

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2006-0509

ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF

CITY OF VACAVILLE  
GIBSON CANYON CREEK WASTEWATER TREATMENT PLANT  
SOLANO COUNTY

This Administrative Civil Liability Complaint (hereafter Complaint) is issued to the City of Vacaville (hereafter known as "Discharger") based on failure to comply with Waste Discharge Requirements Order No. R5-2004-0021 and California Water Code (CWC) Section 13385. This Complaint is issued pursuant to CWC Section 13385, which authorizes the imposition of administrative civil liability.

The Executive Officer of the Central Valley Regional Water Quality Control Board (Regional Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. Waste Discharge Requirements (WDRs) Order No. R5-2004-0021, adopted by the Regional Board on 30 January 2004, prescribes requirements for the Gibson Canyon Creek Wastewater Treatment Plant (WWTP). The facility is owned and operated by the Discharger.
2. The WWTP collects, treats, and disposes of wastewater from a dried-fruit processing plant and a grocery store distribution center. The wastewater is approximately 98% industrial wastewater and 2% sewage. The WWTP provides removal of biochemical oxygen demand in two lined aeration ponds and disposes of the wastewater into two large unlined stabilization ponds (24 acres combined) where the water percolates and evaporates. The wastewater in the unlined stabilization ponds has caused groundwater pollution. The Discharger has agreed to close the WWTP and to remediate underlying groundwater. The WDRs and the extended time schedule in Cease and Desist Order No. R5-2005-0088 require the WWTP to cease operating by the end of 2006. The WWTP formerly operated under a National Pollutant Discharge Elimination System (NPDES) permit with discharge to Gibson Canyon Creek when the plant received much higher wastewater flows from a tomato processing plant. The NPDES permit was rescinded by the Regional Board on 30 January 2004 with the adoption of WDRs Order No. R5-2004-0021.
3. Self monitoring reports submitted for the period from January 2004 to March 2006 indicate that monthly average flows range from approximately 118,000 to 467,000 gallons per day (gpd). The monthly average flow rate during March 2006 was reported to be 260,000 gpd.
4. On Monday, 3 April 2006, the Discharger reported a spill of partially-treated wastewater to Gibson Canyon Creek, which runs through the WWTP property. At that time, the Discharger estimated the volume of the spill to be approximately 500,000 gallons. The Discharger reported that the spill had occurred over the weekend for an unknown period between the last inspection of the WWTP on Friday, 31 March 2006 and the inspection conducted during the morning of 3 April. The Discharger reported that the spill occurred at two standpipes located in the 30-inch gravity piping between the aeration ponds and the stabilization ponds, and was caused by an apparent blockage of the piping. The Discharger reported that the spill had been stopped, and that samples

had been collected in the creek upstream and downstream from the spill location. The Discharger also reported the spill to the Office of Emergency Services and the Solano County Environmental Management Department.

5. On 14 April 2006, the Discharger submitted a written report about the spill as required by the WDRs. The report stated that the volume of the spill was between 231,000 gallons and 730,480 gallons based on best and worst case scenarios of when the spill began. The report stated that the WWTP was operating normally when it was inspected on Friday, 31 March 2006 at approximately 1430 hours. The report stated that the WWTP is inspected three times weekly but is otherwise unmanned and is monitored remotely 24 hours a day. The report included the results of the sampling conducted in the creek on 3 and 4 April. These results indicate that the spill was no longer influencing water quality in the creek at the time the samples were collected. The Discharger also reported that local rainfall during the period between 31 March and 3 April was over one inch, and that the water levels in the creek were very high and provided significant dilution for the spill. The Discharger reported that the 30-inch pipeline between the aeration ponds and the stabilization ponds had been flushed to clear the blockage, and that the blockage may have occurred due to the significantly lower flow rates at the WWTP compared to its design flow capacity. The Discharger reported that operational changes would be made at the WWTP to prevent a similar spill in the future including increasing plant inspections from three times weekly to daily, installing gauges in the standpipes to monitor for any blockage in the piping, and conducting routine flushing of the piping.

#### **VIOLATION OF WASTE DISCHARGE REQUIREMENTS**

6. WDRs Order No. R5-2004-0021 contains the following Prohibitions that were violated by the Discharger by discharging the partially-treated wastewater to Gibson Canyon Creek:
  - a. Discharge Prohibition No. A.2: "The discharge of wastes to surface waters or surface water drainage courses without WDRs that allow such discharge, is prohibited."
  - b. Discharge Prohibition No. A.3: "Discharge of treated wastewater at a location or in a manner different from that described in the Findings is prohibited."
  - c. Discharge Prohibition No. A.4: "The by-pass or overflow of wastes to surface waters is prohibited."
7. On 27 April 2006, Regional Board staff issued a Notice of Violation (NOV) to the Discharger for the spill and cited violation of the three Prohibitions referenced in Finding No. 6, above.

#### **REGULATORY CONSIDERATIONS**

8. As described in the above Findings, the Discharger has violated WDRs Order No. R5-2004-0021, by discharging wastes to surface waters or surface water drainage courses, by discharging the

wastewater at a location or in a manner different from that described in the Findings of the WDRs, and by the bypass of or overflow of wastes to surface waters.

9. Section 301 of the Clean Water Act and Section 13376 of the CWC prohibit the discharge of pollutants to surface waters except in compliance with a NPDES permit.
10. CWC Section 13376 states, in 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...”* and *“The discharge of pollutants...except as authorized by waste discharge requirements [NPDES permit]...is prohibited.”*
11. The Discharger, by failing to file a report of waste discharge as set forth in CWC section 13260 and failing to obtain an NPDES permit prior to the discharges described in the above Findings, has violated CWC section 13376. WDRs Order No. R5-2004-0021 is not an NPDES permit.
12. CWC Section 13385 states, in part:  
*“(a) Any person who violates any of the following shall be liable civilly in accordance with subdivisions (b), (c), (d), (e), and (f):*  
  
*(1) Section 13375 or 13376.*  
  
*“(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 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) times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.”*
13. For discharging waste in violation of the WDRs, the Regional Board may assess administrative civil liability based on CWC section 13385. The maximum administrative civil liability which can be imposed by the Regional Board under CWC Section 13385 is \$10,000 per day of discharge plus \$10 per gallon discharged in excess of 1,000 gallons. As stated in the Findings, the Discharger estimated between 231,000 and 730,480 gallons of partially-treated wastewater were discharged into surface waters over a period of between one and three days. Of this, a total of 230,000 to 729,480 gallons were discharged in excess of 1,000 gallons. Therefore, the maximum administrative civil liability is \$30,000 (three days at \$10,000 per day) plus \$7,294,800 (730,480 gallons minus 1,000 gallons at \$10 per gallon), for a total maximum liability of \$7,324,800.
14. CWC Section 13385(e) states:

*“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.”*

15. Pursuant to CWC Section 13385(e), the minimum administrative civil liability is equivalent to the economic benefit accrued by the Discharger in not implementing management and/or physical improvements necessary to prevent the discharge. The spill occurred due to blockage in the piping between the aeration ponds and the stabilization ponds. The discharge may have been prevented or minimized if the Discharger had inspected the WWTP more often, inspected and cleared the piping regularly, or provided additional safeguards to alert them if a spill was occurring at the standpipes. It is estimated that the Discharger may have saved \$9,600 over the past year by not inspecting the WWTP daily. Therefore, the minimum liability for the spill is at least \$9,600. Staff have not estimated the economic benefit for periodic flushing of the piping or installing additional safeguards to alert them of a spill.
16. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321 (a)(2), Title 14, of the California Code of Regulations.

**THE CITY OF VACAVILLE IS HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed Administrative Civil Liability in the amount of twenty thousand dollars (\$20,000). The amount of the liability proposed is based upon a review of the factors set forth in CWC Section 13385 cited in Finding No. 14 above, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing shall be held on **3/4 August 2006** unless the Discharger agrees to waive the hearing and pay the imposed civil liability in full.
3. If a hearing is held, the Regional 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. In lieu of a hearing, the Discharger may waive the right to a hearing. If you wish to waive the right to a hearing, sign the enclosed waiver and return it with the full amount of civil liability (in a check made payable to the *State Water Resources Control Board Cleanup and Abatement*

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*Account*), to the Regional Board's office at 11020 Sun Center Drive, Suite #200, Rancho Cordova, CA 95670, by **10 July 2006**.

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PAMELA C. CREEDON, Executive Officer

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15 June 2006

(Date)

WLB/SER/WSW: 15-June-06

**WAIVER OF HEARING 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 Vacaville (hereinafter “Discharger”) in connection with Administrative Civil Liability Complaint No. R5-2006-0509 (hereinafter the “Complaint”);
2. I am informed of the right provided by Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint;
3. I hereby waive the Discharger’s right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of issuance of the Complaint; and
4. Without admitting liability for the matters alleged in the Complaint, I otherwise agree to remit payment for the civil liability imposed in the amount of twenty thousand dollars (\$20,000) by check, which contains a reference to “ACL Complaint No. R5-2006-0509” and is made payable to the “*State Water Resources Control Board Cleanup and Abatement Account.*”
5. I understand the payment of the above amount constitutes a settlement of the Complaint that will not become final until after a public comment period.
6. 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.

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(Name)

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(Title)

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(Date)