



# California Regional Water Quality Control Board Central Valley Region



Terry Tamminen  
Secretary for  
Environmental  
Protection

Robert Schneider, Chair

Arnold Schwarzenegger  
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29 October 2004

Mr. Gregory Wellman, City Manager  
City of Atwater  
750 Bellview Road  
Atwater, CA 95301

CERTIFIED MAIL  
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## **MANDATORY PENALTY COMPLAINT NO. R5-2004-0540, CITY OF ATWATER, WASTEWATER TREATMENT FACILITY (WWTF), MERCED COUNTY**

Enclosed is an Administrative Civil Liability Complaint in which effluent limitation violations by the City of Atwater of Waste Discharge Requirements (WDRs) Order No. 95-034 (NPDES Permit No. CA0079179) are alleged. The Complaint proposes that the City pay \$30,000 to the State Water Pollution Cleanup and Abatement Account. As an alternative, the Regional Board, with the concurrence of the City, may direct that the City spend up to \$22,500 on a 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 **1 December 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 person 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 \$30,000. 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 \$22,500 to complete a supplemental environmental project and pay the balance of the \$30,000 to the *State Water Pollution Cleanup and Abatement Account*. If the City wishes to direct a portion of the liabilities up to \$22,500 toward a supplemental environmental project pursuant to California Water Code (CWC) Section 13385(l), the City must submit by **1 December 2004** a technical report detailing the supplemental environmental project, including a compliance schedule that shows that the supplemental environmental 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.

***California Environmental Protection Agency***



If the City does not waive its right to a hearing or another person requests a hearing, a hearing will be scheduled for **28 January 2005** 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.

If the matter will be heard before the Regional Board, 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 **1 December 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, Regional Water Quality Control Board, San Diego  
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  
Merced County Environmental Health, Merced  
Mr. Monte Hammamoto, Veolia Water, Atwater  
Mr. Warren Tellefson, Central Valley Clean Water Association (CVCWA), Auburn

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2004-0540

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

This complaint to assess Mandatory Minimum Penalties (MMPs) pursuant to California Water Code (CWC) section 13385 is issued to the City of Atwater (herein Discharger) based on a finding of violations of Waste Discharge Requirements Order No. 95-034 (NPDES Permit No. CA0079179).

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

1. On 24 February 1995, the Regional Board adopted Order No. 95-034 authorizing the Discharger to discharge pollutants from its wastewater treatment facility (WWTF) to the Atwater Drain, 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 ... 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. 95-034 includes the following effluent limitations:

**B. Effluent Limitations**

1. Effluent shall not exceed the following limits:

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>7-Day Median</u>	<u>Daily Maximum</u>
Total Coliform	MPN/100 mL	--	--	23	500

\* \* \*

- 6. ...the Discharger shall not have an EC greater than the source water EC plus 500 µmhos/cm.
- 8. According to monitoring reports submitted by the Discharger, it committed nine (9) serious violations between 1 January 2001 and 31 July 2004 involving the discharge of total coliform, a Group I pollutant. Three serious violations exceeded the effluent daily maximum limitation by 40 percent or more and six serious violations exceeded the effluent seven-sample median 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 MMPs for these serious violations are twenty-seven thousand dollars (\$27,000).
- 9. In addition to the provisions of CWC section 13385(h), CWC section 13385(i)(1) requires the Regional Board to assess an MMP of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if a discharger violates a waste discharge requirement effluent limitation four or more times in any period of six consecutive months. Violations of this frequency are termed chronic violations. For purposes of counting the first three violations, each violation of CWC section 13385(h) that occurs prior to violation of CWC section 13385(i)(1) counts as one of the first three violations. No violation is subject both to chronic and serious penalties.
- 10. Based upon monitoring reports submitted by the Discharger covering the period of 1 January 2001 through 31 July 2004, in addition to the six serious violations in Finding 8, it also violated the effluent conductivity (EC) once, which is a chronic violation subject to MMP pursuant to CWC section 13385(i). The violation is shown in Attachment A. The MMP for this chronic violation is three thousand dollars (\$3,000).
- 11. The MMPs from Finding Nos. 8 and 10 total thirty thousand dollars (\$30,000).
- 12. 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 ten days. The maximum amount of civil liability that may be imposed by the Regional Board pursuant to CWC Section 13385(c)(1) is one hundred thousand dollars (\$100,000). 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 \$300 million.

13. If the Regional Board elects to assess civil liability under CWC section 13385(e), CWC section 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.
14. 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 ATWATER IS HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Regional Board proposes that the City of Atwater be assessed MMPs in the amount of thirty thousand dollars (\$30,000).
2. The Executive Officer may consider offsetting a portion of the MMPs by the monetary value of a supplemental environmental project (SEP) to be completed by the City of Atwater.
3. If the City of Atwater wishes the Executive Officer to consider allowing monetary credit for an SEP against a portion of the full MMPs, the City of Atwater shall comply with the following schedule:
  - a. By **1 December 2004**, agree to enter into a stipulated administrative civil liability order that will require the City of Atwater to complete an SEP as approved by the Executive Officer and pay the amount of the MMPs not approved for the SEP within thirty days from the date the Regional Board adopts the order.
  - b. By **1 December 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 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 January 2010**, the City of Atwater shall submit verification of the actual amount of money spent by City of Atwater toward completion of the SEP.

4. A hearing shall be held by the Regional Board on **28 January 2005** unless the City of Atwater agrees to waive the hearing and pay the penalty of \$30,000 in full or enters into a stipulated administrative civil liability order as described in item 3 above.

5. The City of Atwater may waive the right to a hearing. If the City of Atwater wishes to waive the hearing, it must by **1 December 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 thirty thousand dollars (\$30,000) 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-**0540**; or
  - b. Check (2) on the attached waiver, sign it, and return it to indicate commitment to enter into a stipulated administrative civil liability order to spend a portion of thirty dollars (\$30,000) on a proposed SEP described in an accompanying technical report; and pay any remainder resulting from this alternative to the *State Water Pollution Cleanup and Abatement Account* within **30 days** after execution of the stipulated administrative civil liability order specifying the remainder still due.
- 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 an 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 time schedule in Nos. 3 and 5 above, by no more than 6 months.
7. If the City chooses Alternative 5.b. and does not agree to 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 penalties must be paid within **30 days** of notification by the Executive Officer.

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THOMAS R. PINKOS, Executive Officer

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(Date)

**WAIVER**

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

1. \_\_\_ remit thirty thousand dollars (\$30,000) by check made payable to the *State Water Pollution Cleanup and Abatement Account* for the mandatory penalty by **1 December 2004**, or
2. \_\_\_ enter into a stipulated administrative civil liability order agreeing to:
  - a. spend a portion of thirty thousand dollars (\$30,000) 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 **1 December 2004**; and
  - b. By **30 days** after the date of signing of a stipulated administrative civil liability order containing the above SEP, pay the balance of the mandatory penalty to the *State Water Pollution Cleanup and Abatement Account*.

The City of Atwater 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 Atwater 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)

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2004-0540

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

Violation Number	Reporting Period	Violation Date	Constituent	Limit Type	Units	Period	Category	Limit	Reported Value	% Exceedance	Mandatory Penalty (Chronic)	Mandatory Penalty (Serious)
1	Jan-01	24	Total Coliform	Concentration	MPN/100 mL	Median	I	23	80	248%		\$3,000
2	Jan-01	25	Total Coliform	Concentration	MPN/100 mL	Median	I	23	80	248%		\$3,000
3	Jan-01	26	Total Coliform	Concentration	MPN/100 mL	Median	I	23	80	248%		\$3,000
4	Jan-01	28	Total Coliform	Concentration	MPN/100 mL	Median	I	23	80	248%		\$3,000
5	Jan-01	29	Total Coliform	Concentration	MPN/100 mL	Median	I	23	80	248%		\$3,000
6	Jan-01	30	Total Coliform	Concentration	MPN/100 mL	Median	I	23	80	248%		\$3,000
7	Mar-01	22	Conductivity	Concentration	µmhos/cm	Maximum		804	1201	49%	\$3,000	
8	May-01	4	Total Coliform	Concentration	MPN/100 mL	Daily Maximum	I	500	>1600	220%		\$3,000
9	Feb-03	24	Total Coliform	Concentration	MPN/100 mL	Daily Maximum	I	500	>1600	220%		\$3,000
10	Jul-03	4	Total Coliform	Concentration	MPN/100 mL	Daily Maximum	I	500	>1600	220%		\$3,000
<b>SUBTOTAL</b>											<b>\$3,000</b>	<b>\$27,000</b>
<b>TOTAL</b>												<b>\$30,000</b>