

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2010-0540

MANDATORY PENALTY
IN THE MATTER OF

CITY OF VACAVILLE
EASTERLY WASTEWATER TREATMENT PLANT
SOLANO COUNTY

This Complaint is issued to the City of Vacaville (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) Orders 5-01-044 and R5-2008-0055 (NPDES No. CA0077691).

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 Vacaville and the unincorporated community of Elmira in Solano County. Treated municipal wastewater is discharged to Old Alamo Creek, a water of the United States and a tributary to Cache Slough.
2. On 15 March 2001, the Central Valley Water Board issued WDRs Order 5-01-044 (NPDES No. CA0077691) to regulate discharges of waste from the WWTP. The WDRs include effluent limitations and other requirements regarding the wastewater discharges. The Board issued WDRs Order R5-2008-0055 on 25 April 2008, effective 14 June 2008. Order R5-2008-0055 rescinds Order 5-01-044 and includes new requirements.
3. On 3 October 2002, the State Water Resources Control Board issued Water Quality Order (WQO) 2002-0015. WQO 2002-0015, in part, stayed the final coliform limits in Order 5-01-044 from the effective date of WQO 2002-0015 (3 October 2002) until the Central Valley Regional Board acted on the remand. The Board acted on the remand when it issued WDRs R5-2008-0055.
4. The Central Valley Water Board issued Time Schedule Order (TSO) R5-2008-0056 on 25 April 2008. This Complaint considers the protection from Mandatory Minimum Penalties (MMPs) provided by the TSO and WQO 2002-0015.
5. On 18 June 2008, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2008-0539 for mandatory minimum penalties for effluent violations from 1 April 2004 through 31 December 2007. The Discharger paid the administrative civil liability and the Board considers the matter resolved.

6. This Complaint covers the period of 1 January 2008 through 30 June 2010. On 14 July 2010, Central Valley Water Board staff issued the Discharger a draft Record of Violations for the time period of 1 January 2008 through 31 May 2010. The Discharger responded on 13 August 2010, agreed with the violations, and identified four additional violations. This Complaint adds the four violations presented by the Discharger and extends the period of record to 30 June 2010.
7. CWC section 13385 subdivisions (h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385 subdivision (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 subdivision (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:

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."

8. 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.

9. WDRs Order 5-01-044 Effluent Limitations B.1. include, in part, the following effluent limitations:

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>	<u>4-Day Average</u>	<u>1-Hour Average</u>
Settleable Solids	mL/L	0.1	0.2	--	--

10. WDRs Order R5-2008-0055 Effluent Limitations IV.A.1.a., include, in part, the following effluent limitations:

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

Table 6. Effluent Limitations (Tertiary-1 May to 31 October)

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Settleable Solids	mL/L	0.1	--	0.2	--	--
Total Coliform	MPN/100 mL	--	--	--	--	240

11. WDRs Order R5-2008-0055 Effluent Limitations IV.A.1.d., include, in part, the following effluent limitations

- d. Total Residual Chlorine. Effluent total residual chlorine shall not exceed:

- i. 0.01 mg/L, as a 4-day average; and
- ii. 0.02 mg/L, as a 1-hour average.

12. WDRs Order R5-2008-0055 Effluent Limitations IV.A.2.a., include, in part, the following effluent limitations:

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

Table 6. Effluent Limitations (Secondary-1 November to 30 April)

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
pH	std units	--	--	--	6.5	8.5

13. According to the Discharger's self-monitoring reports, the Discharger committed two (2) serious Group I violations of the above effluent limitations contained in WDRs Orders 5-01-044 and R5-2008-0055 during the period beginning 1 January 2008 and ending 30 June 2010. These violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels in WDRs Orders 5-01-044 and R5-2008-0055 by forty percent (40%) or more. The mandatory minimum penalty for these serious violations is **six thousand dollars (\$6,000)**.

14. According to the Discharger's self-monitoring reports, the Discharger committed one (1) serious Group II violation of the above effluent limitations contained in Orders 5-01-044 and R5-2008-0055 during the period beginning 1 January 2008 and ending 30 June 2010. The violation is defined as serious because the measured concentration of a Group II constituent exceeded the maximum prescribed level by more than 20 percent on this occasion. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
15. According to the Discharger's self-monitoring reports, the Discharger committed two (2) non-serious violations of the above effluent limitations contained in WDRs Orders 5-01-044 and R5-2008-0055 during the period beginning 1 January 2008 and ending 30 June 2010. These two (2) non-serious violation are not subject to mandatory penalty under CWC section 13385(i)(1) because they were not preceded by three or more similar violations within a six-month period.
16. The total amount of the mandatory penalties assessed for the cited effluent violations is **nine thousand dollars (\$9,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
17. 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 subdivision (a)(2).

THE CITY OF VACAVILLE 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 **nine thousand dollars (\$9,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **8/9/10 December 2010**, unless the Discharger does one of the following by **13 October 2010**:
 - 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, along with payment for the proposed civil liability of **nine thousand dollars (\$9,000)**; 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.

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.

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

PAMELA C. CREEDON, Executive Officer

13 September 2010

DATE

Attachment A: Record of Violations

**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 Vacaville (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2010-0540 (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 **nine thousand dollars (\$9,000)** by check that references "ACL Complaint R5-2010-0540" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **13 October 2010**.
- 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 R5-2010-0540**

**City of Vacaville
Easterly Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 January 2008 – 30 June 2010) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs 5-01-044 and R5-2008-0055.

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
<i>Violations under Order 5-01-044</i>								
1	04-Jan-08	Settleable Solids	mL/L	0.2	0.3	Daily	1	879500
<i>Violations under Orders R5-2008-0055</i>								
2	16-Sep-08	Coliform Chlorine Residual	MPN/100m L	240	900	Instantaneous	3	807955
3	9-Oct-08	Residual	mg/L	0.02	>0.02	1-hr	2	879501
4	21-Sep-09	Settleable Solids	mL/L	0.2	1.2	Daily	1	857202
5	6-Dec-09	pH	pH Units	6.5	6.4	Instantaneous	3	861721

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 exempt.
4. Non-serious violation subject to mandatory minimum penalties.

<u>VIOLATIONS AS OF:</u>	<u>06/30/2010</u>
Group I Serious Violations:	2
Group II Serious Violations:	1
Non-Serious Exempt from MMPs:	2
Non-serious Violations Subject to MMPs:	0
<u>Total Violations Subject to MMPs:</u>	<u>3</u>

Mandatory Minimum Penalty = (3 serious Violation + 0 Non-Serious Violations) x \$3,000 = \$9,000

Central Valley Regional Water Quality Control Board
HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R5-2010-0540

ISSUED TO
CITY OF VACAVILLE
EASTERLY WASTEWATER TREATMENT PLANT
SOLANO COUNTY

SCHEDULED FOR 8/9/10 DECEMBER 2010

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Executive Officer has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (CWC) section 13323 to the City of Vacaville, alleging violations of CWC section 13385 for discharges from the Discharger's wastewater treatment plant that exceeded permitted effluent limitations.

The Complaint proposes that an administrative civil liability in the amount of \$9,000 be imposed. A hearing is currently scheduled to be conducted before the Central Valley Water Board during its 8/9/10 December 2010 meeting.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Central Valley Water Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Central Valley Water Board meeting agenda. The meeting will be held at

11020 Sun Center Drive, Suite 200, Rancho Cordova, California.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Central Valley Water Board's web page at:

http://www.waterboards.ca.gov/centralvalley/board_info/meetings.

Hearing Procedures

The hearing will be conducted in accordance with this Hearing Procedure. This Hearing Procedure has been approved by the Central Valley Water Board Chair in model format, and is subject to further revision by the Central Valley Water Board's Advisory Team or the Chair. A copy of the general procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648, subdivision (b) and herein, Chapter 5 of the Administrative Procedures Act (commencing with Gov't Code § 11500) does not apply to this hearing.

ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE CENTRAL VALLEY WATER BOARD'S ADVISORY TEAM NO LATER THAN 27 SEPTEMBER 2010, OR THEY WILL BE WAIVED. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

The Discharger shall contact the Prosecution Team to try to resolve objections regarding due dates and the hearing date and hearing time limits BEFORE submitting objections to the Advisory Team.

Hearing Participants

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the Central Valley Water Board, staff or others, at the discretion of the Central Valley Water Board.

The following participants are hereby designated as parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. City of Vacaville

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received no later than 5 p.m. on **4 October 2010**, by the Advisory Team attorney (contact information listed below). The request shall include an explanation of the basis for status as a designated party (i.e., how the issues to be addressed in the hearing and the

potential actions by the Central Valley Water Board affect the person, and the need to present evidence or cross-examine witnesses), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be received by the Advisory Team, the person requesting party status, and all other parties by 5 p.m. on **13 October 2010**. The parties will be notified by 5 p.m. on **25 October 2010** whether the request has been granted or denied.

Primary Contacts

Advisory Team:

Kenneth Landau, Assistant Executive Officer
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone: (916) 464-4726
klandau@waterboards.ca.gov

Alex Mayer, Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 322-5051; fax: (916) 341-5199
amayer@waterboards.ca.gov

Prosecution Team:

Pamela Creedon, Executive Officer
Frederick Moss, Assistant Executive Officer
Wendy Wyels, Environmental Program Manager
Victor Vasquez, Senior Engineer
Barry Hilton, Water Resources Control Engineer
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone: (916) 464-4835; fax: (916) 464-4645
wwyels@waterboards.ca.gov

Shannon Chambers, Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 324-6681; fax: (916) 341-5284
SChambers@waterboards.ca.gov

Discharger

David Tompkins
Assistant Director of Public Works, City of Vacaville
650 Merchant Street
Vacaville, CA 95688
Phone: (707) 469-6400; fax: (707) 469-4680
dtompkins@cityofvacaville.com

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Central Valley Water Board (Prosecution Team) have been separated from those who will provide advice to the Central Valley Water Board (Advisory Team). Members of the Advisory Team are: Mr. Kenneth Landau and Mr. Alex Mayer. Members of the Prosecution Team are: Ms. Pamela Creedon, Mr. Frederick Moss, Ms. Wendy Wyels, Mr. Victor Vasquez, Mr. Barry Hilton, and Ms. Chambers. Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Pamela Creedon regularly advises the Central Valley Water Board in other, unrelated matters, but is not advising the Central Valley Water Board in this proceeding. Other members of the Prosecution Team act or have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Central Valley Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested person on the one hand, and a Central Valley Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

The following communications to the Advisory Board must be copied to all designated parties: Objections to these Hearing Procedures; requests for modifications to these Hearing Procedures; requests for designated party status, or objections thereto; and all written evidence, legal argument or policy statements from designated parties. This is not an all-inclusive list of ex parte communications.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined 30 minutes to present evidence (including evidence presented by witnesses called by the designated party), cross-examine witnesses (if warranted), and provide a closing statement; and each

interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received by 5:00 p.m. on **17 November 2010**. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Central Valley Water Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments or legal argument require extra time, and why the Discharger could not adequately provide the testimony, comments or legal argument in writing before the hearing.

If *new* rebuttal evidence or argument is accepted after the above date, designated parties shall submit any requests for additional time to respond to the rebuttal no later than **3 December 2010**. In most cases, additional time will not be necessary to respond to rebuttal.

A timer will be used, but will not run during Board questions or the responses to such questions, or during discussions of procedural issues.

Submission of Evidence and Policy Statements

Case in Chief: The Prosecution Team, the Discharger and each other designated party must submit the following information in writing in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Central Valley Water Board to consider. Evidence and exhibits already in the public files of the Central Valley Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3. Board members will generally not receive copies of materials incorporated by reference, and the referenced materials are generally not posted on the Board's website.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony. (This information is not required for rebuttal witnesses or rebuttal testimony.)
4. The qualifications of each expert witness, if any. (This information is not required for rebuttal witnesses.)

The Prosecution Team's information must include the legal and factual basis for its claims against each Discharger; a list or attached copy of all evidence on which the Prosecution Team relies, which must include, at a minimum, all documents cited in the complaint or Staff Report; and the witness information required under items 3-4 for all witnesses, including staff. The Prosecution Team shall provide an electronic copy to Mr. Kenneth Landau and Mr. Alex Mayer of all documents cited in the complaint or Staff Report no later than the due date under Important Deadlines, below.

The Prosecution Team shall submit one hard copy and one electronic copy to Mr. Kenneth Landau and one electronic copy to Mr. Alex Mayer. Each other designated party shall submit 3 hard copies and one electronic copy to Mr. Kenneth Landau and one electronic copy to Mr. Alex Mayer. Mr. Kenneth Landau and one electronic copy to Mr. Alex Mayer must receive all submissions no later than 5:00 p.m. on the applicable due date under Important Deadlines, below.

Rebuttal: Any designated party that would like to submit evidence, legal analysis or policy statements to rebut the information previously submitted by other designated parties shall submit 3 hard copies of their rebuttal information to Mr. Kenneth Landau and one electronic copy of the information to Mr. Alex Mayer so that they are received by 5 p.m. on the due date under Important Deadlines, below. "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other designated parties' submissions. Rebuttal shall be limited to the scope of the materials previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

Copies: Board members will receive copies of all materials submitted in hard copy or electronic format. The Board's copies will be printed in black and white from the designated parties' electronic copies. Designated parties who are concerned about print quality of all or any part of their written materials should submit a high-resolution pdf or provide an extra nine paper copies for the Board members. For items with voluminous submissions, Board members may receive copies electronically only. Electronic copies are also posted on the Board's website.

Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy and mailing center. However, the Board will not reject materials solely for failure to provide electronic copies.

By **23 November 2010**, the Prosecution Team shall prepare a summary agenda sheet ("buff sheet") for this item to be included in the Board members' agenda package and posted on the internet. The buff sheet shall clearly state that it was prepared by the Prosecution Team. The Prosecution Team shall provide a copy of the buff sheet to all parties by mail or email.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by **23 November 2010**. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Central Valley Water Board may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the Central Valley Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. Designated parties must

provide the Advisory Team with a printed copy of such materials at or before the hearing, for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 11020 Sun Center Drive, Rancho Cordova, CA 95670. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Central Valley Water Board's Chair. Many of these documents are also posted on-line at http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml Although the web page is updated regularly, to assure access to the latest information, you may contact Wendy Wyels (contact information above).

Questions

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information above).

IMPORTANT DEADLINES

(Note: the Central Valley Water Board is required to provide a hearing within 90 days of issuance of the Complaint (CWC § 13323). The Advisory Team will generally adhere to this schedule unless the discharger submits a waiver and it is accepted.)

All required submissions must be received by 5:00 p.m. on the due date.

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|----------------------|---|
| 13 Sept 2010 | Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice. |
| 27 Sept 2010 | Objections due on proposed Hearing Procedure. |
| 4 October 2010 | Deadline for submission of request for designated party status. |
| 13 October 2010 | Deadline for opposition to request for designated party status. |
| 13 October 2010 | Discharger's deadline for submitting signed form to waive right to hearing within 90 days. |
| 21 October 2010 | Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above. |
| 25 October 2010 | Advisory Team issues decision on requests for designated party status, if any. |
| 10 November 2010 | Remaining Designated Parties' (including the Discharger's) deadline for submission of all information required under "Evidence and Policy Statements," above. |
| 10 November 2010 | Prosecution Team submits an electronic copy to Kenneth Landau and Alex Mayer of all documents cited in the complaint or Staff Report, unless previously submitted. |
| 17 November 2010 | Requests for additional hearing time (see Hearing Time Limits, above). |
| 22 November 2010 | All Designated Parties shall submit any rebuttal evidence, written rebuttal to legal argument and/or written rebuttal to policy statements; and all evidentiary objections to other Designated Parties' submittals. |
| 23 November 2010 | Interested persons' comments are due. |
| 23 November 2010 | Prosecution Team's deadline to submit Buff Sheet. |
| 3 December 2010 | If <i>new</i> rebuttal evidence or argument is submitted, deadline for designated parties to submit any requests for additional time at the hearing to respond to the rebuttal. |
| 8/9/10 December 2010 | Hearing. |



California Regional Water Quality Control Board Central Valley Region

Katherine Hart, Chair



Linda S. Adams
Secretary for
Environmental
Protection

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Arnold
Schwarzenegger
Governor

13 September 2010

David Tompkins
Assistant Director of Public Works
City of Vacaville
650 Merchant Street
Vacaville, CA 95688

CERTIFIED MAIL
7010 0290 0000 8535 6273

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2010-0540 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, CITY OF VACAVILLE, EASTERLY WASTEWATER TREATMENT PLANT, SOLANO COUNTY

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code section 13385, for violations of Waste Discharge Requirements (WDRs) Orders 5-01-044 and R5-2008-0055 (NPDES CA0077697) by the City of Vacaville (Discharger) at its Easterly Wastewater Treatment Plant. The Complaint charges the Discharger with administrative civil liability in the amount of **nine thousand dollars (\$9,000)**, which represents the sum of accrued Mandatory Minimum Penalties for effluent limitation violations which occurred from 1 January 2008 through 30 June 2010.

On 14 July 2010, Central Valley Water Board staff issued a draft Record of Violations (ROV) for the period 1 January 2008 through 31 May 2010. The Discharger responded on 13 August 2010, agreed with the violations, and identified four additional violations. This Complaint extends the period reviewed to 30 June 2010 and adds the four additional violations.

Pursuant to CWC section 13323, the Discharger may:

- Pay the proposed administrative civil liability and waive its right to a hearing (Option #1 on the attached waiver form);
- Ask that the hearing be postponed to facilitate settlement discussions or for other reasons (Options #2 or #3 on the attached waiver form); or
- Contest the Complaint and/or enter into settlement discussions without signing the enclosed waiver.

If the Central Valley Water Board does not receive a signed waiver **by 13 October 2010**, a hearing will be scheduled for the **8/9/10 December 2010** Board meeting in Rancho Cordova. This hearing will be governed by the attached Hearing Procedures, which have been approved by the Board Chair for use in adjudicating matters such as this one. Any objections to the Hearing Procedures must be received by Alex Mayer, whose contact information is listed in the Hearing Procedures, by **5 p.m. on 27 September 2010**.

California Environmental Protection Agency

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations. The settlement will be considered final pending a 30-day comment period, starting from the date this Complaint is issued. Interested parties may comment on the proposed action during this period by submitting written comments to the Central Valley Water Board staff person listed below. Should the Central Valley Water Board receive new information or comments during this comment period, the Executive Officer may withdraw the complaint, return payment, and issue a new complaint. If the Central Valley Water Board does not hold a hearing on the matter, and if the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will be no additional opportunities for public comment on the proposed settlement.

In order to conserve resources, this letter transmits paper copies of the documents to the Discharger only. Interested persons may download the documents from the Central Valley Water Board's Internet website at:

http://www.waterboards.ca.gov/centralvalley/tentative_orders/.

Copies of these documents can also be obtained by contacting or visiting the Central Valley Water Board's office weekdays between 8:00 AM and 5:00 PM.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Barry Hilton at (916) 464-4762 or bhilton@waterboards.ca.gov.

Original signed by

WENDY WYELS, Supervisor
Compliance and Enforcement Section

Enclosure: ACLC R5-2010-0540
Hearing Procedures
Waiver Form

cc w/o encl: Kenneth Greenberg, USEPA, Region 9, San Francisco
Shannon Chambers, Office of Enforcement, SWRCB, Sacramento
Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Ken Landau, Central Valley Water Board Advisory Team, Sacramento
David Coupe, Office of Chief Counsel, SWRCB, Sacramento
Alex Mayer, Office of Chief Counsel, SWRCB, Sacramento
Carol Oz, Department of Fish and Game, Region 2, Rancho Cordova
Solano County Department of Environmental Management, Fairfield
Bill Jennings, California Sportfishing Protection Alliance, Stockton
Jae Kim, Tetra Tech, Fairfax, VA