

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0520

MANDATORY PENALTY
IN THE MATTER OF

CITY OF TRACY
WASTEWATER TREATMENT PLANT
SAN JOAQUIN COUNTY

This Complaint is issued to the City of Tracy, Wastewater Treatment Plant (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) Order R5-2007-0036 (NPDES No. CA0079154).

The Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water 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 Tracy. Treated wastewater is discharged to Old River, a water of the United States and part of the Sacramento-San Joaquin Delta.
2. On 4 May 2007, the Central Valley Water Board issued WDRs Order R5-2007-0036 to regulate discharges of waste from the wastewater treatment plant (WWTP).
3. On 4 May 2007, the Central Valley Water Board issued Time Schedule Order (TSO) R5-2007-0037, providing a time schedule and establishing interim effluent limits until 1 August 2008 to comply with new effluent limitations for nitrate and nitrite. The TSO also extended the compliance date for the new dissolved oxygen effluent limitation until 30 April 2012. On 25 January 2008, the Central Valley Water Board issued Resolution No. R5-2008-0014 to amend the WDRs to modify the location of receiving water monitoring point R-005. On 12 June 2008, the Central Valley Water Board issued Resolution No. R5-2008-0086, amending the WDRs to provide interim effluent limitations for chlorodibromomethane and dichlorobromomethane effective 12 June 2008, with an 18 May 2010 full compliance date. This Complaint considered the interim effluent limitations and the protection from Mandatory Minimum Penalties provided by TSO R5-2007-0037 and Resolution No. R5-2008-0086.
4. On 8 August 2008, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2008-0559 for mandatory minimum penalties for effluent violations from 1 January 2003 through 31 January 2008. The Discharger paid the Complaint and the Central Valley Water Board considers the matter resolved.

5. On 25 February 2009, the Central Valley Water Board sent the Discharger a draft Record of Violations. On 9 March 2009, the Discharger responded that the cited violations are correct.
6. CWC sections 13385(h) and (i) require assessment of mandatory penalties 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:

- 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."

7. 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.

8. WDRs Order No. R5-2007-0036 Effluent Limitations IV.A.1.a. requires, in part, "*The Discharger shall maintain compliance with the effluent limitations specified...*"

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Dichlorobromomethane	µg/L	6.8	--	9.5	--	--
Chlorodibromomethane	µg/L	3.6	--	7.6	--	--

9. Resolution R5-2008-0086, effective 12 June 2008, amended WDRs Order No. R5-2007-0036 Interim Effluent Limitations IV.A.5.e. to require, in part:

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Dichlorobromomethane	µg/L	--	--	37.0	--	--
Chlorodibromomethane	µg/L	--	--	28.0	--	--

10. WDRs Order No. R5-2007-0036 Effluent Limitations IV.A.1.e. requires, in part, "Effluent total residual chlorine shall not exceed:

ii. 0.02 mg/L as a 1-hour average."

11. WDRs Order No. R5-2007-0036 Effluent Limitations IV.A.5.g. states in part: "Effective immediately and ending on April 30, 2012 the discharge of treated effluent shall maintain compliance with the effluent limitations specified in Table 10..."

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Aluminum	µg/L	--	--	266	--	--

12. According to the Discharger's self-monitoring reports, the Discharger committed twenty-three (23) serious Group II violations of the above effluent limitations contained in Order R5-2007-0036 and Resolution R5-2008-0086 during the period beginning 1 February 2008 and ending 31 December 2008. These violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels by more than 20 percent on these occasions. The mandatory minimum penalty for these serious violations is **sixty-nine thousand dollars (\$69,000)**.
13. According to the Discharger's self-monitoring reports, the Discharger committed three (3) non-serious violations of the above effluent limitations contained in Order R5-2007-0036 and Resolution R5-2008-0086 during the period beginning 1 February 2008 and ending 31 December 2008. All three (3) of the non-serious violations are subject to mandatory

penalties under CWC section 13385(i)(1) because these violations were preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for these non-serious violations is **nine thousand dollars (\$9,000)**.

14. The total amount of the mandatory penalties assessed for the cited effluent violations is **seventy-eight thousand dollars (\$78,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
15. 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).

THE CITY OF TRACY WASTEWATER TREATMENT PLANT 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 **seventy-eight thousand dollars (\$78,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **11/12 June 2009**, unless the Discharger does either of the following by **15 April 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 **seventy-eight thousand dollars (\$78,000)**; 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 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.

PAMELA C. CREEDON, Executive Officer

16 March 2009

**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 the City of Tracy (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2009-0520 (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 Central Valley Regional Water Quality Control Board (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 proposed civil liability in the amount of **seventy-eight thousand dollars (\$78,000)** by check, which will contain a reference to "ACL Complaint R5 2009-0520" and will be made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **15 April 2009** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **11/12 June 2009** Central Valley Water Board meeting.
 - 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 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)

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2009-0520**

**City of Tracy
Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 February 2008 – 31 December 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2007-0036)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Result</u>	<u>Period Type</u>	<u>Remarks</u>	<u>CIWQS</u>
1	5-Feb-08	Dichlorobromomethane	µg/L	9.5	22	Daily	2	781112
2	5-Feb-08	Chlorodibromomethane	µg/L	7.6	15	Daily	2	781120
3	12-Feb-08	Dichlorobromomethane	µg/L	9.5	24	Daily	2	781115
4	12-Feb-08	Chlorodibromomethane	µg/L	7.6	14	Daily	2	781121
5	14-Feb-08	Dichlorobromomethane	µg/L	9.5	22	Daily	2	781117
6	14-Feb-08	Chlorodibromomethane	µg/L	7.6	22	Daily	2	781122
7	29-Feb-08	Dichlorobromomethane	µg/L	6.8	23	Monthly	2	781118
8	29-Feb-08	Chlorodibromomethane	µg/L	3.6	17	Monthly	2	781123
9	5-Mar-08	Dichlorobromomethane	µg/L	9.5	27	Daily	2	781125
10	5-Mar-08	Chlorodibromomethane	µg/L	7.6	23	Daily	2	781129
11	30-Mar-08	Dichlorobromomethane	µg/L	6.8	27	Monthly	2	781126
12	30-Mar-08	Chlorodibromomethane	µg/L	3.6	23	Monthly	2	781137
13	17-Apr-08	Dichlorobromomethane	µg/L	9.5	32	Daily	2	781139
14	17-Apr-08	Chlorodibromomethane	µg/L	7.6	35	Daily	2	781141
15	30-Apr-08	Dichlorobromomethane	µg/L	6.8	32	Monthly	2	781138
16	30-Apr-08	Chlorodibromomethane	µg/L	3.6	35	Monthly	2	781140
17	25-May-08	Dichlorobromomethane	µg/L	9.5	21	Daily	2	781142
18	25-May-08	Dichlorobromomethane	µg/L	6.8	21	Monthly	2	781143
19	25-May-08	Chlorodibromomethane	µg/L	7.6	14	Daily	2	781144
20	25-May-08	Chlorodibromomethane	µg/L	3.6	14	Monthly	2	781145
21	5-Jun-08	Chlorodibromomethane	µg/L	7.6	24	Daily	2	781147
22	5-Jun-08	Dichlorobromomethane	µg/L	9.5	34	Daily	2	781151
23	20-Jun-08	Total Chlorine Residual	mg/L	0.02	0.1	1-hour average	2	781160
24	5-Aug-08	Aluminum	µg/L	266	290	Daily Max	4	805406
25	10-Sep-08	Aluminum	µg/L	266	310	Daily Max	4	805407
26	22-Oct-08	Dichlorobromomethane	µg/L	37	40	Daily	4	805409

Remarks:

1. Serious Violation: For Group 1 pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group 2 pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations 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>12/31/2008</u>
Group 1 Serious Violations:	0
Group 2 Serious Violations:	23
Non-Serious Exempt from MPs:	0
Non-serious Violations Subject to MPs:	3
<u>Total Violations Subject to MMPs:</u>	<u>26</u>

Mandatory Minimum Penalty = (23 Serious Violations + 3 Non-Serious Violations) x \$3,000 = \$78,000