



# California Regional Water Quality Control Board Central Valley Region



Terry Tamminen  
Secretary for  
Environmental  
Protection

Robert Schneider, Chair

Arnold Schwarzenegger  
Governor

Fresno Branch Office  
Internet Address: <http://www.swrcb.ca.gov/~rwqcb5>  
1685 E Street, Fresno, California 93706  
Phone (559) 445-5116 • FAX (559) 445-5910

5 October 2004

Mr. James Marshall, City Manager  
City of Merced  
678 West 18th Street  
Merced, CA 95340

CERTIFIED MAIL  
7004 1350 0000 7804 1718

## **MANDATORY PENALTY COMPLAINT NO. R5-2004-0537, CITY OF MERCED, WASTEWATER TREATMENT FACILITY (WWTF), MERCED COUNTY**

Enclosed is an Administrative Civil Liability Complaint in which effluent limitation violations by the City of Merced of Waste Discharge Requirements (WDRs) Order No. 5-00-246 (NPDES No. CA0079219) are alleged. The Complaint proposes that the City pay \$27,000 to the State Water Pollution Cleanup and Abatement Account. In the alternative, the City may propose to spend up to \$21,000 on a qualified supplemental environmental project and pay the balance to the State Water Pollution Cleanup and Abatement Account.

The City and the public may submit written comments on the Complaint on or before **5 November 2004**. The City may agree to pay the civil liability and waive a hearing before the Central Valley Regional Water Quality Control Board (Regional Board) on this matter. If the City waives its right to a hearing and agrees to pay the liability in full, a duly authorized representative must sign the waiver attached to the Complaint and submit it to the Regional Board's Rancho Cordova office and attach a check payable to the State Water Pollution Cleanup and Abatement Account in the amount of \$27,000. If the City elects to waive a hearing and pay the liability in full, the waiver will not be effective until 30 days from the date of this Complaint to allow interested persons to comment on this action. In this case, a hearing will not be held unless a member of the public requests a hearing

Alternatively, the City may waive a hearing and agree to enter into a stipulated administrative civil liability order to spend up to \$21,000 to complete a supplemental environmental project and pay the balance of the \$27,000 to the State Water Pollution Cleanup and Abatement Account. If the City wishes to complete a supplemental environmental project pursuant to California Water Code (CWC) Section 13385(l), the City must submit by **5 November 2004** a technical report detailing the supplemental environmental project, including a time schedule that shows the project meets the requirements of CWC Section 13385(l) and applicable portions of the State Water Resource Control Board *Water Quality Enforcement Policy*. If the City proposes a supplemental environmental project that is acceptable to the Executive Officer and elects to enter into a stipulated administrative civil liability order, the proposed stipulated order, when complete, will be made available for public comment for a thirty-day period.

If the City does not waive its right to a hearing or another person requests a hearing, a hearing will be scheduled for **2 or 3 December** at the Regional Board meeting in Rancho Cordova. Notice of the public hearing will be provided at least ten days in advance of the Regional Board meeting.

***California Environmental Protection Agency***



If the Regional Board holds a hearing and the City desires that the Regional Board consider written evidence, it must submit such written evidence, including testimony and exhibits, to the Regional Board at the above office (Attention: Barry Hilton), by 4:30 p.m. on **5 November 2004**. The Regional Board may refuse to admit evidence into the record that is not submitted by the above specified date and time.

If you have any questions regarding these matters, please call Barry Hilton at (559) 445-5455.

THOMAS R. PINKOS  
Executive Officer

Enclosure: Administrative Civil Liability Complaint

cc: Ms. Kathi Moore (WTR-7), U.S. EPA, Region 9, San Francisco  
Ms. Catherine George, Office of Chief Counsel, State Water Resources Control Board,  
Sacramento  
Mr. Mark Bradley, Compliance Assurance and Enforcement Unit, State Water Resources Control  
Board, Sacramento  
Mr. Philip Isorena, Division of Water Quality, State Water Resources Control Board, Sacramento  
Mr. Dave Carlson, Program Manager, Regional Water Quality Control Board, Ranch Cordova  
California Department of Health Services, Fresno  
Humberto Molina, City of Merced  
Merced County Environmental Health, Merced  
Mr. Warren Tellefson, Central Valley Clean Water Association (CVCWA), Auburn

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2004-0537

MANDATORY MINIMUM PENALTY  
IN THE MATTER OF  
CITY OF MERCED WASTEWATER TREATMENT FACILITY  
MERCED COUNTY

This complaint to assess Mandatory Minimum Penalties (MMP) pursuant to California Water Code (CWC) section 13385 is issued to the City of Merced (herein Discharger) based on a finding of violations of Waste Discharge Requirements Order No. 5-00-246 (NPDES Permit No. CA0079219).

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

1. On 27 October 2000, the Regional Board adopted Order No. 5-00-246 authorizing the Discharger to discharge pollutants from its wastewater treatment facility (WWTF) to Hartley Slough, a water of the United States.
2. On 31 July 2002, the Office of Administrative Law approved the State Water Resources Control Board's (State Board) *Water Quality Enforcement Policy* (WQEP).
3. CWC section 13385(a) subjects any person who violates any waste discharge requirements to civil liability.
4. California Water Code section 13385(h)(1) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation.
5. California Water Code section 13385(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 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.

6. California Water Code section 13385(l) states in part:
  - (1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).
  - (2) For the purposes of this section, a "supplemental environmental project" means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section.

(3) This subdivision applies to the imposition of penalties pursuant to subdivision (h) or (i) on or after January 1, 2003, without regard to the date on which the violation occurs.

7. Order No. 5-00-246 includes the following effluent limitations:

**B. Effluent Limitations**

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>7-Day Maximum</u>	<u>Daily Maximum</u>
Chlorine Residual	mg/L	0.1	--	--	0.5
<u>Total Coliform</u>	MPN <sup>4</sup> /100 mL	--	--	23	240

\* \* \*

<sup>4</sup> Most probable number

8. According to monitoring reports submitted by the Discharger, it committed nine (9) serious violations between 1 July 2000 and 31 July 2004. Of these, seven serious violations involved the discharge of total residual chlorine, a Group II pollutant, at a concentration exceeding the effluent daily maximum limitation by 20 percent or more. Two violations were for total coliform, a Group I pollutant, exceeding the effluent daily maximum limitation by 40 percent or more. A summary of these serious violations is shown in Attachment A, a part of this Complaint. Pursuant to CWC Section 13385(h)(1), the MMP for these serious violations is twenty-seven thousand dollars (\$27,000).
9. The Regional Board may elect to assess civil liability pursuant to CWC Section 13385(c). Monitoring reports submitted by the Discharger indicate that effluent limitation violations occurred on nine days. The maximum amount of civil liability that may be imposed by the Regional Board pursuant to CWC Section 13385(c)(1) is ninety thousand dollars (\$90,000). The discharge is not susceptible to cleanup and was not cleaned up. Each day's discharge, in which a violation occurred, minus 1000 gallons, is subject to ten dollars (\$10) per gallon civil liability under Section 13385(c)(2). The Discharger's potential civil liability pursuant to 13385(c)(2) exceeds \$600 million.
10. If the Regional Board elects to assess civil liability under CWC 13385(c), CWC 13385(e) requires the Regional Board, in determining the amount of any liability, to consider the nature, circumstances, extent, and gravity of the violations; whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge; and with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability must be assessed at a level that recovers the economic benefits derived from the acts that constitute the violation.
11. Issuance of this enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321(a)(2), Title 14, California Code of Regulations.

**THE CITY OF MERCED IS HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Regional Board proposes that the City of Merced be assessed an MMP in the amount of twenty-seven thousand dollars (\$27,000).
2. The Executive Officer may consider offsetting a portion of the MMP by the monetary value of a supplemental environmental project (SEP) to be completed by the City of Merced.
3. If the City of Merced wishes the Executive Officer to consider allowing monetary credit for an SEP against a portion of the full MMP, the City of Merced shall comply with the following schedule:
  - a. By **5 November 2004**, enter into stipulated administrative civil liability order to complete an SEP as approved by the Executive Officer and pay the amount of the MMP not approved for the SEP.
  - b. By **5 November 2004**, submit a technical report, implementation schedule, and cost estimates detailing a proposed SEP consistent with CWC section 13385 (l) and the WQEP. The portion of the penalty amount that may be directed to be expended on an SEP environmental project and the project itself are subject to Executive Officer approval and may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).

Upon completion of the SEP and no later than **1 December 2009**, the City of Merced shall submit verification of the actual amount of money spent by City of Merced toward completion of the SEP.

4. A hearing shall be held by the Regional Board on **2 or 3 December 2004** unless City of Merced agrees to waive the hearing and either pay the penalty of \$27,000 in full or enter into a stipulated administrative civil liability order as described in notification item 3 above.
5. The City of Merced may waive the right to a hearing. If the City of Merced wishes to waive the hearing, it must by **5 November 2004** either:
  - a. Check (1) on the attached waiver, sign and return it with a check made payable to the *State Water Pollution Cleanup and Abatement Account* in the amount of twenty seven thousand dollars (\$27,000) to the Regional Board's Rancho Cordova Office at 11020 Sun Center Drive, Rancho Cordova, California 95670-6114. The check must contain a reference to Administrative Civil Liability Complaint No. R5-2004-0537; or
  - b. Check (2) on the attached waiver, sign and return it to indicate commitment to enter into a stipulated administrative civil liability order to spend a portion of twenty seven thousand dollars (\$27,000) on a proposed SEP described in an accompanying technical report; and pay any remainder the Order resulting from item 3 above to the *State Water Pollution Cleanup and Abatement Account* within **30 days** after written approval by the Executive Officer of the SEP.

Such waiver will not become effective until 30 days after the date of this Complaint if payment in full is made, or until 30 days after formally entering into a stipulated agreement with the Executive Officer, to allow interested persons an opportunity to comment on this action.

6. The Executive Officer may, at his discretion and only if reasonable conditions warrant, extend the Full Compliance dates in Notification Items Nos. 3 and 5, above, by no more than six months.
7. If the City chooses Alternative 5.b. and does not enter into a stipulated Administrative Civil Liability Order within a reasonable period, or if the proposed SEP is not acceptable as determined by the Executive Officer, the full amount of the mandatory minimum penalty must be paid within 30 days of notification by the Executive Officer

---

THOMAS R. PINKOS, Executive Officer

BLH: 10/05/2004

---

(Date)

**WAIVER**

By signing this waiver and choosing one of the following options, the City of Merced agrees to waive its right to a hearing before the Regional Board and to:

1. \_\_\_ remit twenty-seven thousand dollars (\$27,000) by check made payable to the *State Water Pollution Cleanup and Abatement Account* for the mandatory penalty by **5 November 2004**, or
2. \_\_\_ enter into a stipulated administrative civil liability order agreeing to:
  - a. spend a portion of twenty-seven thousand dollars (\$27,000) on a SEP in accordance with the WQEP in an amount not to exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000) and to submit a technical report detailing steps that it has taken or will take to complete the project and a time schedule. The technical report and a time schedule shall be submitted to the Regional Board's Fresno office by **5 November 2004**; and
  - b. By **30 days** after written approval of the SEP by the Executive Officer to pay any balance of the penalty to the *State Water Pollution Cleanup and Abatement Account* consistent with the terms of the stipulated administrative civil liability order.

The City of Merced understands that it is giving up its right to argue against the allegations made by the Executive Officer in this Complaint, and against assessment of, and the amount of, the penalty. The City of Merced also understands that failure to comply with this agreement may result in further enforcement action including, but not limited to, referral of the matter to the Attorney General for resolution.

---

(Signature)

---

(Title)

---

(Date)

COMPLAINT NO. R5-2004-0537  
ATTACHMENT A  
EFFLUENT VIOLATIONS  
CITY OF MERCED WASTEWATER TREATMENT FACILITY  
MERCED COUNTY

Violation Number	Reporting Period	Violation Date	Constituent	Limit Type	Units	Period	Category	Limit	Reported Value	% Exceedance	Mandatory Penalty (Serious)
1	May-01	24	Chlorine	Concentration	mg/L	Daily Maximum	2	0.5	1.6	220%	\$3,000
2	May-01	25	Chlorine	Concentration	mg/L	Daily Maximum	2	0.5	1.05	110%	\$3,000
3	Nov-01	7	Chlorine	Concentration	mg/L	Daily Maximum	2	0.5	0.65	30%	\$3,000
4	Dec-01	14	Chlorine	Concentration	mg/L	Daily Maximum	2	0.5	0.85	70%	\$3,000
5	Jan-03	28	Chlorine	Concentration	mg/L	Daily Maximum	2	0.5	0.93	86%	\$3,000
6	Oct-03	7	Coliform	Concentration	MPN/100 mL	Daily Maximum	1	240	1600	567%	\$3,000
7	Mar-04	22	Chlorine	Concentration	mg/L	Daily Maximum	2	0.5	0.619	24%	\$3,000
8	Mar-04	30	Chlorine	Concentration	mg/L	Daily Maximum	2	0.5	0.776	55%	\$3,000
9	Jul-04	22	Coliform	Concentration	MPN/100 mL	Daily Maximum	1	240	900	275%	\$3,000
<b>Total</b>											<b>\$27,000</b>