

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0582

MANDATORY PENALTY
IN THE MATTER OF

SAN JOAQUIN COUNTY SERVICE AREA 31
FLAG CITY WASTEWATER TREATMENT PLANT
SAN JOAQUIN COUNTY

This Complaint is issued to San Joaquin County Service Area 31, Flag City, Wastewater Treatment Plant (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) R5-2003-0061 (NPDES No. CA0082848).

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 for San Joaquin County Service Area 31, Flag City Wastewater Treatment Plant. For the period 25 April 2003 through 11 April 2008, treated wastewater was discharged to Highline Canal, tributary to the Sacramento-San Joaquin Delta, a water of the United States.
2. On 25 April 2003, the Central Valley Water Board adopted WDRs Order R5-2003-0061 and Cease and Desist Order (CDO) R5-2003-0062. CDO R5-2003-0062 established a time schedule until 1 January 2008 to comply with final effluent limitations for ammonia, nitrate, manganese, copper, barium, total trihalomethanes, and electrical conductivity. On 10 September 2004, the Central Valley Water Board adopted Resolution R5-2004-0126, extending the compliance schedule for Provisions F.3 and F.6 to 1 November 2005. The final compliance dates were then extended to 1 January 2008, pursuant to Resolution R5-2005-0091. Finally, on 26 October 2007, the Central Valley Water Board adopted Resolution R5-2007-0141, amending the final compliance date to 24 April 2008. This Complaint considered the interim effluent limitations in WDRs Order R5-2003-0061, as amended, and the protection from Mandatory Minimum Penalties provided by CDO R5-2003-0062.
3. On 11 April 2008, the Discharger ceased discharging because it diverted all the wastewater to the City of Lodi's wastewater collection system. On 12 June 2008, the Central Valley Water Board adopted Resolution R5-2008-0083, which rescinded WDRs Order R5-2003-0061 (NPDES Permit CA0082848) and CDO R5-2003-0062.

4. On 29 July 2008, the Assistant Executive Officer issued Administrative Civil Liability Complaint R5-2008-0558 in the amount of sixty thousand dollars (\$60,000) for Mandatory Minimum Penalties (MMPs). After consideration of additional information submitted by the Discharger, this Complaint rescinds Administrative Civil Liability Complaint R5-2008-0558, and adjusts the amount of violations subject to MMPs. The adjustments are discussed in the 19 September 2008 technical memorandum prepared by Central Valley Water Board staff, included as Attachment B to this Complaint and discussed in Finding No. 10 of this Complaint.

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 R5-2003-0061 Effluent Limitations No. B.2, include, in part, the following effluent limitations: "effluent shall not exceed the following interim limitations."

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>7-day Median</u>	<u>Daily Average</u>	<u>Daily Maximum</u>
Total Coliform Organisms	MPN/100 mL	--	--	23	--	240

8. According to the Discharger's self-monitoring reports, the Discharger committed twenty-six (26) non-serious violations of the above effluent limitations contained in Order R5-2003-0061 during the period beginning 25 April 2003 and ending 10 April 2008. Seven (7) 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 mandatory minimum penalty for these non-serious violations is **twenty-one thousand dollars (\$21,000)**.
9. The total amount of the mandatory penalties assessed for the cited effluent violations is **twenty-one thousand dollars (\$21,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
10. As described in the technical memorandum mentioned in Finding No. 4, Central Valley Water Board staff made the following adjustments to the draft Record of Violations (all violation numbers reference those contained in the draft Record of Violations).
 - Total Coliform Violations 1, 3, 6, 13, 17, 19, 24, 29, 31, 33, 36. The Discharger presented evidence that, for this Order, the 7-day medians should have been calculated as one per week rather than rolling 7-day medians. After recalculation, these entries were no longer violations.
 - Total Coliform Violations 4, 5, 16, 18, 21, 25, 30, and 37. After removing the violations noted above, these violations were not subject to MMPs because there were fewer than three violations during the previous 180 days.
11. 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).

SAN JOAQUIN COUNTY SERVICE AREA 31, FLAG CITY WASTEWATER TREATMENT PLANT, IS HEREBY GIVEN NOTICE THAT:

1. Administrative Civil Liability Complaint R5-2008-0558 is rescinded.
2. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed Administrative Civil Liability in the amount of **twenty-one thousand dollars (\$21,000)**.
3. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **4/5 December 2008**, unless the Discharger agrees to complete the following by **24 October 2008**:

- a) Waive 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 **twenty-one thousand dollars (\$21,000)**; or
 - b) Agree to enter into settlement discussions with the Central Valley Water Board and request 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.
4. 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

24 September 2008

Attachment A: Record of Violations
Attachment B: Technical Memo

BLH: 09/24/08

**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 **San Joaquin County Service Area 31, Flag City Wastewater Treatment Plant**, (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0582 (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 Central Valley Regional Water Quality Control Board (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 civil liability imposed in the amount of **twenty-one thousand dollars (\$21,000)** by check, which contains a reference to "ACL Complaint R5-2008-0582" and is made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **24 October 2008** or this matter will be placed on the Central Valley 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 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. 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 R5-2008-0582**

**San Joaquin County Service Area 31
Flag City Wastewater Treatment Plant**

RECORD OF VIOLATIONS (25 April 2003 – 10 April 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2003-0061)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
1	16-May-03	Coliform	MPN/100mL	23	67	7-day median	3
2	22-May-03	Coliform	MPN/100mL	23	130	7-day median	3
3	5-Jun-03	Coliform	MPN/100mL	240	1600	Daily	3
4	8-Jun-03	Coliform	MPN/100mL	240	1600	Daily	4
5	8-Jun-03	Coliform	MPN/100mL	23	1600	7-day median	4
6	13-Jun-03	Coliform	MPN/100mL	240	300	Daily	4
7	13-Jun-03	Coliform	MPN/100mL	23	950	7-day median	4
8	3-Jul-03	Coliform	MPN/100mL	23	27	7-day median	4
9	30-Dec-03	Coliform	MPN/100mL	23	26	7-day median	3
10	20-Feb-04	Coliform	MPN/100mL	23	40	7-day median	3
11	27-Jul-04	Coliform	MPN/100mL	23	29	7-day median	3
12	5-Aug-04	Coliform	MPN/100mL	23	240	7-day median	3
13	10-Jan-05	Coliform	MPN/100mL	23	50	7-day median	3
14	28-Mar-05	Coliform	MPN/100mL	240	280	Daily	3
15	28-Mar-05	Coliform	MPN/100mL	23	280	7-day median	3
16	28-Nov-05	Coliform	MPN/100mL	23	30	7-day median	3
17	9-Dec-05	Coliform	MPN/100mL	23	50	7-day median	3
18	9-Jan-06	Coliform	MPN/100mL	23	41	7-day median	3
19	14-Feb-06	Coliform	MPN/100mL	23	126	7-day median	4
20	4-Oct-06	Coliform	MPN/100mL	23	56	7-day median	3
21	17-Jan-07	Coliform	MPN/100mL	23	170	7-day median	3
22	25-Jan-07	Coliform	MPN/100mL	23	32	7-day median	3
23	1-Feb-07	Coliform	MPN/100mL	23	46	7-day median	4
24	21-Nov-07	Coliform	MPN/100mL	23	825	7-day median	3
25	20-Nov-07	Coliform	MPN/100mL	240	1600	Daily	3
26	20-Dec-07	Coliform	MPN/100mL	23	50	7-day median	3

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>04/10/2008</u>
Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	19
Non-serious Violations Subject to MPs:	7
<u>Total Violations Subject to MPs:</u>	<u>7</u>

Mandatory Minimum Penalty = (0 Serious Violations + 7 Non-Serious Violations) x \$3,000 = \$21,000



Linda S. Adams
Secretary for
Environmental Protection

ATTACHMENT B
California Regional Water Quality Control Board
Central Valley Region

Karl E. Longley, ScD, P.E., Chair

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>



Arnold
Schwarzenegger
Governor

TO: Patricia Leary, Senior Engineer
NPDES Compliance and Enforcement

FROM: Barry Hilton, WRCE
NPDES Compliance and Enforcement

DATE: 19 September 2008

SIGNATURE: _____

SUBJECT: SAN JOAQUIN COUNTY SERVICE AREA 31, FLAG CITY WWTP

On 29 July 2008, the Central Valley Central Valley Water Board (Central Valley Water Board) issued ACLC R5-2008-0558. On 28 August 2008, the Discharger responded.

Total Coliform

Violations 1, 3, 6, 13, 17, 19, 24, 29, 31, 33, 36. The Discharger contends that the 7-day median coliform is a fixed weekly limit, not a running median. Waste Discharge Requirements Order R5-2003-0061 does not explicitly define a 7-day median. Newly issued NPDES Permits for other dischargers now explicitly state that "the 7-day median shall be determined by calculating the median concentration of total coliform bacteria in the effluent utilizing the bacteriological results of the last seven days for which analyses have been completed." I deleted the violations.

Violations 4, 5, 16, 18, 21, 25, 30, and 37. Total coliform violations are not a Group I or Group II violation but are other effluent violations and therefore are non-serious violations. When there are fewer than three non-serious violations (including the current violation) during the preceding 180 days, the violation is not subject to MMPs. I changed these violations to remarks 3 because there were three or fewer violations during the 180 day period.

Summary

The number of violations was reduced from 37 to 26.

The number of violations subject to MMPs was reduced from 20 to 7.

The mandatory minimum penalty was reduced from \$60,000 to \$21,000.

**San Joaquin County Service Area 31
Flag City Wastewater Treatment Plant**

RECORD OF VIOLATIONS (25 April 2003 – 10 April 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program No. R5-2003-0061)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
1	13-May-03	Coliform	MPN/100mL	23	110	7-day median	3
2	16-May-03	Coliform	MPN/100mL	23	67	7-day median	3
3	20-May-03	Coliform	MPN/100mL	23	97	7-day median	3
4	22-May-03	Coliform	MPN/100mL	23	130	7-day median	34
5	5-Jun-03	Coliform	MPN/100mL	240	1600	Daily	34
6	5-Jun-03	Coliform	MPN/100mL	23	1600	7-day median	4
7	8-Jun-03	Coliform	MPN/100mL	240	1600	Daily	4
8	8-Jun-03	Coliform	MPN/100mL	23	1600	7-day median	4
9	13-Jun-03	Coliform	MPN/100mL	240	300	Daily	4
10	13-Jun-03	Coliform	MPN/100mL	23	950	7-day median	4
11	3-Jul-03	Coliform	MPN/100mL	23	27	7-day median	4
12	30-Dec-03	Coliform	MPN/100mL	23	26	7-day median	3
13	18-Feb-04	Coliform	MPN/100mL	23	50	7-day median	3
14	20-Feb-04	Coliform	MPN/100mL	23	40	7-day median	3
15	27-Jul-04	Coliform	MPN/100mL	23	29	7-day median	3
16	5-Aug-04	Coliform	MPN/100mL	23	240	7-day median	34
17	10-Aug-04	Coliform	MPN/100mL	23	121	7-day median	4
18	10-Jan-05	Coliform	MPN/100mL	23	50	7-day median	34
19	13-Jan-05	Coliform	MPN/100mL	23	26	7-day median	4
20	28-Mar-05	Coliform	MPN/100mL	240	280	Daily	3
21	28-Mar-05	Coliform	MPN/100mL	23	280	7-day median	34
22	28-Nov-05	Coliform	MPN/100mL	23	30	7-day median	3
23	9-Dec-05	Coliform	MPN/100mL	23	50	7-day median	3
24	13-Dec-05	Coliform	MPN/100mL	23	26	7-day median	3
25	9-Jan-06	Coliform	MPN/100mL	23	41	7-day median	34
26	14-Feb-06	Coliform	MPN/100mL	23	126	7-day median	4
27	4-Oct-06	Coliform	MPN/100mL	23	56	7-day median	3
28	17-Jan-07	Coliform	MPN/100mL	23	170	7-day median	3
29	23-Jan-07	Coliform	MPN/100mL	23	110	7-day median	3
30	25-Jan-07	Coliform	MPN/100mL	23	32	7-day median	34
31	29-Jan-07	Coliform	MPN/100mL	23	50	7-day median	4
32	1-Feb-07	Coliform	MPN/100mL	23	46	7-day median	4
33	20-Nov-07	Coliform	MPN/100mL	23	1600	7-day median	3
34	21-Nov-07	Coliform	MPN/100mL	23	825	7-day median	3
35	20-Nov-07	Coliform	MPN/100mL	240	1600	Daily	3
36	19-Dec-07	Coliform	MPN/100mL	23	34	7-day median	4
37	20-Dec-07	Coliform	MPN/100mL	23	50	7-day median	34

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>04/10/2008</u>
Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	<u>1917</u>
Non-serious Violations Subject to MPs:	<u>720</u>
<u>Total Violations Subject to MPs:</u>	<u>720</u>

Mandatory Minimum Penalty = (0 Serious Violations + ~~720~~ Non-Serious Violations) x \$3,000 = \$2160,000