

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0610

MANDATORY PENALTY
IN THE MATTER OF

LINDA COUNTY WATER DISTRICT
WASTEWATER TREATMENT PLANT
YUBA COUNTY

This Complaint is issued to the Linda County Water District (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) Orders 92-145, 5-00-165, and R5-2006-0096 (NPDES CA0079651).

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

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system, and provides sewerage service to the unincorporated area of Linda in Yuba County. Treated municipal wastewater is discharged to both the Feather River and to evaporation/percolation ponds that lie within the 100-year flood plain of the Feather River, a water of the United States. The ponds discharge directly to the Feather River during floods, and have hydraulic continuity with the Feather River.
2. On 14 August 1992, the Central Valley Water Board adopted WDRs Order 92-145 to regulate discharges of waste from the wastewater treatment plant. On 16 June 2000, the Board adopted WDRs Order 5-00-165, which contained new requirements and rescinded WDRs Order 92-145. On 22 September 2006, effective 11 November 2006, the Board adopted WDRs Order R5-2006-0096, which contained new requirements and rescinded WDRs Order 5-00-165.
3. On 16 June 2000, the Central Valley Water Board adopted Cease and Desist Order (CDO) 5-00-166, which provided a time schedule until 1 June 2005 to comply with new effluent limitations for chlorine residual and total coliform organisms, and to provide disinfection of the effluent. On 22 September 2006, the Board adopted Time Schedule Order (TSO) R5-2006-0097 which required full compliance with the aluminum, ammonia, diazinon, iron, manganese, methoxychlor, and organochlorine pesticides effluent limitations by 21 September 2011. This Complaint considers the protection from Mandatory Minimum Penalties provided by CDO 5-00-166 and TSO R5-2006-0097.
4. On 22 July 2008, staff of the Central Valley Water Board sent the Discharger a draft Record of Violations (ROV). The Discharger's consultant responded that the facility should not be subject to MMPs for discharges to the evaporation/percolation ponds within the floodplain, as this disposal method should be consider a discharge to groundwater.

5. Discharges to the evaporation/percolation ponds are subject to mandatory minimum penalties. These ponds discharge to the Feather River, at the very least during flood inundation. Because Linda County has an NPDES permit for discharges to the evaporation/percolation ponds, discharges from these ponds to the Feather River are not considered violations if the discharges to the ponds comply with effluent limits contained in the permit. These limits were developed under the presumption that the ponds discharge to the Feather River – it is for this reason that the beneficial uses of the surface water were considered in developing these effluent limits. Had the discharges to these ponds been solely considered discharges to land, only the beneficial uses of the underlying groundwater would have been considered in developing the effluent limits. Unfortunately, the Discharger cannot interpret the permit in two different ways, as convenience suits it. Having obtained protection from violations that would have resulted from discharges from the ponds to the Feather River during floods, the Discharger cannot then claim that subsequent discharges are exempt from mandatory minimum penalties because this discharge is exclusively a discharge to land. If this were the case, the December 2005 inundation of the evaporation/percolation ponds would have been subject to enforcement under different subsections of CWC section 13385 governing unpermitted discharges to surface waters. These subsections allow a penalty calculation of up to \$10 per gallon discharged over 1,000 gallons. Multiplied by the capacity of the evaporation/percolation ponds (which admittedly discharged to the Feather River during this, and previous, flood events), this potential penalty would have been several orders of magnitude greater than the mandatory minimum penalties proposed in this Complaint.
6. Additionally, the ponds appear to be hydrologically connected to the Feather River. The 5 March 2003 hydraulic study required by WDR Order 5-00-165 states that "...it also appears that the ponds cause a localized mounding of the groundwater table. This results in some volume of effluent percolating in all directions away from the ponds, including toward the river." Even though WDR Order R5-2006-0096 occasionally characterizes the discharge from EFF-002 as a "discharge to land," the first page of the permit (as well as other portions) reinforces the concept that the ponds exhibit the characteristics of hydrologic interconnectivity with the Feather River by characterizing the Feather River as a "receiving waterbody" which receives waste from the plant, "...via evaporation/percolation ponds within the floodplain." Since the ponds appear to be hydrologically connected to the Feather River, the effluent limit violations are certainly subject to mandatory minimum penalties.
7. Even if the discharges to the evaporation/percolation ponds were to be considered solely as discharges to groundwater, the Central Valley Water Board retains the discretion to take enforcement actions for these violations under CWC section 13350, or any other applicable provision of law. Penalties imposed pursuant to CWC section 13350 can be assessed at five thousand dollars (\$5,000) per violation per day, which leads to a maximum penalty substantially higher than the mandatory minimum penalty sought to be imposed pursuant to this Complaint.
8. 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.”

9. 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.

10. WDRs Order No. 5-00-165 Effluent Limitations No. B.1., (Discharge 001 to ponds within the flood plain), include, in part, “*Effluent shall not exceed the following limits.*”

<u>Constituents</u>	<u>Units</u>	<u>30-Day Average</u>	<u>30-Day Median</u>	<u>7-Day Average</u>	<u>Daily Maximum</u>
BOD ¹	mg/L	45 ²	--	65 ²	--
Total Coliform Organisms	MPN/100mL	--	240	--	500

¹ 5-day, 20°C biochemical oxygen demand (BOD₅)

² To be ascertained by a 24-hour composite

11. WDRs Order No. R5-2006-0096 Effluent Limitations IV.A.2.b., include, in part, the following interim limitations: “...*the discharge of treated wastewater shall maintain compliance with the following limitations at EFF-002...*”

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Biochemical Oxygen Demand, 5-day @ 20°C	mg/L	45	65	--	--	--

12. WDRs Order No. R5-2006-0096 Effluent Limitations IV.A.2.b.ii. Electrical Conductivity states: “*The 30-day 90th percentile effluent electrical conductivity shall not exceed 780 µmhos/cm.*”
13. According to the Discharger’s self-monitoring reports, the Discharger committed one (1) serious Group I violation of the above effluent limitations contained in Orders 92-145, 5-00-165, and R5-2006-0096 during the period beginning 1 January 2000 and ending 30 April 2008. The violation is defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels by more than 40 percent on this occasion. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
14. According to the Discharger’s self-monitoring reports, the Discharger committed twenty-two (22) non-serious violations of the above effluent limitations contained in Orders 92-145, 5-00-165, and R5-2006-0096 during the period beginning 1 January 2000 and ending 30 April 2008. Ten (10) of the non-serious violations are subject to mandatory penalties under CWC section 13385(i)(1) because these violations were preceded by three or more similar violations within a six-month period. The sum of the mandatory minimum penalties for these non-serious violations is **thirty thousand dollars (\$30,000)**.
15. The total amount of the mandatory penalties assessed for the cited effluent violations is **thirty-three thousand dollars (\$33,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
16. 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 LINDA COUNTY WATER DISTRICT 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 **thirty-three thousand dollars (\$33,000)**.

2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **5/6 February 2009**, unless the Discharger does either of the following by **19 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 **thirty-three thousand dollars (\$33,000)**; or
 - 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.
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.

JACK E. DEL CONTE, Assistant Executive Officer

19 November 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 Linda County Water District (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0610 (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 (Central Valley 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 proposed civil liability in the amount of **thirty-three thousand dollars (\$33,000)** by check, which will contain a reference to "ACL Complaint No. R5-2008-0610" and will be made payable to the "*State Water Pollution Cleanup and Abatement Account.*" Payment must be received by the Central Valley Water Board by **19 December 2008** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **5/6 February 2009** Central Valley Water Board meeting.
 - 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 Central Valley Water Board receive new information or comments during this comment period, the Central Valley 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 Central Valley 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.

(Print Name and Title)

(Signature)

(Date)

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0610**

**Linda County Water District
Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 January 2000 – 30 April 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program Nos. 92-145, 5-00-165 and R5-2006-0096)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period Type</u>	<u>Discharge</u> <u>Point*</u>	<u>Remarks</u>
1	19-Nov-03	BOD	mg/L	65	81	7-Day Avg	EFF-001	3
2	20-Oct-04	BOD	mg/L	65	79	7-Day Avg	EFF-001	3
3	7-Sep-05	Total Coliform	MPN/100 mL	500	1600	Daily Max	EFF-001	3
4	21-Sep-05	Total Coliform	MPN/100 mL	500	1600	Daily Max	EFF-001	3
5	28-Sep-05	Total Coliform	MPN/100 mL	500	900	Daily Max	EFF-001	3
6	30-Sep-05	Total Coliform	MPN/100 mL	240	1250	30-Day Median	EFF-001	4
7	30-Sep-05	BOD	mg/l	45	50	30-Day Avg	EFF-001	4
8	7-May-06	Total Coliform	MPN/100 mL	500	1600	Daily Max	EFF-001	3
9	30-Jun-06	BOD	mg/L	45	48	30-Day Avg	EFF-001	3
10	19-Jul-06	Total Coliform	MPN/100 mL	500	>1600	Daily Max	EFF-001	3
11	31-Jul-06	BOD	mg/L	45	48	30-Day Avg	EFF-001	4
12	6-Sep-06	BOD	mg/L	65	76	7-Day Avg	EFF-001	4
13	30-Sep-06	BOD	mg/L	45	47.5	30-Day Avg	EFF-001	4
14	31-Jan-07	BOD	mg/L	45	47	Monthly Avg	EFF-002a	4
15	31-Jan-07	EC	µmhos/cm	780	787	30-day 90 th %	EFF-002a	4
16	30-Sep-07	BOD	mg/L	45	49	Monthly Avg	EFF-002a	3
17	31-Oct-07	BOD	mg/L	65	70	Weekly Avg	EFF-002a	3
18	31-Oct-07	BOD	mg/L	45	54	Monthly Avg	EFF-002a	3
19	7-Nov-07	BOD	mg/L	65	67	Weekly Avg	EFF-002a	4
20	14-Nov-07	BOD	mg/L	65	80	Weekly Avg	EFF-002a	4
21	21-Nov-07	BOD	mg/L	65	68	Weekly Avg	EFF-002a	4
22	30-Nov-07	BOD	mg/L	45	64	Monthly Avg	EFF-002a	1
23	31-Dec-07	BOD	mg/L	45	47	Monthly Avg	EFF-002a	4

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 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>4/30/2008</u>
Group I Serious Violations:	1
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	12
Non-serious Violations Subject to MPs:	10
<u>Total Violations Subject to MPs:</u>	<u>11</u>

Mandatory Minimum Penalty = (1 Serious Violation + 10 Non-Serious Violations) x \$3,000 = \$33,000

- * EFF-001 (Order 5-00-165): Discharge to Ponds in Flood Plain
- * EFF-002 (Order 5-00-165): Discharge to Feather River
- * EFF-001a (Order R5-2006-0096): Discharge to Feather River
- * EFF-002a (Order R5-2006-0096): Discharge to Ponds in Flood Plain