

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0619

MANDATORY PENALTY  
IN THE MATTER OF

VISALIA MEDICAL CLINIC, INC.  
VISALIA MEDICAL CLINIC FACILITY  
TULARE COUNTY

This Complaint is issued to Visalia Medical Clinic, Inc. (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL), 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 R5-2005-0147 (NPDES No. CA0085154) at its Visalia Medical Clinic Facility (Facility) in Tulare County.

The Assistant 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 an outpatient medical clinic facility in the City of Visalia. The Facility discharged about 235,000 gallons per day of untreated, non-contact cooling water from the operation of the Facility's air conditioning units to Mill Creek, a water of the United States, in Tulare County. The discharge contained residual chlorine, though the Discharger does not add any chemicals to its cooling water, which is potable water provided by California Water Service Company.
2. On 27 June 1997, the Central Valley Water Board issued WDRs Order 97-119 to regulate the discharge of up to a maximum daily flow of 0.26 million gallons per day. This Order prescribes an effluent limitation for pH, and establishes other terms and conditions applicable to the discharge. On 25 April 2003, the Central Valley Water Board rescinded WDRs Order 97-119. On 21 April 2003, the Discharger submitted a Report of Waste Discharge and NPDES permit application to continue the discharge of pollutants.
3. On 21 October 2005, Central Valley Water Board issued WDRs Order R5-2005-0147, and an associated Time Schedule Order (TSO) R5-2005-0148, to regulate the Facility's discharge of up to maximum daily flow of 0.24 million gallons per day to Mill Creek. Effluent Limitation B.1 in WDRs Order R5-2005-0147 prescribes new effluent limitations applicable to the waste discharge, including an effluent limit for total chlorine residual of 0.01 mg/L as a monthly average and 0.02 mg/L as a daily maximum. Task 5 of TSO R5-2005-0148 specifies the actions the Discharger is required to implement to achieve compliance with Effluent Limitation B.1 by 23 October 2006.

4. On 15 March 2007, Central Valley Water Board staff (staff) received a written request by the Discharger to rescind WDRs Order R5-2005-0147 and TSO R5-2005-0148, as the Discharger had ceased discharging to Mill Creek on or about 26 February 2007 after it connected to the City of Visalia's municipal sewer system.
5. On 31 July 2008, the Central Valley Water Board issued Order R5-2008-0116, which rescinded WDRs Order R5-2005-0147 and TSO R5-2005-0148.
6. CWC section 13385(h)(1) requires the assessment of mandatory penalties and states, in part, the following:

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.

7. CWC section 13385(j)(3) identifies conditions that, if met, make CWC sections 13385(h) and 13385(i) not applicable to violations, including:

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:

(A) The cease and desist order or time schedule order is issued on or after July 1, 2000, and specifies the actions the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i).

(B) The regional board finds that, for one of the following reasons, the discharger is not able to consistently comply with one or more of the effluent limitations established in the waste discharge requirements applicable to the waste discharge:

(i) the effluent limitation is a new, more stringent, or modified regulatory requirement that has been applicable to the waste discharge after the effective date of the waste discharge requirements and after July 1, 2000, new or modified control measures are necessary in order to comply with the effluent limitation, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

8. CWC section 13385.1(a)(1) states:

For purposes of subdivision (h) of Section 13385, a "serious violation" also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.

9. CWC section 13323 states, in relevant part, that:

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.

10. On 10 November 2008, staff issued the Discharger a Notice of Violation and draft Record of Violations identifying violations of WDRs Order R5-2005-0147 that occurred at the Facility during the period 1 January 2000 to 26 February 2007 and are subject to mandatory minimum penalties (MMPs). By letter dated 21 November 2008, the Discharger commented on the Notice of Violation and did not provide any information indicating the cited late reporting violations were incorrect or otherwise not subject to MMPs pursuant to CWC section 13385.1.
11. Attachment A to this Complaint is the final Record of Violations that identifies two (2) serious violations of effluent limitations for total residual chlorine that are not subject to MMPs pursuant to CWC section 13385(j)(3), and six (6) serious late reporting violations that are subject to MMPs pursuant to CWC section 13385.1.
12. The total amount of the MMPs assessed for the cited violations is **eighteen thousand dollars (\$18,000)**.
13. 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, section 15321(a)(2).

**VISALIA MEDICAL CLINIC, INC. 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 **eighteen thousand dollars (\$18,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled for **5/6 February 2009**, unless the Discharger does either of the following by **30 December 2008**:
  - a. Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **eighteen thousand dollars (\$18,000)**; or

ACL COMPLAINT R5-2008-0619  
MANDATORY PENALTY  
VISALIA MEDICAL CLINIC, INC.  
VISALIA MEDICAL CLINIC FACILITY  
TULARE COUNTY

-4-

- b. Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board, along with a letter describing the issues to be discussed in settlement negotiations.
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.

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LOREN J. HARLOW, Assistant Executive Officer

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Attachment A: Record of Violations

HA: 11/13/2008

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Visalia Medical Clinic, Inc. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0619 (hereinafter the "Complaint");
2. 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" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) within ninety (90) days of service of the Complaint; and
4.  **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
  - a. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **eighteen thousand dollars (\$18,000)** by check, which contains a reference to "ACL Complaint R5-2008-0619." made payable to the "Waste Discharge Permit Fund." Payment must be received by the Regional Water Board by **30 December 2008** or this matter will be placed on the Regional Water Board's agenda for adoption as initially proposed in the Complaint.
  - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Regional Water Board receive new information or comments during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Regional Water Board who are not associated with the enforcement team's issuance of the Complaint.
  - c. 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.

-or-

5.  **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

ATTACHMENT A  
 ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0619  
 VISALIA MEDICAL CLINIC, INC.  
 VISALIA MEDICAL CLINIC FACILITY  
 RECORD OF VIOLATIONS (1 January 2000 – 26 February 2007) MANDATORY PENALTIES  
 (Data reported under Monitoring and Reporting Program No. R5-2005-0147)

<u>Violation ID</u> <sup>1</sup>	<u>Violation Date</u>	<u>Violation Type</u> <sup>2</sup>	<u>Violation Description</u>	<u>MMP Type</u>
792930	10/31/2005	CAT2	10M; Total Residual Chlorine; 0.01; mg/L; M; 0.11	EXEMPT <sup>3</sup>
792931	10/31/2005	CAT2	10M; Total Residual Chlorine; 0.02; mg/L; D; 0.11	EXEMPT <sup>3</sup>
784735	7/2/2006	LREP	May 2006 SMR, due 7/1/2006, received on 10/17/2006 (109 days late), 1st 30-day period	SERIOUS
784537	7/2/2006	LREP	May 2006 SMR, due 7/1/2006, received on 10/17/2006 (109 days late), 2nd 30-day period	SERIOUS
784538	7/2/2006	LREP	May 2006 SMR, due 7/1/2006, received on 10/17/2006 (109 days late), 3rd 30-day period	SERIOUS
784776	8/2/2006	LREP	June 2006 SMR, due 8/1/2006, received on 10/17/2006 (79 days late), 1st 30-day period	SERIOUS
784777	8/2/2006	LREP	June 2006 SMR, due 8/1/2006, received on 10/17/2006 (79 days late), 2nd 30-day period	SERIOUS
784778	9/2/2006	LREP	July 2006 SMR, due 9/1/2006, received on 10/17/2006 (39 days late)	SERIOUS

<sup>1</sup> Violation ID in CIWQS

<sup>2</sup> Table of Abbreviations below defines abbreviations used in this table.

<sup>3</sup> Exempt pursuant to CWC section 13385(j)(3) due to Time Schedule Order R5-2005-0148 adopted on 21 October 2005.

<u>Abbreviation</u>	<u>Definition</u>
CAT2	Violation of an effluent limitation for a Group II pollutant as defined in Enforcement Policy
CIWQS	California Integrated Water Quality System database
CWC	California Water Code
D	Daily
LREP	Late Report
M	Monthly
MMP	Mandatory Minimum Penalty
SMR	Self-Monitoring Report

<u>MMP VIOLATION TYPE</u>	<u>VIOLATION PERIOD</u> <u>1/1/2000 TO 02/28/2007</u>
Serious Violation of Group II Pollutant Effluent Limitation Exempt from MMPs:	2
Serious Late Reporting Violations Subject to MMPs:	6
<b>Total Violations Subject to MMPs:</b>	<b>6</b>

**Mandatory Minimum Penalties = (6 Serious Late Reporting Violations) x \$3,000 = \$18,000**