

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0628

MANDATORY PENALTY
IN THE MATTER OF

BEAR VALLEY COMMUNITY SERVICES DISTRICT
WASTEWATER TREATMENT FACILITY
KERN COUNTY

This Complaint is issued to Bear Valley Community Services District (Bear Valley CSD or 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 R5-2002-0113 (NPDES No. CA0081213) at its Wastewater Treatment Facility (WWTF).

The Assistant 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 to about 1000 residents in the unincorporated community of Bear Valley Springs in Kern County. Effluent is stored in a lined 240,000-gallon storage pond before it is discharged to Sycamore Creek or to the Bear Valley Oak Tree Country Club Golf Course (Use Area) for use as irrigation supply. Sycamore Creek is an ephemeral stream and a water of the United States. Effluent is typically discharged to Sycamore Creek from late spring to early fall, and to the Use Area from late spring to early fall.
2. On 7 June 2002, Central Valley Water Board issued Waste Discharge Requirements (WDRs) Order R5-2002-0113, which authorizes the discharge of 0.25 million gallons per day of effluent to Sycamore Creek and the Use Area.
3. CWC sections 13385(h) and 13385(i) require the assessment of mandatory minimum penalties (MMPs) 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.

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:

CWC section 13385(i)(2) states:

For the purposes of this section, a "period of six consecutive months" means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.

4. CWC section 13323 states, in relevant part, that:

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.

5. WDRs Order R5-2002-0113, Discharge Specification B.2 prescribes, in part, effluent limitations for chlorine residual, a Group II pollutant, of 0.0 mg/L daily maximum and 0.00 mg/L monthly average. Discharge Specification B.2 specifies that the effluent chlorine residual limitations apply to the discharge to Sycamore Creek only and are effective 15 November 2002, and notes that the effluent limitations are defined as below the limit of detection in test procedures listed for total chlorine residual in 40 Code of Federal Regulations part 136, table IB.

6. WDRs Order R5-2002-0113, Discharge Specification B.4 states the following:

The turbidity of the effluent shall not exceed any of the following:

- a. A daily average of 2 Nephelometric Turbidity Units (NTU) within a 24-hour period,
- b. 5 NTU more than 5 percent of the time within a 24-hour period, and
- c. 10 NTU at any time.

7. On 10 November 2008, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations identifying violations of WDRs Order R5-2002-0113 that are subject to MMPS. The draft Record of Violations identifies five (5)

serious violations of the effluent limitation for chlorine residual subject to MMP pursuant to CWC section 13385(h) and six (6) non-serious effluent limitation violations, three (3) of which are chronic violations subject to MMPs pursuant to CWC section 13385(i). On 14 November 2008, the Discharger responded and acknowledged the violations cited in the draft Record of Violations.

8. Following issuance of the 10 November 2008 Notice of Violation, Board staff re-evaluated the accuracy of one non-serious effluent limitation for turbidity (entered into the California Integrated Water Quality System (CIWQS) database as Violation ID 780708) and determined that the effluent turbidity result reported for 21 February 2004, 2.27 NTUs, once rounded down to one significant digit similar to the limitation, did not constitute an exceedance of the daily maximum effluent turbidity limitation of 2 NTUs. Staff dismissed Violation ID 780708 and the violation is no longer subject to MMPs. Also, staff re-evaluated the five violations of the chlorine residual effluent limitations identified in the draft Record of Violations as "serious" pursuant to CWC section 13385(h). Because the chlorine residual effluent limitations prescribed by WDRs Order R5-2002-0113 are zero, it is not possible to identify a value for effluent chlorine residual that is 20 percent greater than zero for determining whether reported results of effluent chlorine residual constitute "serious" violations subject to MMPs pursuant to CWC section 13385(h). Therefore, staff revised the draft Record of Violations to change the status of the five cited violations of the chlorine residual effluent limitations to chronic non-serious violations subject to MMPs pursuant to CWC section 13385(i).
9. On 2 December 2008, the Assistant Executive Officer issued ACL Complaint R5-2008-0618, which included a Record of Violations that identified ten (10) non-serious violations of effluent limitations, and seven (7) of these were said to be subject to MMPs pursuant to CWC section 13385(i). Following issuance of ACL Complaint R5-2008-0168 on 2 December 2008, Central Valley Water Board staff re-evaluated the identified violations and determined that two of the violations (Violations ID 793071 and 793072) were not subject to MMPs.
10. This Complaint rescinds and replaces ACL Complaint R5-2008-0168. Attachment A is the final Record of Violations, revised as described in Finding 9. The amended Record of Violations identifies ten (10) non-serious violations of effluent limitations, of which five (5) are subject to MMPs pursuant to CWC section 13385(i).
11. The total amount of the MMPs assessed for the violations identified in Attachment A, a part of this Complaint, is **fifteen thousand dollars (\$15,000)**.
12. 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 California Code of Regulations, title 14, section 15321(a)(2).

BEAR VALLEY COMMUNITY SERVICES DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. ACL Complaint R5-2008-0168 is rescinded.
2. 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)**.
3. 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 **8 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 **fifteen thousand dollars (\$15,000)**; 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.
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

Attachment A: Amended Record of Violations

HA: 12/4/2008

**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 Bear Valley Community Services District (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0628 (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 **fifteen thousand dollars (\$15,000)** by check, which contains a reference to "ACL Complaint R5-2008-0628" made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **9 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

<u>Violation ID</u> ¹	<u>Violation Date</u>	<u>Violation Type</u> ²	<u>Violation Description</u> ³	<u>MMP Type</u> ⁴
780760	12/22/2003	OEV	12M; Turbidity; 10; NTUs; I; 14.3	Exempt
780705	1/13/2004	OEV	1M; Turbidity; 10; NTUs; I; 24	Exempt
780707	2/21/2004	OEV	2M; Turbidity; 10; NTUs; I; 19.5	Exempt
780709	2/26/2004	OEV	2M; Turbidity; 2; NTUs; D; 2.55	Chronic
780711	4/14/2004	OEV	4M; Turbidity; 10; NTUs; I; 18	Chronic
780756	4/30/2004	CAT2	4M; Chlorine residual; 0.0; mg/l; D; 0.1 (reported value = 0.09 mg/L)	Chronic
793071	10/19/2004	CAT2	10M; Chlorine residual; 0.0; mg/l; D; 0.8	Exempt ⁵
793072	10/20/2004	CAT2	10M; Chlorine residual; 0.0; mg/l; D; 0.1	Exempt ⁵
793073	10/21/2004	CAT2	10M; Chlorine residual; 0.0; mg/l; D; 0.1	Chronic
793104	10/31/2004	CAT2	10M; Chlorine residual.; 0.00; mg/l; M; 0.03	Chronic

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., pH, Turbidity); effluent limitation; units; limitation period; and reported result.

⁴ Chronic non-serious and serious violations are subject to MMPs. Exempt non-serious violations fall within the first three violations in a six-month period, thus are exempt.

⁵ These violations were incorrectly identified as "Chronic" in Administrative Civil Liability Complaint R5-2008-0618 issued 2 December 2008.

<u>Abbreviation</u>	<u>Definition</u>
CAT2	Violation of effluent limitation for a Group II pollutant as defined in Enforcement Policy
CIWQS	California Integrated Water Quality System database
D	Daily
I	Instantaneous
M	Monthly
MMP	Mandatory Minimum Penalty
NTUs	Nephelometric Turbidity Units
OEV	Other Effluent Limitation Violation

MMP VIOLATION TYPE

VIOLATION PERIOD

6/7/02 TO 07/31/08

Chronic Non-serious Violations of Effluent Limitations Subject to MMPs:	10
Total Violations Subject to MMPs:	5
Non-serious Violations of Effluent Limitations Exempt from MMPs:	5

Mandatory Minimum Penalty = (5 Chronic Violations) x \$3,000 = \$15,000