

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0568

MANDATORY PENALTY
IN THE MATTER OF

CITY OF MANTECA
WATER QUALITY CONTROL FACILITY
SAN JOAQUIN COUNTY

This Complaint is issued to the City of Manteca (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, and 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 R5-2004-0028 (NPDES No. CA0081558).

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 the City of Manteca Water Quality Control Facility (WQCF), which provides sewerage service to the City of Manteca and portions of the City of Lathrop in San Joaquin County. Treated domestic, commercial and industrial wastewater is discharged to the San Joaquin River, a water of the United States.
2. On 19 March 2004, the Central Valley Water Board issued WDRs Order R5-2004-0028 to regulate discharges of waste from the WQCF. On 5 August 2005, the Board adopted Resolution R5-2005-0110, amending WDRs Order R5-2004-0028. On 16 May 2005, the State Water Resources Control Board (State Water Board) issued Water Quality Order WQ-2005-0005 which amended Order R5-2004-0028. On 8 October 2009, effective 27 November 2009, the Board issued WDRs Order R5-2009-0095 rescinding Order R5-2004-0028 and CDO R5-2004-0029, and containing new requirements. The WDRs include effluent limitations and other requirements regarding the wastewater discharges.
3. On 16 May 2008, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2008-0529 for mandatory minimum penalties for effluent violations from 1 March 2006 through 31 December 2007. The Discharger paid the administrative civil liability charged in Complaint R5-2008-0529 and the Board considers the matter resolved.
4. This Complaint covers the period of 1 January 2008 through 31 July 2009. On 8 October 2009, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations (ROV) for effluent limitation violations for this period. On 22 October 2009, the Discharger responded and provided evidence that the electrical conductivity violations cited in the ROV should be excluded because State Water Board Order WQ-2005-0005 established the year-round effluent limitation for electrical conductivity as 1,000 $\mu\text{mhos/cm}$ and deleted the seasonal EC effluent limitations. Board staff have revised the ROV to reflect the State Water Board Order.

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 R5-2004-0028 Effluent Limitations B.2, states, in part:

Effective 1 April 2004, and through 31 January 2009, the effluent concentrations and mass loading shall not exceed the following limits:

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>1-Hour Average</u>	<u>Daily maximum</u>
Total Coliform	MPN/100mL	---	23 ⁴	---	500

⁴ Weekly Median

8. WDRs Order R5-2004-0028 Effluent Limitations B.2, states, in part:

Effective 1 February 2009, the effluent concentrations and mass loading shall not exceed the following limits:

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>1-Hour Average</u>	<u>Daily maximum</u>
Total Coliform	MPN/100mL	---	2.2 ⁴	---	23/240 ⁵
<u>Turbidity</u>	NTU	---	---	2 ⁶	5/10 ⁷

⁴ Weekly Median

⁵ Does not exceed 23 in more than one sample in any 30-day period. No sample shall exceed 240.

⁶ Does not exceed an average of 2 NTU within a 24-hour period.

⁷ Does not exceed 5 NTU more than 5 percent of the time within a 24-hour period and 10 NTU at any time.

9. According to the Discharger's self-monitoring reports, the Discharger committed one (1) serious Group I violation of the above effluent limitations contained in Order R5-2004-0028 during the period beginning 1 January 2008 and ending 31 July 2009. This violation is defined as serious because the measured concentration of a Group I constituent 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)**.
10. According to the Discharger's self-monitoring reports, the Discharger committed seven (7) non-serious violations of the above effluent limitations contained in Order R5-2004-0028 during the period beginning 1 January 2008 and ending 31 July 2009. Four 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 the four non-serious violations is **twelve thousand dollars (\$12,000)**.
11. The total amount of the mandatory penalties assessed for the cited effluent violations is **fifteen thousand dollars (\$15,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Order.
12. 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 MANTECA 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 **fifteen thousand dollars (\$15,000)**.

2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **27/28/29 January 2010**, unless any of the following occurs by **10 December 2009**:
 - 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 **fifteen thousand dollars (\$15,000)**; 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 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 Joe Karkoski for

PAMELA C. CREEDON, Executive Officer

10 November 2009

DATE

**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 Manteca (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2009-0568 (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 **fifteen thousand dollars (\$15,000)** by check that references "ACL Complaint R5-2009-0568" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **10 December 2009**.
- 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 R5-2009-0568**

**City Of Manteca
Water Quality Control Facility**

RECORD OF VIOLATIONS (1 January 2008 – 31 July 2009) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2004-0028)

	<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>	<u>CIWQS</u>
1	19-Nov-08	Coliform	MPN/100mL	500	1600	Daily	3	817506
2	7-Feb-09	Coliform	MPN/100mL	2.2	17	Weekly	3	817491
3	14-Feb-09	Coliform	MPN/100mL	2.2	8	Weekly	3	817494
4	21-Feb-09	Coliform	MPN/100mL	23	50	Daily	4	817497
5	21-Feb-09	Coliform	MPN/100mL	2.2	7	Weekly	4	817495
6	28-Feb-09	Coliform	MPN/100mL	2.2	11	Weekly	4	817496
7	9-Apr-09	Coliform	MPN/100mL	240	300	Maximum	4	825164
8	6-Jul-09	Turbidity	NTU	10	20	Daily Max	1	842348

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>07/31/2009</u>
Group I Serious Violations:	1
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	3
Non-serious Violations Subject to MPs:	4
<u>Total Violations Subject to MPs:</u>	<u>5</u>

Mandatory Minimum Penalty = (1 serious Violation + 4 Non-Serious Violations) x \$3,000 = \$15,000