

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION**

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R7-2008-0064
IN THE MATTER OF
CITY OF BRAWLEY, OWNER/OPERATOR
MUNICIPAL WASTEWATER TREATMENT PLANT
IMPERIAL COUNTY

This Order to assess Administrative Civil Liability (ACL), pursuant to California Water Code (CWC) Section 13385, is issued to the City of Brawley, based on a finding of violations of Waste Discharge Requirements (WDRs) Order No. R7-2005-0021, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0104523.

The Colorado River Basin Regional Water Quality Control Board (Regional Board) finds the following:

1. The City of Brawley (hereinafter Discharger), 400 Main Street, Brawley, California 92227 owns and operates the Wastewater Treatment Plant (WWTP) located at 1550 Best Road, Brawley, California 92227. According to a Report of Waste Discharge submitted by the Discharger and dated January 14, 2005, the WWTP has a designed capacity of 5.9 million gallons per day (MGD).
2. The WWTP consists of headworks, three primary clarifiers, five lagoons, an ultraviolet (UV) disinfection system, and sludge drying beds. The three primary clarifiers have not been in service since digesters were removed in 2002 due to excessive corrosion of the digester system's steel structure. The first and second aerated lagoons operate in parallel. Aerated lagoons 1 and 2 operate in series with lagoons 3, 4, and 5.
3. The WWTP treats and disposes of an average daily flow of 3.4 MGD of wastewater. The effluent from the lagoons is UV-disinfected and then discharged to the New River, in the SW ¼, Section 15, T13S, R14E, SBB&M, which is a tributary to the Salton Sea. The New River and the Salton Sea are waters of the United States.
4. On June 29, 2005, the Regional Board adopted WDR Order No. R7-2005-0021 (NPDES Permit No. CA0104523) for the Discharger in order to regulate discharges of treated wastewater from the WWTP into the New River. WDR Order No. R7-2005-0021 specifies effluent limitations, prohibitions, specifications, and provisions necessary to protect the beneficial uses of the surface and ground waters within the Colorado River Basin Region.
5. CWC Section 13385(a) states, in part, the following:

“Any person who violates any of the following shall be liable civilly in accordance with this section :...(4) Any order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5,...

6. CWC Section 13385(c) states:

"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 of 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) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons."

7. CWC Section 13385(h)(1) requires the Regional Board to assess a mandatory minimum penalty (MMP) of three thousand dollars (\$3,000) for each serious violation.

8. CWC Section 13385(h)(2) states, in part, the following:

"For the purpose of this section [13385], a 'serious violation' means any waste discharge that violates the effluent limitations ... 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."

9. CWC Section 13385(i)(1) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the Discharger does any of the following four or more times in a six-month period:

- 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.

10. CWC Section 13385(i)(2) states the following:

"For the purpose of this section [13385], a 'period of six consecutive months' means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date."

11. CWC Section 13385(l) states:

"(1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that

may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).

“(2) For the purposes of this section, a ‘supplemental environmental project’ means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section.”

12. On February 19, 2002, the State Water Resources Control Board adopted Resolution No. 2002-0040 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy, which was approved by the Office of Administrative Law and became effective on July 30, 2002, establishes criteria for Supplemental Environmental Projects (SEPs).

13. WDRs Order No. R7-2005-0021 contains the following discharge limitations:

“[1.b. Final Effluent Limitations for Discharge Point 001]

“Either beginning on February 1, 2007 or, if the commencement of discharges from the upgraded WWTP designed for nitrification and denitrification is completed prior to February 1, 2007 and as required by Provision VI.C.2.d the discharge of treated wastewater shall maintain compliance with the following limitations at Discharge Point M-001, with compliance measured at monitoring location M-001A as described in the attached Monitoring and Reporting Program (Attachment E).”

Constituents	Units	Effluent Limitations	
		Average Monthly	Maximum Daily
Total Ammonia as Nitrogen	mg/L	1.1	12
	lbs/day ¹	54	590

14. Monitoring reports submitted by the Discharger show that the wastewater discharged from the Discharger’s Wastewater Treatment Plant was in violation of its WDRs effluent limitations cited in Finding No. 13 above.
15. A summary of each violation of Board Order No. R7-2005-0021 is contained in Attachment “A,” which is incorporated in and made a part of this ACL Order by reference.
16. The total amount of the MMP for the violations cited in Attachment “A” is \$129,000.
17. On March 19, 2008, the Regional Board adopted Cease and Desist Order No. R7-2008-0008. The Order specified in Paragraph 5:

¹ Based on a flow of 5.9 MGD

"Pursuant to CWC Section 13385(j), the Discharger will be exempt from Mandatory Minimum Penalties (MMP) for violations of the new effluent limitation for Total Ammonia as Nitrogen if the Discharger is in compliance with Cease and Desist Order No. R7-2008-0008."

18. On June 25, 2008, the Regional Board adopted ACL Order No. R7-2008-0043. The ACL Order assessed MMPs of \$291,000 and other penalties of \$63,750 for a total ACL penalty of \$354,750 for violations that occurred prior to November 1, 2007. The ACL Order allowed the Discharger to propose a SEP consistent with the Water Quality Enforcement Policy in lieu of payment of up to \$184,875 of the ACL penalty. The Discharger proposed three SEPs, all of which were approved by the Regional Board. The SEPs, their estimated costs, and the amounts of the MMPs allowed to be suspended for each SEP were as follows:

<u>SEP</u>	<u>Estimated Project Cost</u>	<u>Suspended Amount</u>
(1) Environmental Staff Training	\$9,243	\$4,642
(2) Water Conservation Public Awareness Project	\$18,847	\$9,466
(3) K Street Drainage Improvement Project	\$340,000	\$170,767

19. This Order, No. R7-2008-0064, assesses MMPs for violations that occurred between November 1, 2007 and March 19, 2008, as shown in Attachment "A".
20. As shown in Attachment "A", the Discharger has violated waste discharge requirements. The Regional Board can assess liability pursuant to CWC Section 13385(c) for the violations. It must, however, assess the minimum civil liability prescribed under CWC Sections 13385(h)(1) and (i)(1) for the serious and chronic effluent violations.
21. The minimum civil liability the Regional Board must assess for the serious and chronic effluent violations shown in Attachment A is one hundred twenty-nine thousand dollars (\$129,000). The total maximum civil liability authorized by CWC Section 13385(c) for the violations shown in Attachment "A" is eleven billion, six hundred sixty-seven million, one hundred thousand dollars (\$11,667,100,000).
22. On August 15, 2008, the Regional Board Assistant Executive Officer issued ACLC No. R7-2008-0060, proposing that the Discharger pay three thousand dollars (\$3,000) for each of the serious and chronic violations identified in Attachment A. The total Administrative Civil Liability against the Discharger is one hundred twenty-nine thousand dollars (\$129,000). The Assistant Executive Officer also indicated that he would consider offsetting a portion of this ACL amount by the monetary value of a SEP proposed by the Discharger in an amount not to exceed \$72,000.
23. The Regional Board has notified the Discharger and the general public of its intent to hold a hearing on this matter within 90 days from the date the Complaint was issued unless the Discharger waives its right to a hearing under CWC Section 13323(b). By letter dated August 15, 2008, the Discharger waived its right to a hearing on this matter (see Attachment "B").

24. On August 29, 2008, the Discharger proposed the implementation of another phase of the existing K Street Drainage Improvement Project (Project) SEP. As explained in Finding No. 18, above, a SEP for this Project was previously approved by the Regional Board pursuant to Board Order No. R7-2008-0043. The currently proposed phase of the SEP is described in Attachment "B", which is made a part of this ACL Order by reference. The Discharger proposed to apply \$72,000 of the \$129,000 ACL penalty to the Project. Thus, the total ACL amount suspended from this Order and ACL Order No. R7-2008-0043 is \$242,767 (\$170,767 + \$72,000). The SEP will be completed by December 31, 2010.
25. The Regional Board heard and considered all comments pertaining to this matter in a public meeting.
26. Issuance of this Order 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, California Code of Regulations
27. Any person aggrieved by this action of the Regional 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 no later than 5:00 p.m., thirty (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, or state holiday, 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. Copies will also be provided upon request.

IT IS HEREBY ORDERED, pursuant to CWC Section 13385, the Discharger is assessed \$129,000 in ACL violations. In lieu of paying an ACL in the amount of \$129,000, the Discharger shall pay a reduced penalty amount in accordance with CWC Section 13385(l) and shall implement the proposed phase of the K Street Drainage Improvement Project SEP described in Attachment "B" (the SEP) in accordance with the following:

1. The Discharger shall comply with the Enforcement Policy relating to implementation of SEPs.
2. This phase of the SEP shall be implemented in accordance with the time schedule stipulated in Attachment "C", appended to and made a part of this Order by reference. The Regional Board Executive Officer may modify the stipulated completion date and approve an alternative completion date for this phase of the SEP if he determines that a delay is necessary for a timely return of the Discharger to full and sustained compliance with its WDR, and is beyond the reasonable control of the Discharger. Under no circumstances may the completion date extend beyond five (5) years from the date of this Order.

3. The suspended portion of the proposed ACL penalty of \$129,000 that is hereby directed to be expended on this phase of the SEP may not exceed \$72,000. The Discharger shall pay within thirty (30) days of the date of this Order the remaining portion of \$57,000. Payment by check of this amount shall be made payable to the "State Water Pollution Cleanup and Abatement Account" and mailed to the address shown in paragraph 7 below.
4. If the Discharger completes this phase of the SEP to the satisfaction of the Executive Officer by the approved date, the corresponding portion of the ACL indicated in Attachment "C" for this phase of the SEP shall be permanently suspended. Similarly, if the Discharger fails to complete this phase of the SEP to the satisfaction of the Executive Officer by the approved date, and the Executive Officer has not approved an extension in the completion date, the corresponding portion of the ACL shall become due and payable by the Discharger within 30 days of being so informed in writing by the Executive Officer.
5. Previously suspended amounts do not relieve the discharger of the independent obligation to take necessary actions to achieve compliance.
6. Completion of this phase of the SEP shall be certified in writing by the Executive Officer. No portion of the ACL shall be suspended without a written certification issued by the Executive Officer.
7. The Discharger shall submit all unsuspended ACL amounts, made payable to the "State Water Pollution Cleanup and Abatement Account", to the following address:

California Regional Water Quality Control Board
Colorado River Basin Region
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260

I, Robert Perdue, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order adopted by the California Regional Water Quality Control Board, Colorado River Basin Region, on September 17, 2008.

ROBERT PERDUE, Executive Officer