

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0525

MANDATORY PENALTY
IN THE MATTER OF

CITY OF STOCKTON
REGIONAL WASTEWATER CONTROL FACILITY
SAN JOAQUIN COUNTY

This Complaint is issued to the City of Stockton (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 R5-2008-0154 (NPDES No. CA0079138).

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 to the City of Stockton, the Port of Stockton, and surrounding urbanized unincorporated areas. Treated municipal wastewater is discharged to the San Joaquin River.
2. On 23 October 2008, the Central Valley Water Board issued WDRs Order R5-2008-0154, which became effective on 2 December 2008. The WDRs contained new requirements, and rescinded Order R5-2002-0083, except for enforcement purposes.
3. On 23 October 2008, the Central Valley Water Board issued Time Schedule Order (TSO) R5-2008-0155. TSO R5-2008-0155 included interim effluent limitations for aluminum, dichlorobromomethane, chlorodibromomethane, bis(2-ethylhexyl)phthalate, and cyanide.
4. On 30 March 2009, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2009-0526 for mandatory minimum penalties for effluent violations (identified in Attachment A to ACLC R5-2009-0526) that occurred from 1 January 2000 through 31 December 2008. The Discharger paid the civil liability and the Board considers those effluent violations specifically listed in Attachment A to ACLC R5-2009-0526 resolved.
5. On 7 October 2009, Central Valley Water Board staff issued a draft Record of Violations (ROV) to the Discharger for the period of 1 January 2009 through 30 June 2009. The Discharger paid the proposed \$6,000 penalty prior to issuance of an ACL Complaint. On 23 November 2009, the Executive Officer acknowledged the payment and considered the violations identified in the 7 October 2009 ROV as subject to mandatory minimum penalties settled.

6. On 23 December 2009, Central Valley Water Board staff issued the Discharger a draft ROV for the period of 1 July 2009 through 30 September 2009. This ROV listed one cyanide violation; however, Board staff subsequently withdrew the ROV based on legal counsel's interpretation of CWC section 13385(j).
7. On 18 November 2010, Board staff issued the Discharger a draft ROV for the period from 1 August 2009 through 30 September 2010. The Discharger responded that TSO R5-2008-0155 provided it with protection from MMPs. However, the Discharger exceeded the cyanide interim effluent limitations established in TSO R5-2008-0155, and therefore, the exemption provided by CWC section 13385(j) does not apply to those violations.
8. On 7 January 2011, the Executive Officer of the Central Valley Water Board issued ACLC R5-2011-0506 for mandatory minimum penalties for effluent violations (identified in Attachment A to Complaint R5-2011-0506) that occurred from 1 January 2009 through 30 September 2010. ACLC R5-2011-0506 included the violations identified in the 7 October 2009 ROV and acknowledged the amount the Discharger has already paid. On 19 January 2011, the Discharger waived a right to a hearing within 90 days and requested a meeting to discuss the violations. During a 10 February 2011 meeting, the Discharger submitted evidence and documentation that sample preservation techniques for cyanide generated false positive test results. Based on that documentation, Central Valley Water Board staff has dismissed the cyanide violations that occurred after 30 June 2009. Cyanide violations prior to that date have already been settled.
9. This Complaint addresses administrative civil liability for effluent violations that occurred during the period from 1 January 2009 through 30 November 2010. These violations are specifically identified in Attachment A to this Complaint as subject to mandatory minimum penalties. Attachment A to this Complaint is attached hereto and incorporated herein by this reference. This Complaint withdraws and replaces ACLC R5-2011-0506, extends the record of violations period through 30 November 2010, accounts for the Discharger's prior payment of \$6,000, and updates the record of violations in Attachment A. This Complaint considers the protection from mandatory minimum penalties provided by TSO R5-2008-0155 but only exempts certain violations from mandatory minimum penalties if the Discharger was in compliance with interim effluent limits established in the TSO.
10. 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 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. CWC 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.

12. TSO R5-2008-0155 contains interim effluent limitations for cyanide; however, as shown on Attachment A, the Discharger exceeded those interim effluent limits and therefore CWC section 13385(j) does not exempt those particular violations from mandatory minimum penalties.

13. 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.

14. WDRs Order R5-2008-0154 Effluent Limitations IV.A.1.a. states, in part:

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

Table 6

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Ammonia, Total (as N)	mg/L	2	--	5	--	--
Cyanide, Total Recoverable	µg/L	4.1	--	9.0	--	--

15. WDRs Order R5-2008-0154 Effluent Limitations IV.A.1.e. states, in part:

- e. Total Residual Chlorine. Effluent total residual chlorine shall not exceed:
 - ii. 0.02 mg/L as a 1-hour average.

16. Time Schedule Order R5-2008-0155, Item 2, states, in part:

The following interim effluent limitations shall be effective immediately. The interim effluent limitations for ... cyanide shall be effective until 1 October 2013, or when the Discharger is able to come into compliance, whichever is sooner.

Parameter	Average Monthly Effluent Limitation (µg/L)	Maximum Daily Effluent Limitation (µg/L)
Cyanide (Total Recoverable)	4.1	9.2

17. According to the Discharger’s self-monitoring reports, the Discharger committed four (4) serious Group II violations of the above effluent limitations contained in WDR Order R5-2008-0154 and TSO R5-2008-0155 during the period beginning 1 January 2009 and ending 30 November 2010 as identified in Attachment A. 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 **twelve thousand dollars (\$12,000)**
18. According to the Discharger’s self-monitoring reports, the Discharger committed one (1) non-serious violation of the above effluent limitations contained in Order R5-2008-0154 during the period beginning 1 January 2009 and ending 30 November 2010 as identified in Attachment A. The non-serious violation is not subject to mandatory penalties under CWC section 13385 subdivision (i)(1) because this violation was not preceded by three or more similar violations within a six-month period.
19. The total amount of the mandatory penalties assessed for the cited effluent violations is **twelve thousand dollars (\$12,000), of which the Discharger has previously paid \$6,000 as described in Finding 5 above.** As stated herein, a detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint. This Complaint addresses administrative civil liability for violations that are specifically identified in Attachment A as subject to mandatory minimum penalties.

20. 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 STOCKTON IS HEREBY GIVEN NOTICE THAT:

1. Administrative Civil Liability Complaint R5-2011-0506 is hereby rescinded.
2. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **six thousand dollars (\$6,000)**.
3. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **8/9/10 June 2011**, unless the Discharger does one of the following by **13 April 2011**:
 - a) 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; 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.
4. 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.
5. 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 Frederick Moss for
PAMELA C. CREEDON, Executive Officer

14 March 2011

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 City of Stockton (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2011-0525 (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 **six thousand dollars (\$6,000)** by check that references "ACL Complaint R5-2011-0525" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **13 April 2011**.
- 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 R5-2011-0525**

**City of Stockton
Regional Wastewater Control Facility**

DRAFT RECORD OF VIOLATIONS (1 January 2009 – 30 November 2010) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2008-0154)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>WDR Limit</u>	<u>TSO Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>	<u>CIWQS</u>
1*	18-Feb-09	Cyanide	µg/L	9.0	9.2	17	Max Daily	2	817787
2*	31-May-09	Cyanide	µg/L	4.1	4.1	5.1	Monthly	2	829480
3	6-Dec-09	Ammonia (as N)	mg/L	5		6.3	Max Daily 1-hr	3	860479
4	25-May-10	Chlorine	mg/L	0.02		0.2	Average 1-hr	2	875600
5	20-Nov-10	Chlorine	mg/L	0.02		0.65	Average	2	887988

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 not subject to mandatory minimum penalties.
4. Non-serious violation subject to mandatory penalties.

VIOLATIONS AS OF: 11/30/2010

Group I Serious Violations:	0
Group II Serious Violations:	4
Non-Serious Violations Not Subject to MMPs:	1
Non-serious Violations Subject to MMPs:	0
<u>Total Violations Subject to MMPs:</u>	<u>4</u>

Mandatory Minimum Penalty = (4 Serious Violations + 0 Non-Serious Violations) x \$3,000 = \$12,000*

* The MMPs for violations 1 and 2 were paid on 27 October 2009.