

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

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R7-2008-0043
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) Orders No. 00-087 and No. R7-2005-0021, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0104523, and Cleanup and Abatement Order (CAO) No. R7-2004-0079.

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 dated January 14, 2005, the WWTP has a design 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 $\frac{1}{4}$, 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. CWC Section 13385(a) states, in part, that:

“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,...”

5. 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.”

6. CWC Section 13385(h) (1) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation.
7. CWC Section 13385(h) (2) states, in part, the following:

For the purpose of this section, 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.”

8. CWC Section 13385(i) (1) also 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.

9. CWC Section 13385(i) (2) states:

“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.”

10. CWC Section 13385(l) (1) and (2) state:

“(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.”

11. On February 19, 2002, the State Water Resources Control Board adopted Resolution No. 2002-0040 amending the Water Quality Enforcement Policy (Policy). The Policy was approved by the Office of Administrative Law and became effective on July 30, 2002. In accordance with Section IX of the Policy, among other requirements, SEPs proposed by the Discharger must “enhance the beneficial uses of the waters of the State, provide a benefit to the public at large, and that, at the time they are included in an ACL action, are not otherwise required of the discharger.” (Enforcement Policy pp. 42-43)

Violations of WDR Board Order No. 00-087

12. On June 28, 2000, the Regional Board adopted WDRs Board Order No. 00-087 (NPDES Permit No. CA0104523), which superseded WDRs Order No. 95-014 except for enforcement purposes, and specified effluent limitations, prohibitions, specifications, and provisions necessary to protect the beneficial uses of the surface and ground waters with the Colorado River Basin Region.

13. WDRs Board Order No. 00-087 contained effluent limitations and provisions necessary for the protection of state waters and states in relevant part:

“[Effluent Limitation No. A.5] The effluent shall not contain heavy metal, chemicals, pesticides or other constituents in concentration toxic to aquatic life.

“[Effluent Limitation No. A.6] There shall be no acute toxicity in the treatment plant effluent or chronic toxicity in the receiving water. Compliance with this objective will be determined by use of indicator organisms, analyses of species diversity, population density, growth abnormalities, or bioassays of appropriate duration or other appropriate methods specified by the Regional Board.

“[Provision E.6] The Discharger shall comply with all conditions of this Board Order. Noncompliance with this Board Order constitutes a violation of the Porter Cologne Water Quality Control Act and is grounds for enforcement.

“[Provision E.10] The Discharger is the responsible party for the waste discharge requirements and the monitoring and reporting program...Violations may result in enforcement actions including Regional Board Orders, court orders...”

14. Board Order No. 00-087, Section F, Pretreatment Program states, in part, that:

“a. The Discharger shall be responsible for the performance of all pretreatment requirements contained in CFR, Part 40, Section 403, and shall be subject to enforcement actions, penalties, and other remedies by the U.S. Environmental Protection Agency, or the Regional Board, as provided in the Federal Clean Water Act, as amended (33USC 1251 et. seq.) (Hereinafter “Act”).

///
///

“c. The Discharger shall implement and enforce its Pretreatment Program. The Discharger’s pretreatment program is hereby made an enforceable condition of this Board Order....

- “d. The Discharger shall enforce the requirements promulgated under Sections 307(b), 307(c), 307(d) and 402(b) of the Act. The Discharger shall cause industrial users subject to Federal Categorical Standards to achieve compliance no later than the date specified in those requirements or, in the case of a new industrial user, upon commencement of the discharge.”
15. From the year 2000 onward, the Discharger has chronically exceeded the acute and chronic bioassay limits, as summarized in the monthly effluent bioassay reports. In 2002 the Discharger conducted several Toxicity Identification Evaluations (TIEs) that reported that the primary toxicant contributing to effluent toxicity is high ammonia concentrations.
 16. On November 20, 2001 the Discharger adopted Wastewater Pretreatment Ordinance No. 2001-08 to prevent the introduction of industrial pollutants that will enter or pass through or interfere with the city’s treatment facilities and to enable the Discharger to comply with WDRs Order No. 00-087.
 17. The Discharger receives wastewater from more than 30 industrial dischargers. However, the most significant industrial user is National Beef Company (formerly known as Brawley Beef), which discharges up to 800,000 gallons per day (gpd) of partially treated wastewater that currently contains ammonia concentrations ranging from 30 mg/L to 140 mg/L, well above the ammonia concentration limit of 30 mg/L specified in the Wastewater Pretreatment Ordinance No. 2001-08 adopted in 2001 and amended in 2005.
 18. During the spring of 2002, and pursuant to the Pretreatment Ordinance, the Discharger conducted surveys and sampling of its sewage collection system to identify whether there were discharges into the system that violate the Discharger’s Ordinance and/or contribute to the noncompliance with WDRs Order No. 00-087. The surveys conducted by the Discharger were inconclusive. The Discharger cited Brawley Beef Company (now National Beef Company) for discharging high levels of ammonia, issuing Notices of Violations (NOV) on 3/11/03, 2/23/04, 9/30/04, and 12/16/04. In the first NOV, it states: “Should your pretreatment operations not come into compliance within the time frame (6/1/03) provided, sewer service may be discontinued unless adequate treatment facility devices or other related appurtenances are installed and properly operated.” In another letter, the City mentions the \$3,000 MMPs that the Regional Board is required to assess for effluent violations.
 19. In a letter dated November 12, 2002, Regional Board staff directed the Discharger to conduct and submit the Toxicity Reduction Evaluation (TRE) by 1/10/03. According to the TRE in the section titled “Wastewater Optimization for Ammonia Reduction”, the wastewater treatment operators implemented the following changes to the five aerated lagoons:
 - Effluent baffles on cells A2, S1, S2, and S3 have been installed to reduce TSS and BOD at the effluent discharge.
 - A polypropylene fence with 4”x4” square holes has been installed along the north end of cells S2 and S3 to provide a habitat for nitrifying bacteria.
 - A2 has 90 HP of aeration to operate as a complete mix system.
 - Cells A2, S1, S2, and S3 were evaluated for short-circuiting. Results of the tests were deemed negative.
 - All cells are being monitored for ammonia concentration on a weekly basis.
 - The City is evaluating the best location for a return line.

20. Section 22.75 of the Discharger's Wastewater Pretreatment Ordinance No. 2001-8 authorizes the City Manager or his designee to impose fines up to \$5,000 per violation per day, but the Discharger never imposed any fines against the National Beef Company for violation of the pretreatment limits. The Discharger has yet to take any formal enforcement action against this user.
21. On April 15, 2003, the Discharger reported that it found discharges into its collection system that were in noncompliance with its Pretreatment Ordinance, including from the Brawley Beef Company plant and from a fertilizing spreading business.
22. Monthly monitoring reports submitted by the Discharger from October 2002 to the present show that the Discharger has issued only four (4) Notice of Violations (NOVs) in 2003 and 2004 for exceeding the ammonia concentration limit for Brawley Beef Company. Each time the Discharger requested a plan for satisfactory correction and prevention of the violations.
23. On February 9, 2004, the Regional Board Executive Officer issued ACLC No. R7-2004-0026 against the Discharger for chronic violations of the acute toxicity limit of WDRs Order No. 00-087. The ACLC proposed an MMP of \$33,000 for the violations. In lieu of paying the MMP, the Discharger proposed a Compliance Project (CP) to correct the violations. The Board approved the CP that included removal of sludge from the drying beds, removal and cleaning of A1 lagoon's accumulated sludge, and the complete use of all five lagoons at the WWTP.
24. On June 23, 2004, the Discharger submitted a proposal in the form of an outline with tasks and milestones to bring the discharge from its WWTP in compliance with Board Order No. 00-087. The proposal consisted of the design and construction of improvements to the WWTP as follows:

Description of Tasks - Time Period

- a. Adjust Pretreatment Ordinance discharge limits, July 2004 - December 2004
- b. Prepare CEQA documentation, if necessary, July 2004 - December 2004
- c. Conduct TIE, July 2004 - December 2004
- d. Review/discuss TIE results and necessary mitigation, January - February 2005
- e. Design treatment facility upgrades, February 2005 - May 2005
- f. Acquire necessary permits, February 2005 - May 2005
- g. Construction, June 2005 - December 2005

Violations of Cleanup and Abatement (CAO) Order No. R7-2004-0079

25. On June 30, 2004, the Regional Board Executive Officer issued Cleanup and Abatement Order (CAO) No. R7-2004-0079, requiring the Discharger to correct the toxicity violations and threatened violations of Board Order No. 00-087 in accordance with a series of tasks and time schedule. The CAO was issued after ten notices of noncompliance were sent to the Discharger on the following dates: 5/13/2003, 6/14/2003, 7/23/2003, 9/4/2003, 11/7/2003, 12/26/2003, 3/15/2004, 4/28/2004, 6/2/2004, and 6/22/2004.

26. The CAO No. R7-2004-0079 intended to set forth actions that the Discharger shall take to abate the effects of waste by correcting or preventing discharges of waste in violation of Board Order No. 00-087. More specifically, the CAO provides in substantive relevant part for the Discharger to comply with the following:

Milestone	Milestone Description	Milestone Submittal	Completion Date
1.A	Complete Toxicity Identification Evaluation (TIE)	Submit a Copy of the Toxicity Identification Evaluation to the Regional Board	January 31, 2005 (Actual: 1/27/05)
1.B	Complete Design of the Wastewater Treatment Plant Upgrades	Submit a Copy of Final Design Drawings and Specification to the Regional Board	June 30, 2005 (Actual: 2/14/05)
1.C	Complete Construction of the Wastewater Treatment Plant Upgrades	Submit Summary and Verification of Construction Completion	January 31, 2006 (Actual: 7/7/06)
1.D	Complete Operational Startup of New Wastewater Treatment Plant Upgrades	Submit Operation and Maintenance Program for Wastewater Treatment Plant Upgrades	February 1, 2007 (Actual: 1/31/07)

27. CAO No. R7-2004-0079 also states on page 4 that:

“If in the opinion of the Regional Board’s Executive Officer, the discharger fails to comply with the provisions of this Order, in a timely manner, the discharger may be subject to further enforcement action. Such actions may include, but not be limited to, the assessment of ACL pursuant to Sections 13268, 13323, and 13350 of the CWC, and referral for any injunctive relief and civil or criminal liability.”

28. The Discharger completed the construction of the WWTP upgrades (Milestone 1.C) on July 7, 2006, 157 days late in complying with the deadline imposed by the CAO. Each day the milestone was late constitutes a daily violation of the CAO No. R7-2004-0079.
29. Pursuant to CWC Section 13385(c), the maximum liability available for the Regional Board for assessment for milestone report 1.C that was submitted 157 days late by the Discharger is \$218,710,000, which is calculated as follows:

Month	Average monthly flow in million gallons/day (MGD)	Assessed liability amount in dollars/gallon	Maximum liability amount (MLA) in dollars(\$)
Feb. 2006	3.59	\$10	35,890,000*
Mar. 2006	4.02	\$10	40,190,000
Apr. 2006	3.00	\$10	29,990,000
May 2006	3.59	\$10	35,890,000
June 2006	3.72	\$10	37,190,000
July 2006	3.80	\$10	37,990,000
*MLA is calculated as follows: (3,590,000 – 1,000) x \$10 = \$35,890,000			
CWC Section 13385(c) (2):			217,140,000
CWC Section 13385(c)(1): 157 days x \$10,000 =			1,570,000
Maximum Liability Available (MLA) to Regional Board =			218,710,000

Violations of WDRs Board Order No. R7-2005-0021

30. On June 29, 2005, the Regional Board adopted WDRs Board Order No. R7-2005-0021 (NPDES Permit No. CA0104523), which rescinded Board Order No. 00-087 except for enforcement purposes. WDRs 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.
31. 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

“[2.a. Interim Effluent Limitations]

“During the period beginning June 29, 2005 and ending on May 18, 2010, the discharge of effluent wastewater shall maintain compliance with the following limitations at Discharge Point 001, with compliance measured at Monitoring Location M-001A as described in the attached Monitoring and Reporting Program.

Constituents	Units	Effluent Limitations	
		Average Monthly	Maximum Daily
Free Cyanide	µg/L	76	76
	lbs/day	3.7	3.7
Zinc ²	µg/L	62	95
	lbs/day	3.1	4.7

“[2.e. Final Effluent Limitations]

“Wastewater effluent discharged to the New River shall not have an *Escherichia coli* (E. coli) concentration in excess of a log mean of Most Probable Number (MPN) of 126 MPN/100 mL (based on a minimum of not less than five samples for any 30-day period) nor shall any sample exceed 400 MPN/100 mL.”

“Special Provisions Section VI.C.6., Pretreatment Program “b” states, in part, that:

- “i. In the event that there are industrial wastes subject to regulation under the NPDES Pretreatment Program being discharged to the WWTP....then...(3) The Discharger shall enforce the federal categorical pretreatment standards on all Categorical Industrial Users (CIUs).

¹ Based on a flow of 5.9 MGD

² Total Recoverable

(4) The Discharger shall notify the CIU of its discharge effluent limits. The limit must be as stringent as the pretreatment standards...

“iii. The Regional Board retains the right to take legal action against an industrial user and/or the Discharger where a user fails to meet the approved applicable pretreatment standards.”

32. On February 22, 2007, the Regional Board Assistant Executive Officer issued ACLC No. R7-2007-0026 against the Discharger for zinc, free cyanide, and E. coli violations of Order No. R7-2005-0021. The ACLC proposed an MMP of \$36,000 for the violations. In lieu of paying the MMP, the Discharger proposed a CP to correct the violations, but the Discharger does not qualify for a CP because it is not a “small community.” CWC Section 79084 defines “small community” as a municipality with a population of 10,000 persons or less, a rural county, or a reasonably isolated and divisible segment of a larger municipality where the population of the segment is 10,000 persons or less, with a financial hardship as determined by the State Water Resources Control Board.
33. March 22, 2007, the Discharger submitted to the Regional Board an outline with the Discharger’s proposed schedule of events, including the design and construction of improvements to the WWTP to bring discharges into compliance with Board Orders:

<u>Description of Tasks</u>	<u>Time Period</u>
a. Advertise Statement of Interest and Qualifications (SOQs)	February 26, 2007
b. Receive SOQ’s	March 20, 2007
c. City Counsel selects Consultant	April – May 2007
d. Negotiate Fee	June – July 2007
e. City Counsel Approves Fee	August – September 2007
f. Execute Consultant Contract	October – November 2007
g. Complete Preliminary Design	February 2008
h. Submit 30% design	August 2008
i. Submit 100% design	November 2008
j. Bid construction	January 2009
k. Construction contract award	April 2009
l. Construction complete and in compliance	May 2012

Summary

34. The Regional Board has the option of assessing liability to the Discharger using the MMPs pursuant to CWC Section 13385(h) and (i) for violations of the NPDES permit, or it may consider a wider array of factors pursuant to CWC Section 13385(c) for violations of the both the NPDES permit and the 2004 CAO.
35. The minimum liability the Regional Board must assess against the Discharger for each chronic violation of Board Order No. R7-2005-0021 shown in Attachment “A”, which is made a part of this ACL Complaint by reference, is two hundred ninety-one thousand dollars (\$291,000).

36. Pursuant to CWC Section 13385(c)(2), the maximum liability available to the Regional Board (MLA) for the violations cited in Attachment A and in Finding No. 29, above, is three billion eight hundred fifty-three million two hundred ninety thousand dollars (\$3,853,290,000), which is calculated as follows:

Violation	Reference Finding for Violation	No. of days in violation	Maximum Liability Available (MLA)
CAO R7-2004-0079 (late Milestone 1.C)	Finding No. 29	157	\$218,710,000
Effluent Limits	Attachment A	459	\$3,634,580,000
Maximum Liability Available to Regional Board =			\$3,853,290,000

37. CWC Section 13327 states:

“In determining the amount of civil liability, the regional board, and the state board upon review of any order pursuant to Section 13320, shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.”

38. The factors in Finding No. 37, above, are evaluated for the violations at issue as follows:

- a. Nature, circumstance, extent, and gravity of the violation or violations

Failure to timely complete milestone 1.C (Complete construction of the WWTP upgrades) and submit the milestone report (due January 31, 2006, submitted July 7, 2006) is a significant violation because the WWTP continues to violate its toxicity limits and still is in noncompliance with permit requirements.

The Discharger has chronic violations of each of its NPDES permits adopted by the Regional Board since 1995 as documented in the findings above. In addition, the Discharger has violated every enforcement order issued by the Regional Board in that time. The Discharger failed to enforce its pretreatment ordinance, discharged partially treated and toxic waste into the New River, a Clean Water Act Section 303(d)-listed impaired surface water body, creating additional stress on the Salton Sea. The violations (at least 93 violations in the last eight years) are severe and significant, and provided an unfair business advantage to the Discharger and the Brawley Beef Company. In effect, the violations of Board Orders have transferred their economic savings to the environment, causing an area under extreme conditions to suffer additional stress and hardship.

- b. Susceptibility of discharge to cleanup or abatement, and degree of toxicity of discharge

The discharge was susceptible to cleanup and/or abatement, but the Discharger failed to do so. The toxicity of the discharge from the Discharger's WWTP is toxic and contributing to the problems of the Salton Sea. On March 19, 2008, the Regional Board adopted Cease and Desist Order No. R7-2008-0008 directing the

Discharger to complete WWTP improvements and develop and implement a pretreatment program in accordance with a time schedule to correct the violations and bring the discharge from the WWTP into consistent compliance with the NPDES Permit.

c. Discharger's ability to pay

The Discharger has not demonstrated an inability to pay the proposed amount.

d. Effect on Discharger's ability to continue in business

The proposed fine should not affect the Discharger's ability to continue operating as a public agency since the fine largely pertains to costs that the Discharger would have normally incurred if compliance with the WDRs had been properly observed.

e. Prior history of violations

The Discharger has a long history of violations dating back over ten years. The Discharger has violated the last three NPDES Orders Nos. 95-014, 00-087, and R7-2005-021; TSO No. 99-054; CAO No. R7-2004-0079; ACLC No. R7-2004-0026; and numerous informal requests to comply with these orders.

f. Degree of culpability

The Discharger is the responsible party for compliance with CAO No. R7-2004-0079, WDRs Orders No. 00-087 and No. R7-2005-0021, and it is fully culpable for violating the terms and conditions of these orders.

g. Economic benefit or savings resulting from the violation:

The Discharger realized significant economic benefit or savings by delaying the construction of the WWTP improvements. The Discharger currently estimates spending over \$20 million that it should have been spent four years ago to upgrade the WWTP to meet the requirements of the CAO and the WDRs.

In addition, the Discharger realized an economic advantage for itself and the beef plant by not enforcing its pretreatment ordinance. By not hiring the professional staff to comply the toxicity requirements of the NPDES permits, the Discharger has saved significant amount of public funds that should have been devoted to permit compliance.

h. Other matters as justice may require:

Staff time to prepare a complaint and supporting information is estimated to be 150 hours. Based on an average cost to the State of \$125 per hour, the total cost is eighteen thousand seven hundred fifty dollars (\$18,750).

39. On September 25, 2007, Regional Board orally informed the Discharger that ACLC No. R7-2007-0026 had been rescinded. On April 3, 2008 the Regional Board Assistant Executive Officer issued ACL Complaint No. R7-2008-0012 that superseded ACLC No. R7-2007-0026, proposing that the Discharger pays three hundred fifty-four thousand seven hundred fifty dollars (\$354,750) in ACL (MMP) for the violations. This liability amount consists of an MMP of \$291,000, staff costs of \$18,750 (150 hours x \$125 per hour) and a \$45,000 penalty. The amount of the liability is based on a review of the factors cited in Finding No. 38, above, and the Enforcement Policy. 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 \$184,875.
40. 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 May 7, 2008, the Discharger waived its right to a hearing on this matter (see Attachment "B").
41. On May 7, 2008, the Discharger proposed the implementation of three SEPs described in Attachment "B", which is made a part of this ACL Order by reference.
42. The Regional Board heard and considered all comments pertaining to this matter in a public meeting.
43. 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.

IT IS HEREBY ORDERED, pursuant to CWC Section 13385, the Discharger is assessed \$354,750 in ACL violations. In lieu of paying an ACL in the amount of \$354,750, the Discharger shall pay a reduced penalty amount in accordance with CWC Section 13385(I) and shall implement the proposed SEPs described in Attachment "B" in accordance with the following:

1. The Discharger shall comply with the Enforcement Policy relating to implementation of SEPs.
2. The SEPs 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 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 5 years from the date of this Order.
3. The suspended portion of the proposed ACL penalty of \$354,750 that is hereby directed to be expended on the SEP cannot exceed \$184,875. The Discharger shall pay within thirty (30) days of the date of this Order the remaining portion of \$169,875. 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 a phase of the SEPs to the satisfaction of the Executive Officer by the approved date, the corresponding portion of the ACL indicated in Attachment "C" for that phase shall be permanently suspended. Similarly, if the Discharger fails to complete any stipulated 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 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 June 25, 2008.


ROBERT PERDUE, Executive Officer