodology in its determination of the appropriate discretionary liability in this matter.
2. The Discharger shall submit a check to the Regional Water Board for \$73,828 payable to the "State Water Pollution Cleanup and Abatement Account" within 30 days of the adoption of this Order.
3. Fulfillment of the Discharger's obligations under this Order constitutes full and final satisfaction of any and all liability for each violation alleged in Amended Administrative Civil Liability Complaint No. R7-2010-0044, identified in Exhibits "A" and "B" attached hereto.
4. If the Discharger fails to make the specified payment to the State Water Pollution Cleanup and Abatement Account within the time limits specified in this Order, the Regional Water Board or its Executive Officer may enforce this Order, including referring the matter to the Attorney General for collection.

I, Robert Perdue, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order adopted by the California Regional Water Quality Control Board, Colorado River Basin Region, on January 20, 2011.

ROBERT PERDUE, Executive Officer

EXHIBIT "A"

Summary of Violations of WDRs Order Nos. R7-2003-0049 and R7-2008-0020 Subject to Mandatory Minimum Penalties				
Assessed Violation¹ No.	Description of Violation	Date Occurred	Serious Violation Defined by CWC 13385(h)	Amount Assessed Dollars (\$)
369401	Exceeded 30-day geometric mean limit of 126 MPN/100mL for E. coli Reported value = 170 MPN/100mL	3/31/2006	No	Assessed in ACLO-R7-2006-0074
423190	Exceeded Daily Maximum Effluent Limit of 29 µg/L for Copper Reported value = 35 µg/L	5/1/2006	Yes	3,000
423192	Exceeded Average Monthly Effluent Limit of 29 µg/L for Copper Reported value = 35 µg/L	5/31/2006	Yes	3,000
493724	Did not meet 30-Day average percent removal for BOD ₅ . Minimum removal value = 65% Reported value = 58%	7/31/2006	No	3,000
651531	Did not meet 30-Day average percent removal for BOD ₅ . Minimum removal value = 65% Reported value = 59%	6/30/2007	No	0 ²
657737	Did not meet 30-Day average percent removal for BOD ₅ . Minimum removal value = 65% Reported value = 61.5%	7/31/2007	No	0 ²
771664	Exceeded Daily Maximum Effluent Limit of 29 µg/L for Copper Reported value = 32 µg/L	8/6/2007	No	0 ²
760286	Exceeded Average Monthly Effluent Limit of 29 µg/L for Copper Reported value = 32 µg/L	8/31/2007	No	3,000
749259	Exceeded Daily Maximum Effluent Limit of 29 µg/L for Copper Reported value = 36 µg/L	12/10/2007	Yes	3,000
749260	Exceeded Average Monthly Effluent Limit of 29 µg/L for Copper Reported value = 36 µg/L	12/31/2007	Yes	3,000
759657	Exceeded Daily Maximum Effluent Limit of 29 µg/L for Copper Reported value = 49 µg/L	3/3/2008	Yes	3,000
759682	Exceeded Average Monthly Effluent Limit of 29 µg/L for Copper Reported value = 49 µg/L	3/31/2008	Yes	3,000
766281	Exceeded Daily Maximum Effluent Limit of 29 µg/L for Copper Reported value = 49 µg/L	5/5/2008	Yes	3,000

¹ Data Source: California Integrated Water Quality System (CIWQS)

² This is a supporting violation

**Summary of Violations of WDRs Order Nos. R7-2003-0049 and R7-2008-0020
Subject to Mandatory Minimum Penalties**

Assessed Violation¹ No.	Description of Violation	Date Occurred	Serious Violation Defined by CWC 13385(h)	Amount Assessed Dollars (\$)
766282	Exceeded Average Monthly Effluent Limit of 29 µg/L for Copper Reported value = 49 µg/L	5/31/2008	Yes	3,000
780275	Exceeded Daily Maximum Effluent Limit of 2.39 µg/L for Copper Reported value = 75 µg/L	7/2/2008	Yes	3,000
780276	Exceeded Average Monthly Effluent Limit of 4.80 µg/L for Copper Reported value = 75 µg/L	7/31/2008	Yes	3,000
786339	Exceeded Daily Maximum Effluent Limit of 2.39 µg/L for Copper Reported value = 23 µg/L	08/04/2008	Yes	3,000
786340	Exceeded Average Monthly Effluent Limit of 4.80 µg/L for Copper Reported value = 23 µg/L	08/31/2008	Yes	3,000
790642	Exceeded Daily Maximum Effluent Limit of 2.39 µg/L for Copper Reported value = 60 µg/L	09/02/2008	Yes	3,000
790645	Exceeded Average Monthly Effluent Limit of 4.80 µg/L for Copper Reported value = 60 µg/L	09/30/2008	Yes	3,000
799572	Exceeded Daily Maximum Effluent Limit of 2.39 µg/L for Copper Reported value = 31 µg/L	10/06/2008	Yes	3,000
799573	Exceeded Average Monthly Effluent Limit of 4.80 µg/L for Copper Reported value = 31 µg/L	10/31/2008	Yes	3,000
814598	Exceeded Average Monthly Effluent Limit of 19 µg/L for Copper Reported value = 34 µg/L	12/31/2008	Yes	3,000

Accrued Mandatory Minimum Penalties:

Total

\$57,000

EXHIBIT "B"

**Summary of Violations of WDRs Order Nos. R7-2003-0049 and R7-2008-0020
Subject to Discretionary Penalties**

	Violation Type	Violation Date	Violation Description
1	<i>E. coli</i>	7/1/2008	Used uncertified laboratory
2	<i>E. coli</i>	7/7/2008	Used uncertified laboratory
3	<i>E. coli</i>	7/14/2008	Used uncertified laboratory
4	<i>E. coli</i>	7/21/2008	Used uncertified laboratory
5	<i>E. coli</i>	7/28/2008	Used uncertified laboratory
6	<i>E. coli</i>	8/4/2008	Used uncertified laboratory
7	<i>E. coli</i>	8/5/2008	Used uncertified laboratory
8	<i>E. coli</i>	8/11/2008	Used uncertified laboratory
9	<i>E. coli</i>	8/18/2008	Used uncertified laboratory
10	<i>E. coli</i>	8/25/2008	Used uncertified laboratory
11	<i>E. coli</i>	9/2/2008	Used uncertified laboratory
12	<i>E. coli</i>	9/8/2008	Used uncertified laboratory
13	<i>E. coli</i>	9/15/2008	Used uncertified laboratory
14	<i>E. coli</i>	9/22/2008	Used uncertified laboratory
15	<i>E. coli</i>	9/29/2008	Used uncertified laboratory
16	<i>E. coli</i>	10/6/2008	Used uncertified laboratory
17	<i>E. coli</i>	10/7/2008	Used uncertified laboratory
18	<i>E. coli</i>	10/14/2008	Used uncertified laboratory
19	<i>E. coli</i>	10/20/2008	Used uncertified laboratory
20	<i>E. coli</i>	10/28/2008	Used uncertified laboratory
21	<i>E. coli</i>	11/03/2008	Used uncertified laboratory
22	<i>E. coli</i>	11/04/2008	Used uncertified laboratory
23	<i>E. coli</i>	11/10/2008	Used uncertified laboratory
24	<i>E. coli</i>	11/17/2008	Used uncertified laboratory
25	<i>E. coli</i>	11/24/2008	Used uncertified laboratory
26	<i>E. coli</i>	12/01/2008	Used uncertified laboratory
27	<i>E. coli</i>	12/08/2008	Used uncertified laboratory
28	<i>E. coli</i>	12/15/2008	Used uncertified laboratory
29	<i>E. coli</i>	12/22/2008	Used uncertified laboratory
30	<i>E. coli</i>	12/29/2008	Used uncertified laboratory
31	<i>E. coli</i>	01/05/2009	Used uncertified laboratory
32	<i>E. coli</i>	01/06/2009	Used uncertified laboratory
33	<i>E. coli</i>	01/12/2009	Used uncertified laboratory
34	<i>E. coli</i>	01/20/2009	Used uncertified laboratory
35	<i>E. coli</i>	01/26/2009	Used uncertified laboratory

EXHIBIT "C"			
Penalty Methodology for Discretionary Civil Liability			
Discharger Name/ID:	Niland Sanitary District Municipal WWTP; WDID: 7A 13 0104 011		
		Violation 1: Use of an uncertified laboratory to perform E. coli Analyses	
Discharge Violations	Step 1	Potential Harm Factor	
	Step 2	Per Gallon Factor Gallons Statutory / Adjusted Max per Gallon (\$) Total	
		Per Day Factor Days Statutory Max per Day Total	
			n/a
Non-Discharge Violations	Step 3	Per Day Factor	0.25
		Days	35
		Statutory Max per Day	\$10,000.00
		Total	\$87,500.00
Initial Amount of the ACL			\$87,500.00
Add'l Factors	Step 4	Culpability	0.5
		Cleanup and Cooperation	0.75
		History of Violations	1.1
	Step 5	Total Base Liability Amount	\$36,094.00
	Step 6	Ability to Pay & to Continue in Business	0.3
	Step 7	Other Factors as Justice May Require	1
		Staff Costs	\$6,000.00
	Step 8	Economic Benefit	\$9,642.50
	Step 9	Minimum Liability Amount (Economic Benefit + 10%)	\$10,606.75
		Maximum Liability Amount	\$350,000.00
	Step 10	Final Liability Amount	\$16,828.00