

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0503

MANDATORY PENALTY
IN THE MATTER OF

CITY OF MODESTO WATER QUALITY CONTROL FACILITY
STANISLAUS COUNTY

This complaint is issued to the City of Modesto Water Quality Control Facility (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 violated provisions of Waste Discharge Requirements (WDRs) Order No. 5-01-120 (NPDES No. CA0079103).

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

1. The Discharger owns and operates the City of Modesto Water Quality Control Facility (WWTP), which provides sewerage service to the community of Modesto in Stanislaus County. Treated domestic, commercial and industrial wastewater is discharged to the San Joaquin River, a water of the United States.
2. On 11 May 2001, the Regional Water Board adopted WDRs Order No. 5-01-120. The WDRs include effluent limitations and other requirements regarding the wastewater discharge.
3. CWC Section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC 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."

CWC 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."

CWC section 13385(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.”*

4. 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.”

5. WDRs Order No. 5-01-120 Effluent Limitations No. B. 1 include, in part, the following effluent limitations:

<u>Constituent</u>	<u>Unit</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>
Chlorine Residual	mg/L	--	--	0.02
Total Coliform Organisms	MPN/100 mL			500

- 6. According to the Discharger’s self-monitoring reports, the Discharger committed one (1) serious violation of the effluent limitations contained in Order No. 5-01-120 during the period beginning 11 May 2001 and ending 30 November 2007, because the measured 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)**.
- 7. According to the Discharger’s self-monitoring reports, the Discharger committed six (6) non-serious violations of the effluent limitations contained in Order No 5-01-120 during the period beginning 11 May 2001 and ending 30 November 2007. The six (6) non-serious violations are not subject to mandatory penalties under CWC Section 13385 (i)(1), because these violations were not preceded by three or more similar violations within a six-month period.
- 8. The total amount of the mandatory penalty assessed for the cited effluent violation is **three thousand dollars (\$3,000)**. A detailed list of all the effluent violations is included in Attachment A, a part of this Order.
- 9. 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 MODESTO IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **three thousand dollars (\$3,000)**.
2. A hearing on this matter will be held at the Regional Water Board meeting scheduled on 24/25 April 2008, unless the Discharger agrees to:
 - a) Waive the hearing by completing the attached form and returning it to the Regional Water Board; and
 - b) Pay the proposed civil liability of **three thousand dollars (\$3,000)** in full.
3. If a hearing on this matter is held, the Regional 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.

KENNETH D. LANDAU, Assistant Executive Officer

6 February 2008

**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 Modesto (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0503 (hereinafter the "Complaint");
2. I am informed of the right provided by California 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. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **three thousand dollars (\$3,000)** by check, which contains a reference to "ACL Complaint No. R5-2008-0503" and is made payable to the "*State Water Pollution Cleanup and Abatement Account.*"
5. I understand the payment of the above amount constitutes a settlement of violations alleged in the Complaint that will not become final until after a public comment period.
6. I understand that the Assistant Executive Officer has complete discretion to modify or terminate this settlement.
7. 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.

(Print Name and Title)

(Signature)

(Date)

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0503**

**City of Modesto
Water Quality Control Facility**

RECORD OF VIOLATIONS (1 January 2000 – 30 November 2007) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program No. 5-01-120)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Result</u>	<u>Period Type</u>	<u>Remarks</u>
1	03-May-02	Total Coliform	MPN/100 mL	500	1600	Daily	3
2	09-May-02	Chlorine Residual	mg/L	0.02	3.3	Daily Maximum	1
3	17-Mar-03	Total Coliform	MPN/100 mL	500	1600	Daily	3
4	27-Mar-03	Total Coliform	MPN/100 mL	500	540	Daily	3
5	08-Mar-05	Total Coliform	MPN/100 mL	500	900	Daily	3
6	30-Mar-05	Total Coliform	MPN/100 mL	500	1600	Daily	3
7	26-Apr-07	Total Coliform	MPN/100 mL	500	1600	Daily	3

Remarks:

1. Serious Violation: For Group 1 pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group 2 pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties

<u>VIOLATIONS AS OF:</u>	<u>11/30/2007</u>
Group 1 Serious Violations:	1
Group 2 Serious Violations:	0
Non-Serious Exempt from MPs:	6
Non-serious Violations Subject to MPs:	0
<u>Total Violations Subject to MPs:</u>	1

Mandatory Minimum Penalty = (1 Serious Violations + 0 Non-Serious Violations) x \$3,000 = \$3,000