

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2010-0550

MANDATORY PENALTY
IN THE MATTER OF

CITY OF DAVIS
WASTEWATER TREATMENT PLANT
YOLO COUNTY

This Complaint is issued to the City of Davis (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. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2007-0132 (NPDES No. CA0079049).

The 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 a municipal wastewater collection, treatment, and disposal system, and provides sewerage service within the City of Davis. Treated municipal wastewater is discharged to Willow Slough Bypass, a water of the United States, and tributary to the Yolo Bypass.
2. On 16 March 2001, the Central Valley Water Board issued WDRs Order 5-01-067. On 25 October 2007, the Board issued WDRs Order R5-2007-0132, effective 14 December 2007, which contained new requirements and rescinded WDRs Order 5-01-067.
3. On 10 November 2008, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2008-0601 for mandatory minimum penalties for effluent violations from 1 January 2000 through 31 March 2008. The Discharger paid the Administrative Civil Liability and the Board considers those effluent violations specifically listed in Attachment A to Complaint R5-2008-0601 resolved.
4. This Complaint covers the period of 1 April 2008 through 31 July 2010. On 1 October 2010, Central Valley Water Board staff issued the Discharger a draft Record of Violations. The Discharger responded on 13 October 2010, agreed with the violations, but requested that the two violations be considered one violation due to a single operational upset. Board staff re-evaluated the violations and determined that only one violation is subject to mandatory minimum penalties, in accordance with Question 41 of the 17 April 2001 State Water Resources Control Board *SB 709 and SB 2165 Questions and Answers* document which states, in part:

For the purpose of mandatory penalties, an exceedance of a single effluent limitation based on instantaneous maximums or hourly averages should be counted as no more than one violation per day.

5. CWC sections 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.

6. 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.

7. WDRs Order R5-2007-0132, Effluent Limitations No. A.1.f., include, in part:

f. Total Residual Chlorine. Effluent total residual chlorine shall not exceed:

- ii. 0.02 mg/L, as a 1-hour average.

8. According to the Discharger's self-monitoring reports, the Discharger committed two (2) serious Group II violations of the above effluent limitations contained in Order R5-2007-0132 during the period beginning 1 April 2008 and ending 31 July 2010. These violations are defined as serious because the measured concentration of a Group II constituent exceeded the maximum prescribed level by more than 20 percent on this

occasion. However, as discussed in Finding 4, only one violation is subject to mandatory minimum penalties. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.

9. The total amount of the mandatory penalties assessed for the cited effluent violation is **three thousand dollars (\$3,000)**. The cited effluent violation is included in Attachment A, a part of this Complaint. This Complaint addresses administrative civil liability for violations that are specifically identified in Attachment A.
10. 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 (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

THE CITY OF DAVIS 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 **three thousand dollars (\$3,000)**.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **2/3/4 February 2011**, unless one of the following occurs by **6 December 2010**:
 - a) The Discharger 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, along with payment for the proposed civil liability of **three thousand dollars (\$3,000)**; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
 - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
3. If a hearing on this matter is conducted, 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.

If this matter proceeds to hearing, the 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.

Original signed by Frederick Moss for

PAMELA C. CREEDON, Executive Officer

4 November 2010

DATE

Attachment A: Record of Violations

**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 Davis (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2010-0550 (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 **three thousand dollars (\$3,000)** by check that references "ACL Complaint R5-2010-0550" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **6 December 2010**.
- 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
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2010-0550**

**City of Davis
Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 April 2008 – 31 July 2010) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2007-0132)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>	<u>CIWQS</u>
1	29-Mar-10	Chlorine Residual	mg/L	0.02	0.75	1-hr avg	2	872204
2	29-Mar-10	Chlorine Residual	mg/L	0.02	0.38	1-hr avg	5	872205

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.
4. Non-serious violation subject to mandatory penalties.
5. Not subject to a mandatory minimum penalty per *SB 709 and SB 2165 Questions and Answers*.

<u>VIOLATIONS AS OF:</u>	<u>7/31/2010</u>
Group I Serious Violations:	0
Group II Serious Violations:	1
Group II Serious Violations Exempt from MPs:	1
Non-Serious Violations Exempt from MPs:	0
Non-serious Violations Subject to MPs:	0
<u>Total Violations Subject to MPs:</u>	<u>1</u>

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