

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2010-0509

MANDATORY PENALTY
IN THE MATTER OF

NEVADA COUNTY SANITATION DISTRICT NO. 1
LAKE OF THE PINES WASTEWATER TREATMENT PLANT
NEVADA COUNTY

This Complaint is issued to the Nevada County Sanitation District No. 1 (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) Orders R5-2002-0095 and R5-2009-0031 (NPDES No. CA0081612).

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 Lake of the Pines. Treated wastewater is discharged to Magnolia Creek, tributary to the Bear River, a water of the United States.
2. On 7 June 2002, the Central Valley Water Board issued WDRs Order R5-2002-0095. On 23 April 2009, effective 13 June 2009, the Board rescinded WDRs Order R5-2002-0095 and issued WDRs Order R5-2009-0031, which contained new requirements. The violation in this Complaint occurred on 30 April 2009, after issuance but before the effective date of Order R5-2009-0031. Therefore, at the time of the violation, the Discharger was required to comply with Order R5-2002-0095.
3. On 28 July 2008, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Order R5-2008-0552 for mandatory minimum penalties for effluent violations from 1 January 2000 through 31 March 2008. The Discharger paid \$82,000 to the Cleanup and Abatement Account, and agreed to a Supplemental Environmental Project (SEP) for \$47,000. The Discharger currently is implementing the SEP.
4. This Complaint covers the period of 1 April 2008 through 31 December 2009. On 23 December 2009, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations (ROV) for effluent limitation violations for the period of 1 April 2008 through 30 September 2009. In its 15 January 2010 response, the Discharger contested a violation in the draft ROV and requested that no penalties be assessed. Board staff considered the Discharger's response and has retained the contested violation, as discussed in detail in Attachment B of this Complaint. Additionally,

this Complaint extends the period through 31 December 2009, during which time no further violations occurred.

5. CWC Section 13385(h)(2) requires assessment of mandatory penalties and states, in part, the following:

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.

6. 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.

7. WDRs Order R5-2002-0095 Effluent Limitations B.1., states, in part:

<u>Constituents</u>	<u>Units</u>	<u>Average Monthly</u>	<u>Average 4-Day</u>	<u>Average Daily</u>	<u>Average 1-Hour</u>
Aluminum	µg/L	--	87	--	750

8. According to the Discharger's self-monitoring reports, the Discharger committed one Group I serious violation of the above cited effluent limitation in WDRs Order R5-2002-0095 from 1 April 2008 through 12 June 2008 and no effluent limitation violations of WDRs Order R5 2009-0031 from 13 June 2008 through 31 December 2009. The violation is defined as serious because the measured concentration of a Group I constituent exceeded maximum prescribed levels by more than 40 percent on this occasion. The mandatory minimum penalty for the **one (1)** Group I serious violation is **three thousand dollars (\$3,000)**.
9. The total amount of the mandatory penalty assessed for the cited effluent violation is **three thousand dollars (\$3,000)**. The cited effluent violation is included in Attachment A, a part of this Order.
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).

NEVADA COUNTY SANITATION DISTRICT NO. 1 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 **three thousand dollars (\$3,000)**.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **27/28 May 2010**, unless one of the following occurs by **1 April 2010**:
 - 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 **three thousand dollars (\$3,000)**; 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 conducted, the 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 Wendy Wyels for
PAMELA C. CREEDON, Executive Officer

1 March 2010
DATE

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the Nevada County Sanitation District No. 1 (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2010-0509 (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 **three thousand dollars (\$3,000)** by check that references "ACL Complaint R5-2010-0509" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **1 April 2010**.
- 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 R5-2010-0509

Nevada County Sanitation District No. 1
Lake of the Pines Wastewater Treatment Plant

DRAFT RECORD OF VIOLATIONS (1 April 2008 – 31 December 2009) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs R5-2002-0095 and R5-2009-0031)

	<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	30-Apr-09	Aluminum	µg/L	87	132	4-Day	1	831881

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 violation 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>12/31/2009</u>
Group I Serious Violations:	1
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	0
Non-serious Violations Subject to MPs:	0
<u>Total Violations Subject to MPs:</u>	<u>1</u>

Mandatory Minimum Penalty = (1 serious Violation + 0 Non-Serious Violations) x \$3,000 = \$3,000



Linda S. Adams
Secretary for
Environmental
Protection

ATTACHMENT B
California Regional Water Quality Control Board
Central Valley Region

Katherine Hart, Chair



Arnold
Schwarzenegger
Governor

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>

TO: Victor Vasquez
Sr. Engineer
NPDES Compliance & Enforcement

FROM: Barry Hilton
NPDES Compliance & Enf.

DATE: 24 February 2010

SIGNATURE: _____

SUBJECT: NEVADA COUNTY SANITATION DISTRICT 1, LAKE OF THE PINES WWTP

On 23 December 2009, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations for effluent limitation violations for the period of 1 April 2008 through 30 September 2009. Additionally, this Complaint addresses the period through 31 December 2009, during which time no further violations occurred.

The Discharger, in its 15 January 2010 response, disagreed with the Record of Violations and requested that no penalties be assessed. Specifically, the Discharger disagreed with the manner that the 4-day average effluent concentration for aluminum was calculated. WDRs Order R5-2002-0095, Effluent Limitations B.1 established an average 4-day aluminum effluent limitation of 87 µg/L. There was one sample during a seven-day period. The Discharger stated that there were four days of effluent aluminum samples for April 2009: 50 (4/10), 18.8 (4/16), 8.3 (4/23), and 132 µg/L (4/30) with a four sample day average of 52.3 µg/L. The Discharger interpreted the four-day average as the average of the four sample days.

However, when there is only one sample during a designated monitoring period, and if the sample exceeds the average effluent limitation for the monitoring period, the result is a violation for the monitoring period (see the State Water Board's *SB 709 and SB 2165 Questions and Answers*, Question 38, 17 April 2001). The following also support this interpretation:

- The California Toxics Rule, 40 CFR 131, states, in part, "...a 4-day averaging period for chronic criteria...means that measured or predicted ambient pollutant concentrations should be averaged over a 4-day period to determine attainment of a chronic criteria."
- The Draft "Total Residual Chlorine and Chlorine-Produced Oxidants Policy of California" (June 2006) defines a four-day average as "...an average of discrete data set in four-day intervals."
- The USEPA "Technical Support Document for Water Quality-Based Toxics Control," (1991) states"...the 4-day averaging period would imply that concentrations in all samples obtained within any 4-day period should be averaged..."

- Central Valley Water Board staff have consistently utilized single samples per week to determine compliance with the hourly maximum, daily maximum, four-day average, and weekly average.

The Discharger's 30 April 2009 aluminum sample of 132 µg/L single-day result is also the 4-day average result and violated the four-day average concentration because the sample result was within a continuous four-day period. A four-sample per month average taken once per week for four weeks does not meet the definition of a four-day sample because the samples are not on contiguous consecutive days. Therefore, since the violation meets the definition of a serious Group I violation because it is more than 40 percent greater than the effluent limitation, the violation is subject to a mandatory minimum penalty of \$3,000.