

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT R5-2013-00516

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
CITY OF MANTECA
WASTEWATER QUALITY CONTROL FACILITY
SAN JOAQUIN COUNTY

This Complaint is issued to the City of Manteca (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 evidence that the Discharger violated provisions of Waste Discharge Requirements Order (WDRs) Order R5-2009-0095 (NPDES No. CA0081558).

The Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) alleges the following:

BACKGROUND

1. The Discharger owns and operates the City of Manteca Water Quality Control Facility (WQCF), which provides sewerage service to the City of Manteca and portions of the City of Lathrop in San Joaquin County. The WQCF discharges treated domestic, commercial and industrial wastewater to the San Joaquin River.
2. On 8 October 2009, effective 27 November 2009, the Board issued WDRs Order R5-2009-0095 rescinding Order R5-2004-0028, except for enforcement purposes. The WDRs prescribe effluent limitations and include discharge prohibitions prohibiting the discharge of wastewater to the San Joaquin River that does not meet the requirements for disinfected tertiary treated effluent.

SPILL EVENTS

3. On 22 October 2012, the Discharger reported¹ a spill of approximately 496,500 gallons of un-disinfected tertiary treated effluent to the San Joaquin River. The spill occurred over a ninety minute period of time. The Discharger states that the spill was a result of an electrical short-circuit at one of the six air conditioner units for the proprietary ultra-violet disinfection system (UV system). Per the Discharger, the short-circuit caused a complete shutdown of the tertiary treatment system electrical power, including the final effluent outfall automatic valves that divert improperly treated wastewater to the secondary effluent storage pond. In response to the spill, the Discharger states that:
 - a. On 22 October 2012, the Discharger responded and manually re-routed the disinfected effluent to the secondary effluent storage pond; began troubleshooting the UV system and restored full operations approximately ninety minutes after the initial failure was discovered; and began inspecting the other five UV system air conditioning units to assure that similar conditions for short-circuiting were not present and, if present, were corrected. The City stated that no similar conditions were detected.

¹ Finding 3 is summarized from the Discharger's 26 October 2012 written report.

- b. On 23 October 2012, a conference call was held with the Discharger's supervisory control and data acquisition (SCADA) controls contractor. The parties created a corrective action plan to improve SCADA failsafe features to mitigate a recurrence of a similar condition. The plan included directing the UV System vendor to program an instantaneous diversion when an alarm is sent from the UV System to the SCADA system.
 - c. On 13/14 November 2012, the UV System vendor completed the programming update, thereby improving communications between the UV system and the SCADA system.
4. On 30 November 2012, the Discharger reported² a spill of approximately 294,300 gallons of un-disinfected tertiary treated effluent to the San Joaquin River. The spill occurred over a one hour period of time. The Discharger states that the spill was a result of an electrical short-circuit at another one of the UV system's six air conditioner units. Per the Discharger, the short-circuit caused a complete shut down of the tertiary system electrical power, including the final effluent outfall automatic valves that divert improperly treated wastewater to the secondary effluent storage pond. Although the Discharger had previously stated that the issue had been fixed by the UV system vendor, the problem re-occurred within a short period of time.
5. The Discharger investigated and found the electrical sensitivity settings for the electrical circuit protection devices were such that all power feeding the entire UV System would be cut off if an electrical short occurred in a minor sub-system. Per the Discharger, both AC unit failures caused an electrical short thereby cutting off all power, including power to the communication system between the UV System and the SCADA system. The City corrected the problem on 4 December 2012.

REGULATORY CONSIDERATIONS

6. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board.
7. Pursuant to WDRs Order No. R5-2009-0095, the WQCF discharges disinfected tertiary level treated effluent from Discharge Point No.001 to the San Joaquin River. The San Joaquin River is a water of the State and of the United States, within the Sacramento-San Joaquin Delta.
8. The Basin Plan designates the beneficial uses of the San Joaquin River as municipal and domestic supply; agricultural supply, including irrigation and stock watering; industrial process supply; industrial service supply; water contact recreation, including canoeing and rafting; non-contact water recreation; warm freshwater habitat; cold fresh water habitat; migration of aquatic organisms, warm and cold; spawning, reproduction, and/or early development, warm; wildlife habitat; and navigation.
9. Administrative civil liabilities may be sought and imposed for violations of a Discharger's NPDES permit and/or applicable Board orders pursuant to the procedures described in Water Code section 13323. This Administrative Civil Liability Complaint alleges the Discharger's acts and/or

² Findings 4 and 5 are summarized from the Discharger's 5 December 2012 written report.

failure to act constitutes a violation of WDRs R5-2009-0095 and seeks administrative civil liabilities under Water Code section 13385.

10. 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 § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, 15321(a)(2) and all applicable law.

CALCULATION OF CIVIL LIABILITIES UNDER WATER CODE SECTION 13385

11. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and Water Code section 13376 prohibit discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.
12. Water Code section 13385 states, in relevant part:
 - (a) Any person who violates any of the following shall be liable civilly in accordance with this section:
 - (2) A waste discharge requirement ... issued pursuant to [Water Code, Division 7, Chapter 5.5]...
 - (4) An order or prohibition issued pursuant to Section 13243...
13. Water Code section 13243 states:

A regional board, in a water quality control plan or in waste discharge requirements, may specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted.
14. WDR Order R5-2009-0095 was issued pursuant to Chapter 5.5, and specifies the conditions under which waste may be discharged. The discharges to surface water described in paragraphs in 3 and 4 are violations of Discharge Prohibition III.1 of WDRs Order R5-2009-0095, and thus render the Discharger liable under Water Code section 13385, subdivision (a)(2) and (a)(4).
15. Water Code section 13385 states, in relevant part:
 - (c) Civil liability may be imposed administratively by the state board or a regional board...in an amount not to exceed the sum of both of the following:
 - (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.
 - (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
 - (e) ...At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.
16. **Maximum Civil Liability for Discharge to Surface Waters:** Per Water Code section 13385, civil liability imposed administratively by the Central Valley Water Board may not exceed \$10,000 for each day in which the violation occurs, plus \$10 per gallon for each gallon of waste discharged over 1,000 gallons per spill event. The Discharger spilled 790,800 gallons of tertiary treated un-disinfected wastewater over two spill events. Therefore, at \$10 per gallon for discharges in

excess of 1,000 gallons, and at \$10,000 per day for each day of the discharge, the maximum administrative civil liability that may be assessed pursuant to Water Code section 13385 is **seven million nine hundred and eight thousand dollars (\$7,908,000)**.

17. **Minimum Civil Liability for Discharge to Surface Waters:** Pursuant to Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The Discharger received little to no economic benefit from the spills, as the cost to troubleshoot the problem, reprogram the SCADA system, and reset the electrical breakers was minimal. Therefore, staff did not further assess the economic benefit in determining the liability.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

18. Pursuant to Water Code section 13385, subdivision (e), in determining the amount of any civil liability imposed under Water Code section 13385(c), the Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, 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 violations, and other matters that justice may require.
19. On 17 November 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability that addresses the factors that must be considered when imposing an administrative civil liability under Water Code section 13385(e). The entire Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11179.pdf
20. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment A. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
21. As described in paragraph 16, the maximum administrative civil liability for the above violations is \$7,908,000. However, based on consideration of the above facts and after applying the penalty methodology, the Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **\$87,492**, which includes the recovery of enforcement staff costs. The specific factors considered in this administrative civil liability are detailed in Attachment A.
22. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional civil liabilities for violations of the requirements of the Discharger's waste discharge requirements and/or applicable orders for which civil liabilities have not yet been assessed, or for violations that may subsequently occur.

CITY OF MANTECA 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 **eighty seven thousand four hundred ninety two dollars (\$87,492)**. The amount of the proposed liability is based upon an analysis of the factors cited in Water Code section 13385 and the Enforcement Policy, accounts for \$7,500 in staff costs.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **30/31 May 2013**, unless one of the following occurs by **29 March 2013**:
 - a) The Discharger waives the hearing by completing the attached form (checking the box next to Option #1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **eighty seven thousand four hundred ninety two dollars (\$87,492)**; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking 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 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 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 Andrew Altevogt for

PAMELA C. CREEDON, Executive Officer

4 March 2013

Date

Attachment A: Penalty Calculations

MoF/NM/WSW: 21 February 2013

**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 Manteca (Discharger) in connection with Administrative Civil Liability Complaint R5-2013-0516 (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 **eighty seven thousand four hundred ninety two dollars (\$87,492)** by check that references "ACL Complaint R5-2013-0516" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **29 March 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)