

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2007-0502
ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

THE CITY OF WINTERS
WINTERS WASTEWATER TREATMENT FACILITY
YOLO COUNTY

This Administrative Civil Liability Complaint (hereafter Complaint) is issued to the City of Winters (hereafter known as "Discharger") based on failure to comply with Waste Discharge Requirements (WDRs) Order No. R5-2002-0136. This Complaint is issued pursuant to California Water Code (CWC) Section 13385, which authorizes the imposition of administrative civil liability.

The Executive Officer of the Central Valley Regional Water Quality Control Board (Regional Water Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger owns a wastewater treatment facility (WWTF) in Winters, Yolo County. The WWTF is regulated by WDRs Order No. R5-2002-0136, which was adopted by the Regional Water Board on 19 July 2002.
2. The WWTF serves the City of Winters, and comprises a headworks facility, four aerated ponds, one effluent polishing pond, four wastewater storage ponds, and two land application areas totaling approximately 170 acres. All wastewater receives secondary treatment and disinfection prior to land application. The WDRs allow an average daily dry weather influent flow of 0.92 million gallons per day (mgd).
3. The WWTF's control center, headworks, and main lift station are south of downtown Winters on the north bank of Putah Creek. Sewage flows by gravity to the headworks facility, and is pumped from there to the wastewater treatment pond system, which is approximately 1.5 miles northwest of the main lift station. The sewer system includes three other lift stations that serve low-lying areas.
4. The Discharger owns the WWTF and the City's sewer system, and has contracted with Eco Resources, Inc. for operation, maintenance, and monitoring of the WWTF and the City's sewer system. The Discharger is solely responsible for compliance with the WDRs.
5. On 25 January 2007, the Regional Water Board adopted Cease and Desist Order (CDO) No. R5-2007-0002 to address several WDRs violations. This Complaint proposes that administrative civil liabilities be assessed for the four sanitary sewer overflows cited in the CDO that caused discharges of wastewater to surface waters.

VIOLATIONS CITED

6. Discharge Prohibitions A.1, A.2, and A.6 of WDRs Order No. R5-2002-0136 prohibit the discharge of waste to surface waters, bypass of the treatment system, and sanitary sewer spills. Specifically:
 - a. Discharge Prohibition A.1 states: "The direct or indirect discharge of wastes and/or recycled water to surface waters or surface water drainage courses is prohibited."
 - b. Discharge Prohibition A.2 states: "The bypass or overflow of untreated or partially treated waste is prohibited."
 - c. Discharge Prohibition A.6 states, in part: "The discharge of sewage from a sanitary sewer system at any point upstream of a wastewater treatment facility is prohibited."

August 2005 Spill

7. On 29 August 2005, a contractor working for a private utility company ruptured the main sewer force main in downtown Winters. The contractor and the Discharger responded properly and in a timely fashion to:
 - a. Contain the spill within the paved street area by sandbagging storm drain inlets;
 - b. Shut down the main lift station to stop the flow; and
 - c. Divert influent from the headworks to an old clarifier at the WWTF control center.
8. Vacuum trucks at the spill site collected approximately 10,000 gallons of sewage from the paved area. The City's Public Works Director directed the vacuum truck operators to discharge the sewage into nearby sewer manholes. However, the City's Public Works Director mistakenly identified a storm drain manhole as a sewer manhole. Consequently, five truckloads of sewage (approximately 4,000 gallons total) were discharged from the vacuum trucks into a storm drain. By the time the error was identified, the sewage had already flowed directly into Putah Creek via a storm drain outfall. Additionally, the Discharger estimated that approximately 850 gallons leaked through sand bags at the spill site into the storm drain, and from there into Putah Creek.
9. The Discharger acted properly in notifying the Yolo County Environmental Health Department and Regional Water Board staff, and cooperated by posting warning signs along the creek and sampling for total and fecal coliform organisms in the creek as requested. However, despite Regional Water Board staff's explicit direction, the Discharger did not notify the State Office of Emergency Services (OES) until 6 September 2005, nine days after the spill.

10. In total, approximately 4,850 gallons of raw sewage flowed into Putah Creek in violation of Discharge Prohibitions A.1, A.2, and A.6 of WDRs Order No. R5-2002-0136. Regional Water Board staff did not receive any reports of fish kills or other actual impacts to the beneficial uses of Putah Creek. However, elevated levels of total and fecal coliform organisms were detected as far downstream as the University of California at Davis through 2 September 2005.

January 2006 Spill

11. On 18 January 2006, one of the Discharger's sewage lift stations (the Carter Ranch lift station) failed, causing a sanitary sewer overflow in a residential neighborhood due to surcharging. Both pump impellers were jammed with rags. Although neither pump was operable, the pump indicators showed that they were running. The lift station is equipped only with a flashing light alarm system; there is no audible alarm or autodialer to ensure that City staff is alerted to potential spills before they occur. The Discharger's response to the spill was prompt and appropriate.
12. OES was notified in a timely manner. Although the Discharger did not notify Regional Water Board staff, staff was made aware of the spill by the Yolo County Environmental Health Department on 20 January 2006, two days after it occurred. On 26 January 2006, staff verbally reminded the Discharger of the proper spill reporting procedure. On 3 February 2006, staff responded to a message from Eco Resources, Inc., and provided the same information to the Discharger's contract operator.
13. According to the Discharger's written spill report, a total of 350 gallons of raw sewage spilled from the manhole. Approximately 300 gallons were recovered, and approximately 50 gallons flowed into the storm drain system, which discharges to Putah Creek. This spill was a violation of Discharge Prohibitions A.1, A.2, and A.6 of WDRs Order No. R5-2002-0136.

May 2006 Spill

14. On 22 May 2006, another sewage lift station (the El Rio Villa lift station) failed, causing a sanitary sewer overflow in a residential neighborhood due to surcharging. The Discharger's written spill report states that neither of the two lift station pumps was operable. On the day after the spill, one of the pumps' impellers was found to be jammed with trash and debris, including a broken broom handle. The failure of the second pump was not explained in the Discharger's report.
15. The Discharger's response to the spill was prompt and appropriate, and Regional Water Board staff was notified in a timely manner. Approximately 150 gallons of raw sewage spilled from a manhole, and "a small portion" of that volume was discharged to a storm drain that discharges to Putah Creek. This spill was a violation of Discharge Prohibitions A.1, A.2, and A.6 of WDRs Order No. R5-2002-0136.

December 2006 Spill

16. On 3 December 2006, the Discharger's contract operator was notified of an ongoing overflow from the El Rio Villa lift station. Based on a preliminary spill report prepared by Eco Resources, Inc., the lift station was overflowing for approximately 28 hours before operations staff became aware of it. Eco Resources, Inc. acknowledged that the spill was caused by its staff's failure to restore electrical power to the lift station following maintenance two days before. The spill was stopped when a booster pump was manually turned on.
17. Regional Water Board staff was notified in a timely manner. However, OES and the Yolo County Environmental Health Department were not notified until the following day because the Discharger's Sanitary Sewer Overflow Response Plan contained incorrect phone numbers for these agencies, and the spill occurred on a Sunday.
18. According to the Discharger's final spill report, approximately 43,000 gallons of raw sewage spilled into Putah Creek via the City's storm drain system. Analytical results for water samples in Putah Creek upstream and downstream of the spill site indicate that elevated total and fecal coliform levels persisted through 11 December 2006. The spill was a violation of Discharge Prohibitions A.1, A.2, and A.6 of WDRs Order No. R5-2002-0136.
19. A summary of the four spill events follows:

<u>Spill Dates</u>	<u>Spill Duration (days)</u>	<u>Volume Discharged to Surface Waters (gal)</u>
29 August 2005	1	4,850
18 January 2006	1	50
22 May 2006	1	"minimal"
3 December 2006	2	43,000
Total	5 days	47,900 gallons

REGULATORY CONSIDERATIONS

20. As described in the above Findings, the Discharger has violated WDRs Order No. R5-2002-0136 by discharging waste to surface waters or surface water drainage courses, and by bypassing the treatment system.
21. Section 301 of the Clean Water Act and Section 13376 of the CWC prohibits discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.

22. CWC Section 13376 states, in part: *“Any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States ... shall file a report of the discharge in compliance with the procedures set forth in Section 13260...”* and *“The discharge of pollutants...except as authorized by waste discharge requirements [NPDES permit]...is prohibited.”*
23. WDRs Order No. R5-2002-0136 is not an NPDES permit. Therefore, by failing to file a report of waste discharge as set forth in CWC Section 13260 and failing to obtain an NPDES permit prior to the discharges described in the above Findings, the Discharger has violated CWC Section 13376.
24. CWC Section 13385 states, in part:
“(a) Any person who violates any of the following shall be liable civilly in accordance with subdivisions (b), (c), (d), (e), and (f):
(1) Section 13375 or 13376.
“(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both the following:
(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.
(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.”
25. For discharging waste to surface waters in violation of the WDRs, the Regional Water Board may assess administrative civil liability based on CWC Section 13385. The maximum administrative civil liability which can be imposed by the Regional Water Board under CWC Section 13385 is \$10,000 per day of discharge plus \$10 per gallon discharged in excess of 1,000 gallons which is spilled to surface waters. As stated in the Findings, 47,900 gallons of raw sewage were discharged to surface waters on four separate occasions for a total of five days. Of this total, 45,850 gallons were discharged in excess of 1,000 gallons per spill event. Therefore, the maximum administrative civil liability is \$50,000 (five days times \$10,000 per day) plus \$458,500 (45,850 gallons times \$10 per gallon), for a total maximum liability of \$508,500.
26. CWC Section 13385(e) states:
“In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the

degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation."

27. Pursuant to CWC Section 13385(e), the minimum administrative civil liability is equivalent to the economic benefit accrued by the Discharger for not implementing management and physical improvements necessary to prevent the discharges. Approximately 4,000 gallons of the 4,850-gallon discharge to Putah Creek resulted from improper identification of a sewer manhole, which is a form of negligence. The two smallest spills resulted from inadequate failsafe and/or backup systems at the lift stations involved. The 43,000-gallon spill resulted from negligence on the part of the contract operator that performed maintenance on the lift station. Because the two largest spills resulted from negligence, the Discharger did not benefit economically. However, the two smaller spills resulted from the Discharger's failure to install modern failsafe and backup power systems for three of its lift stations. It is estimated that the Discharger has saved at least \$7,000 by not retrofitting the lift stations prior to the first spill. This savings is based on a capital cost estimate of approximately \$20,000 per lift station for autodialers, backup generators, automated controls, and the Discharger paying seven percent interest on a five-year loan (assuming that the improvements were financed in early 2005).
28. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321 (a)(2), Title 14, of the California Code of Regulations.

THE CITY OF WINTERS IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Water Board proposes that the Discharger be assessed an administrative civil liability in the amount of \$70,000 (seventy thousand dollars). The amount of the proposed liability is based upon a review of the factors cited in California Water Code Section 13385 and the State Water Resources Control Board's Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing shall be held on **3/4 May 2007** unless the Discharger agrees to waive the hearing and pay the imposed civil liability in full.
3. If a hearing 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.
4. In lieu of a hearing, the Discharger may waive the right to a hearing. If you wish to waive the right to a hearing, sign the enclosed waiver and return it with the full amount of civil liability (in a check made payable to the *State Water Pollution Cleanup and Abatement*

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Account), to the Regional Water Board's office at 11020 Sun Center Drive, Suite #200, Rancho Cordova, CA 95670, by **25 March 2007**.

PAMELA C. CREEDON, Executive Officer

22 February 2007

(Date)

ALO:2/23/07

**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 Winters (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2007-0502 (hereinafter the "Complaint");
2. I am informed of the right provided by 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 seventy thousand dollars (\$70,000) by check, which contains a reference to "ACL Complaint No. R5-2007-0502" 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 the Complaint that will not become final until after a public comment period.
6. 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.

(Name)

(Title)

(Date)