

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2017-0542

MANDATORY PENALTY
IN THE MATTER OF

CITY OF LIVE OAK
WASTEWATER TREATMENT PLANT
SUTTER COUNTY

This Order is issued to the City of Live Oak (hereafter Discharger) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL). This Order is based on allegations that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Orders R5-2011-0034 and R5-2016-0039 (NPDES CA0079022).

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 the City of Live Oak Wastewater Treatment Plant (Facility), a wastewater collection, treatment, and disposal system, which provides sewerage service for the City of Live Oak. Treated wastewater is discharged to Reclamation District 777 Lateral Drain No. 1, tributary to the East Interceptor Canal, then Wadsworth Canal, and then the Sutter Bypass.
2. In order to regulate discharges from the Facility, on 10 June 2011, the Central Valley Water Board adopted WDRs Order R5-2011-0034. On 23 June 2016, the Central Valley Water Board rescinded WDRs Order R5-2011-0034, except for enforcement purposes, and adopted WDRs Order R5-2016-0039. WDRs Order R5-2016-0039 became effective on 1 August 2016.
3. On 11 June 2011, the Board issued Order R5-2011-0035 (amending CDO R5-2009-0012-02) which provides the Discharger with an exemption from mandatory minimum penalties (MMPs) for BOD, TSS and total coliform organisms through 5 February 2014. The CDO also provides MMP protection for ammonia, dibromochloromethane, dichlorobromomethane, iron, manganese, and nitrate through 10 June 2016. This Order considers the protection from MMPs for the above nine constituents provided by CDO R5-2009-0012-02.
4. On 22 June 2012, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability (ACL) Complaint R5-2012-0549 for MMPs for effluent violations from 1 March 2011 through 31 March 2012. The Board considers those effluent violations specifically listed in Attachment A to ACLC R5-2012-0549 to be resolved.
5. On 26 January 2017, staff issued the Discharger a Notice of Violation (NOV) and draft Record of Violations (ROV) for effluent limitation violations that occurred between 1 April 2012 and 30 November 2016. On 16 February 2017, the Discharger responded and concurs with the fact that the values exceeded the effluent limits in the WDRs for arsenic and in the CDO for nitrate; however, the Discharger does not concur that the violations should be subject to MMPs. The Discharger contends that MMPs should not be assessed as the municipal and domestic supply (MUN) beneficial use designation was removed from the receiving water by the time the effluent limitation violations for arsenic and nitrate occurred. Board staff explained to the Discharger that although the effluent limitations for arsenic and nitrate were eventually removed when WDRs Order R5-2016-0039 was effective on 1 August 2016, WDRs Order R5-2011-0034 was still in effect at the time of the exceedances and therefore the violations are subject to MMPs. In

addition, the MMP protection for nitrate provided by the CDO expired on 10 June 2016. This Order extends the ROV period through 31 January 2017.

6. This Order addresses administrative civil liability for effluent violations that occurred between 1 April 2012 and 31 January 2017. These violations are specifically identified in Attachment A to this Order as subject to mandatory minimum penalties. Attachment A to this Order is attached hereto and incorporated herein by this reference.
7. 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.

8. 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.

9. 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.

- 10. WDRs Order R5-2011-0034 Effluent Limitations IV.A.1.a includes, in part, the following effluent limitations:

Table 6. Effluent Limitations

Parameter	Units	Average Monthly	Maximum Daily
Arsenic	µg/L	10	20.1
Nitrate (as N)	mg/L	10	--

- 11. WDRs Order R5-2011-0034 Effluent Limitations IV.A.2.b includes, in part, the following interim effluent limitation:
 - b. **Arsenic. Effective immediately and ending by 5 years from the adoption date of this Order, or compliance with the final effluent limits, whichever is sooner**, the discharger shall maintain compliance with the interim effluent limitation at Discharge Point No. 001, with compliance measured at Monitoring Location EFF-001 as described in the Monitoring and Reporting Program (Attachment E). The interim effluent limitation for arsenic is 88.9 µg/L as a daily average. This interim effluent limitation shall apply in lieu of all of the final effluent limitations for arsenic specified in Table 6 of this Order during the time period specified in this provision.
- 12. The WDRs were adopted on 10 June 2011 and therefore final compliance for arsenic is 10 June 2016.
- 13. CDO R5-2009-0012-02 Directive 1 includes a time schedule which allows five years from the effective date of the CDO to comply with final effluent limitations for nitrate. The CDO was adopted on 10 June 2011 and therefore final compliance for nitrate is 10 June 2016.
- 14. According to the Discharger’s self-monitoring reports, the Discharger committed two (2) serious Group I violation and two (2) serious Group II violations of the above effluent limitations contained in WDRs Order R5-2011-0034. These violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels in the WDRs by 40 percent or more, and measured concentrations of Group II constituents exceeded maximum prescribed levels in the WDRs by 20 percent or more. The mandatory minimum penalty for these serious violations is **twelve thousand dollars (\$12,000)**.
- 15. The total amount of the mandatory penalties assessed for the alleged effluent violations is **twelve thousand dollars (\$12,000)**. As stated herein, a detailed list of the alleged effluent violations is included in Attachment A. This Order addresses administrative civil liability for violations that are specifically identified as subject to mandatory minimum penalties in Attachment A.

16. Water Code section 13385 (k) states:

(1) In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works, if the state board or the regional board finds all of the following:

(A) The compliance project is designed to correct the violations within five years.

(B) The compliance project is in accordance with the enforcement policy of the state board, excluding any provision in the policy that is inconsistent with this section.

(C) The publicly owned treatment works has prepared a financing plan to complete the compliance project.

(2) For the purposes of this subdivision, “a publicly owned treatment works serving a small community” means a publicly owned treatment works serving a population of 10,000 persons or fewer or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works.

17. The 2009 State Water Resources Control Board’s *Water Quality Enforcement Policy* delegates the Regional Boards the authority to determine whether a publicly owned treatment works serves a small community with financial hardship. On 25 January 2017, the Central Valley Water Board determined that the City of Live Oak Wastewater Treatment Plant is a publicly owned treatment works and is serving a small community with financial hardship as defined by the Water Quality Enforcement Policy and within the meaning of Water Code Section 13385(k)(2).

Compliance Project — Basin Plan Amendment

18. At the Central Valley Water Board’s 2014 Triennial Review of the Water Quality Control Plan for the Sacramento and San Joaquin River Basins (Basin Plan), Board expressed concerns with the municipal and domestic supply (MUN) beneficial use designation of certain categories of water bodies. These categories included “agricultural drains,” “agricultural dominated water bodies,” and “effluent dominated water bodies.” Concurrently, the Central Valley Salinity Alternatives for Long-Term Sustainability (CV-SALTS) stakeholder initiative identified that there was a need to define the salinity related requirements for the protection of both the MUN and the agricultural supply (AGR) beneficial uses. To support both needs, the Central Valley Salinity Coalition, a discharger group financially supporting and managing the CV-SALTS initiative, provided resources for the development of technical information and environmental and economic analyses in support of the MUN and AGR beneficial use evaluation project.
19. As a result of the efforts described in Finding 18 above, on 16 April 2015, the Central Valley Water Board adopted Resolution No. R5-2015-0022, an amendment to the Basin Plan to remove the MUN beneficial use in twelve constructed and/or modified water bodies in the Sacramento River Basin that receive treated municipal wastewater from the cities of Biggs, Colusa, Live Oak, and Willows. Resolution No. R5-2015-0022 and subsequent approval by the State Board, United States Environmental Protection Agency, and the Office of Administrative Law removed the MUN designation from several agricultural drains, including Reclamation District 777 lateral drain No. 1,

the City of Live Oak's wastewater treatment plant's discharge location. As a result of removing the MUN beneficial use from the City's discharge location, on 23 June 2016 WDRs Order R5-2016-0039 was adopted which removed the nitrate and arsenic effluent limits.

20. On 19 July 2013, the Discharger spent \$15,000 toward CV-SALTS' effort to de-designate MUN from Reclamation District 777 lateral drain No.1 through a Basin Plan amendment process, which would ultimately remove the arsenic and nitrate effluent limitations from the City's WDRs (compliance project). The compliance project corrects the violations that occurred between 30 June 2016 and 31 July 2016. On 19 May 2017, the Discharger submitted documentation that it had completed the project and expended in excess of the mandatory minimum penalty that is required by CWC sections 13385(h) and (i).
21. Board staff finds that the proposed compliance project qualifies as a compliance project within the meaning of Water Code section 13385 (k) because it resulted in the removal of final effluent limitations for arsenic and nitrate, and ultimately, compliance with the arsenic and nitrate effluent limitations.

Additional Findings

22. The Central Valley Water Board finds that the compliance project will remedy future violations for nitrate and arsenic as those effluent limitations no longer exist in the WDRs. The compliance project has been designed to correct these violations and the compliance project has been designed in accordance with the State Water Board's Water Quality Enforcement Policy. The amount that the Discharger has expended on the compliance project is in excess of the mandatory minimum penalty that the Board is required to assess under Water Code sections 13385(h) and (i) for the violations that are to be addressed by the compliance project.
23. On 21 December 2015, the Executive Officer designated Andrew Altevogt, Assistant Executive Officer, as the Lead Prosecution Officer for all enforcement matters originating in the Central Valley Region. The 14 February 2014 Delegation of Authority also authorizes Andrew Altevogt to issue Administrative Civil Liability Orders.
24. Issuance of this Administrative Civil Liability Order 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).

This Order constitutes a settlement of the violations herein mentioned. Notice of this settlement was published on the Central Valley Water Board's website, and was provided to all interested parties. The 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) has expired. Comments were received from the City of Live Oak on 27 June 2017 which were posted along with the tentative Order on the internet at the following website:

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

THE CITY OF LIVE OAK 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 **twelve thousand dollars (\$12,000)**.
2. The entire \$12,000 penalty has been satisfied through the completion of the compliance project described in Finding 20 above, in accordance with CWC Section 13385(k).

3. This Order is final upon signature.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, state holiday or furlough day, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

Original signed by Adam Laputz for

PAMELA CREEDON, Executive Officer

20 July 2017

DATE

Attachment A: Record of Violations

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R5-2017-0542**

**City of Live Oak
Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 April 2012 – 31 January 2017) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2011-0034 and R5-2016-0039)

	<u>Date</u>	<u>Parameter</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
1	30-Jun-16	Nitrate*	mg/L	10	20.4	Average Monthly	1	1012382
2	6-Jul-16	Arsenic**	µg/L	20.1	28	Daily Maximum	2	1014898
3	31-Jul-16	Arsenic**	µg/L	10	28	Average Monthly	2	1014899
4	31-Jul-16	Nitrate*	mg/L	10	21.9	Average Monthly	1	1014900

* MMP protection provided by CDO R5-2009-0012-02 expired on 10 June 2016.

** The interim effluent limitations for arsenic ended 10 June 2016, as per WDRs Order R5-2011-0034 Section IV.A.2.b.

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 180-day period, thus is not subject to mandatory minimum penalties. Penalties that may be assessed for this violation are discretionary. This violation is not addressed or resolved in this ROV.
4. Non-serious violation subject to mandatory minimum penalties.

VIOLATIONS AS OF:	1/31/17
Group I Serious Violations:	2
Group II Serious Violations:	2
Non-Serious Violations Not Subject to MMPs:	0
Non-serious Violations Subject to MMPs:	0
Total Violations Subject to MMPs:	4

Mandatory Minimum Penalty = (4 Serious Violations Subject to MMPs) x \$3,000 = \$12,000