

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2014-0513

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 (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability, Water Code section 13323, which authorizes the Executive Officer to issue this Complaint and Water Code 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 allegations that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2008-0055-01 (NPDES No. CA0077691).

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) alleges 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. In order to regulate discharges from the facility, on 18 March 2010, the Central Valley Water Board issued WDRs Order R5-2010-0027, which amended WDRs Order R5-2008-0055-01. On 3 August 2010, the Board issued Time Schedule Order (TSO) R5-2012-0072, which amended TSO R5-2008-0056-02. On 13 December 2013, the Board issued TSO R5-2013-0903, amending TSO R5-2008-0056-02. Amended TSOs R5-2008-0056-02 and R5-2008-0056-03 provided a time schedule to comply with final effluent limitations for nitrate by 1 May 2013, and to comply with the final effluent limitations for dibromochloromethane and dichlorobromomethane by 1 March 2015. This complaint considers the protection from mandatory minimum penalties provided by TSOs R5-2008-0056-02 and R5-2008-0056-03.
3. On 10 September 2013, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2013-0565 for mandatory minimum penalties for effluent violations from 1 July 2010 through 30 April 2013. The Discharger paid the civil liability and the Board considers those effluent violations specifically listed in Attachment A to ACLC R5-2013-0565 to be resolved.
4. This Complaint addresses administrative civil liability for effluent violations that occurred during the period from 1 May 2013 through 31 December 2013. 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.

5. On 6 January 2014, Central Valley Water Board staff issued the Discharger a draft Record of Violations for the period 1 May 2013 through 31 October 2013. The Discharger responded on 5 February 2014 and acknowledged six of the violations but questioned the validity of the dibromochloromethane exceedance on 14 September 2013. The Discharger contends that the samples taken on 14/16 September 2013 were follow-up samples taken as a result of a "single operational upset" occurring on 14 September 2013 and therefore should not be subject to MMPs.

Board staff reviewed whether there was a single operational upset as defined in Water Code section 13385 (f)(2)(A). Per US EPA guidance and the State Water Board Enforcement Policy, a "single operational upset" is "an exceptional incident which causes simultaneous, unintentional, unknowing (not the result of a knowing act or omission), temporary noncompliance with more than one Clean Water Act effluent discharge pollutant parameter." According to the Dischargers incident report dated 16 September 2013, the plant shutdown events are related to construction of tertiary treatment filtration facilities. Therefore, since the event was planned by the Discharger and the Discharger could have taken steps to ensure that the Facility shutdown was managed in such a way as to prevent the violations, the event is not an exceptional incident causing simultaneous, unintentional, and unknowing temporary noncompliance. Therefore, the violations do not meet the definition of a single operational upset and Board staff continues to allege the violations in Attachment A of the Complaint. In addition, Board staff extended the period of record through 31 December 2013 and found no additional violations subject to MMPs.

6. Water Code section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

Water Code 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.

Water Code 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.

Water Code 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.

7. Water Code 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.

8. Water Code 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.

9. TSO R5-2006-0056-02 contains interim effluent limitations for chlorodibromomethane and dichlorobromomethane; however, as shown on Attachment A, the Discharger exceeded those interim effluent limits and therefore Water Code section 13385(j) does not exempt those particular violations from mandatory minimum penalties.

10. WDRs Order R5-2008-0055-01 Effluent Limitations IV.A.1., include, in part, the following effluent limitations:

- b. The Discharger shall maintain compliance with the following effluent limitations from May 1 through October 31 when discharging to Old Alamo Creek...

**Final Effluent Limitations  
Discharge to Discharge Point 001**

Parameter	Units	Effluent Limitations	
		Average Monthly	Maximum Daily
Dichlorobromomethane	µg/L	0.63	0.99
Chlorodibromomethane	µg/L	0.41	0.86
Total Trihalomethanes <sup>2</sup>	µg/L		122
<sup>2</sup> The total THMs concentration shall be the sum of bromoform, chloroform, chlorodibromomethane, and dichlorobromomethane.			

11. TSO Order R5-2008-0056-02 includes, in part, the following effluent limitations:
2. The following interim effluent limitations shall be effective immediately...

Parameter	Maximum Daily Effluent Limitation
Dichlorobromomethane (µg/L)	43
Chlorodibromomethane (µg/L)	14

12. According to the Discharger’s self-monitoring reports, the Discharger committed six (6) serious Group II violations of the above effluent limitations contained in WDRs Order R5-2008-0055-01, as shown in Attachment A. These violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0055-01 by 20 percent or more. The mandatory minimum penalty for these serious violations is **eighteen thousand dollars (\$18,000)**.
13. According to the Discharger’s self-monitoring reports, the Discharger committed one (1) non-serious violation of the above effluent limitations contained in Order R5-2008-0055-01. This non-serious violation is subject to mandatory penalties under Water Code section 13385 subdivision (i)(1) because the violation was preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for this non-serious violation is **three thousand dollars (\$3,000)**.
14. The total amount of the mandatory penalties assessed for the alleged effluent violations is **twenty-one thousand dollars (\$21,000)**. As stated herein, a detailed list of the alleged effluent violations is included in Attachment A. This Complaint addresses administrative civil liability for violations that are specifically identified in Attachment A as subject to mandatory minimum penalties.
15. On 14 February 2014, the Executive Officer designated Andrew Altevogt, Assistant Executive Officer, as the Lead Prosecution Officer for all enforcement matters originating in the Rancho Cordova Office. The 14 February 2014 Delegation of Authority also authorizes Andrew Altevogt to issue Administrative Civil Liability Complaints.

16. 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 section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

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

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **twenty-one thousand dollars (\$21,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **5/6 June 2014**, unless the Discharger does one of the following by **4 April 2014**:
  - 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. In addition, submits payment for the proposed civil liability of **twenty-one thousand dollars (\$21,000)** to the State Water Board with a copy of the check to the Central Valley Water Board; or
  - b) Requests to engage in settlement discussions by checking the box next to Option 2 on the attached form, and returning it to the Board along with a letter describing the issues to be discussed. The Central Valley Water Board must agree to the postponement; or
  - c) Requests to delay the hearing by checking off the box next to Option 3 on the attached form, and returning it to the Board along with a letter describing the proposed length of delay and the issues to be discussed. The Central Valley Water Board must agree to the postponement.
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.
4. If this matter proceeds to hearing, the Assistant 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.

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ANDREW ALTEVOGT, Assistant Executive Officer

7 March 2014

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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 Vacaville (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2014-0513 (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 **twenty-one thousand dollars (\$21,000)** by check that references "ACL Complaint R5-2014-0513" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the State Water Resources Control Board, Accounting Office at PO Box 1888, Sacramento, California, 95812-1888 by **4 April 2014**. The waiver and a copy of the check must be submitted to the Central Valley Water Board at 11020 Sun Center Drive #200, Rancho Cordova California, 95670 by **4 April 2014**.
- 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 TO ACLC R5-2014-0513**  
**City of Vacaville**  
**Easterly Wastewater Treatment Plant**  
**RECORD OF VIOLATIONS (1 May 2013 – 31 December 2013) MANDATORY PENALTIES**  
(Data reported under Monitoring and Reporting Program R5-2008-0055-01)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>WDR</u> <u>Limit</u>	<u>TSO</u> <u>Limit</u> <sup>1</sup>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
1	7/8/2013	Chlorodibromomethane	µg/L	0.86	14	17	Daily Maximum	2	954513*
2	7/31/2013	Chlorodibromomethane	µg/L	0.41	--	17	Monthly Average	2	954512*
3	9/9/2013	Chlorodibromomethane	µg/L	0.86	14	49	Daily Maximum	2	957591*
4	9/9/2013	Dichlorobromomethane	µg/L	0.99	43	54	Daily Maximum	2	957590*
5	9/9/2013	Total Trihalomethanes	µg/L	122	--	144	Daily Maximum	4	957593
6	9/14/2013	Chlorodibromomethane	µg/L	0.86	14	22	Daily Maximum	2	957851*
7	9/30/2013	Chlorodibromomethane	µg/L	0.41	--	28	Monthly Average	2	957592*

<sup>1</sup> TSO daily maximum limitation for dichlorobromomethane and dibromochloromethane

\* Subject to MMPs because the effluent exceeded the interim instantaneous maximum effluent limitation in TSO R5-2008-0056-02

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.  
Penalties that may be assessed for this violation are discretionary. This violation is not addressed or resolved in this Complaint.
4. Non-serious violation subject to mandatory minimum penalties.

<u>VIOLATIONS AS OF:</u>	<u>12/31/2013</u>
Group I Serious Violations:	0
Group II Serious Violations:	6
Non-Serious Exempt from MMPs:	0
<u>Non-serious Violations Subject to MMPs:</u>	<u>1</u>
<b>Total Violations Subject to MMPs:</b>	<b>7</b>

**Mandatory Minimum Penalty = (6 serious Violation + 1 Non-Serious Violations) x \$3,000 = \$21,000**