

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0572

MANDATORY PENALTY
IN THE MATTER OF

EL DORADO IRRIGATION DISTRICT
EL DORADO HILLS WASTEWATER TREATMENT PLANT
EL DORADO COUNTY

This Complaint is issued to the El Dorado Irrigation District (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2007-0069 (NPDES No. CA0078671).

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

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system, and provides sewerage service for the community of El Dorado Hills. Treated wastewater is discharged to Carson Creek, a water of the United States and tributary to the Cosumnes River within the San Joaquin River Watershed.
2. On 23 June 1995, the Central Valley Water Board issued WDRs Order 95-151 to regulate discharges of waste from the El Dorado Hills Wastewater Treatment Plant. On 14 June 2001, the Board issued WDRs Order R5-01-135, which rescinded Order 95-151 and updated requirements. On 22 June 2007, effective 11 August 2007, the Board issued WDRs Order R5-2007-0069, which rescinded Order R5-01-151 and included new requirements.
3. This Complaint covers the period from 1 January 2000 through 31 July 2009. There were no violations prior to 7 December 2008 that are subject to mandatory minimum penalties. On 23 September 2009, Central Valley Water Board staff sent the Discharger a draft Record of Violations (ROV) for the period 1 August 2007 through 31 July 2009. The Discharger responded on 19 October 2009 and agreed with the violations. Board staff subsequently re-evaluated apparent exceedances of mass-based effluent limitations that were included in the ROV and determined they were not violations.
4. CWC section 13385(h) requires assessment of mandatory penalties and states, in part, the following:

CWC 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.

CWC 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.

CWC section 13385(i)(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 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.

5. CWC 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.

6. WDRs Order R5-2007-0069 Effluent Limitations IV.A.1.a., include, in part, the following effluent limitations: “*The Discharger shall maintain compliance with the following effluent limitations:*”

Table 6b: Concentration and Mass-Based Final Effluent Limitations (based on 3.0 mgd ADWF)

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Ammonia (as N)	mg/L	1.1	---	2.14	---	---

7. According to the Discharger’s self-monitoring reports, the Discharger committed eight (8) serious Group I violations of the above effluent limitations contained in Order

R5-2007-0069 during the period 1 January 2000 through 31 July 2009. The violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels by more than 40 percent on these occasions. The mandatory minimum penalty for these serious violations is **twenty-four thousand dollars (\$24,000)**.

8. According to the Discharger's self-monitoring reports, the Discharger committed four (4) non-serious violations of the above effluent limitations contained in Order R5-2007-0069 during the period 1 January 2000 through 31 July 2009. Two (2) of the non-serious violations are subject to mandatory minimum penalties under CWC section 13385(i)(1) because these violations were preceded by three or more violations within a six-month period. The mandatory minimum penalty for the **two (2)** non-serious violations is **six thousand dollars (\$6,000)**.
9. The total amount of the mandatory penalties assessed for the cited effluent violations is **thirty thousand dollars (\$30,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
10. Issuance of this Administrative Civil Liability Complaint to enforce CWC 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).

EL DORADO IRRIGATION DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **thirty thousand dollars (\$30,000)**.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **27/28/29 January 2010**, unless either of the following occurs by **10 December 2009**:
 - a) The Discharger 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, along with payment for the proposed civil liability of **thirty thousand dollars (\$30,000)**; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
 - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.

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.

If this matter proceeds to hearing, the 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 Joe Karkoski for

PAMELA C. CREEDON, Executive Officer

10 November 2009

DATE

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent El Dorado Irrigation District (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2009-0572 (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 **thirty thousand dollars (\$30,000)** by check that references "ACL Complaint R5-2009-0572" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **10 December 2009**.
- 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 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 R5-2009-0572**

**El Dorado Irrigation District
El Dorado Hills Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 January 2000 – 31 July 2009) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs 95-151, R5-01-135 and R5-R5-2007-0069)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
1	7-Dec-08	Ammonia	mg/L	2.14	2.4	Daily	3	835297
2	8-Dec-08	Ammonia	mg/L	2.14	3.3	Daily	1	835301
3	9-Dec-08	Ammonia	mg/L	2.14	2.7	Daily	3	835303
4	10-Dec-08	Ammonia	mg/L	2.14	2.3	Daily	4	835305
5	23-Dec-08	Ammonia	mg/L	2.14	4.3	Daily	1	835307
6	24-Dec-08	Ammonia	mg/L	2.14	3.9	Daily	1	835309
7	31-Dec-08	Ammonia	mg/L	2.14	4.4	Daily	1	835311
8	31-Dec-08	Ammonia	mg/L	1.1	1.4	Monthly	4	835313
9	5-Jan-09	Ammonia	mg/L	2.14	5.9	Daily	1	830817
10	12-Jan-09	Ammonia	mg/L	2.14	7.1	Daily	1	830821
11	20-Jan-09	Ammonia	mg/L	2.14	6.0	Daily	1	830823
12	31-Jan-09	Ammonia	mg/L	1.1	5.0	Monthly	1	830825

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 violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.

<u>VIOLATIONS AS OF:</u>	<u>07/31/2009</u>
Group I Serious Violations:	8
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	2
Non-serious Violations Subject to MPs:	2
<u>Total Violations Subject to MPs:</u>	<u>10</u>

Mandatory Minimum Penalty = (8 serious Violations + 2 Non-Serious Violations) x \$3,000 = \$30,000