

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0519
IN THE MATTER OF

CITY OF REDDING
JENNY CREEK ELEVATED SANITARY TRUNK SEWER
SHASTA COUNTY

This Complaint is issued to the City of Redding (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that the Discharger discharged waste to waters of the United States without a permit.

The Assistant Executive Officer of the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board) finds the following:

1. The Discharger owns and operates the City of Redding Clear Creek Wastewater Treatment Facility (WWTF) and accompanying collection, treatment and disposal systems, which provides sewerage service to a portion of the City of Redding. Treated municipal wastewater is discharged to the Sacramento River, a water of the United States.
2. On 5 September 2003, the Central Valley Water Board adopted WDRs Order R5-2003-0130 to regulate discharges of wastewater from the WWTF. The Discharger owns and maintains approximately 400 miles of pipeline for the collection of raw sewage and conveyance to two Discharger-owned treatment facilities, including the subject WWTF.
3. On 2 May 2006, the State Water Board issued Order 2006-0003-DWQ, Statewide General WDRs for Sanitary Sewer Systems (Sanitary Sewer General Order). The Sanitary Sewer General Order contains, among other items, sanitary sewer overflow (SSO) requirements including monitoring and reporting requirements, Sewer System Management Plan (SSMP) requirements, and an implementation time schedule.
4. On 30 October 2006 the Discharger enrolled its sewer collection system under the Sanitary Sewer General Order. The Discharger is required to operate and maintain its sewage collection system to prevent sanitary sewer overflows and spills in compliance with requirements of the Sanitary Sewer General Order and WDRs Order R5-2003-0130.

Raw Sewage Spills

5. On 15 October 2007, the Discharger reported that between 20,000 and 64,000 gallons of raw sewage discharged from the sanitary sewer collection system to a surface water body, Jenny Creek, in Shasta County. Jenny Creek is tributary to the Sacramento River, a water of the United States. The raw sewage discharged to Jenny Creek resulted from

the collapse of a 30-foot section of an elevated, 12-inch steel wrapped pipe. The sewage combined with ambient flows in Jenny Creek and could not be cleaned up once it entered the creek.

6. The 15 October 2007 sewage spill occurred within a secluded greenbelt located between Overhill Drive and Sunset Drive, north of Eureka Way in Redding. The elevated sanitary trunk sewer line (built in 1958) runs along Jenny Creek for approximately 2400 feet, ending at the Mary Street Lift Station. The original spill report to the Discharger was received at 1:15 p.m. on 15 October 2007. A resident on Sunset Drive arrived home to hear rushing water in his backyard. After investigating the noise, he saw the broken sewer line. The resident did not recall hearing the rushing water earlier that morning when he left for work. The Discharger reported that a bypass pumping system that stopped the discharge was up and running by 3:40 p.m. Temporary repairs to the pipeline were completed by 6 p.m. on 15 October 2007. The Discharger reported that the volume of the spill was between 20,155 gallons (2 hours & 25 minutes of discharge) and 63,940 gallons (7 hours & 40 minutes of discharge). A more accurate number could not be reached, due to the fact that the exact duration of the spill is unknown.
7. Once the 15 October 2007 spill was identified, the Discharger provided a timely initial notification to the California Office of Emergency Services and other state and local agencies including the Central Valley Water Board. The Discharger also issued a press release soon after the spill was discovered. Central Valley Water Board staff responding to the scene on 15 October 2007 noted significant Discharger resources responding to the incident. The Discharger initiated a sampling program to assess impacts of the discharge, and requested Board staff's input on this effort and follow-up sampling requirements. The Discharger posted warning signs along Jenny Creek, from the discharge point along to the Sacramento River and along the Sacramento River Trail.
8. Field observations and laboratory results from water samples collected by both City staff and Central Valley Water Board staff indicated impacts to Jenny Creek. Further, water quality sampling results showed elevated concentrations of fecal coliform (above background concentrations and in exceedance of Basin Plan Objectives) in Jenny Creek for approximately two months after the spill. Elevated fecal coliform concentrations were observed at multiple locations throughout Jenny Creek for a distance of approximately 3,500 feet downstream of the discharge point.
9. On 18 October 2007, the Central Valley Water Board issued a Notice of Violation (NOV) to the Discharger for the sanitary sewer overflow to Jenny Creek. The NOV required the Discharger to submit 1) a technical report detailing the cause and response to the spill, 2) a technical report detailing an immediate inspection of the elevated collection system in the Jenny Creek drainage, and 3) a technical report containing a priority list and time schedule for interim repairs of unacceptable sections of sewer lines in the area. The discharger had inspected the elevated section of pipe in March 2007 and made numerous repairs with either cement grout or syntho-glass wrap.

10. On 22 October 2007, after reviewing water quality monitoring data that showed a high fecal Coliform bacteria count in Jenny Creek above the spill site, Central Valley Water Board staff and City staff discovered another leak in the elevated sewer collection pipe approximately 300 feet west of the spill site (upstream). This sewage leak also combined with ambient flows in Jenny Creek and could not be cleaned up once it entered the creek. Water quality sampling results in Jenny Creek indicated bacteria levels that exceeded Basin Plan Objectives (fecal coliform reported at 500 MPN/100mL to >160000 MPN/mL). The leak was estimated at 2 gallons per minute, for an unknown duration. Repairs to this section of piper were made immediately. The Discharger reported the volume of the second spill to Jenny Creek to be 2420 gallons.

11. CWC section 13376 states, in relevant part:

Any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States ... shall file a report of the discharge in compliance with the procedures set forth in Section 13260... The discharge of pollutants...except as authorized by waste discharge requirements [NPDES permit]...is prohibited.

12. CWC section 13385 states, in relevant part:

(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

- (1) Section 13375 or 13376.
- (2) Any waste discharge requirements...issued pursuant to this chapter...

- (5) Any requirements of Section 301, 302, 306, 307,308, 318, 401, or 405 of the Clean Water Act, as amended.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 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) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, 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 violation, and other matters that justice may require. 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.”

13. **Minimum Civil Liability.** Pursuant to CWC section 13385(e), at a minimum, administrative civil liability charged under this section must be equivalent to the economic benefit that the Discharger gained by not implementing management and physical improvements necessary to prevent the discharge. In May 2006, the Discharger’s consultant submitted a report that indicated the Jenny Creek elevated sanitary trunk sewer “was in extremely poor condition and needed to either be rehabilitated or replaced.” In the summer of 2007, the Discharger began to plan and design a new force main and lift station that would reroute flows away from the Jenny Creek existing elevated sanitary truck sewer. The City was well aware of the poor condition of the elevated trunk sewer and the severity of the discharge could have been prevented through adequate inspections and/or the early replacement of the fifty-year old piping. The Discharger reported that they expended \$137,123 as a result of this spill including labor, pipe replacement and water quality sampling. Although they spent monies repairing the damage following the spill, they had an economic savings conservatively estimated at \$25,000 by not replacing the elevated trunk sewer sooner or by not establishing an inspection program after they received information indicating that the line was in extremely poor condition.
14. **Maximum Civil Liability.** Pursuant to CWC section 13385(c), the maximum administrative civil liability in this case may be assessed at \$10,000 per violation per day plus ten (\$10) dollars per gallon discharged that is not cleaned up minus one thousand gallons. Based on Findings 5 through 10 above there were at minimum two days of violations. The combined maximum assessment for the two spills is between **two hundred twenty-five thousand, seven hundred fifty dollars (\$225,750)** (($\$10,000$ per day x 2 days) plus ((20,155 -1000)+(2420-1000)) x \$10 per gallon) and **six hundred sixty-three thousand, three hundred dollars (\$663,600)** (($\$10,000$ per day x 2 days) plus ((63,940-1000)+(2420-1000)) x \$10 per gallon), depending on which value is used for the volume of the 15 October 2007 spill.
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 (Public Resources Code Section 21000, et. seq.), in accordance with Title 14 California Code of Regulations, Enforcement Actions by Regulatory Agencies, Section 15321(a)(2).

THE CITY OF REDDING IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed Administrative Civil Liability in the amount of eighty two thousand, five hundred dollars (\$82,500).
2. A hearing on this matter will be conducted 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 eighty two thousand, five hundred dollars (**\$82,500**); 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 issues to be discussed in settlement negotiations, including compliance project proposals.
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.

original signed by

JAMES C. PEDRI, Assistant Executive Officer

15 October 2009

(Date)

**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 Redding (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2009-0519 (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 eighty two thousand, five hundred dollars (\$82,500) by check, which will contain a reference to "ACL Complaint R5-2009-0519" 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 Assistant 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)