

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0564

MANDATORY PENALTY
IN THE MATTER OF

CITY OF GALT
WASTEWATER TREATMENT PLANT
SACRAMENTO COUNTY

This Complaint is issued to the City of Galt (hereafter Discharger) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability and Water Code 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 R5-2004-0001 and R5-2010-0099 (NPDES No. CA0081434).

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 City of Galt. Treated wastewater is discharged to Laguna Creek, tributary to the Cosumnes River, a water of the United States.
2. On 29 January 2004, the Central Valley Water Board adopted WDRs Order R5-2004-0001, which contained new requirements and rescinded WDRs Order 97-111, except for enforcement purposes.
3. On 23 September 2010, the Central Valley Water Board adopted WDRs Order 2010-0099 (effective 12 November 2010), which contained new requirements and rescinded the previous WDRs Order R5-2004-0001, except for enforcement purposes.
4. On 23 May 2010, the Board adopted Time Schedule Order (TSO) R5-2010-0100, which contained interim limitations and compliance time schedules for arsenic, bis (2-ethylhexyl)phthalate, carbon tetrachloride, copper, cyanide, chlorodibromomethane, dichlorobromomethane, and nitrate plus nitrite. The TSO required full compliance with WDRs final effluent limits for arsenic, bis (2-ethylhexyl)phthalate, copper, and nitrate plus nitrite by 1 September 2015 and full compliance with WDRs final effluent limitations for carbon tetrachloride, cyanide, chlorodibromomethane, and dichlorobromomethane by 1 November 2011.
5. On 15 December 2010, the Board amended TSO R5-2010-0100 and adopted TSO R5-2010-0100-01, which increased the interim effluent limitation for arsenic from 14 µg/L to 21 µg/L and extended the compliance schedule for carbon tetrachloride from 1 November 2011 to 1 September 2015. This Complaint considers the protection from mandatory minimum penalties provided by both TSOs.

6. On 3 December 2009, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Order (ACLO) R5-2009-0576 for \$300,000 in mandatory minimum penalties (MMPs) for effluent violations occurring between 1 January 2000 and 30 June 2009. The Discharger paid \$150,000 of the civil liability and completed a supplemental environmental project to satisfy the remaining \$150,000 liability. The Board considers those effluent violations specifically listed in Attachment A to ACLO R5-2009-0576 to be resolved.
7. On 3 July 2013, staff issued the Discharger a Notice of Violation (NOV) and draft Record of Violations (ROV) for effluent limitation violations that occurred between 1 July 2009 and 30 April 2013. The Discharger responded to the NOV/ROV in a letter dated 2 August 2013 and disputed several of the violations. The Discharger requested that the BOD, TSS, and settleable solids violations be removed as these violations were not effluent limitation violations. The Discharger stated that the violations cited in the ROV/NOV were violations of the land discharge and reclamation effluent limitations and are therefore not subject to MMPs. Board staff re-reviewed these monitoring reports and determined that the violations occurred during periods of land application, not effluent discharge to surface waters, and the violations are not subject to MMPs. These violations are not included in this Complaint.

In addition, the Discharger disputed a January 2011 total coliform effluent violation. Board staff re-reviewed the January 2011 self-monitoring report and determined that the discharge was in compliance with the total coliform effluent limitations and that the violation was cited in error. Board staff has removed the violation.

The Discharger also disputed the average monthly arsenic violations cited in the ROV/NOV. The Discharger stated that arsenic was covered under TSO R5-2010-0100-01 and average monthly arsenic violations were not subject to MMPs. Board staff re-reviewed these violations and finds that the violations are subject to MMPs. According to the self-monitoring reports, the 5 June 2012 and 12 July 2012 arsenic effluent concentrations exceeded the daily maximum interim effluent limitation contained in the TSO. The TSO only provides protection from MMPs when the Discharger is in compliance with the interim effluent limitations. Because the daily maximum effluent concentration exceeded the interim limitation contained in the TSO, any WDRs limitation exceedances for arsenic are subject to MMPs during the reporting period that the interim TSO limitation was exceeded. Therefore, the average monthly WDRs limitation exceedances are violations subject to MMPs.

8. While preparing the ROV/NOV, Board staff inadvertently overlooked two cyanide violations. Because MMP protection provided by the TSO ended on 1 November 2011, this Complaint includes two additional cyanide effluent violations subject to MMPs that occurred in April 2012 and June 2012.
9. Board staff also overlooked two copper effluent violations which have been added to this Complaint. The April 2012 effluent copper result exceeded the TSO's daily maximum limitation, as well as the WDRs' daily maximum and average monthly effluent limitations.

Because the effluent concentration exceeded the interim limitation contained in the TSO, any WDRs limitation exceedances for copper are subject to MMPs during the reporting period that the interim limitation TSO was exceeded. Therefore, the daily maximum and average monthly WDRs limitation exceedances in April 2012 are violations subject to MMPs, and the violations have been added to this Complaint.

10. Water Code section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

Water Code 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.

Water Code 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.

Water Code section 13385 subdivision (i)(1) states, in part:

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:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

11. Water Code 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.

12. Water Code section 13385(j) exempts certain violations from the mandatory minimum penalties, and states, in relevant part:

Subdivisions (h) and (i) do not apply to any of the following:

- 3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or 13308 if all of the following requirements are met:
 - C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible....For the purposes of this subdivision, the time schedule may not exceed five years in length The interim requirements shall include both of the following:
 - i) Effluent limitations for the pollutant or pollutants of concern.
 - ii) Actions and milestones leading to compliance with the effluent limitation.

13. WDRs Order R5-2004-0001 Effluent Limitations B.5 includes the following effluent limitation:

- 5. The discharge shall not have a pH less than 6.5 nor greater than 8.5.

14. WDRs Order R5-2010-0099 Effluent Limitations IV.A.2.b includes, in part, the following effluent limitation:

- b. Effective immediately and ending on 1 September 2015, the Discharger shall maintain compliance with the ammonia maximum daily effluent limitations (MDEL) listed in Table 7... These interim effluent limitations shall apply in lieu of all final ammonia effluent limitations specified in previous section IV.A.1. Table 6 during the time period indicated in this provision:

Table 7. Interim Effluent Limit for Ammonia

Parameter	Units	Effluent Limitations			
		Average Monthly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Ammonia Nitrogen, Total (as N)	mg/L	--	14	--	--

15. WDRs Order R5-2010-0099 Effluent Limitations IV.A.1.a includes, in part, the following effluent limitations:

- a. The Discharger shall maintain compliance with the effluent limitations specified in Table 6:

Table 6. Effluent Limitations

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Arsenic	mg/L	10	--	--	--	--
Copper, Total Recoverable	µg/L	3.1	--	4.3	--	--
Cyanide, Total (as CN)	µg/L	3.4	--	9.6	--	--
pH	standard units	--	--	--	6.5	8.2

16. TSO R5-2010-0100-01 Directive 2 includes, in part, the following interim effluent limitations:

2. The following interim maximum daily effluent limitations shall be effective immediately and until the date specified in the table for applicable parameter, or when the Discharger is able to come into compliance, whichever is sooner.

Effective immediately and until:	Parameter	Maximum Daily Effluent Limitation
1 September 2015	Arsenic	21 µg/L
1 September 2015	Copper	7 µg/L
1 November 2011	Cyanide	9.6 µg/L

In accordance with the provisions of Water Code section 13385(j)(3), violations of the copper and arsenic interim effluent limitations contained in the 2010 TSO subject the Discharger to mandatory minimum penalties for violations of the final copper and arsenic effluent limitations contained in the WDRs.

17. According to the Discharger's self-monitoring reports, the Discharger committed five (5) serious Group II violations of the above effluent limitations contained in Order Nos. R5-2004-0001 and R5-2010-0099. The violations are serious because measured concentrations of Group II constituents exceeded maximum prescribed levels by twenty percent (20%) or more on these occasions. The mandatory minimum penalty for these serious violations is **fifteen thousand dollars (\$15,000)**.
18. According to the Discharger's self-monitoring reports, the Discharger committed five (5) non-serious violations of the above effluent limitations contained in Order Nos. R5-2004-0001 and R5-2010-0099. Two of these non-serious violations are subject to mandatory penalties under Water Code section 13385 subdivision (i)(1) because the violations were preceded by three or more similar violations within a 180-day period. The mandatory minimum penalty for these non-serious violations is **six thousand dollars (\$6,000)**.

19. The total amount of the mandatory penalties assessed for the alleged effluent violations is **twenty-one thousand dollars (\$21,000)**. As stated herein, a detailed list of the alleged effluent violations is included in Attachment A. This Complaint addresses administrative civil liability for violations that are specifically identified as subject to mandatory minimum penalties in Attachment A.
20. Issuance of this Administrative Civil Liability Complaint to enforce Water Code 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).

THE CITY OF GALT 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 **twenty-one thousand dollars (\$21,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **5/6 December 2013**, unless one of the following occurs by **8 October 2013**.
 - 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 **twenty-one thousand dollars (\$21,000)**; 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 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.

4. 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

PAMELA C. CREEDON, Executive Officer

10 September 2013

DATE

Attachment A: Record of Violations

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the City of Galt (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2013-0564 (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 **twenty-one thousand dollars (\$21,000)** by check that references "ACL Complaint R5-2013-0564" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **8 October 2013**.
 - 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)

