

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2018-0514

MANDATORY PENALTY
IN THE MATTER OF

TOWN OF DISCOVERY BAY COMMUNITY SERVICES DISTRICT
WASTEWATER TREATMENT PLANT
CONTRA COSTA COUNTY

This Complaint is issued to the Town of Discovery Bay Community Services District (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 R5-2008-0179-01 (NPDES CA00078590), R5-2014-0073, and R5-2014-0073-01.

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

1. The town of Discovery Bay Community Services District owns the Discovery Bay Wastewater Treatment Plant (WWTP), which provides sewage service to the Town of Discovery in Contra Costa County. Treated domestic, commercial, and industrial wastewater is discharged to Old River, a water of the United State.
2. On 4 December 2008, effective 23 January 2009, the Central Valley Water Board issued WDRs Order R5-2008-0179, which contained new discharge requirements and rescinded Order R5-2003-0067, except for enforcement purposes. On 7 June 2012, the Board issued amended WDRs Order R5-2008-0179-01, effective on 23 January 2009.
3. On 6 June 2014, effective 1 August 2014, the Central Valley Water Board issued WDRs Order R5-2014-0073, which contained new discharge requirements and rescinded Order R5-2008-0179, except for enforcement purposes. On 9 October 2014, the Board issued amended and replaced WDRs Order R5-2014-0173 with WDRs Order R5-2014-0173-07.
4. On 26 April 2013, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2013-0529 for mandatory minimum penalties for effluent violations (identified in Attachment A to ACLC R5-2013-0529) that occurred from 1 March 2011 through 30 April 2013. The Discharger signed a waiver of hearing and entered into negotiations to fund a supplemental environmental project (SEP) in lieu of payment of a portion of the mandatory minimum penalties.
5. On 13 September 2013, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Order (ALCO) R5-2013-0581 for mandatory minimum penalties listed in ACLC R5-2013-0529 from 2 March 2011 through 30 April 2013 in the amount of \$54,000. These violations are specifically identified in Attachment A to ACLO R5-2013-0581. The Discharger paid \$34,500 of the penalty and entered into an agreement to complete a Supplemental Environmental Project (SEP) in the amount of \$19,500. The Discharger completed the SEP and Board considers those effluent violation specifically listed in Attachment A to ACLO R5-2013-0581 to be resolved.

6. This Complaint addresses administrative civil liability for effluent limitation violations that occurred between 1 May 2013 and 31 December 2017. These violations are specifically identified as subject to mandatory minimum penalties in Attachment A to this Complaint, which is attached hereto and incorporated herein by reference.
7. On 26 January 2018, Central Valley Water Board staff issued the Discharger a draft Record of Violations (ROV) for the period 1 May 2013 through 30 November 2017. On 6 February 2018, the Discharger agreed with the violations but made correction to some of the violations listed in the ROV. Board staff agreed with the Discharger and has incorporated the changes that the Discharger noted in the 6 February 2018 corresponds in this Complaint. On 22 February 2017, Board staff issued the Discharger a *Self-Monitoring Report Review letter and Notice of Violation* (NOV) and identified four additional effluent biochemical oxygen demand (BOD) violations that occurred during the month of December 2017. On 2 March 2018, the Discharger responded to the NOV and requested that the BOD violations be dismissed. The Discharger contends that the analytical result for BOD on 19 December 2017 is anomalous and not representative of actual discharge on that day. The sample was re-analyzed for chemical oxygen demand which confirmed that the BOD contained in the sample was indeed elevated. In addition the response included a letter from FGL Environmental (Laboratory) which stated “...*FGL Environmental is unable to add any additional insight to why this anomalous result occurred. We acknowledge that this high BOD level has not occurred in any prior years of service to Veolia N.A., nor has it occurred since. In fact, the BOD result from the very next day of sampling, returned to a normal, acceptable level...*” Although, Board staff appreciate the Discharger’s response for why they believed the sample result should not be cited as a violation, the response does not negate the validity of the BOD laboratory results which indicate that effluent limit exceedances occurred. Board staff considered all the responses provided by the Discharger and continue to allege the BOD violations in Attachment A to the Complaint. This Complaint extends the ROV period though 31 December 2017; the four additional BOD violations that were alleged in the 22 February 2018 NOV are included in this Complaint.
8. 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.

9. 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.

10. WDRs Order R5-2008-0179-01, Effluent Limitations IV.A.1.g. include, in part, the following effluent limitations:

g. Electrical Conductivity. The effluent electrical conductivity shall not exceed 2,100 µg/L, as annual average.

11. WDRs Order R5-2014-0073-01, Effluent Limitations IV.A.1. include, in part, the following effluent limitations:

Table 1. Final Effluent Limitation – Discharge Point 001

Parameter	Units	Effluent Limitation		
		Average Monthly	Average Weekly	Maximum Daily
Conventional Pollutant				
Biochemical Oxygen Demand (5-day @ 20°C)	mg/L	10	15	20
	lbs/day ¹	180	260	350
	lbs/day ²	200	290	390

¹ Based on a design average dry weather flow of 2.1 MGD. Effective immediately and until Executive Officer's written approval of flow increase (Special Provision VI.C.6.b).

² Based on design average dry weather flow of 2.35 MGD. Effective upon executive officer's written approval of flow increase (Special Provisions VI.C.6.b).

12. WDRs Order R5-2014-0073-01, Effluent Limitations IV.A.2. include, in part, the following effluent limitations:

Table 5. Interim Effluent Limitation

Parameter	Units	Effluent Limitation		
		Average Monthly	Average Weekly	Maximum Daily
Conventional Pollutant				
Nitrate Plus Nitrite (as N)	mg/L	--	--	31

13. WDRs Order R5-2014-0073-01, Effluent Limitations IV.A.2.b. include, in part, the following effluent limitations:
 - b. Total Coliform Organisms. Effective immediately and through 30 December 2022,** effluent total coliform organisms at Monitoring Location UVS-001 and UVS-002 shall not exceed:
 - i. 23 most probable number (MPN) per 100 mL, as 7-day median; and
 - ii. 240 MPN/100 mL, at any time
14. According to the Discharger's self-monitoring reports, the Discharger committed three (3) serious Group I violations of the above effluent limitations contained in WDRs Order R5-2014-0073-01, as shown in Attachment A. These violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels in WDRs Order R5-2014-0073-01 by 40 percent or more. The mandatory minimum penalty for these serious violations is **nine thousand dollars (\$9,000)**.
15. According to the Discharger's self-monitoring reports, the Discharger committed seven (7) non-serious violations of the above effluent limitations contained in WDRs Orders R5-2008-0179-01 and R5-2014-0073-01. Two (2) of the non-serious violations are subject to mandatory penalties under Water Code section 13385 subdivision (i)(1) because these violations were preceded by three or more effluent limit violations within a 180-day period. The mandatory minimum penalty for these violations is **six thousand dollars (\$6,000)**.
16. The total amount of the mandatory penalties assessed for the alleged effluent limitation violations is **fifteen thousand dollars (\$15,000)**. 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.
17. 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.
18. 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 TOWN OF DISCOVERY BAY COMMUNITY SERVICES DISTRICT 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 **fifteen thousand dollars (\$15,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **31 May/1 June 2018**, unless one of the following occurs by **29 March 2018**:
 - 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 **fifteen thousand dollars (\$15,000)** 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.

Original Signed By

ANDREW ALTEVOGT, Assistant Executive Officer

5 March 2018

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 Town of Discovery Bay Community Service District (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2018-0514 (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 **fifteen thousand dollars (\$15,000)** by check that references "ACL Complaint R5-2018-0514" 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 **29 March 2018**. 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 **29 March 2018**.
- 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
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2018-0514**

**Town of Discovery Bay Community Services District
Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 May 2013 – 31 December 2017) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs R5-2008-0179-01, R5-2014-0073, and
R5-2014-0073-01)

	<u>Date</u>	<u>Parameter</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
<i>Violation Under WDRs R5-2008-0179-01</i>								
1	31-Dec-13	Electrical Conductivity	µmhos/cm	2100	2136	Annual Average	3	968610
<i>Violation Under WDRs R5-2014-0073-01</i>								
2	8-Jun-16	Nitrite Plus Nitrate	mg/L	31	31.8	Daily Maximum	3	1010642
3	27-Sep-17	Total Coliform	MPN/100 mL	23	79	7-Day Median	3	1033647
4	28-Sep-17	Total Coliform	MPN/100 mL	23	79	7-Day Median	3	1033648
5	2-Oct-17	Total Coliform	MPN/100 mL	23	79	7-Day Median	3	1035370
6	3-Oct-17	Total Coliform	MPN/100 mL	23	64	7-Day Median	4	1035369
7	19-Dec-17	BOD	mg/L	20	78	Daily Maximum	1	1038004
8	19-Dec-17	BOD	lbs/day	350	707.96	Daily Maximum	1	1038982
9	23-Dec-17	BOD	mg/L	15	40	Weekly Average	1	1038984
10	23-Dec-17	BOD	lbs/day	260	361	Weekly Average	4	1038983

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>12/31/17</u>
Group I Serious Violations:	3
Group II Serious Violations:	0
Non-Serious Violations Not Subject to MMPs:	5
<u>Non-Serious Violations Subject to MMPs:</u>	<u>2</u>
Total Violations Subject to MMPs:	5

Mandatory Minimum Penalty = (3 Group I Serious Violations + 2 Non-Serious Violation) x \$3,000 = \$15,000