

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

In the matter of:

Carpinteria Sanitary District

WDID: 3 420101001

**AMENDED COMPLAINT NO. R3-
2015-0011
FOR
ADMINISTRATIVE CIVIL LIABILITY**

**Violations of
NPDES Permit No. CA 0047364
and
Order No. R3-2011-0003**

Hearing: May 29, 2015

CARPINTERIA SANITARY DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. Carpinteria Sanitary District (Discharger) has violated provisions of law for which the California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) may impose civil liability pursuant to section 13385 of the California Water Code (CWC).
2. This Administrative Civil Liability Complaint (ACLIC or Complaint) is issued under authority of CWC sections 13323 and 13385. An evidentiary stipulation reached between the parties on April 10, 2015 resulted in the amendment of the ACLIC originally issued on March 2, 2015. The Amended ACLIC, this document, is the operative charging document for the hearing and the date on this document is pursuant to an Advisory Team directive of May 19, 2015.
3. A hearing concerning this Complaint will be held before the Central Coast Water Board within ninety (90) days of the date of issuance of this Complaint, unless, pursuant to CWC §13323, the Discharger waives its right to a hearing. Waiver procedures are specified in the attached Waiver Form. The hearing on this matter is scheduled for the Central Coast Water Board's regular meeting on May 29, 2015.
4. If a hearing is held on this matter, the Central Coast 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. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this ACLIC through hearing.
5. The Discharger owns and operates a wastewater collection, treatment, and disposal system, which provides sewer service for the City of Carpinteria and portions of Santa Barbara County. The treatment system consists of

- pretreatment, screening, grit removal, primary sedimentation, aerated activated sludge tanks, secondary sedimentation, chlorination, and dechlorination. Treated wastewater is discharged from Discharge Point No. 001 (as described in Order No. R3-2011-0003) to the Pacific Ocean, a water of the United States.
6. On April 16, 2010, the Discharger filed its most recent Report of Waste Discharge for National Pollutant Discharge Elimination System (NPDES) permit number CA 0047364.
 7. On February 3, 2011, the Central Coast Water Board adopted Waste Discharge Requirements Order No. R3-2011-0003, NPDES CA-0047364.
 8. On December 27, 2011, the Discharger exceeded three effluent limitations for settleable solids; the daily maximum, the 7-day average and the 30-day average. Settleable solids is a Group 1 pollutant, for which a violation is serious and will lead to a mandatory minimum penalty (MMP) of no less than \$3,000 when the limit is exceeded by 40% or more. The Discharger exceeded each of the three permit effluent limits by 40 percent or more and is therefore subject to three MMPs.
 9. The Discharger had a significant discharge of non-chlorinated (i.e., non-disinfected) effluent to the Pacific Ocean on October 3, 2012. The Discharger self-reported that it discharged 281,250 gallons of “non-chlorinated” wastewater when its disinfection system failed.
 10. On January 3, 2013, Discharger exceeded the permitted chlorine total residual instantaneous maximum effluent limitation. Chlorine total residual is a Group 2 pollutant, for which a violation is serious and will lead to an MMP of no less than \$3,000 when the limit is exceeded by 20 percent or more. Discharger exceeded the permit effluent limitation by 20 percent or more and is therefore subject to an MMP.
 11. On January 7, 2013, Discharger exceeded the permitted chlorine total residual instantaneous maximum effluent limitation by 20 percent or more and is therefore subject to an MMP. Attachment B to this Complaint, incorporated by this reference, shows the MMP violations.
 12. On October 29, 2013, investigators from the State Water Resources Control Board, acting in cooperation with the Central Coast Water Board¹, inspected the Carpinteria Sanitary District facility. The scope of the inspection was to inquire about the cause and any corrective actions resulting from the 2012 ocean discharge and the MMP violations.
 13. On December 10, 2013, the Assistant Executive Officer of the Central Coast Water Board issued the Discharger a Notice of Violation (NOV) and CWC

¹ Members of the Central Coast Water Board and State Water Resources Control Board are collectively identified as the Prosecution Team, and more particularly identified in the Hearing Procedures [Proposed] that accompany this Complaint for Administrative Civil Liability.

section 13267 Order seeking information regarding discharges and effluent violations in 2011-2013.

14. The Discharger responded to the 13267 Order on January 27, 2014.
15. On or about April 4, 2014, representatives and counsel for Discharger met with representatives and counsel for the Central Coast Water Board Prosecution Team to discuss the Discharger's Section 13267 response and possible enforcement.
16. On or about April 21, 2014, the Prosecution Team received additional documentation needed regarding the October 2012 discharge.
17. Over the next several months, the Prosecution Team and the Discharger attempted to resolve the matter informally. When settlement discussions did not yield a resolution, this Complaint followed.

ALLEGED VIOLATIONS

18. The Federal Clean Water Act (33 U.S.C. §1311) prohibits the discharge of pollutants from a point source to waters of the United States, unless authorized by a NPDES Permit.
19. CWC §13243 states that the Central Coast Water Board may specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted. The Central Coast Water Board implements this section of the CWC by adopting and implementing the Water Quality Control Plan for the Central Coastal Basin (Basin Plan). The Basin Plan establishes the beneficial uses (Chapter 2) and water quality objectives (Chapter 3) for surface waters for the Central Coast Region, which must be met and maintained to protect those uses.
20. CWC §13376 states, in part, "Any person discharging or proposing to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state... shall file a report of the discharge in compliance with the procedures set forth in Section 13260..." and "The discharge of pollutants... by any person except as authorized by waste discharge requirements ... is prohibited."
21. Section 13385 of the CWC includes provisions for assessing administrative civil liability for discharges of wastes to surface waters in violation of the federal Clean Water Act. The discharge incident described above was to surface waters of the United States for which liability can be assessed in accordance with Section 13385 of the CWC. CWC §13385(c) states, in part, that the Regional Board may impose civil liability administratively for noncompliance with CWC §13376 on a daily basis at a maximum of ten thousand dollars (\$10,000) for each day in which the violation occurs in accordance with CWC §13385(c)(1); and 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 discharge, but not cleaned up, exceeds 1,000 gallons; or both, CWC §13385(c)(2).

22. The Discharger had a significant discharge of non-chlorinated effluent to the Pacific Ocean on October 3, 2012. The Discharger self-reported that it discharged 281,250 gallons of “non-chlorinated” wastewater when its disinfection system failed. This is a violation of Prohibition III.B of NPDES Permit No. CA00447364, Order No. R3-2011-0003, which provides in pertinent part that, “Discharge of any waste in any manner other than as described by this Order is prohibited.”
23. The October 3, 2012 discharge is also a violation of the Standard Provisions of the Discharger’s NPDES permit, which provide, in pertinent part:

The Discharger shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this Order that has a reasonable likelihood of adversely affecting human health or the environment.

And:

Safeguards shall be provided to assure maximal compliance with all terms and conditions of this permit. Safeguards shall include preventative and contingency plans and may also include alternative power sources, stand-by generators, retention capacity, operating procedures, or other precautions. ...

Attachment D, D-1 C. Duty to Mitigate and D-11, B.9, Central Coast Standard Provisions, respectively.

24. The Discharger originally reported that the October 3, 2012 discharge amount was estimated to be 281,250 gallons. In its 13267 response, based on an assessment of available data, the Discharger’s consultant re-estimated the discharge amount as 231,076 [gallons]. However, using effluent data from the Discharger’s Supervisory Control and Data Acquisition (SCADA) system, the Prosecution Team’s calculation of the discharge volume was recalculated at 297,896 gallons. Based on its subsequent review of the relevant data on SCADA that was not previously available to the Discharger, the Discharger agrees with the discharge volume estimate of 297,896 gallons.
25. While the Discharger immediately reported the discharge on October 3, 2012, the Discharger did not conduct any sampling, pursuant to Provision VIII.A.2 of the Monitoring and Reporting Program of Order No. R3-2011-0003 (Attachment E), which provides in pertinent part:

The Discharger **shall monitor** for total coliform, fecal coliforms, and enterococcus at receiving water sampling stations RSW-F and RSW-G as identified in MRP section II above, in addition to three shore sampling stations approved by the Executive Officer, for seven days after loss of disinfection.

(emphasis added). Although this failure to conduct sampling could be considered a violation of the Discharger's permit, it is not included in the proposed administrative liability. In providing notification to the Central Coast Water Board permitting staff, the Discharger was apparently told there was no need to sample after the October 3, 2012 discharge. However, the Discharger is responsible for compliance with the terms of its permit despite verbal directives to the contrary.

26. The October 3, 2012 discharge is subject to a discretionary penalty. CWC §13385(e) specifies factors that the Central Coast Water Board shall consider in establishing the amount of civil liability. The Water Quality Enforcement Policy (hereinafter "Enforcement Policy") adopted by the State Water Resources Control Board on November 19, 2009, and approved by the Office of Administrative Law on May 20, 2010, establishes a methodology for assessing administrative civil liability and addresses the factors in CWC §13385(e). Attachment A, incorporated herein and made a part of this ACLC by reference, presents the civil liability assessment derived from the use of the penalty methodology in the Enforcement Policy.

The policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

27. Discretionary penalties and the Enforcement Policy allow for the recovery of staff costs. Attachment A, incorporated by reference, provides a summary of staff costs incurred to date. Staff costs will continue to accrue up to and through hearing.
28. An analysis of the Discharger's ability to pay indicates that the Discharger's published budget for its fiscal year that ended in 2010 (the most recent year available) indicated a net surplus of funds in its Enterprise Fund. It is not anticipated that the proposed liability would cause a financial hardship for the Discharger. The burden of proof now shifts to the Discharger to indicate that the recommended liability should be reduced based on an inability to pay.
29. Discharger's effluent limitation violations are subject to non-discretionary MMPs. CWC section 13385, subdivision (h)(1) requires the Central Coast Water Board to assess an MMP of three thousand dollars (\$3,000) for each serious violation.

30. CWC section 13385, subdivision (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." Settleable solids is a Group 1 pollutant, and chlorine total residual is a Group 2 pollutant.

MINIMUM LIABILITY FOR ALL VIOLATIONS

31. The Enforcement Policy requires that the minimum liability be compared to the economic benefit, and that the recommended penalty must be at least 10 percent higher than the economic benefit so that liabilities are not construed as the cost of doing business. The economic benefit in this instance is \$25,534, which represents the delayed and avoided costs of installing an alarm and avoided sampling (please refer to Attachment A). The minimum liability for the discretionary enforcement related to the October 3, 2012 discharge exceeds this amount by more than 10%, which complies with the Enforcement Policy requirement. The minimum liability for the October 3, 2012 discharger would therefore be \$28,087.40.
32. The 5 (five) MMP violations must be assessed according to CWC 13385(h) for \$3,000 each, for a total of \$15,000.
33. The total minimum liability is therefore \$43,087.40 [\$28,087.40 + \$15,000] for both the discretionary penalties and the MMPs.

MAXIMUM LIABILITY FOR THE 13385 DISCHARGE

34. Pursuant to CWC section 13385, subdivision (a), any person who violates Water Code section 13376 is subject to administrative civil liability pursuant to Water Code section 13385, subdivision (c), 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 and (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.
35. The alleged violations, set forth in full in the accompanying Attachment A, constitute violations subject to Water Code section 13385. The maximum liability that the Central Coast Water Board may assess pursuant to Water Code section 13385, subdivision (c) is \$2,978,960, based on a volume of 297,896 gallons plus \$10,000 per day.

36. MMP violations are usually charged \$3,000 per violation, but can be treated as discretionary violations and penalized up to \$10,000 per occurrence. The \$15,000 MMP liability could therefore be increased to \$50,000.
37. The total maximum liability is therefore \$3,018,960 for both the discharge and effluent violations.

PROPOSED LIABILITY

38. Pursuant to CWC section 13385, subdivision (e), and the Enforcement Policy and as described in greater detail in Attachment A, the Prosecution Team has considered the factors in determining the amount of the recommended civil liability.
39. Based on consideration of the above facts, the applicable law, and after applying the penalty calculation methodology in section VI of the Enforcement Policy, it is recommended that the Central Coast Water Board impose civil liability against Discharger in the amount of **\$96,775** ~~**\$81,775**~~ for the October 3, 2012 discharge (see Attachment A) and **\$15,000** (see Attachment B) for the MMPs] for the violations alleged herein.

Dated this 20th day of May, 2015 (AMENDED).

MICHAEL THOMAS,
Assistant Executive Officer

Signed pursuant to the authority delegated
by the Executive Officer to the Assistant
Executive Officer.

Attachment A: Prosecution Team's Penalty Methodology Recommendations
Attachment B: MMPs – Effluent Limitation Violations
Attachment C: Waiver Form