

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

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R7-2010-0042
IN THE MATTER OF
CITY OF BRAWLEY, OWNER/OPERATOR
MUNICIPAL WASTEWATER TREATMENT PLANT
City of Brawley — 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) Board 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 (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 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 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 WDRs 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. 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.
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 ... (1) Section 13375 or 13376; (3) Any requirements established pursuant to Section 13383.”
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. 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

- 10. 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. 9 above.
- 11. 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.
- 12. On July 7, 2010, the Assistant Executive Officer issued ACL Complaint No. R7-2010-0030, which proposed that the Discharger be assessed administrative civil liability pursuant to CWC Section 13385(c) in the amount of twenty-four thousand dollars (\$24,000) for the violations described above. The proposed administrative civil liability is based on violation of the WDRs effluent limitations cited in Finding No. 9 above and the State Water Resources Control Board’s Water Quality Enforcement Policy.

¹ Based on a flow of 5.9 MGD

13. On February 19, 2002, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2002-0040 amending the Water Quality Enforcement Policy (2002 Enforcement Policy). The 2002 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) in Section IX of the Policy.
14. On February 3, 2009, the State Water Board adopted Resolution No. 2009-0013, which rescinded Section IX of the 2002 Enforcement Policy pertaining to SEPs and adopted a new, separate policy on SEPs (SEP Policy). The SEP Policy was approved by the Office of Administrative Law and became effective on September 15, 2009. Pursuant to the SEP Policy, SEPs “enhance the beneficial uses of the waters of the State, that 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.”
15. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083, which rescinded Resolution No. 2002-0040 that adopted the 2002 Enforcement Policy, and adopted the current Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010.
16. Regional Board staff notified the Discharger and the general public of its intent to hold a hearing on this matter within 90 days from the date the ACL Complaint (ACL) was issued, unless the Discharger waived its right to a hearing under CWC Section 13323(b). On August 2, 2010, the Discharger signed the Waiver of 90-Day Hearing Requirement for Administrative Civil Liability Complaint, thereby agreeing to waive its right to a hearing on this matter.
17. In a letter to Regional Board staff dated August 2, 2010, the Discharger proposed to apply \$19,500 of the \$24,000 ACLC penalty to an existing SEP (K Street Drainage Improvement Project) and to remit the balance of \$4,500 to the State Water Board Cleanup and Abatement Account. The Discharger’s letter is attached hereto as “Attachment “B” and made a part of this Order by reference.
18. The Regional Board heard and considered all comments pertaining to this matter in a public meeting held on September 16, 2010, in La Quinta, California.
19. Issuance of this Administrative Civil Liability Order to enforce CWC Division 7, Chapter 5.5, is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.), in accordance with Section 15321(a)(2) (“Enforcement Actions by Regulatory Agencies”), Title 14, California Code of Regulations.
20. 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.

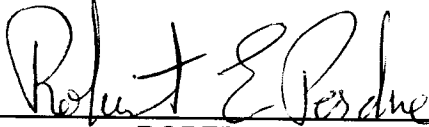
IT IS HEREBY ORDERED, pursuant to CWC Section 13385, that the Discharger is assessed twenty-four thousand dollars (\$24,000) in ACL for the violations set forth in Attachment "A". In lieu of paying the full amount of \$24,000, the Discharger shall implement the proposed SEP described in Attachment "B" in accordance with the following requirements:

1. The Discharger shall comply with the State Water Board SEP Policy. The Discharger shall comply with Monitoring and Reporting Program for Administrative Civil Liability Order R7-2010-0042, which the Executive Officer may amend. The Discharger shall also submit quarterly reports to the State Water Board's Division of Financial Assistance and to the Regional Water Board, on or before March 31, June 30, September 30 and December 31 of each year until completion of the SEP. Each report shall describe the actions the Discharger has taken toward timely and successful completion of the SEP.
2. The Discharger shall implement the SEP in accordance with the time schedule stipulated in Attachment "C", attached hereto and made a part of this Order by reference. The Regional Board's Executive Officer may modify the stipulated completion date and approve an alternative completion date for the SEP if he determines that the delay is beyond the reasonable control of the Discharger.
3. The \$19,500 portion of the proposed ACL penalty of \$24,000 that is hereby directed to be expended on the SEP, as set forth in Attachment "C", shall be deemed suspended based on the conditions set forth in Paragraph 4 below. The Discharger shall pay within thirty (30) days of the date of this Order the remaining unsuspended portion of \$4,500. 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. Failure to pay the remaining unsuspended portion of \$4,500 on a timely basis will cancel the provisions for suspended penalties to be expended on the SEP and that suspended amount will become payable by the Discharger within 30 days of being so informed in writing by the Regional Board's Executive Officer.
4. If the Discharger completes the SEP to the satisfaction of the Regional Board's Executive Officer by the approved date, the \$19,500 portion directed to be expended on the SEP shall be permanently suspended. Similarly, if the Discharger fails to complete the SEP to the satisfaction of the Regional Board's Executive Officer by the approved date, and the Regional Board's Executive Officer has not approved an extension of the completion date, the \$19,500 portion directed to be expended on the SEP shall become due and payable by the Discharger within 30 days of being so informed in writing by the Regional Board's Executive Officer.
5. Previously suspended amounts do not relieve the discharger of the independent obligation to take necessary actions to achieve compliance.
6. The Regional Board's Executive Officer shall verify the completion of the SEP in writing. No portion of the ACL penalty shall be suspended without a written certification issued by the Executive Officer.

7. The Discharger shall submit all unsuspended ACL penalty 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 16, 2010.



ROBERT PERDUE
Executive Officer

ATTACHMENT "B"



CITY OF BRAWLEY

PUBLIC WORK / CITY ENGINEER
180 S. WESTERN AVENUE
BRAWLEY, CALIFORNIA
92227
PHONE: (760) 344-5800
FAX: (760) 344-5612

RECEIVED

AUG 3 2010

REGION 7

August 2, 2010

Jose Angel
Assistant Executive Director
State Water Resources Control Board
Colorado River Basin Region
73-720 Fred Waring Dr. Ste 100
Palm Desert, CA 92260

Dear Mr. Angel:

The City of Brawley received the Administrative Civil Liability Compliant No. R7 2010-0030 on July 12, 2010 and agrees with the terms and conditions set forth within the document.

The City requested and was granted our right to waive the Regional Water Board hearing and submitted three Supplemental Environmental Projects (SEP) in 2008. These projects were granted by your board and consist of the following:

- The under grounding of approximately 1000 lineal feet of an open storm water canal
- A public awareness project regarding water conservation
- Staff training in environmental issues

The total cost for both the SEP and the penalties is \$354,750.00. The City will supplement the remainder cost of the K Street Drainage Improvement Project. The total cost of the penalties, SEP, Public Awareness, and Staff Training will equal an amount of approximately \$537,605.00.

The City is choosing Option 3 of the waiver form from the current issued ACLC No. R7 2010-0030 and is requesting that the nineteen thousand five hundred dollars (\$19,500.00) be applied to the existing Supplemental Environmental Project described above. The City will remit payment of four thousand five hundred dollars (\$4,500.00) at the time that the Water Board adopts this order.

Should you have any concerns or require additional information regarding this letter or the Wastewater Improvement Project, I can be reached at (760) 344-5800 Ext. 11.

Sincerely,

Ruben Mireles
Operations Division Manager

cc: Gary Burroughs, City Manager
Dennis Murita, City Attorney
Ruby Walla, Interim Finance Director

ATTACHMENT "C"

STIPULATED TIME SCHEDULE
FOR THE IMPLEMENTATION OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS

Phase No.	Description of SEP	Completion Date	Estimated Cost of Project	Portion of ACL that May be Suspended	Due Date
1	K Street Drainage Improvement Project	December 31, 2011	\$340,000	\$19,500	Final report due on or before December 31, 2011

Note: The estimated cost of the SEP is taken from a letter dated May 7, 2008 from John Benson, Brawley City Mayor, to Regional Board Assistant Executive Officer Jose Angel included in ACL Order No. R7-2008-0043 adopted June 25, 2008.