

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0606

MANDATORY PENALTY
IN THE MATTER OF

CITY OF STOCKTON
REGIONAL WASTEWATER CONTROL FACILITY
SAN JOAQUIN COUNTY

This Complaint is issued to the City of Stockton (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) Order 94-324 and R5-2002-0083 (NPDES No. CA0079138).

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 City of Stockton, the Port of Stockton, and surrounding urbanized County areas. Treated municipal wastewater is discharged through a single outfall to the San Joaquin River, a navigable water of the United States and part of the Sacramento-San Joaquin Delta.
2. On 28 October 1994, the Central Valley Water Board adopted WDRs 94-324 to regulate discharges of waste from the wastewater treatment plant. On 26 April 2002, the Board adopted WDRs Order R5-2002-0083, which contained new requirements and rescinded Order 94-324. On 26 April 2002, the Central Valley Water Board also adopted Cease and Desist Order (CDO) R5-2002-0084. This Order required the Discharger to comply with effluent ammonia limitations by 1 April 2007.
3. On 29 August 2008, Central Valley Water Board staff sent the Discharger a draft Record of Violations. The Discharger responded on 19 September 2008, and agreed with the record.
4. 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.

5. 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.

6. WDRs Order 94-324 Effluent Limitations No. B.1., states, in part:

Effluent shall not exceed the following limits:

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Average</u>	<u>Daily Maximum</u>
Total Coliform Organisms	MPN/100 mL	23 (median)	--	--	500

7. WDRs Order R5-2002-0083 Effluent Limitations No. B.1. states, in part:

Effluent shall not exceed the following limitations:

<u>Constituents</u>		<u>Yearly Total</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>
Dibromochloromethane	(µg/L) (lbs/day ³)	--	--	--	23
)				10.6

³ Based upon a permitted flow of 55 mgd

8. WDRs Order R5-2002-0083 Effluent Limitations No. B. 2. states, in part:

Effective immediately, effluent shall not exceed the following seasonal CBOD effluent limitations:

<u>Constituents</u>	<u>(Units)</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>	<u>Effective Dates</u>
CBOD	(mg/L) ⁽¹⁾	10	20	25	1 April through 31 October

⁽¹⁾ 5-day, 20°C, carbonaceous biochemical oxygen demand, ascertained by 24-hour composite

9. WDRs Order R5-2002-0083 Effluent Limitations No. B.6. states, in part:

Interim effluent limits effective until 1 May 2006, when Title 22 filtration/disinfection is completed. The effluent shall not exceed the following limitations:

<u>Constituents</u>	<u>(Units)</u>	<u>Yearly Total</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>
Total Coliform	(MPN/100 mL)	--	23 (median)	--	240

10. According to the Discharger's self-monitoring reports, the Discharger committed five (5) serious Group II violations of the above effluent limitations contained in Order R5-2002-0083 during the period beginning 1 January 2000 and ending 30 April 2008. These violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels by more than 20 percent on these occasions. The mandatory minimum penalty for these serious violations is **fifteen thousand dollars (\$15,000)**.
11. According to the Discharger's self-monitoring reports, the Discharger committed nine (9) non-serious violations of the above effluent limitations contained in Order R5-2002-0083 during the period beginning 1 January 2000 and ending 30 April 2008. One (1) of the non-serious violations is subject to mandatory penalties under CWC section 13385(i)(1) because this violation was preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for this non-serious violation is **three thousand dollars (\$3,000)**.
12. The total amount of the mandatory penalties assessed for the cited effluent violations is **eighteen thousand dollars (\$18,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.

13. 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 STOCKTON 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 **eighteen thousand dollars (\$18,000)**.
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 **10 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 **eighteen thousand dollars (\$18,000)**; 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 either (a) a letter describing the issues to be discussed or (b) a proposal for a Supplemental Environmental Project that meets the criteria of the State Water Board's *Water Quality Enforcement Policy*.
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

10 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 the City of Stockton (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0606 (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 proposed civil liability in the amount of **eighteen thousand dollars (\$18,000)** by check, which will contain a reference to "ACL Complaint R5 2008-0606" 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 **10 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.)** 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 NO. R5-2008-0606**

**City of Stockton
Regional Wastewater Control Facility**

RECORD OF VIOLATIONS (1 January 2000 – 30 April 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program Nos. 94-324 and R5-2002-0083)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period</u>	<u>Remarks</u>
1	23-Apr-00	Coliform	MPN/100 mL	500	1600	Daily	3
2	28-Apr-00	Coliform	MPN/100 mL	500	520	Daily	3
3	10-Dec-02	Coliform	MPN/100 mL	240	830	Daily	3
4	03-May-05	Coliform	MPN/100 mL	240	1600	Daily	3
5	05-May-05	Coliform	MPN/100 mL	240	500	Daily	3
6	09-Apr-06	Coliform	MPN/100 mL	240	900	Daily	3
7	31-Jul-06	cBOD	mg/L	25	30	Daily	3
8	11-Oct-06	Dibromochloromethane	µg/L	23	29	Daily	2
9	16-Aug-07	Dibromochloromethane	µg/L	23	56	Daily	2
10	16-Aug-07	Dibromochloromethane	lbs/day	10.6	12.4	Daily	3
11	05-Sep-07	Dibromochloromethane	µg/L	23	53	Daily	2
12	05-Sep-07	Dibromochloromethane	lbs/day	10.6	13.5	Daily	2
13	10-Oct-07	Dibromochloromethane	µg/L	23	35	Daily	2
14	10-Oct-07	Dibromochloromethane	lbs/day	10.6	10.8	Daily	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:	0
Group II Serious Violations:	5
Non-Serious Exempt from MPs:	8
Non-serious Violations Subject to MPs:	1
<u>Total Violations Subject to MPs:</u>	<u>6</u>

Mandatory Minimum Penalty = (5 Serious Violations + 1 Non-Serious Violations) x \$3,000 = \$18,000