

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0622

MANDATORY PENALTY
IN THE MATTER OF

CALIFORNIA DEPARTMENT OF FISH AND GAME
SAN JOAQUIN FISH HATCHERY
FRESNO COUNTY

This Complaint is issued to the California Department of Fish and Game (DFG) (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL), CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC 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 findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order 97-001 (NPDES No. CA004812).

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

1. The California Department of Fish and Game (Discharger) operates the San Joaquin Fish Hatchery (hereafter Facility) in Friant, Fresno County. The Central Valley Water Board issued Orders 97-001 and R5-2004-0118 to regulate the discharge of wastewater to the San Joaquin River, a water of the United States.
2. CWC sections 13385(h) and (i) require the assessment of mandatory penalties and state, 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.

3. CWC section 13323 states, in relevant 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.

4. WDRs Order 97-001 prescribes, in part, the following effluent limitations:

<u>Constituent</u>	<u>Units</u>	<u>Average Monthly</u>	<u>Maximum Daily</u>
Biochemical Oxygen Demand (BOD)	mg/L	5	15
	lbs/day	942	2827
Total Settleable Solids (TSS)	mg/L	5	15
	lbs/day	942	2827

5. On 15 August 2008, Board staff issued the Discharger a Notice of Violation and draft Record of Violations identifying nine (9) violations of WDR Orders 97-001 and R5-2004-0118 that occurred at the Facility during the period from 1 January 2000 through 31 May 2008 and are subject to mandatory minimum penalties (MMPs). The Discharger responded by letters dated 8 September 2008, 12 September 2008, and 1 October 2008. Staff reviewed the Discharger's comments and determined the Discharger had submitted sufficient information to support dismissal of five (5) of the nine (9) violations cited in the draft Record of Violations. Attachment A to this Complaint is the final Record of Violations that identifies four (4) violations that are subject to MMPs. Attachment B to this Complaint is a technical staff memorandum that explains the changes that were made to the draft Record of Violations.
6. The sum of the MMPs for the four serious effluent limitation violations identified in Attachment A is **twelve thousand dollars (\$12,000)**.
7. 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 (Public Resources Code section 21000 et seq.), in accordance with Title 14, California Code of Regulations, section 15321(a)(2).

CALIFORNIA DEPARTMENT OF FISH AND GAME 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 **twelve thousand dollars (\$12,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled in **5/6 February 2009**, unless the Discharger does either of the following by 5 January 2009:

- a) Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **twelve thousand dollars (\$12,000)**; or
 - b) Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board, along with a letter describing issues to be addressed in settlement negotiations.
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.

LOREN J. HARLOW, Assistant Executive Officer

original signed on 2 December 2008

Attachment A: Record of Violations

Attachment B: Technical Memorandum dated 1 December 2008

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent California Department of Fish and Game (hereafter referred to as "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0622 (hereinafter the "Complaint");
2. 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" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) within ninety (90) days of service of the Complaint; and
4. **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
 - a. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **twelve thousand dollars (\$12,000)** by check that references "ACL Complaint R5-2008-0622" made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **5 January 2009** or this matter will be placed on the Central Valley Water Board's agenda for adoption as initially proposed in the Complaint.
 - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Central Valley Water Board receive 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. New information or comments include those submitted by personnel of the Central Valley Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. 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.

-or-

5. **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0622

CALIFORNIA DEPARTMENT OF FISH AND GAME
SAN JOAQUIN FISH HATCHERY
RECORD OF VIOLATIONS (1 January 2000 – 31 May 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs 97-001 and R5-2004-0118)

<u>Violation ID</u> ¹	<u>Violation Date</u>	<u>Violation Type</u> ²	<u>Violation Description</u> ³	<u>MMP Type</u> ⁴
181884	1/31/2000	CAT1	1M; BOD; 5; mg/L; M; 9.4 ⁵	SERIOUS
186718	1/31/2000	CAT1	1M; BOD; 942; lbs/day; M; 2741 ⁵	SERIOUS
247336	12/31/2003	CAT1	12M; TSS; 5; mg/L; M; 10 ⁶	SERIOUS
247362	12/31/2003	CAT1	12M; TSS; 942; lbs/day; M; 1938 ⁶	SERIOUS

¹ Violation ID in CIWQS.

² Table of Abbreviations below defines abbreviations used in this table.

³ Violation Descriptions are coded as follows: Reporting period (e.g., 2M = February); constituent or parameter (e.g., BOD); effluent limitation; units; limitation period; and reported result.

⁴ Serious effluent limitation violations are subject to mandatory penalties.

⁵ Monitoring and Reporting Program (MRP) 97-001 required effluent BOD be monitored twice monthly. Only one effluent BOD result was reported in January 2000 (9.4 mg/L on 1/5/00). Result yields serious two effluent limitation violations (i.e., monthly average BOD concentration and monthly average BOD mass loading).

⁶ MRP 97-001 requires effluent TSS be monitored twice monthly. Only one effluent TSS result was reported in December 2003 (10 mg/L on 12/9/03). Result yields serious two effluent limitation violations (i.e., monthly average TSS concentration and monthly average TSS mass loading).

<u>Abbreviation</u>	<u>Definition</u>
BOD	5-day Biochemical Oxygen Demand
CAT1	Violation of Group I pollutant effluent limitation as defined in Enforcement Policy
CIWQS	California Integrated Water Quality System database
M	Monthly
MMP	Mandatory Minimum Penalty
OEV	Other Effluent Violation
TSS	Total Suspended Solids

	VIOLATION PERIOD
<u>MMP VIOLATION TYPE</u>	<u>1/1/2000 TO 5/31/2008</u>
Serious Group I Pollutant Effluent Limitation Violations Subject to MMPs:	4
Total Violations Subject to MMPs:	4

Mandatory Minimum Penalty = (4 Serious Violations) x \$3,000 = \$12,000