

California Regional Water Quality Control Board, Colorado River Basin  
Prosecution Team Evidence  
on the matter of  
Administrative Civil Liability Complaint R7-2014-0041  
Exhibit 5

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

**COMPLAINT NO. 00-108**

**MANDATORY PENALTY  
IN THE MATTER OF  
CITY OF BRAWLEY  
400 MAIN STREET  
BRAWLEY, CALIFORNIA 92227  
CITY OF BRAWLEY WASTEWATER TREATMENT FACILITY  
IMPERIAL COUNTY**

This complaint to assess Mandatory Penalties pursuant to Water Code Section 13385(i) is issued to City of Brawley, (hereafter Discharger) based on a finding of violations of Waste Discharger Requirements Order No. 95-014 (NPDES No. CA0104523).

The Executive Officer finds the following:

1. On March 29, 1995, the Regional Water Quality Control Board, Colorado River Basin Region, (Regional Board) adopted Waste Discharge Requirements Order No. 95-014 (NPDES No. CA0104523 ), for City of Brawley, to regulate discharges of waste from the City of Brawley Wastewater Treatment Facility.
2. Water Code Section 13385(i)(2) requires the Regional Board to assess a mandatory 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 any six-month period:
  - a. Exceeds 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. Exceeds a toxicity discharge limitation where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
3. Order No. 95-014 includes the following effluent limitations:
  - a. The 30-day arithmetic mean for Biochemical Oxygen Demand (BOD<sub>5</sub>) shall not exceed 45 mg/L.
  - b. The 30-day average percent removal of pollutant BOD<sub>5</sub> and suspended solids (SS) shall not be less than 65 percent.
4. According to monitoring reports submitted by the Discharger, the Discharger exceeded Effluent Limitations for percent removal for BOD<sub>5</sub> (one time) and SS (two times), and 30-day arithmetic mean for BOD<sub>5</sub> (one time) during the six-month period beginning January 1, 2000, and ending on June 30, 2000. See Attachment A for a summary of these violations.

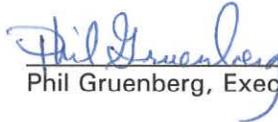
**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BASIN REGION**

City of Brawley  
City of Brawley Wastewater Treatment Facility  
Complaint No. 00-108

5. The amount of the mandatory penalty for those violations is \$3,000.

CITY OF IMPERIAL IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed a Mandatory Penalty in the amount of \$3,000.
2. A hearing shall be held by the Regional Board on September 13, 2000 unless the Discharger agrees to waive the hearing and pay the mandatory penalty of \$3,000 in full.
3. The Discharger may waive the right to a hearing. If you wish to waive the hearing, please check and sign the attached waiver and return it and a check made payable to the State Water Resources Control Board for the full amount of the mandatory penalty to the Regional Board's office at the letterhead address, by August 30, 2000.

  
\_\_\_\_\_  
Phil Gruenberg, Executive Officer

7-31-00  
\_\_\_\_\_  
Date

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

City of Brawley  
City of Brawley Wastewater Treatment Facility  
Complaint No. 00-108

ATTACHMENT "A"

Date of Violation	Type of Violation	Description of Violation	Cumulative Total of Non-Serious Violations
March 31, 2000	Non-serious	Exceeded 30-day arithmetic mean value of 45 mg/L for BOD. Monitoring report indicated a 30-day arithmetic mean value of 47 mg/L.	1
May 31, 2000	Non-serious	Monitoring report indicates a 64 percent removal for suspended solids. This does not meet the required 65 percent removal for suspended solids.	2
June 30, 2000	Non-serious	Monitoring report indicates a 64 percent removal for suspended solids. This does not meet the required 65 percent removal for suspended solids.	3
June 30, 2000	Non-serious	Monitoring report indicates a 64 percent removal for BOD. This does not meet the required 65 percent removal for BOD.	4

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

IN THE MATTER OF:

City of Brawley  
400 Main Street  
Brawley, California 92227

) Complaint No. 00-108  
) for  
) Mandatory Penalties  
) City of Brawley Wastewater  
) Treatment Facility

WAIVER OF HEARING

The discharger agrees to waive its right to a hearing before the Colorado River Basin Regional Water Quality Control Board with regard to the violations alleged in Complaint No. 00-108. The discharger has enclosed a check made payable to the State Water Resources Control Board in the amount of \$3,000 in settlement of Complaint No. 00-108. The discharger understands that it is giving up its right to be heard and to argue against allegations made by the Executive Officer in Complaint No. 00-108, and against the imposition of, and amount of, the mandatory penalties.

\_\_\_\_\_  
Date

\_\_\_\_\_  
for City of Brawley

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

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. 01-194**

**MANDATORY MINIMUM PENALTY  
IN THE MATTER OF  
CITY OF BRAWLEY, OWNER/OPERATOR  
400 MAIN STREET  
BRAWLEY, CALIFORNIA 92227  
CITY OF BRAWLEY WASTEWATER TREATMENT FACILITY  
IMPERIAL COUNTY**

This complaint to assess Mandatory Minimum Penalties pursuant to Water Code Section 13385(i) is issued to City of Brawley, (hereafter Discharger) based on a finding of violations of Waste Discharge Requirements Order No. 00-087 (NPDES Permit No. CA0104523).

The Executive Officer finds the following:

1. On June 28, 2000, the Regional Water Quality Control Board, Colorado River Basin Region, (hereinafter, Regional Board) adopted Waste Discharge Requirements Order No. 00-087 (NPDES Permit No. CA0104523), for City of Brawley, to regulate discharges of waste from the City of Brawley Wastewater Treatment Facility.
2. Water Code Section 13385(i)(2) 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 any six-month period:
  - a. Exceeds 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. Exceeds a toxicity discharge limitation where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
3. Waste Discharge Requirements Board Order No. 00-087, contains the following toxicity discharge limitation:
  - a. "[Effluent Limitation A.6]: There shall be no acute toxicity in the treatment plant effluent nor 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 anomalies, or bioassays of appropriate duration or other appropriate methods specified by the Regional Board."
4. According to monitoring reports submitted by the Discharger, the wastewater discharged from the City of Brawley Wastewater Treatment Facility was in chronic violations of the general toxicity limitation "[Effluent Limitation A.6]," four or more times during the six-month period beginning January 31, 2001 and ending on July 30, 2001 as follows:
  - a. Acute toxicity and Chronic toxicity

A summary of each chronic violation of Board Order No. 00-087 is contained in Attachment "A," which is made a part of this Administrative Civil Liability Complaint by reference.

5. The total amount of the mandatory minimum penalty for the foregoing violations is \$6,000.00.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BASIN REGION

City of Brawley  
Brawley Wastewater Treatment Facility  
Complaint No. 01-194

**CITY OF BRAWLEY IS HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed a Mandatory Minimum Penalty in the amount of \$6,000.00.
2. A hearing shall be held by the Regional Board on November 14, 2001, unless the Discharger agrees to waive the hearing and pay the mandatory minimum penalty of \$6,000.00 in full.
3. The Discharger may waive the right to a hearing. If you wish to waive the hearing, please date and sign the attached waiver, invoice and return both with a check for the full amount of the mandatory minimum penalty made payable to the State Water Resources Control Board by October 1, 2001. However, any waiver of a hearing shall not be in effect until 30 days from the date of Public Notice No. 7-01-21 to allow other interested parties to comment on this action. Please submit the signed and dated waiver, invoice and check 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

  
\_\_\_\_\_  
Phil Gruenberg, Executive Officer  
9/17/01  
\_\_\_\_\_  
Date

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

City of Brawley  
Brawley Wastewater Treatment Facility  
Complaint No. 01-194

**ATTACHMENT "A"**  
Summary of Violations and Mandatory Minimum Penalties

Date Reference No.	Description of Violation	Type of Violation	Applicable 180-day Period	Mandatory Penalties	Comments
01/31/2001 70907	Acute and Chronic toxicity. Acute toxicity indicated: Ceriodaphnia 0% survival and Fathead Minnow 55% survival. Chronic toxicity indicated: Ceriodaphnia (survival) 4.0 TUc & (reproduction) >16.0 TUc	Chronic	From 01/31/01 To 07/30/01	No MMP	This is a supporting violation
02/28/2001 78966	Acute toxicity indicated 65% survival in 100% effluent for Fathead Minnow	Chronic	From 01/31/01 To 07/30/01	No MMP	This is a supporting violation
03/31/2001 71566	Acute toxicity indicated 52.5% survival in 100% effluent for Fathead Minnow	Chronic	From 01/31/01 To 07/30/01	No MMP	This is a supporting violation
04/30/2001 78967	Acute and Chronic toxicity. Acute toxicity indicated: Fathead Minnow 2.5% survival. Chronic toxicity indicated: Ceriodaphnia (reproduction) 4.0 TUc	Chronic	From 01/31/01 To 07/30/01	\$3,000	This violation is supported by violation reference Nos.: 70907 01/31/2001 78966 02/28/2001 71566 03/31/2001
05/31/2001 72417	Acute and Chronic toxicity. Acute toxicity indicated: Fathead Minnow 0% survival. Chronic toxicity indicated: Fathead Minnow (survival) 4.0 TUc, (reproduction) <4.0 TUc, and Ceriodaphnia (reproduction) 4.0 TUc	Chronic	From 01/31/01 To 07/30/01	\$3,000	This violation is supported by violation reference Nos.: 70907 01/31/2001 78966 02/28/2001 71566 03/31/2001

Accrued Penalties:

\$6,000

<sup>1</sup> System for Water Information Management (SWIM)

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BASIN REGION

IN THE MATTER OF:

City of Brawley  
400 Main Street  
Brawley, California 92236

)  
)  
)  
)  
)

ACL Complaint No. 01-194  
for  
City of Brawley  
Wastewater Treatment Plant

WAIVER OF HEARING

I am duly authorized to waive City of Brawley's right to a hearing before the Colorado River Basin Regional Water Quality Control Board with regards to the violations alleged in the ACL Complaint No. 01-194. I have enclosed a check made payable to the State Water Resources Control Board in the amount of \$ 6,000.00 in settlement of ACL Complaint No. 01-194. I understand that this is giving up City of Brawley's right to be heard and to argue against allegations made by the Executive Officer in the ACL Complaint No. 01-194, and against the imposition of, and the amount of, the mandatory minimum penalty.

\_\_\_\_\_  
For: City of Brawley

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
Date

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BASIN REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R7-2002-0095

MANDATORY MINIMUM PENALTY  
IN THE MATTER OF  
CITY OF BRAWLEY, OWNER/OPERATOR  
180 SOUTH WESTERN AVENUE  
BRAWLEY, CALIFORNIA 92227  
CITY OF BRAWLEY WASTEWATER TREATMENT FACILITY  
IMPERIAL COUNTY

This complaint to assess Mandatory Minimum Penalties pursuant to California Water Code Section 13385(i) is issued to City of Brawley, (hereafter, Discharger) based on a finding of violations of Waste Discharge Requirements prescribed in Regional Board Order No. 00-087 (NPDES Permit No. CA0104523).

The Executive Officer finds the following:

1. On June 28, 2000, the Regional Water Quality Control Board, Colorado River Basin Region, (hereinafter, Regional Board) adopted Waste Discharge Requirements Order No. 00-087 (NPDES Permit No. CA0104523), for City of Brawley, to regulate discharges of waste from the City of Brawley Wastewater Treatment Facility.
2. California Water Code Section 13385(i) 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 any six-month period:
  - a. Exceeds 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. Exceeds a toxicity discharge limitation where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
3. Waste Discharge Requirements Board Order No. 00-087, contains the following effluent discharge limitations:
  - a. "[Effluent Limitation A.1]: Effluent discharged to the New River shall not contain constituents in excess of the following limits:"

<u>Constituents</u>	<u>Unit</u>	<u>30-Day Arithmetic Mean Discharge Rate</u>	<u>7-Day Arithmetic Mean Discharge Rate</u>
20°C BODs	mg/L	45	65
Total Suspended Solids	mg/L	95	---
Settleable Matter	mg/L	0.3	0.5

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BASIN REGION

- b. "[Effluent Limitation A.2]: The 30-day average percent removal of the pollutant parameters BODs and suspended solids shall not be less than 65%."
  - c. "[Effluent Limitation A.6]: There shall be no acute toxicity in the treatment plant effluent nor 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 anomalies, or bioassays of appropriate duration or other appropriate methods specified by the Regional Board."
4. According to monitoring reports submitted by the Discharger, the wastewater discharged from the City of Brawley Wastewater Treatment Facility was in chronic violation of its waste discharge requirements effluent limitations.
- A summary of each chronic violation of Board Order No. 00-087 is contained in Attachment "A," which is made a part of this Administrative Civil Liability Complaint by reference.
5. The total amount of the mandatory minimum penalty for the foregoing violations is \$33,000.00.
6. Issuance of this Complaint 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.

CITY OF BRAWLEY IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed an Administrative Civil Liability (Mandatory Minimum Penalty) in the amount of \$33,000.00.
2. The Regional Board will hold a public hearing on this matter on May 8, 2002, unless the Discharger agrees to waive the hearing and pay the Mandatory Minimum Penalty of \$33,000.00 in full.
3. If a hearing is held, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability and mandatory penalty, or whether to refer the matter to the Attorney General for recovery of civil liability and mandatory penalty.
4. The Discharger may waive the right to a hearing. If you wish to waive the hearing, please date and sign the attached waiver and invoice and return both with a check for the full amount of the Mandatory Minimum Penalty made payable to the State Water Resources Control Board by April 10, 2002. However, any settlement of this Complaint shall not be final until 30 days from the date of Public Notice No. 7-02-01 to allow other interested parties to comment on this action. Please submit the signed and dated waiver, invoice and check to the following address:

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BASIN REGION

California Regional Water Quality Control Board  
Colorado River Basin Region  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260

Phil Gruenberg  
Phil Gruenberg, Executive Officer

3-15-02  
Date

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

**ATTACHMENT "A"**  
Summary of Violations and Mandatory Minimum Penalties

Assessed Violation <sup>1</sup> Date Occurred	Description of Violation	Applicable "Rolling" 6-Month Period	Supporting Violations: Date	Amount Assessed (Dollars (\$))
71566 03/31/2001	03/2001 M&R: Acute Toxicity: 52.5% survival <i>Ceriodaphnia</i> (Min. Req. SRR: 80%)	01/02/2001 to 06/30/2001	One of the violations supporting this violation is in compliance with a TSO and therefore exempt from Penalty assessment	0.00
78967 04/30/2001	04/2001 M&R: Acute Toxicity: 2.5% survival of <i>Fathead Minnow</i> (Minimum SRR: 80%)	01/02/2001 to 06/30/2001	This is a supporting violation	Assessed in previous ACLC No. R7-2001-0194
72417 05/31/2001	05/2001 M&R: Acute Toxicity: 0% survival of <i>Fathead Minnow</i> (Minimum SRR: 80%)	01/02/2001 to 06/30/2001	This is a supporting violation	Assessed in previous ACLC No. R7-2001-0194
76078 06/30/2001	06/2001M&R: exceeded 30-day mean for BOD <sub>5</sub> 30-day mean limit: 45 mg/L 30-day mean reported: 46 mg/L	01/02/2001 To 06/30/2001	71566: 03/31/2001 78967: 04/30/2001 72417: 05/31/2001	3,000.00
82644 07/31/2001	07/2001 M&R reported 59% removal of BOD <sub>5</sub> . Minimum removal requirement: 65%	02/02/2001 To 07/31/2001	82645: 07/31/2001 82646: 07/31/2001 82929: 07/31/2001	3,000.00
82645 07/31/2001	07/2001 M&R reported 53% removal of Total Suspended Solids. Minimum removal requirement: 65%	02/02/2001 To 07/31/2001	82644: 07/31/2001 82646: 07/31/2001 82929: 07/31/2001	3,000.00
82646 07/31/2001	07/2001 M&R for Acute Toxicity: <i>Fathead Minnow</i> 40% survival. Chronic Toxicity: <i>Ceriodaphnia</i> (survival) 4.0 Tuc. (Minimum SRR <sup>2</sup> : 80%)	02/02/2001 To 07/31/2001	82644: 07/31/2001 82645: 07/31/2001 82929: 07/31/2001	3,000.00

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

Assessed Violation <sup>1</sup> Date Occurred	Description of Violation	Applicable "Rolling" 6-Month Period	Supporting Violations: Date	Amount Assessed in Dollar (\$)
82929 07/31/2001	07/2001 M&R: exceeded 30-day mean for BOD <sub>5</sub> . 30-day mean limit: 45 mg/L 30-day mean reported 46 mg/L	02/02/2001 To 07/31/2001	82644: 07/31/2001 82645: 07/31/2001 82646: 07/31/2001	3,000.00
81300 08/31/2001	08/2001 M&R reported 53% removal of Total Suspended Solids. Minimum removal requirement: 65%	03/04/2001 To 08/31/2001	81304: 08/31/2001 82646: 07/31/2001 82929: 07/31/2001	3,000.00
81304 08/31/2001	08/2001 M&R for Acute Toxicity: 72.5% survival rate in 100% effluent for <i>Fathead Minnow</i> (Minimum SRR <sup>2</sup> : 90%)	03/04/2001 To 08/31/2001	81300: 08/31/2001 82646: 07/31/2001 82929: 07/31/2001	3,000.00
83946 09/30/2001	09/2001 M&R reported 63% removal of BOD <sub>5</sub> ; Minimum removal requirement is 65%.	04/03/2001 To 09/30/2001	81300: 08/31/2001 81304: 08/31/2001 83948: 09/30/2001	3,000.00
83948 09/30/2001	09/2001 M&R reported 64% removal of Total Suspended Solids. Minimum removal requirement: 65%	04/03/2001 To 09/30/2001	81300: 08/31/2001 81304: 08/31/2001 83946: 09/30/2001	3,000.00
93176 11/30/2001	11/2001 M&R for Acute Toxicity: 0% survival rate in 100% effluent for <i>Fathead Minnow</i> (Minimum SRR <sup>2</sup> : 90%)	06/03/2001 To 11/30/2001	81304: 08/31/2001 83946: 09/30/2001 83948: 09/30/2001	3,000.00
93192 12/31/2001	08/2001 M&R for Acute Toxicity: 45% survival rate in 100% effluent for <i>Fathead Minnow</i> (Minimum SRR <sup>2</sup> : 90%)	07/04/2001 To 12/31/2001	83946: 09/30/2001 83948: 09/30/2001 93176: 11/30/2001	3,000.00

Accrued Mandatory Minimum Penalties:

\$33,000.00

<sup>1</sup> System for Water Information Management (SWIM).

<sup>2</sup> Minimum Survival Rate Requirement.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BASIN REGION

IN THE MATTER OF:	)	ACLComplaint No R7-2002-0095
	)	for
City of Brawley	)	City of Brawley
180 South Western Avenue	)	Wastewater Treatment Plant
Brawley, California 92236	)	

WAIVER OF HEARING

I am duly authorized to waive City of Brawley's right to a hearing before the California Regional Water Quality Control Board, Colorado River Basin Region with regards to the violations alleged in the ACL Complaint No R7-2002-0095. I have enclosed a check made payable to the State Water Resources Control Board in the amount of \$ 33,000.00 in settlement of ACL Complaint No. R7-2002-0095. I understand that this is giving up City of Brawley's right to be heard and to argue against allegations made by the Executive Officer in the ACL Complaint No. R7-2002-0095 and against the imposition of, and the amount of, the administrative civil liability.

\_\_\_\_\_  
For City of Brawley

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
Date

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

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R7-2004-0026  
MANDATORY MINIMUM PENALTY  
IN THE MATTER OF  
CITY OF BRAWLEY, OWNER/OPERATOR  
MUNICIPAL WASTEWATER TREATMENT PLANT  
IMPERIAL COUNTY**

This complaint to assess Mandatory Minimum Penalties pursuant to California Water Code Section 13385(i) is issued to City of Brawley, (hereafter, Discharger) based on a finding of violations of Waste Discharge Requirements Order No. 00-087 (NPDES Permit No. CA0104523).

The Executive Officer finds the following:

1. On June 28, 2000, the Regional Water Quality Control Board, Colorado River Basin Region, (hereinafter, Regional Board) adopted Waste Discharge Requirements Order No. 00-087 (NPDES Permit No. CA0104523) for City of Brawley to regulate discharges of waste from the City of Brawley Municipal Wastewater Treatment Plant.
2. California Water Code Section 13385(i) 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 any period of six consecutive months:
  - 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 where the discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
3. California Water Code Section 13385(i)(2) states that:

"For the purposes 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."
4. California Water Code Section 13385(k) states that:

"In lieu of assessing all or portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a POTW serving a small community, as defined by subdivision (b) of Section 79084, the state board and or the regional board may elect to require the POTW to spend an equivalent amount toward the completion of a compliance project proposed by the POTW, if the state or regional board finds all of the following:

  - (1) The compliance project is designed to correct the violations within five years.
  - (2) The compliance project is in accordance with the enforcement policy of the state board.
  - (3) The POTW has demonstrated that it has sufficient funding to complete the compliance project."

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

City of Brawley  
Brawley Wastewater Treatment Facility  
ACL Complaint No. R7-2004-0026

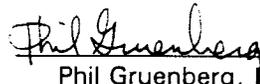
5. On February 19, 2002, the State Water Resources Control Board adopted Resolution No. 2002-0040 amending the Water Quality Enforcement Policy (Policy). The Policy was approved by the Office of Administrative Law and became effective on July 30, 2002. In accordance with Section X of the Policy, among other requirements, Compliance Projects (CPs) proposed by the POTW must be designed to correct the violations in five years and also comply with the general conditions specified for CPs in the Policy.
6. Waste Discharge Requirements Board Order No. 00-087, contains the following toxicity discharge limitations:  
  
Effluent Limitation A.6  
  
"There shall be no acute toxicity in the treatment plant effluent nor 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 anomalies, or bioassays of appropriate duration or other appropriate methods specified by the Regional Board."
7. According to monitoring reports submitted by the Discharger, the wastewater discharged from the City of Brawley Municipal Wastewater Treatment Plant was in chronic violation of its waste discharge requirements toxicity discharge limitations.  
  
A summary of each chronic violation of Board Order No. 00-087 is contained in Attachment "A," which is made a part of this Administrative Civil Liability Complaint by reference.
8. The total amount of the mandatory minimum penalty for the foregoing violations is \$33,000.00.
9. On May 1, 2003, the Regional Board Executive Officer issued Administrative Civil Liability Complaint (ACLC) No. R7-2003-0021 proposing that the Discharger pay \$33,000.00 in administrative civil liability for the violations. The said ACLC was rescinded on June 5, 2003 because the Discharger stated it wanted to implement an acceptable Compliance Project (CP) in accordance with Section 13385(k) of the California Water Code.
10. On July 2, 2003, the Discharger proposed the implementation of CPs described in Attachment "B," which is made a part of this ACLC by reference. The proposed CPs are designed to correct the violations within five years, are in accordance with the Enforcement Policy and the Discharger has demonstrated that it has sufficient funding to complete the CPs.
11. Issuance of this Complaint is exempt from the provision 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.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BASIN REGION

City of Brawley  
Brawley Wastewater Treatment Facility  
ACL Complaint No. R7-2004-0026

**CITY OF BRAWLEY IS HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed \$33,000.00 in administrative civil liability for the violations set forth in Attachment "A." In lieu of paying an administrative civil liability in the amount of \$33,000.00, the Discharger may implement the proposed CP described in Attachment "B."
2. The Regional Board will hold a public hearing on this matter on March 10, 2004 and will consider issuing an ACL Order requiring the Discharger to pay an administrative civil liability in the amount of \$33,000.00 or implement the proposed CP described in Attachment "B."

  
\_\_\_\_\_  
Phil Gruenberg, Executive Officer

2-9-04  
\_\_\_\_\_  
Date

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

City of Brawley  
Brawley Wastewater Treatment Facility  
ACL Complaint No. R7-2004-0026

**ATTACHMENT "A"**

Summary of Violations and Mandatory Minimum Penalties

Assessed Violation <sup>1</sup> Date Occurred	Description of Violation	Applicable "Rolling" 6-Month Period	Supporting Violations: Date	Amount Assessed Dollars (\$)
93176 11/30/2001	Acute Toxicity: 0% survival in 100% effluent for <i>Fathead Minnow</i> (Minimum SRR <sup>2</sup> : 80%)	09/01/2001 to 02/28/2002	This is a supporting violation	Assessed in previous ACLC No. R7-2002-0095
93192 12/31/2001	Acute Toxicity: 45% survival in 100% effluent for <i>Fathead Minnow</i> (Minimum SRR <sup>2</sup> : 80%)	09/01/2001 to 02/28/2002	This is a supporting violation	Assessed in previous ACLC No. R7-2002-0095
96038 01/31/2002	Acute Toxicity: 2.5% survival in 100% effluent for <i>Fathead Minnow</i> (Minimum SRR <sup>2</sup> : 80%)	09/01/2001 to 02/28/2002	This is a supporting violation	
97260 02/28/2002	Acute Toxicity: 0% survival in 100% effluent for <i>Fathead Minnow</i> (Minimum SRR <sup>2</sup> : 80%)	09/01/2001 to 02/28/2002	93176: 11/30/2001 93192: 12/31/2001 96038: 01/31/2002	3,000.00
114901 03/31/2002	Acute Toxicity: 0% survival in 100% effluent for <i>Fathead Minnow</i> (Minimum SRR <sup>2</sup> : 80%)	10/02/2001 to 03/31/2002	93192: 12/31/2001 96038: 01/31/2002 97260: 02/28/2002	3,000.00
114887 05/31/2002	Acute Toxicity: 0% survival in 100% effluent for <i>Fathead Minnow</i> (Minimum SRR <sup>2</sup> : 80%)	12/02/2001 to 05/31/2002	96038: 01/31/2002 97260: 02/28/2002 114901: 03/31/2002	3,000.00
115307 06/30/2002	Acute Toxicity: 0% survival in 100% effluent for <i>Fathead Minnow</i> (Minimum SRR <sup>2</sup> : 80%)	01/01/2002 to 06/30/2002	97260: 02/28/2002 114901: 03/31/2002 114887: 05/31/2002	3,000.00

<sup>1</sup> System for Water Information Management (SWIM)

<sup>2</sup> Minimum Survival Rate Requirement

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

City of Brawley  
Brawley Wastewater Treatment Facility  
ACL Complaint No. R7-2004-0026

Assessed Violation <sup>1</sup> Date Occurred	Description of Violation	Applicable "Rolling" 6-Month Period	Supporting Violations: Date	Amount Assessed Dollars (\$)
121412 07/31/2002	Acute Toxicity: 0% survival in 100% effluent for <i>Fathead Minnow</i> (Minimum SRR <sup>2</sup> : 80%)	01/31/2002 to 07/31/2002	114901: 03/31/2002 114887: 05/31/2002 115307: 06/03/2002	3,000.00
121413 08/31/2002	Acute Toxicity: 0% survival in 100% effluent for <i>Fathead Minnow</i> (Minimum SRR <sup>2</sup> : 80%)	02/28/2002 to 08/31/2002	114887: 05/31/2002 115307: 06/31/2002 121412: 07/31/2002	3,000.00
123627 09/30/2002	Acute Toxicity: 0% survival in 100% effluent for <i>Fathead Minnow</i> (Minimum SRR <sup>2</sup> : 80%)	03/31/2002 to 09/30/2002	115307: 06/30/2002 121412: 07/31/2002 121413: 08/31/2002	3,000.00
129568 10/31/2002	Acute Toxicity: 0% survival in 100% effluent for <i>Fathead Minnow</i> (Minimum SRR <sup>2</sup> : 80%)	04/30/2002 to 10/31/2002	121412: 07/31/2002 121413: 08/31/2002 123627: 09/30/2002	3,000.00
129567 11/30/2002	Acute Toxicity: 0% survival in 100% effluent for <i>Fathead Minnow</i> (Minimum SRR <sup>2</sup> : 80%)	05/31/2002 to 11/30/2002	121413: 08/31/2002 123627: 09/30/2002 129568: 10/31/2002	3,000.00
134146 12/31/2002	Acute Toxicity: 0% survival in 100% effluent for <i>Fathead Minnow and Ceriodaphnia Dubia</i> (Minimum SRR <sup>2</sup> : 80%)	06/28/2002 to 12/31/2002	123627: 09/30/2002 129567: 11/30/2002 129568: 10/31/2002	3,000.00
135890 01/31/2003	Acute Toxicity: 0% survival in 100% effluent for <i>Fathead Minnow and Ceriodaphnia Dubia</i> (Minimum SRR <sup>2</sup> : 80%)	07/25/2002 to 01/31/2003	129568: 10/31/2002 129567: 11/30/2002 134146: 12/31/2002	3,000.00

Accrued Mandatory Minimum Penalties

\$33,000.00

<sup>1</sup> System for Water Information Management (SWIM)

<sup>2</sup> Minimum Survival Rate Requirement

<sup>3</sup> Minimum Survival Rate Requirement

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BASIN REGION

City of Brawley  
Brawley Wastewater Treatment Facility  
ACL Complaint No. R7-2004-0026

ATTACHMENT "B"



CITY OF BRAWLEY

PUBLIC WORKS CITY ENGINEER  
180 SOUTH WESTERN AVENUE  
BRAWLEY, CALIFORNIA  
92227  
PHONE (760) 344-5800  
FAX (760) 344-5512

July 2, 2003

Mr. John Carmona  
California Regional Water Quality Control Board  
Colorado River Basin Region  
73-270 Fred Waring Drive, Ste. 100  
Palm Desert, CA 92268

Dear Mr. Carmona:

Re: Administrative Civil Liability Complaint No. R7-2003-0021.

On May of 2003, The City of Brawley submitted a request to complete a compliance project in lieu of paying the Mandatory Minimum Penalty in the Administrative Civil Liability Complaint No. R7-2003-0021. The City is proposing a compliance project that conforms to Section X, a document sent by your department dated June 5, 2003, that was attached to the rescission letter. The compliance project described below is designed to address problems related to the violation of toxicity discharge limitations from our Wastewater Treatment Plant effluent.

The compliance project will address the following:

- ✓ Removal of sludge from the drying beds.
- ✓ Removal and cleaning of A1 lagoon's accumulated sludge.
- ✓ The complete utilization of all 5 lagoons at the WWTP.

In addition, the expenditure report for fiscal year 2003/2004 for the wastewater operations is enclosed as Attachment No. 1, for your review. Should you have any additional concerns or comments please contact Mr. Ruben Mireles, Superintendent of Operations, at (760) 344-5800 Ext. 11.

Sincerely,

Ruben Mireles  
Superintendent of Operations

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R7-2008-0022

ISSUED TO

CITY OF BRAWLEY, OWNER/OPERATOR  
MUNICIPAL WASTEWATER TREATMENT PLANT  
IMPERIAL COUNTY

This Complaint 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 (NPDES Permit No. CA0104523) and Cleanup and Abatement Order (CAO) No. R7-2004-0079, pursuant to California Water Code (CWC) Section 13385, which authorizes the imposition of Administrative Civil Liability (ACL); CWC Section 13323, which authorizes the Executive Officer of the Colorado River Basin Regional Water Quality Control Board, (Regional Board) to issue this Complaint; and Section 7, which authorizes the Executive Officer to delegate these powers and duties to the Assistant Executive Officer.

**General Findings**

The Assistant Executive Officer of the 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 and dated January 14, 2005, the WWTP has a designed 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 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. CWC Section 13323(b) provides that the Regional Board shall conduct a hearing within 90 days after issuance of an Administrative Civil Liability Complaint. It provides further that the party served with the complaint may waive the right to a hearing.
5. 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,..."

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 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, 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. 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.

10. 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."

11. 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."

12. 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**

13. On June 28, 2000, the Regional Board adopted WDR 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.

14. WDR 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..."

15. 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."
16. From 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.
  17. 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.
  18. 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.
  19. 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 (NPV) 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.
  20. 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.
21. 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/day, but the Discharger never imposed any fines against the National Beef Company for violation of the pretreatment limits. In fact, to date, National Beef Company has yet to achieve consistent compliance with pretreatment limits. In spite of this, the Discharger has yet to take any formal enforcement action against this user.
  22. 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.
  23. 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 Co. Each time the Discharger requested a plan for satisfactory correction and prevention of the violations.
  24. 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.
  25. 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**

26. 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.
27. 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 violating of Board Order No. 00-087. More specifically, the CAO provides in substantive relevant part for the Discharger to comply with the as 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)

28. 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."

29. 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.
30. 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
<b>Maximum Liability Available (MLA) to Regional Board =</b>			<b>218,710,000</b>

**Violations of WDR Board Order No. R7-2005-0021**

31. 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.
32. 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 <sup>1</sup>	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 <sup>2</sup>	µg/L	62	95
	lbs/day	3.1	4.7

<sup>1</sup> Based on a flow of 5.9 MGD

<sup>2</sup> Total Recoverable

"[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)

(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."

33. 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.

34. 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

35. On September 25, 2007, Regional Board orally informed the Discharger the ACLC No. R7-2007-0026 had been rescinded. This ACLC supersedes ACLC No. R7-2007-0026 and addresses all outstanding violations of Board orders for which the Discharger can be held liable under provisions of the CWC.

**Summary**

36. 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.
37. 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).
38. 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. 30, 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. 30	157	\$218,710,000
Effluent Limits	Attachment A	459	\$3,634,580,000
<b>Maximum Liability Available to Regional Board =</b>			<b>\$3,853,290,000</b>

39. 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."

40. The factors in Finding No. 39, above, are evaluated for the violations at issue as follows:

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

Failure to complete milestone 1.C (Complete construction of the WWTP upgrades) and submit the milestone report late than January 31, 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 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, 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, WDR Orders No. 00-087 and No. R7-2005-0021, and it is fully culpable for violating the terms and conditions of the order.

- 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 that 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).

41. Issuance of this Complaint 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.

**THE CITY OF BRAWLEY IS HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer proposes that the Discharger be assessed an Administrative Civil Liability in the amount of \$354,750, which 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 proposed is based upon a review of the factors cited in Finding No. 40 above, and the Enforcement Policy.
2. The Assistant Executive Officer may consider offsetting a portion of the ACL by the monetary value of a SEP to be completed by the Discharger.
3. If the Discharger wishes the Assistant Executive Officer to consider allowing monetary credit for a SEP against a portion of the full ACL, the Discharger shall comply with the following schedule:
  - a. **By May 15, 2008**, agree to enter into a stipulated ACL order that will require the Discharger to complete a SEP as approved by the Assistant Executive Officer and pay the amount of the ACL Complaint not approved for the SEP within thirty (30) days from the date the Regional Board adopts the order.
  - b. **By May 15, 2008**, submit a technical report, implementation schedule, and cost estimates detailing a proposed SEP consistent with CWC Section 13385(l) and the Enforcement Policy. The portion of the penalty amount that may be directed to be expended on a SEP and the project itself are subject to Assistant Executive Officer approval and may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000). Since the proposed civil liability total is \$354,750, the portion of the penalty amount that may be expended on a SEP cannot exceed \$184,875 [ $\$15,000 + 0.5(\$354,750 - \$15,000)$ ].

Upon completion of the SEP and no later than **December 31, 2010**, the Discharger shall submit verification of the actual amount of money spent by the Discharger toward completion of the SEP.

4. The Regional Board will hold a public hearing on this matter within 90 days of the date of this complaint, unless the Discharger chooses either of the following two options:
  - a. Waives the right to a hearing and pays the proposed civil liability of \$354,750 in full; or
  - b. Waives the right to a hearing in 90 days, and submits a settlement proposal within 30 days of the date of this Complaint that includes an agreement to implement a SEP.
5. If a hearing on this matter is held, the Regional Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, including the Mandatory Minimum Penalty, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
6. If the Discharger chooses Option 4.a., above, an authorized representative must sign the attached Waiver and return it along with the bottom portion of the ACL Complaint Invoice form and a check for the full amount of the proposed liability, made payable to the "State Water Pollution Cleanup and Abatement Account" within (30) days of the date of this Complaint. Payment will be deemed settlement of this Complaint, but the settlement shall not become final until 30 days from the date of the Public Notice No. 7-08-05 to allow interested persons to comment on this action. The Waiver and payment must be mailed to:

California Regional Water Quality Control Board  
Colorado River Basin Region  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260

7. If the Discharger chooses Option 4.b., above, the Discharger shall not be obligated to pay any portion of the proposed ACL until the settlement becomes final. The settlement shall not become final until 30 days from the date of Public Notice No. 7-08-05 to allow interested persons to comment on this action. In order for Regional Board staff to have time to fully evaluate any settlement proposal, it will be necessary for the settlement proposal to be accompanied by a statement that the Discharger is waiving its right to have a Hearing conducted within 90 days of the date of the Complaint. Payment of any proposed ACL not suspended by the SEP shall be handled in accordance with the procedures described in Paragraph 6 above.

  
\_\_\_\_\_  
JOSE ANGEL, Assistant Executive Officer

April 3, 2008

\_\_\_\_\_  
Date

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

City of Brawley  
Brawley Wastewater Treatment Facility  
ACL Complaint No. R7-2008-0022

**ATTACHMENT "A"**

Summary of Violations of Board Order No. R7-2005-0021 Mandatory Minimum Penalties

Assessed Violation <sup>1</sup> No.	Description of Violation	Date Occurred	No. of days to be used for assessing max. liability	Amount of wastewater discharged (MGD) in excess of 1000 gal. And not cleaned up	Serious Violation <sup>2</sup>	Minimum Liability Assessed Dollars (\$)	Maximum liability available (MLA) to Regional Board [(Total Flow) - (1,000 Gallons)] x (\$10.00 per Gallon)	MLA per CWC Section 13385(c)(1) \$10,000/day
298495	Exceeded interim average monthly of 62 µg/L zinc. Reported value was 70 µg/L	8/31/2005	31	3.669	No	0	\$36,680,000	\$310,000
365867	Exceeded interim average daily of 76 µg/L free cyanide. Reported value was 104 µg/L	11/2/2005	1	3.239	Yes	3,000	\$32,380,000	10,000
365868	Exceeded interim average monthly of 76 µg/L free cyanide. Reported value was 104 µg/L	11/30/2005	30	3.529	Yes	3,000	\$35,280,000	\$300,000
408933	Exceeded interim average daily of 95 µg/L zinc. Reported value was 262 µg/L	2/1/2006	1	3.469	Yes	3,000	\$34,680,000	10,000
408935	Exceeded interim average monthly of 62 µg/L zinc. Reported value was 262 µg/L	2/28/2006	28	3.589	Yes	3,000	\$35,880,000	280,000
420572	Exceeded daily maximum of 400 MPN/100 mL E. Coli. Reported value was 2,200 MPN/100 mL	5/22/2006	1	3.739	No	3,000	\$37,380,000	10,000
420573	Exceeded daily maximum of 400 MPN/100 mL E. Coli. Reported value was 500 MPN/100 mL	5/23/2006	1	3.559	No	3,000	\$35,580,000	10,000
420574	Exceeded monthly maximum of 126 MPN/100 mL E. Coli. Reported value was 217 MPN/100 mL	5/31/2006	31	3.589	No	3,000	\$35,880,000	\$310,000
463170	Exceeded daily maximum of 400 MPN/100 mL E. Coli. Reported value was 2,400 MPN/100 mL	11/14/2006	1	3.789	No	3,000	\$37,880,000	\$10,000
463171	Exceeded daily maximum of 400 MPN/100 mL E. Coli. Reported value was 500 MPN/100 mL	11/20/2006	1	3.789	No	3,000	\$37,880,000	\$10,000
463172	Exceeded daily maximum of 400 MPN/100 mL E. Coli. Reported value was 500 MPN/100 mL	11/28/2006	1	3.819	No	3,000	\$38,180,000	\$10,000

<sup>1</sup> Data Source: California Integrated Water Quality System (CIWQS)

<sup>2</sup> Defined by CWC 13385(h)

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

City of Brawley  
Brawley Wastewater Treatment Facility  
ACL Complaint No. R7-2008-0022

Assessed Violation <sup>1</sup> No.	Description of Violation	Date Occurred	No. of days to be used for assessing max. liability	Amount of wastewater discharged (MGD) in excess of 1000 gal. And not cleaned up	Serious Violation <sup>2</sup>	Minimum Liability Assessed Dollars (\$)	Maximum liability available (MLA) to Regional Board [(Total Flow) - (1,000 Gallons)] x (\$10.00 per Gallon)	MLA per CWC Section 13385(c)(1) \$10,000/day
463173	Exceeded monthly maximum of 126 MPN/100 mL E. Coli. Reported value was 362 MPN/100 mL	11/30/2006	30	3.849	No	3,000	\$38,480,000	\$300,000
490699	Exceeded daily maximum of 400 MPN/100 mL E. Coli. Reported value was 2200 MPN/100 mL	12/4/2006	1	3.849	No	3,000	\$38,480,000	\$10,000
586122	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 1808 lbs/day	2/7/2007	1	3.989	Yes	3,000	\$39,880,000	\$10,000
586118	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 54.32 mg/L	2/7/2007	1	3.989	Yes	3,000	\$39,880,000	\$10,000
586119	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 55.44 mg/L	2/14/2007	1	3.839	Yes	3,000	\$38,380,000	\$10,000
586124	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,934 lbs/day	2/21/2007	1	4.059	Yes	3,000	\$40,580,000	\$10,000
586120	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 57.12 mg/L	2/21/2007	1	4.059	Yes	3,000	\$40,580,000	\$10,000
586121	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 36.40 mg/L	2/28/2007	1	3.959	Yes	3,000	\$39,580,000	\$10,000
586125	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,205 lbs/day	2/28/2007	1	3.959	Yes	3,000	\$39,580,000	\$10,000
586126	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 40.82 mg/L	2/28/2007	28	3.999	Yes	3,000	\$39,980,000	\$280,000
586127	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,681 lbs/day	2/28/2007	28	3.999	Yes	3,000	\$39,980,000	\$280,000
586107	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 14.56 mg/L	3/7/2007	1	4.109	No	3,000	\$41,080,000	\$10,000

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

City of Brawley  
Brawley Wastewater Treatment Facility  
ACL Complaint No. R7-2008-0022

Assessed Violation <sup>1</sup> No.	Description of Violation	Date Occurred	No. of days to be used for assessing max. liability	Amount of wastewater discharged (MGD) in excess of 1000 gal. And not cleaned up	Serious Violation <sup>2</sup>	Minimum Liability Assessed Dollars (\$)	Maximum liability available (MLA) to Regional Board [(Total Flow) - (1,000 Gallons)] x (\$10.00 per Gallon)	MLA per CWC Section 13385(c)(1) \$10,000/day
586110	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 753 lbs/day	3/14/2007	1	4.029	No	3,000	\$40,280,000	\$10,000
586111	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 29.12 mg/L	3/21/2007	1	3.949	Yes	3,000	\$39,480,000	\$10,000
586112	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 959 lbs/day	3/21/2007	1	3.949	Yes	3,000	\$39,480,000	\$10,000
586113	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 18.62 mg/L	3/31/2007	31	3.919	Yes	3,000	\$39,180,000	\$310,000
586116	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 619 lbs/day	3/31/2007	31	3.919	Yes	3,000	\$39,180,000	\$310,000
586128	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 25.76 mg/L	4/4/2007	1	3.459	Yes	3,000	\$34,580,000	\$10,000
586132	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 743 lbs/day	4/4/2007	1	3.459	No	3,000	\$34,580,000	\$10,000
586129	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 29.68 mg/L	4/11/2007	1	3.989	Yes	3,000	\$39,880,000	\$10,000
586130	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 29.12 mg/L	4/25/2007	1	3.759	Yes	3,000	\$37,580,000	\$10,000
586134	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 913 lbs/day	4/25/2007	1	3.759	Yes	3,000	\$37,580,000	\$10,000
586131	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 22.26 mg/L	4/30/2007	30	3.709	Yes	3,000	\$37,080,000	\$300,000
586135	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 696 lbs/day	4/30/2007	30	3.709	Yes	3,000	\$37,080,000	\$300,000

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

City of Brawley  
Brawley Wastewater Treatment Facility  
ACL Complaint No. R7-2008-0022

<b>Assessed Violation<sup>1</sup> No.</b>	<b>Description of Violation</b>	<b>Date Occurred</b>	<b>No. of days to be used for assessing max. liability</b>	<b>Amount of wastewater discharged (MGD) in excess of 1000 gal. And not cleaned up</b>	<b>Serious Violation<sup>2</sup></b>	<b>Minimum Liability Assessed Dollars (\$)</b>	<b>Maximum liability available (MLA) to Regional Board [(Total Flow) - (1,000 Gallons)] x (\$10.00 per Gallon)</b>	<b>MLA per CWC Section 13385(c)(1) \$10,000/day</b>
580038	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 31.46 mg/L	5/2/2007	1	3.689	Yes	3,000	\$36,880,000	\$10,000
580040	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 965 lbs/day	5/2/2007	1	3.689	Yes	3,000	\$36,890,000	\$10,000
580041	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 30.8 mg/L	5/9/2007	1	3.759	Yes	3,000	\$37,580,000	\$10,000
580043	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 31.92 mg/L	5/16/1007	1	3.599	Yes	3,000	\$35,980,000	\$10,000
580044	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 958 lbs/day	5/16/2007	1	3.599	Yes	3,000	\$35,980,000	\$10,000
580045	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 31.92 mg/L	5/23/2007	1	3.519	Yes	3,000	\$35,180,000	\$10,000
580046	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 937 lbs/day	5/23/2007	1	3.519	Yes	3,000	\$35,180,000	\$10,000
580047	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 33.04 mg/L	5/30/2007	1	3.539	Yes	3,000	\$35,380,000	\$10,000
580048	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 975 lbs/day	5/30/2007	1	3.539	Yes	3,000	\$35,380,000	\$10,000
580049	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 31.81 mg/L	5/31/2007	31	3.689	Yes	3,000	\$36,880,000	\$310,000
632742	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 30.8 mg/L	6/6/2007	1	3.679	Yes	3,000	\$36,780,000	\$10,000
632742	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 30.8 mg/L	6/6/2007	1	3.799	Yes	3,000	\$37,980,000	\$10,000

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

City of Brawley  
Brawley Wastewater Treatment Facility  
ACL Complaint No. R7-2008-0022

<b>Assessed Violation<sup>1</sup> No.</b>	<b>Description of Violation</b>	<b>Date Occurred</b>	<b>No. of days to be used for assessing max. liability</b>	<b>Amount of wastewater discharged (MGD) in excess of 1000 gal. And not cleaned up</b>	<b>Serious Violation<sup>2</sup></b>	<b>Minimum Liability Assessed Dollars (\$)</b>	<b>Maximum liability available (MLA) to Regional Board [(Total Flow) - (1,000 Gallons)] x (\$10.00 per Gallon)</b>	<b>MLA per CWC Section 13385(c)(1) \$10,000/day</b>
632747	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 33.6 mg/L	6/13/2007	1	3.799	Yes	3,000	\$37,980,000	\$10,000
632749	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 38.08 mg/L	6/20/2007	1	3.719	Yes	3,000	\$37,180,000	\$10,000
632750	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,181 lbs/day	6/20/2007	1	3.719	Yes	3,000	\$37,180,000	\$10,000
632751	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 31.92 mg/L	6/27/2007	1	3.609	Yes	3,000	\$36,080,000	\$10,000
632752	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 961 lbs/day	6/27/2007	1	3.609	Yes	3,000	\$36,080,000	\$10,000
632753	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 33.60 mg/L	6/30/2007	30	3.749	Yes	3,000	\$37,480,000	\$300,000
632755	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,038 lbs/day	6/30/2007	30	3.749	Yes	3,000	\$37,480,000	\$300,000
699786	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,021 lbs/day	7/3/2007	1	3.799	Yes	3,000	\$37,980,000	\$10,000
699783	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 32.48 mg/L	7/3/2007	1	3.799	Yes	3,000	\$37,980,000	\$10,000
699790	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,008 lbs/day	7/11/2007	1	3.719	Yes	3,000	\$37,180,000	\$10,000
699788	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 32.48 mg/L	7/11/2007	1	3.719	Yes	3,000	\$37,180,000	\$10,000
699792	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 33.60 mg/L	7/18/2007	1	3.599	Yes	3,000	\$35,980,000	\$10,000

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

City of Brawley  
Brawley Wastewater Treatment Facility  
ACL Complaint No. R7-2008-0022

Assessed Violation <sup>1</sup> No.	Description of Violation	Date Occurred	No. of days to be used for assessing max. liability	Amount of wastewater discharged (MGD) in excess of 1000 gal. And not cleaned up	Serious Violation <sup>2</sup>	Minimum Liability Assessed Dollars (\$)	Maximum liability available (MLA) to Regional Board [(Total Flow) - (1,000 Gallons)] x (\$10.00 per Gallon)	MLA per CWC Section 13385(c)(1) \$10,000/day
699793	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,009 lbs/day	7/18/2007	1	3.599	Yes	3,000	\$35,980,000	\$10,000
699796	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 28.56 mg/L	7/25/2007	1	3.669	Yes	3,000	\$36,680,000	\$10,000
699795	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 874 lbs/day	7/25/2007	1	3.669	Yes	3,000	\$36,680,000	\$10,000
699798	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 978 lbs/day	7/31/2007	31	3.779	Yes	3,000	\$37,780,000	\$310,000
699799	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 31.78 mg/L	7/31/2007	31	3.779	Yes	3,000	\$37,780,000	\$310,000
699463	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 33.04 mg/L	8/1/2007	1	3.739	Yes	3,000	\$37,380,000	\$10,000
699467	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,031 lbs/day	8/1/2007	1	3.739	Yes	3,000	\$37,380,000	\$10,000
699469	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 30.80 mg/L	8/8/2007	1	3.389	Yes	3,000	\$33,880,000	\$10,000
699472	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 871 lbs/day	8/8/2007	1	3.389	Yes	3,000	\$33,880,000	\$10,000
699483	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 986 lbs/day	8/15/2007	1	3.639	Yes	3,000	\$36,380,000	\$10,000
699482	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 32.48 mg/L	8/15/2007	1	3.639	Yes	3,000	\$36,380,000	\$10,000
699485	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 27.44 mg/L	8/22/2007	1	3.589	Yes	3,000	\$35,880,000	\$10,000

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

City of Brawley  
Brawley Wastewater Treatment Facility  
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<b>Assessed Violation<sup>1</sup> No.</b>	<b>Description of Violation</b>	<b>Date Occurred</b>	<b>No. of days to be used for assessing max. liability</b>	<b>Amount of wastewater discharged (MGD) in excess of 1000 gal. And not cleaned up</b>	<b>Serious Violation<sup>2</sup></b>	<b>Minimum Liability Assessed Dollars (\$)</b>	<b>Maximum liability available (MLA) to Regional Board [(Total Flow) - (1,000 Gallons)] x (\$10.00 per Gallon)</b>	<b>MLA per CWC Section 13385(c)(1) \$10,000/day</b>
699486	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 822 lbs/day	8/22/2007	1	3.589	Yes	3,000	\$35,880,000	\$10,000
699488	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,050 lbs/day	8/29/2007	1	3.809	Yes	3,000	\$38,080,000	\$10,000
699487	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 33.04 mg/L	8/29/2007	1	3.809	Yes	3,000	\$38,080,000	\$10,000
699492	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 952 lbs/day	8/31/2007	31	3.779	Yes	3,000	\$37,780,000	\$310,000
699491	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 31.36 mg/L	8/31/2007	31	3.779	Yes	3,000	\$37,780,000	\$310,000
721103	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 794 lbs/day	9/5/2007	1	3.469	Yes	3,000	\$34,680,000	\$10,000
721099	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 27.44 mg/L	9/5/2007	1	3.469	Yes	3,000	\$34,680,000	\$10,000
721105	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 24.64 mg/L	9/12/2007	1	3.879	Yes	3,000	\$38,780,000	\$10,000
721106	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 797 lbs/day	9/12/2007	1	3.879	No	3,000	\$38,780,000	\$10,000
720119	Exceeded daily maximum limit of 400 MPN/100 mL for E. coli Reported = 1,600 MPN/100 mL	9/17/2007	1	3.709	No	3,000	\$37,080,000	\$10,000
721109	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 980 lbs/day	9/19/2007	1	3.619	Yes	3,000	\$36,180,000	\$10,000
721107	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 32.48 mg/L	9/19/2007	1	3.619	Yes	3,000	\$36,180,000	\$10,000

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

City of Brawley  
Brawley Wastewater Treatment Facility  
ACL Complaint No. R7-2008-0022

Assessed Violation <sup>1</sup> No.	Description of Violation	Date Occurred	No. of days to be used for assessing max. liability	Amount of wastewater discharged (MGD) in excess of 1000 gal. And not cleaned up	Serious Violation <sup>2</sup>	Minimum Liability Assessed Dollars (\$)	Maximum liability available (MLA) to Regional Board [(Total Flow) - (1,000 Gallons)] x (\$10.00 per Gallon)	MLA per CWC Section 13385(c)(1) \$10,000/day
720121	Exceeded daily maximum limit of 400 MPN/100 mL for E. coli Reported = 900 MPN/100 mL	9/25/2007	30	3.799	No	3,000	\$37,980,000	\$300,000
720122	Exceeded 30-day geometric mean limit of 125 MPN/100 mL of E. coli Reported =229 MPN/100 mL	9/30/2007	30	3.789	No	3,000	\$37,880,000	\$300,000
721113	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 28 mg/L	9/30/2007	30	3.789	Yes	3,000	\$37,880,000	\$300,000
721115	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 630 lbs/day	9/30/2007	30	3.789	Yes	3,000	\$37,880,000	\$300,000
720109	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 592 lbs/day	10/3/2007	1	3.519	No	3,000	\$35,180,000	\$10,000
720019	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 20.16 mg/L	10/3/2007	1	3.519	Yes	3,000	\$35,180,000	\$10,000
720110	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 28 mg/L	10/10/2007	1	3.809	Yes	3,000	\$38,080,000	\$10,000
720111	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 592 lbs/day	10/10/2007	1	3.809	Yes	3,000	\$38,080,000	\$10,000
720112	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 16.24 mg/L	10/17/2007	1	3.639	No	3,000	\$36,380,000	\$10,000
720114	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 17.92 mg/L	10/24/2007	1	3.659	Yes	3,000	\$36,580,000	\$10,000
720116	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 32.48 mg/L	10/31/2007	1	3.789	No	3,000	\$37,880,000	\$10,000
720115	Exceeded daily maximum limit of 400 MPN/100 mL for E. coli Reported = 900 MPN/100 mL	10/31/2007	1	3.789	Yes	3,000	\$37,880,000	\$10,000

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

City of Brawley  
Brawley Wastewater Treatment Facility  
ACL Complaint No. R7-2008-0022

Assessed Violation <sup>1</sup> No.	Description of Violation	Date Occurred	No. of days to be used for assessing max. liability	Amount of wastewater discharged (MGD) in excess of 1000 gal. And not cleaned up	Serious Violation <sup>2</sup>	Minimum Liability Assessed Dollars (\$)	Maximum liability available (MLA) to Regional Board [(Total Flow) - (1,000 Gallons)] x (\$10.00 per Gallon)	MLA per CWC Section 13385(c)(1) \$10,000/day
720117	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 20.27 mg/L	10/31/2007	30	3.789	Yes	3,000	\$37,880,000	\$300,000
720118	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 630 lbs/day	10/31/2007	30	3.789	Yes	3,000	\$37,880,000	\$300,000

<b>Accrued Mandatory Minimum Penalties (MMP):</b>	<b>\$ 291,000</b>	
<b>CWC Section 13385(c)(1):</b>		<b>\$7,950,000</b>
<b>CWC Section 13385(c)(2):</b>		<b>\$3,626,630,000</b>
<b>Maximum Liability Available (MLA) to Regional Board:</b>		<b>\$3,634,580,000</b>

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

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R7-2008-0060  
ISSUED TO  
CITY OF BRAWLEY, OWNER/OPERATOR  
MUNICIPAL WASTEWATER TREATMENT PLANT  
IMPERIAL COUNTY**

This Complaint is issued to the City of Brawley, based on a finding of violations of Waste Discharge Requirements (WDRs) Order No. R7-2005-0021 (NPDES Permit No. CA0104523), pursuant to California Water Code (CWC) Section 13385, authorizing the imposition of Administrative Civil Liability (ACL); CWC Section 13323, which authorizes the Executive Officer of the Colorado River Basin Regional Water Quality Control Board, (Regional Board) to issue this Complaint; and Section 7, which authorizes the Executive Officer to delegate these powers and duties to the Assistant Executive Officer.

The Assistant Executive Officer of the Regional Board finds the following:

1. The City of Brawley (hereafter 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 designed 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 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 WDR 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. WDR 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 13323(b) provides that the Regional Board shall conduct a hearing within 90 days after issuance of an administrative civil liability complaint. It provides further that the party served with the complaint may waive the right to a hearing.

6. 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 :... (4) Any order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5,...”

7. 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.”

8. 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.

9. 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.”

10. CWC Section 13385(i)(1) 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.

11. CWC Section 13385(i)(2) states the following:

“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.”

12. CWC Section 13385(l) states:

“(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.”

13. On February 19, 2002, the State Water Resources Control Board adopted Resolution No. 2002-0040 amending the Water Quality Enforcement Policy (Enforcement Policy). The 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).

14. 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 <sup>1</sup>	54	590

15. 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. 14 above.

16. 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 Complaint by reference.

<sup>1</sup> Based on a flow of 5.9 MGD

17. The total amount of the MMP for the violations cited in Attachment "A" is \$129,000.
18. On March 19, 2008, the Regional Board adopted Cease and Desist Order No. R7-2008-0008. The Order specified in Paragraph 5:  
  
"Pursuant to CWC Section 13385(j), the Discharger will be exempt from Mandatory Minimum Penalties (MMP) for violations of the new effluent limitation for Total Ammonia as Nitrogen if the Discharger is in compliance with Cease and Desist Order No. R7-2008-0008."
19. This Complaint, No. R7-2008-0060, assesses MMP for violations that occurred between November 1, 2007 and March 19, 2008, as shown in Attachment "A".
20. On June 25, 2008, the Regional Board adopted ACL Order No. R7-2008-0043. The ACL Order assessed MMP for violations that occurred prior to November 1, 2007.
21. As shown in Attachment "A", the Discharger has violated waste discharge requirements. The Regional Board can assess liability pursuant to CWC Section 13385(c) for the violations. It must, however, assess the minimum civil liability prescribed under CWC Sections 13385(h)(1) and (i)(1) for the serious and chronic effluent violations.
22. The minimum civil liability the Regional Board must assess for the serious and chronic effluent violations shown in Attachment A is one hundred twenty-nine thousand dollars (\$129,000). The total maximum civil liability authorized by CWC Section 13385(c) for the violations shown in Attachment "A" is eleven billion, six hundred sixty-seven million, one hundred thousand dollars (\$11,667,100,000).
23. 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 (Public Resources Code Section 21000 et seq.), in accordance with Section 15321(a)(2) ("Enforcement Actions by Regulatory Agencies"), Title 14, California Code of Regulations.

**THE CITY OF BRAWLEY IS HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Regional Board proposes that the Discharger be assessed three thousand dollars (\$3,000) for each of the serious and chronic violations identified in Attachment A. The total Administrative Civil Liability against the Discharger is one hundred twenty-nine thousand dollars (\$129,000).
2. The Assistant Executive Officer may consider offsetting a portion of the ACL by the monetary value of a Supplemental Environmental Project (SEP) to be completed by the Discharger.
3. Pursuant to Option 4.b., below, If the Discharger chooses to waive the right to a hearing in 90 days and submits a settlement proposal, as described, that includes an agreement to implement a SEP in lieu of a portion of the assessed civil liability, the Discharger shall comply with the following schedule:

- a. By September 15, 2008, the Discharger shall agree to enter into a stipulated administrative civil liability order that will require City of Brawley to complete an SEP as approved by the Assistant Executive Officer and pay the amount of the ACLC not approved for the SEP within thirty days from the date the Regional Board adopts the order.
- b. By September 15, 2008, the Discharger shall submit a technical report, implementation schedule, and cost estimates detailing a proposed SEP consistent with CWC section 13385(l) and the Enforcement Policy. The portion of the penalty amount that may be directed to be expended on an SEP and the project itself are subject to Assistant Executive Officer approval and may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000). Since the proposed civil liability total is \$129,000, the portion of the penalty amount that may be expended on a SEP cannot exceed \$72,000, which is calculated as follows:

$$(\$15,000 + 0.5(\$129,000 - \$15,000)) = \$72,000$$

Upon completion of the SEP, the Discharger shall submit verification of the actual amount of money spent by the Discharger toward completion of the SEP.

4. The Regional Board will hold a public hearing on this matter within 90 days of the date of this Complaint, unless the Discharger chooses either of the following two options:
  - a. Waives the right to a hearing and pays the proposed civil liability of \$129,000 in full; or
  - b. Waives the right to a hearing in 90 days, and submits a settlement proposal within 30 days of the date of this Complaint that includes an agreement to implement a SEP in lieu of a portion of the assessed civil liability.
5. If a hearing on this matter is held, the Regional Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, including the MMP, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
6. If the Discharger chooses Option 4.a., above, an authorized representative must sign the attached waiver and return it along with the bottom portion of the ACLC Invoice form and a check for the full amount of the proposed liability, made payable to the "State Water Pollution Cleanup and Abatement Account" within thirty (30) days of the date of this Complaint. Payment will be deemed settlement of this Complaint, but the settlement shall not become final until 30 days from the date of Public Notice No. 7-08-34 to allow interested persons to comment on this action. The waiver and payment must be mailed to:

California Regional Water Quality Control Board  
Colorado River Basin Region  
Attn: Hilda Vasquez  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260

7. If the Discharger chooses Option 4.b., above, the Discharger shall not be obligated to pay any portion of the proposed administrative civil liability until the settlement becomes final. The settlement shall not become final until 30 days from the date of Public Notice No. 7-08-34 to allow interested persons to comment on this action. In order for Regional Board staff to have time to fully evaluate any settlement proposal, it will be necessary for the settlement proposal to be accompanied by a statement that the Discharger is waiving its right to have a hearing conducted within 90 days of the date of the Complaint. Payment of any proposed administrative civil liability not suspended by the SEP shall be handled in accordance with the procedures described in Paragraph 6, above.

for Doug Wylie  
JOSE ANGEL, Assistant Executive Officer

8-15-08  
Date

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

City of Brawley  
Brawley Wastewater Treatment Facility  
ACL Complaint No. R7-2008-0060

**ATTACHMENT "A"**  
Summary of Violations of Board Order No. R7-2005-0021 Mandatory Minimum Penalties

Assessed Violation No. <sup>1</sup>	Description of Violation	Date Occurred	Number of Days in Violation	Amount of Wastewater (gpd <sup>2</sup> ) in excess of 1,000 gpd and not cleaned up	Serious Violation Defined by CWC 13385(h)	Minimum Liability Board Must Assess (\$)	Maximum Liability Available (MLA) to Board (\$) <sup>3</sup>
775131	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 26.88 mg/L	11/7/2007	1	3,809,000	Y	3,000	38,100,000
775138	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 854 lbs/day	11/7/2007	1	3,809,000	Y	3,000	38,100,000
775139	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 15.12 mg/L	11/14/2007	1	4,309,000	N	3,000	43,100,000
775140	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 20.72 mg/L	11/19/2007	1	4,079,000	Y	3,000	40,800,000
775141	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 705 lbs/day	11/19/2007	1	4,079,000	N	3,000	40,800,000
775143	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 18.48 mg/L	11/28/2007	1	4,069,000	Y	3,000	40,700,000
775144	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 627 lbs/day	11/28/2007	1	4,069,000	N	3,000	40,700,000
775145	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 20.30 mg/L	11/30/2007	30	4,069,000	Y	3,000	1,221,000,000
775146	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 682 lbs/day	11/30/2007	30	4,069,000	Y	3,000	1,221,000,000
775150	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 19.60 mg/L	12/5/2007	1	4,239,000	Y	3,000	42,400,000

<sup>1</sup> Data Source: California Integrated Water Quality System (CIWQS).

<sup>2</sup> GDP = Gallon Per Day.

<sup>3</sup> Maximum liability available (MLA) to Regional Board = [(Total Flow) - (1,000 Gallons)] x (\$10.00 per Gallon)] + \$10,000 x Number of Days in Violation.

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

City of Brawley  
Brawley Wastewater Treatment Facility  
ACL Complaint No. R7-2008-0060

Assessed Violation No. <sup>1</sup>	Description of Violation	Date Occurred	Number of Days in Violation	Amount of Wastewater (gpd <sup>2</sup> ) in excess of 1,000 gpd and not cleaned up	Serious Violation Defined by CWC 13385(h)	Minimum Liability Board Must Assess (\$)	Maximum Liability Available (MLA) to Board (\$)³
775154	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 693 lbs/day	12/5/2007	1	4,239,000	N	3,000	42,400,000
775155	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 20.16 mg/L	12/12/2007	1	3,709,000	Y	3,000	37,100,000
775156	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 624 lbs/day	12/12/2007	1	3,709,000	N	3,000	37,100,000
775157	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 26.88 mg/L	12/19/2007	1	4,249,000	N	3,000	42,500,000
775158	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 26.88 mg/L	12/26/2007	1	3,649,000	Y	3,000	36,500,000
775159	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 18.76 mg/L	12/31/2007	31	4,249,000	Y	3,000	1,317,500,000
775162	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 618 lbs/day	12/31/2007	31	4,249,000	Y	3,000	1,317,500,000
775163	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 19.60 mg/L	1/2/2008	1	3,989,000	Y	3,000	39,900,000
775165	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 652 lbs/day	1/2/2008	1	3,989,000	Y	3,000	39,900,000
775166	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 21.84 mg/L	1/9/2008	1	4,769,000	Y	3,000	47,700,000
775168	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 847 lbs/day	1/9/2008	1	4,769,000	Y	3,000	47,700,000
775169	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 21.84 mg/L	1/16/2008	1	4,129,000	Y	3,000	41,300,000

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

City of Brawley  
Brawley Wastewater Treatment Facility  
ACL Complaint No. R7-2008-0060

Assessed Violation No. <sup>1</sup>	Description of Violation	Date Occurred	Number of Days in Violation	Amount of Wastewater (gpd <sup>2</sup> ) in excess of 1,000 gpd and not cleaned up	Serious Violation Defined by CWC 13385(h)	Minimum Liability Board Must Assess (\$)	Maximum Liability Available (MLA) to Board (\$)³
775170	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 752 lbs/day	1/16/2008	1	4,129,000	N	3,000	41,300,000
775171	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 21.84 mg/L	1/23/2008	1	4,039,000	Y	3,000	40,400,000
775172	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 736 lbs/day	1/23/2008	1	4,039,000	N	3,000	40,400,000
775173	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 20.72 mg/L	1/30/2008	1	4,549,000	Y	3,000	45,500,000
775174	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 854 lbs/day	1/30/2008	1	4,549,000	Y	3,000	45,500,000
775175	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 21.06 mg/L	1/31/2008	31	4,269,000	Y	3,000	1,323,700,000
775176	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 755 lbs/day	1/31/2008	31	4,269,000	Y	3,000	1,323,700,000
775178	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 21.28 mg/L	2/6/2008	1	3,949,000	Y	3,000	39,500,000
775181	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 701 lbs/day	2/6/2008	1	3,949,000	Y	3,000	39,500,000
775182	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 19.60mg/L	2/13/2008	1	4,379,000	Y	3,000	43,800,000
775188	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 716 lb lbs/day	2/13/2008	1	4,379,000	N	3,000	43,800,000
775189	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 19.60 mg/L	2/20/2008	1	4,699,000	Y	3,000	47,000,000

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

City of Brawley  
Brawley Wastewater Treatment Facility  
ACL Complaint No. R7-2008-0060

Assessed Violation No. <sup>1</sup>	Description of Violation	Date Occurred	Number of Days in Violation	Amount of Wastewater (gpd <sup>2</sup> ) in excess of 1,000 gpd and not cleaned up	Serious Violation Defined by CWC 13385(h)	Minimum Liability Board Must Assess (\$)	Maximum Liability Available (MLA) to Board (\$)³
775191	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 768 lbs/day	2/20/2008	1	4,699,000	N	3,000	47,000,000
775192	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 19.60 mg/L	2/27/2008	1	3999000	Y	3,000	40,000,000
775193	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 654 lbs/day	2/27/2008	1	3,999,000	N	3,000	40,000,000
775194	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 20.02 mg/L	2/29/2008	29	4,299,000	Y	3,000	1,247,000,000
775195	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 710 lbs/day	2/29/2008	29	4,299,000	Y	3,000	1,247,000,000
775240	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 18.48 mg/L	3/5/2008	1	3,979,000	Y	3,000	39,800,000
775248	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 613 lbs/day	3/5/2008	1	3,979,000	N	3,000	39,800,000
775249	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 21.84 mg/L	3/12/2008	1	3,929,000	Y	3,000	39,300,000
775250	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 716 lbs/day	3/12/2008	1	3,929,000	N	3,000	39,300,000
						<b>\$129,000</b>	<b>\$11,667,100,000</b>

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R7-2009-0078  
ISSUED TO  
CITY OF BRAWLEY, OWNER/OPERATOR  
MUNICIPAL WASTEWATER TREATMENT PLANT  
Brawley - Imperial County

This Complaint is issued to the City of Brawley (hereafter Discharger), based on findings of violation of California Water Code (CWC) Section 13383 and Waste Discharge Requirements (WDRs) Order No. R7-2005-0021 (NPDES Permit No. CA0104523). CWC Section 13385 authorizes the imposition of Administrative Civil Liability (ACL) penalties. CWC Section 13323 authorizes the Executive Officer of the Colorado River Basin Regional Water Quality Control Board (Regional Board) to issue this Complaint and Section 7 authorizes the Executive Officer to delegate these powers and duties to the Assistant Executive Officer.

The Assistant Executive Officer of the Regional Board finds the following:

1. The City of Brawley (hereafter 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 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  $\frac{1}{4}$ , 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. The Regional Board may establish monitoring and reporting requirements, known as the Monitoring and Reporting Program (MRP), as authorized by CWC Sections 13376 and 13383.
5. CWC Section 13385(a) states, in relevant part, that:  
  
"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. On June 29, 2005, the Regional Board adopted WDRs Order No. R7-2005-0021 for the Discharger to regulate discharges of treated wastewater to the New River.
8. On June 25, 2008, the Regional Board adopted Special Board Order No. R7-2008-0027, which amended WDRs Board Order No. 2005-0021 to designate the Discharger's discharge location at the New River as a freshwater environment and establish interim and final effluent limits based on the California Toxics Rule (CTR) and State Implementation Policy freshwater criteria for the discharge.
9. In relevant part, WDRs Order No. R7-2008-0027 (Page 7, Section 4, Final Effluent Limitations for Discharging Point 001) contains the following amended final effluent limitations:

“**e. Bacteria:** The bacterial density in the wastewater effluent discharged to the “R” Drain shall not exceed the following values, as measured by the following bacterial indicators:

**i. *E. coli.*** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a Most Probable Number (MPN) of 126, nor shall any sample exceed the maximum allowable bacterial density of 400.

**ii. *Enterococci.*** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a Most Probable Number (MPN) of 33, nor shall any sample exceed the maximum allowable bacterial density of 100.

**iii. *Fecal Coliform.*** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a Most Probable Number (MPN) of 200, nor shall more than ten percent of the total samples during any 30-day period exceed 400 MPN per 100 milliliters.”

10. According to Special Board Order No. R7-2008-0027, the Discharger still must comply with those portions of WDRs Board Order No. R7-2005-0021 that were not specifically amended by the Special Board Order. Provision VI.B of WDRs Board Order No. R7-2005-0021 states:

“The discharger shall comply with MRP and future revisions thereto as specified by the Regional Water Board's Executive Officer, found in Attachment E of this Order.”

11. Attachment E, General Monitoring Provisions I.C states:

“Unless otherwise approved by the Regional Water Board's Executive Officer, all analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services [now known as the California Department of Public Health, Environmental Laboratory Accreditation Program]. All analyses shall be conducted in accordance with the latest edition of ‘Guidelines Establishing Test

Procedures for Analysis of Pollutants', as promulgated by the United States Environmental Protection Agency (USEPA).”

12. Since at least August 2008, the Discharger has used an uncertified laboratory to perform E. coli analyses Attachment “A”, a part of this Order No. R7-2010-0001 by reference shows the monitoring data in question.
13. Because the Discharger submitted effluent monitoring data for E. coli and Enterococci from a laboratory that did not possess certification for analysis of bacteria constituents, the Regional Board is unable to determine whether the Discharger is in compliance with the Effluent Limitations of Special Board Order No. R7-2008-0027 for E. coli and Enterococci, cited above in Finding No. 9.
14. On February 23, 2009, the Assistant Executive Officer issued Time Schedule Order (TSO) No. R7-2009-0035 pursuant to CWC Section 13308, requiring the Discharger to correct the monitoring violations of Board Order No. R7-2005-0021 in accordance with a series of tasks stated in the time schedule. The TSO was issued following the discovery in Findings Nos. 12 and 13, above.
15. More specifically, TSO No. R7-2009-0035 provides in substantive relevant part for the Discharger to comply with the following:
  - a. The Discharger must be in full compliance with WDRs Board Order Nos. R7-2005-0021 and R7-2008-0027, Monitoring and Reporting Programs by July 1, 2009.
  - b. By March 14, 2009, the Discharger shall submit a technical report specifying the steps it will take to ensure that bacteria data is collected and analyzed as specified in Board Order No. R7-2008-0027.
16. As stated above, the data indicating potential effluent limitation violations for bacterial parameters cannot be used to assess compliance with the Effluent Limitations of Special Board Order No. R7-2008-0027 and similarly cannot be used to impose mandatory penalties for potential effluent violations for E. coli and Enterococci. While the Discharger may not be subject to mandatory minimum penalties for these potential E. coli and Enterococci effluent limit violations, the Discharger is still liable for violating the MRP for WDRs Board Order No. R7-2005-0021 pursuant to CWC Section 13385(c). The maximum statutory liability for the MRP violations under CWC Section 13385(c) is \$360,000 [\$10,000 per day for 36 violations from August 4, 2008 through December 29, 2008].
17. The Regional Board may assess liability pursuant to CWC Section 13385(c). CWC Section 13385(e) requires the Regional Board, in determining the amount of liability, to consider the nature, circumstances, extent and gravity of the 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 its ability to continue its business, any voluntary cleanup efforts taken, 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. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

18. The factors in Finding No. 17, above, are evaluated for the violations as follows:
  - a. Nature, circumstance, extent, and gravity of the violations: See Attachment "A".
  - b. Susceptibility of discharge to cleanup and abatement, and degree of toxicity discharge:  
The discharge is not susceptible to cleanup and/or abatement.
  - c. Discharger's ability to pay:  
There is no indication that the Discharger would be financially incapable of paying the assessed liability. The Discharger now has the opportunity to provide additional financial data to the Regional Board regarding its ability to pay the proposed liability.
  - 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. Voluntary cleanup efforts undertaken:  
There was no cleanup and abatement the discharge when violations occurred.
  - f. Prior history of violations:  
On June 25, 2008, the Regional Water Board adopted ACL Order No. R7-2008-0043 imposing administrative civil liability in the amount of \$354,750. On September 19, 2008, the Regional Water Board adopted ACL Order No. R7-2008-0064 in the amount of \$129,000.
  - g. Degree of culpability:  
As the permittee, the Discharger is the responsible for complying with all aspects of WDRs Board Order Nos. R7-2005-0021 and R7-2008-0027. The provisions of WDRs Board Order No. R7-2008-0027 and its corresponding Monitoring and Reporting Program (MRP) are clear and unambiguous regarding the requirement that all analyses be conducted at a laboratory certified for such analyses by the California Department of Public Health. It is the Discharger's responsibility to utilize certified laboratory contracts that can provide reliable results, which are representative of the discharge. The Discharger failed to do so for the period from August 2008 to December 2008, as evidence by the monitoring results it submitted.
  - h. Savings resulting from the violations:  
Several thousands dollars by not transporting samples to a certified lab in another county.
  - i. Other matters that justice may require:  
Staff time to investigate this matter and prepare the ACL compliant and supporting information is estimated to be 40 hours. Based on an average cost to the State of \$150 per hour, the total cost is \$6,000.

**THE CITY OF BRAWLEY IS HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Regional Board proposes that administrative civil liability be imposed against the Discharger in the amount of sixteen thousand dollars (\$16,000), which consists of \$10,000 in discretionary penalties for violations of the MRP by using an uncertified laboratory for E. Coli and Enterococci analysis and staff costs of

\$6,000 (40 hours x \$150 per hour). The amount of liability proposed is based upon a review of the factors cited in Findings No. 17 and 18 above, and the Enforcement Policy.

2. CWC Section 13323(b) provides that the Regional Board will hold a Public Hearing on this matter within 90 days after service of this Complaint, unless the Discharger chooses either of the following two options:
  - a. Waive the right to a Hearing before the Regional Board and pay the proposed civil liability of \$16,000 in full; or
  - b. Waive the right to a Hearing before the Regional Board within 90 days after service of this Complaint to engage the Regional Board Prosecution Team in settlement discussions.
3. If the Discharger chooses Option 2(a) above, an authorized representative must sign the enclosed Waiver and return it along with a check for the full amount of the proposed liability, made payable to the "State Water Pollution Cleanup and Abatement Account" within thirty (30) days of the date of this Complaint. Payment will be deemed settlement of this Complaint, but the settlement shall not become final until thirty (30) days from the date of Public Notice No. 7-10-01 to allow the public and other interested persons to comment on this action. The Waiver and payment must be mailed to:

California Regional Water Quality Control Board  
Colorado River Basin Region  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260

4. If the Discharger chooses Option 2(b) above, an authorized representative must sign the enclosed Waiver and submit it within thirty (30) days of this Complaint. The Discharger must also submit a settlement proposal to the Regional Board within sixty (60) days of this Complaint. The Waiver and settlement proposal must be mailed to the address listed above.
5. If a hearing on this matter is held, the Regional 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.
6. Issuance of this Complaint is exempt from the provision of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000, et seq.), in accordance with Section 15321(a)(2), Title 14, California Code of Regulations.

for Doug Wylie  
JOSE ANGEL, Assistant Executive Officer

12/22/09  
Date

**ATTACHMENT "A"**  
**Summary of Violations of Board Order No. R7-2008-0027 for City of Brawley**

	<b>Violation Type</b>	<b>Violation Date</b>	<b>Violation Description</b>
1	<i>E. Coli</i>	08/04/2008	Used uncertified laboratory
2	<i>E. Coli</i>	08/11/2008	Used uncertified laboratory
3	<i>E. Coli</i>	08/13/2008	Used uncertified laboratory
4	<i>E. Coli</i>	08/25/2008	Used uncertified laboratory
5	<i>E. Coli</i>	08/26/2008	Used uncertified laboratory
6	<i>E. Coli</i>	09/08/2008	Used uncertified laboratory
7	<i>E. Coli</i>	09/15/2008	Used uncertified laboratory
8	<i>E. Coli</i>	09/22/2008	Used uncertified laboratory
9	<i>E. Coli</i>	09/24/2008	Used uncertified laboratory
10	<i>E. Coli</i>	09/29/2008	Used uncertified laboratory
11	<i>E. Coli</i>	10/08/2008	Used uncertified laboratory
12	<i>E. Coli</i>	10/13/2008	Used uncertified laboratory
13	<i>E. Coli</i>	10/15/2008	Used uncertified laboratory
14	<i>E. Coli</i>	10/21/2008	Used uncertified laboratory
15	<i>E. Coli</i>	10/22/2008	Used uncertified laboratory
16	<i>E. Coli</i>	11/06/2008	Used uncertified laboratory
17	<i>Enterococci</i>	11/06/2008	Used uncertified laboratory
18	<i>E. Coli</i>	11/10/2008	Used uncertified laboratory
19	<i>Enterococci</i>	11/10/2008	Used uncertified laboratory
20	<i>E. Coli</i>	11/12/2008	Used uncertified laboratory
21	<i>E. Coli</i>	11/17/2008	Used uncertified laboratory
22	<i>Enterococci</i>	11/17/2008	Used uncertified laboratory
23	<i>E. Coli</i>	11/24/2008	Used uncertified laboratory
24	<i>Enterococci</i>	11/24/2008	Used uncertified laboratory
25	<i>Enterococci</i>	11/26/2008	Used uncertified laboratory
26	<i>E. Coli</i>	12/03/2008	Used uncertified laboratory
27	<i>Enterococci</i>	12/03/2008	Used uncertified laboratory
28	<i>E. Coli</i>	12/08/2008	Used uncertified laboratory
29	<i>Enterococci</i>	12/10/2008	Used uncertified laboratory
30	<i>E. Coli</i>	12/15/2008	Used uncertified laboratory
31	<i>E. Coli</i>	12/17/2008	Used uncertified laboratory
32	<i>Enterococci</i>	12/17/2008	Used uncertified laboratory
33	<i>E. Coli</i>	12/22/2008	Used uncertified laboratory
34	<i>Enterococci</i>	12/22/2008	Used uncertified laboratory
35	<i>E. Coli</i>	12/29/2008	Used uncertified laboratory
36	<i>Enterococci</i>	12/29/2008	Used uncertified laboratory

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

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R7-2010-0030  
ISSUED TO  
CITY OF BRAWLEY, OWNER/OPERATOR  
MUNICIPAL WASTEWATER TREATMENT PLANT  
City of Brawley — Imperial County**

This Complaint is issued to the City of Brawley, based on a finding of violations of Waste Discharge Requirements (WDRs) Order No. R7-2005-0021 (NPDES Permit No. CA0104523), pursuant to California Water Code (CWC) Section 13385, authorizing the imposition of Administrative Civil Liability (ACL); CWC Section 13323, which authorizes the Executive Officer of the Colorado River Basin Regional Water Quality Control Board, (Regional Board) to issue this Complaint; and CWC Section 7, which authorizes the Executive Officer to delegate these powers and duties to the Assistant Executive Officer.

The Assistant Executive Officer of the Regional Board finds the following:

1. The City of Brawley (hereafter, 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 then 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 13323(b) provides that the Regional Board shall conduct a hearing within 90 days after issuance of an administrative civil liability complaint. It provides further that the party served with the complaint may waive the right to a hearing.

6. 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 :... (4) Any order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5,..."

7. 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."

8. 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.

9. 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."

10. 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 <sup>1</sup>	54	590

<sup>1</sup> Based on a flow of 5.9 MGD

11. 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. 10 above.
12. 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 Complaint by reference.
13. The total amount of the MMP for the violations cited in Attachment "A" is \$24, 000.
14. This Complaint, No. R7-2010-0030, assesses MMPs for additional violations that occurred between February 1, 2007, and September 30, 2007, as shown in Attachment "A", and were not assessed in ACL Order No. R7-2008-0043, adopted by the Regional Board on June 26, 2008.
15. As shown in Attachment "A", the Discharger has violated waste discharge requirements. The Regional Board can assess liability pursuant to CWC Section 13385(c) for the violations. It must, however, assess the minimum civil liability prescribed under CWC Sections 13385(h)(1) and (i)(1) for the serious and chronic effluent violations.
16. The minimum civil liability the Regional Board must assess for the serious and chronic effluent violations shown in Attachment "A" is twenty-four thousand dollars (\$24,000). The total maximum civil liability authorized by CWC Section 13385(c) for the violations shown in Attachment "A" is three hundred six million, five hundred twenty thousand dollars (\$306,520,000).
17. 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 (Public Resources Code Section 21000 et seq.), in accordance with Section 15321(a)(2) ("Enforcement Actions by Regulatory Agencies"), Title 14, California Code of Regulations.

**THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Regional Board proposes that the Discharger be assessed three thousand dollars (\$3,000) for each of the serious violations identified in Attachment A. The total Administrative Civil Liability against the Discharger is twenty-four thousand dollars (\$24,000).
2. Unless the Discharger waives its right to a hearing, the Regional Board will hold a public hearing on this matter on September 16, 2010. The Discharger or its representative will have an opportunity to be heard and contest the allegations in this Complaint and the imposition of the proposed mandatory minimum penalty.

3. At the hearing, the Regional Board will consider whether to affirm, reject, or modify the proposed mandatory minimum penalty, or refer the matter to the Attorney General for recovery of judicial civil liability. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by submitting a signed Waiver and paying the civil liability in full or by taking other actions as described in the attached waiver form.
4. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act. Accordingly, interested persons will be given thirty days to comment on any proposed settlement of this Complaint.

*for* *Doug Wylie, P.E.*  
JOSE ANGEL, P.E.  
Assistant Executive Officer

July 7, 2010

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

City of Brawley  
Brawley Wastewater Treatment Facility  
ACL Complaint R7-2010-0030

**ATTACHMENT "A"**  
Summary of Violations of Board Order No. R7-2005-0021 Mandatory Minimum Penalties

Assessed Violation <sup>1</sup> No.	Description of Violation	Date Occurred	No. of days to be used for assessing max. liability	Amount of wastewater discharged (MGD) in excess of 1000 gal. and not cleaned up	Serious Violation <sup>2</sup>	Minimum Liability Assessed Dollars (\$)	Maximum liability available (MLA) to Regional Board [(Total Flow) - (1,000 Gallons)] x (\$10.00 per Gallon)	MLA per CWC Section 13385(c)(1) \$10,000/day	
586123	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,775 lbs/day	2/14/2007	1	3,839	Yes	3,000	\$38,380,000	\$10,000	
586109	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 22 mg/L	3/14/2007	1	4,029	Yes	3,000	\$40,280,000	\$10,000	
586133	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 988 lbs/day	4/11/2007	1	3,989	Yes	3,000	\$39,880,000	\$10,000	
580042	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 966 lbs/day	5/09/2007	1	3,759	Yes	3,000	\$37,580,000	\$10,000	
580050	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 960 lbs/day	5/31/2007	31	3,689	Yes	3,000	\$36,880,000	\$310,000	
632748	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,775 lbs/day	6/13/2007	1	3,799	Yes	3,000	\$37,980,000	\$10,000	
721111	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 27.44 mg/L	9/26/2007	1	3,759	Yes	3,000	\$37,580,000	\$10,000	
721112	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 860 lbs/day	9/26/2007	1	3,759	Yes	3,000	\$37,580,000	\$10,000	
							<b>\$24,000</b>	<b>\$306,140,000</b>	<b>\$380,000</b>

NBC\_ACLC\_PT-001864

<sup>1</sup> Data Source: California Integrated Water Quality System (CIWQS)  
<sup>2</sup> Defined by CWC 13385(h)

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R7-2011-0013

ISSUED TO

CITY OF BRAWLEY, OWNER/OPERATOR  
MUNICIPAL WASTEWATER TREATMENT PLANT  
City of Brawley — Imperial County

1. This Complaint is issued to the City of Brawley (hereafter, Discharger) based on findings of violations of Waste Discharge Requirements (WDRs) Order No. R7-2010-0022, National Pollutant Discharge Elimination System (NPDES), Permit No. CA0104532. California Water Code (CWC) Sections 13385 and 13323 authorize the Executive Officer of the Colorado River Basin Regional Water Quality Control Board (Regional Board) to issue this Administrative Civil Liability Complaint (Complaint), and CWC Section 7 authorizes the Executive Officer to delegate these powers and duties set forth above in CWC Sections 13385 and 13323 to the Assistant Executive Officer.

The Assistant Executive officer of the Regional Board finds the following:

2. The Discharger, 400 Main Street, Brawley, California 92227 owns and operates the Wastewater Treatment Plant (WWTP) located at 1550 Best Road, Brawley, California 92227. The WWTP services the City of Brawley. 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). The Discharger's WWTP is a publicly owned treatment works (POTW) and discharges its effluent into the New River via Discharge 001, which is a tributary to the Salton Sea. The New River and the Salton Sea are waters of the United States.
3. 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.
4. On May 20, 2010, the Regional Board adopted WDRs Order No. R7-2010-0022. WDRs Order No. R7-2010-0022 revised WDRs Order No. R7-2005-0021 for specific 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. WDRs Order No. R7-2010-0022 (pages 12-14, Sections A.1.a and A.1.d) contains the following effluent discharge limitations:

"The Discharger shall maintain compliance with the following effluent limitations at Discharge Point 001, with compliance measured at Monitoring Location EFF-001 as described in the attached MPR (Attachment E) except as modified by any applicable interim Effluent Limitations specified in Section IV.A.2 and Table 8, below:

**Table 8:**

Parameter	Units	Effluent Limitations	
		Average Monthly	Maximum Daily
Cyanide <sup>2</sup>	µg/L	3.0	9.2
	lbs/day <sup>1</sup>	0.15	0.45

<sup>1</sup> The mass-based effluent limitations are based on a design capacity of 5.9 MGD

<sup>2</sup> Expressed as free cyanide. Non-distillation analysis methods for available cyanide, such as UEPA OIA-1677 or ASTM D6888-04, shall be used to measure compliance with the free cyanide effluent limitation.

**“Bacteria:** The bacterial density in the wastewater effluent discharged to the New River shall not exceed the following values, as measured by the following bacterial indicators:

- i. ***E. Coli.*** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a Most Probable Number (MPN) of 126 per 100 milliliters, nor shall any sample exceed the maximum allowable bacterial density of a MPN of 400 per 100 milliliters.
- ii. **Fecal Coliform.** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a MPN of 200 per 100 milliliters, nor shall more than ten percent of the total samples during any 30-day period exceed a MPN of 400 per 100 milliliters.
- iii. **Enterococci.** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a MPN of 33 MPN per 100 milliliters, nor shall any sample exceed the maximum allowable bacterial density of a MPN of 100 per 100 milliliters.”

6. WDRs Board Order No. R7-2010-0022 (page 17, Provision A.2.b.) warns:

“The Discharger shall comply with all conditions of this Order. Noncompliance constitutes a violation of the Federal CWA and Porter-Cologne Water Quality Control Act, and is grounds for enforcement action ....”

7. 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 :... (4) Any order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5,...

8. 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.

9. 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.”

10. CWC Section 13385 Subdivision (i)(1) also requires the Regional Board to assess an MMP 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 (hereafter “chronic violation”):
  - i. Violates a waste discharge requirement effluent limitation;
  - ii. Fails to file a report pursuant to Section 13260;
  - iii. Files an incomplete report pursuant to Section 13260; or
  - iv. 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.
11. CWC Section 13385 subdivision (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.”
12. The self-monitoring reports submitted by the Discharger from May 2010 to January 2011 showed that the WWTP operated by the Discharger violated the effluent limitations for cyanide and bacteria as reference above.
13. A summary of each violation of Board Order No. R7-2010-0022 is contained in Attachment “A,” which is incorporated in and made a part of this ACL Complaint by reference.
14. The total amount of the MMP for the violations cited in Attachment “A” is \$45, 000.
15. 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 (Public Resources Code Section 21000 et seq.), in accordance with Section 15321(a)(2) (“Enforcement Actions by Regulatory Agencies”), Title 14, California Code of Regulations.
16. CWC Section 13323 subdivision (b) provides that the Regional Board shall conduct a hearing within ninety (90) days after issuance of an administrative civil liability complaint. This section provides further that the party served with the complaint may waive the right to a hearing.

**THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Regional Board proposes that the Discharger be assessed a mandatory minimum penalty of forty-five thousand dollars (\$45,000) for each of the effluent limit violations of cyanide and bacteria identified in Attachment “A”.

2. Unless the Discharger waives its right to a hearing, the Regional Board will hold a public hearing on this matter on June 23, 2011. The Discharger or its representative will have an opportunity to be heard and contest the allegations in this Complaint and the imposition of the proposed mandatory minimum penalty.
3. At the hearing, the Regional Board will consider whether to affirm, reject, or modify the proposed mandatory minimum penalty, or refer the matter to the Attorney General for recovery of judicial civil liability. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by submitting a signed Waiver and paying the civil liability in full or by taking other actions as described in the attached waiver form.
4. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act. Accordingly, interested persons will be given thirty days to comment on any proposed settlement of this Complaint.

*Doug Wylie, P.E.*  
\_\_\_\_\_  
*for* JOSE ANGEL, P.E.  
Assistant Executive Officer

April 12, 2011

**ATTACHMENT "A"**  
 Summary of Violations Board Order No. R7-2010-0022

<b>Assessed Violation No.<sup>1</sup></b>	<b>Date Occurred</b>	<b>Description of Violation</b>	<b>Serious Violation Defined by CWC 13385(h)</b>	<b>Amount Assessed Dollars (\$)</b>
877112	5/10/2010	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 300 MPN/100 mL	No	0 <sup>2</sup>
877422	5/24/2010	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 240 MPN/100 mL	No	0 <sup>2</sup>
877423	5/31/2010	Exceeded Monthly Average for Enterococci. Limitation = 33 MPN/100 mL; Reported value = 77.6 MPN/100 mL	No	0 <sup>2</sup>
886572	10/13/2010	Exceeded Daily Maximum for Free Cyanide. Limitation = 9.2 µg/L; Reported value = 17 µg/L	Yes	3,000
886577	10/13/2010	Exceeded Daily Maximum for Free Cyanide. Limitation = 0.45 lbs/day; Reported value = 0.51 lbs/day	No	3,000
886583	10/31/2010	Exceeded Monthly Average for Free Cyanide. Limitation = 3 µg/L; Reported value = 17 µg/L	Yes	3,000
886584	10/31/2010	Exceeded Monthly Average for Free Cyanide. Limitation = 0.15 lbs/day Reported value = 0.51 lbs/day	Yes	3,000
888336	11/10/2010	Exceeded Daily Maximum for Free Cyanide. Limitation = 0.45 lbs/day; Reported value = 0.5 lbs/day	No	3,000
888337	11/10/2010	Exceeded Daily Maximum for Total Cyanide. Limitation = 9.2 µg/L; Reported value = 18 µg/L	Yes	3,000
888179	11/30/2010	Exceeded Monthly Average for Free Cyanide. Limitation = 9.2 µg/L Reported value = 18.0 µg/L	Yes	3,000
888335	11/30/2010	Exceeded Monthly Average for Free Cyanide. Limitation = 0.15 lbs/day Reported value = 0.5 lbs/day	Yes	3,000
890044	12/13/2010	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 2,400 MPN/100 mL	No	3,000
890043	12/20/2010	Exceeded Daily Maximum for Fecal Coliform. Limitation = 400 MPN/100 mL; Reported value = 500 MPN/100 mL	No	3,000
890045	12/20/2010	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 1,600 MPN/100 mL	No	3,000

<sup>1</sup> California Integrated Water Quality System (CIWQS)

<sup>2</sup> This is a Supporting Violation

City of Brawley  
 Brawley Wastewater Treatment Plant  
 Complaint No. R7-2011-0013

<b>Assessed Violation No.<sup>1</sup></b>	<b>Date Occurred</b>	<b>Description of Violation</b>	<b>Serious Violation Defined by CWC 13385(h)</b>	<b>Amount Assessed Dollars (\$)</b>
893170	12/31/2010	Exceeded Monthly Average for Enterococci. Limitation = 33 MPN/100 mL; Reported value = 78 MPN/100 mL	No	3,000
891966	1/24/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 500 MPN/100 mL	No	3,000
891967	1/31/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 130 MPN/100 mL	No	3,000
891968	1/31/2011	Exceeded Monthly Average for Enterococci. Limitation = 33 MPN/100 mL; Reported value = 69 MPN/100 mL	No	3,000

**Accrued Mandatory Minimum Penalty: \$45,000**

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<sup>1</sup> California Integrated Water Quality System (CIWQS)

73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260  
(760) 346-7491

Public Notice No. 7-11-20  
NPDES Permit No. CA0104523  
April 12, 2011

NOTICE OF PUBLIC HEARING AND HEARING PROCEDURE  
FOR  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R7-2011-0013  
ISSUED TO CITY OF BRAWLEY, OWNER/OPERATOR,  
MUNICIPAL WASTEWATER TREATMENT PLANT  
Brawley – Imperial County

**NOTICE IS HEREBY GIVEN THAT A HEARING WILL BE HELD  
BEFORE THE REGIONAL BOARD ON JUNE 23, 2011**

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

**Background**

The Assistant Executive Officer of the Colorado River Basin Regional Water Quality Control Board (Regional Water Board) has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (CWC) Section 13323 to the City of Brawley, Owner/Operator of the Brawley Wastewater Treatment Plant (WWTP) (hereinafter Discharger) alleging that they have violated Waste Discharge Requirements (WDRs) Order No. R7-2010-0022 (NPDES Permit No. CA0104400). The Complaint proposes that administrative civil liability in the amount of \$45,000 be imposed as authorized by CWC Section 13385, subdivisions (c) and (h), and all applicable law. A hearing is currently scheduled to be held before the Regional Board during its June 23, 2011 meeting.

Unless the Discharger waives the right to a hearing and pay the proposed liability, the hearing will be held before the Regional Water Board during its meeting of June 23, 2011. The deadline of April 25, 2011 for waiving the hearing and all other procedural deadlines are listed in the Table of Important Deadlines (Table) at the end of this Notice. Also, please note that all requests, objections, and any other material submissions for which a deadline has been specified **must be received no later than 5:00 p.m. on the date specified. Unless the recipient(s) indicate otherwise, all written requests and submissions may be provided electronically.**

**Purpose of Hearing**

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the Regional Board will consider whether to adopt the proposed assessment, modify it, or reject it. If it adopts the proposed assessment, the Regional Board will issue an Administrative Civil Liability Order. The

public hearing on June 23, 2011, will commence at 10:00 a.m. or as soon thereafter as practical, or as announced in our Board meeting agenda. The meeting will be held in La Quinta, California at the City Hall Council Chambers located at 78-495 Calle Tampico. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the Regional Board's web page at <http://www.waterboards.ca.gov/coloradoriver>. The agenda will include the final hearing date and location, and estimated start time for the hearing.

### **Hearing Procedures**

The hearing will be conducted in accordance with this hearing procedure. This hearing procedure has been pre-approved by the Regional Board's Advisory Staff in model format, but the Advisory Staff may modify the procedure on its own or at the request of any designated party. A copy of the procedures governing an adjudicatory hearing before the Regional Board may be found at Title 23 of the California Code of Regulations (CCRs), Section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this hearing procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedure Act (commencing with Section 11500 of the Government Code) does not apply to this hearing.

THE PROCEDURE AND DEADLINES DESCRIBED IN THIS NOTICE MAY BE AMENDED BY THE ADVISORY STAFF AS NECESSARY. **ANY OBJECTIONS TO THIS HEARING PROCEDURE MUST BE RECEIVED BY THE REGIONAL BOARD'S ADVISORY STAFF BY 5:00 P.M. ON APRIL 18, 2011, OR THEY WILL BE WAIVED.** FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

### **Hearing Participation**

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Board, staff, or others at the discretion of the Regional Board.

The following participants are hereby designated as parties in this proceeding:

- (1) Regional Board Prosecution Staff
- (2) City of Brawley, Owner/Operator of Brawley WWTP

## **Requesting Designated Party Status**

Persons who wish to participate in the hearing as a designated party shall request party status by submitting a request in writing to Advisory Team counsel, Tom Vandenberg, with copies to the designated parties, **no later than 5 p.m. on April 18, 2011**. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Water Board could affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be submitted to Mr. Vandenberg **no later than 5:00 p.m. on April 25, 2011**. The parties will be notified in writing by Mr. Vandenberg by **5:00 p.m. on May 2, 2011** whether the request has been granted or denied.

## **Contacts**

### **Advisory Staff:**

Robert Perdue, Executive Officer  
Colorado River Basin Regional Water Quality Control Board  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260  
[rperdue@waterboards.ca.gov](mailto:rperdue@waterboards.ca.gov)

Tom Vandenberg, Staff Counsel  
State Water Resources Control Board  
Office of Chief Counsel  
1001 I Street, 22<sup>nd</sup> Floor  
Sacramento, CA 95814  
[tvandenberg@waterboards.ca.gov](mailto:tvandenberg@waterboards.ca.gov)

Jon Rokke, Water Resource Control Engineer  
Colorado River Basin Regional Water Quality Control Board  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260  
[jrokke@waterboards.ca.gov](mailto:jrokke@waterboards.ca.gov)

### **Prosecution Staff:**

Jose Angel, Assistant Executive Officer  
Colorado River Basin Regional Water Quality Control Board  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260  
[jangel@waterboards.ca.gov](mailto:jangel@waterboards.ca.gov)

Ellen Howard, Staff Counsel  
State Water Resources Control Board  
Office of Enforcement  
1001 I Street, 16<sup>th</sup> Floor  
Sacramento, CA 95816  
[acarroll@waterboards.ca.gov](mailto:acarroll@waterboards.ca.gov)

Doug Wylie, Senior Water Resource Control Engineer  
Colorado River Basin Regional Water Quality Control Board  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260  
[dwyllie@waterboards.ca.gov](mailto:dwyllie@waterboards.ca.gov)

**Discharger:**

Ruben Mireles, Superintendent  
Brawley Wastewater Treatment Plant  
383 Main Street  
Brawley, CA 92227

**Preliminary Witness List**

The Prosecution Team's preliminary witness list of those witnesses expecting to testify at the public hearing includes Mr. Jose Angel, Assistant Executive Officer, and Mr. Doug Wylie, Senior Water Resource Control Engineer. The Prosecution Team will update the preliminary witness list, if necessary, by **5:00 p.m. on May 2, 2011.**

**Separation of Functions**

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Water Board (Prosecution Team) have been separated from those who will provide advice to the Regional Board (Advisory Team). Members of the Advisory Team are: Robert Perdue, Executive Officer; Tom Vandenberg, Staff Counsel; and Jon Rokke, Water Resource Control Engineer. Members of the Prosecution Staff are: Jose Angel, Assistant Executive Officer; Ellen Howard, Staff Counsel; and Doug Wylie, Senior Water Resource Control Engineer. Although members of the Prosecution Team may have acted as advisors to the Regional Water Board in other, unrelated matters, they are not advising the Regional Water Board in this proceeding. Accordingly, the members of the Prosecution Team have not engaged in any *ex parte* communications, as defined below, with members of the Regional Water Board or the Advisory Team.

## **Ex Parte Communications**

The designated parties and interested persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Advisory Staff or members of the Regional Board. An *ex parte* contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested party on the one hand, and a Regional Board member or an Advisory Staff member on the other hand, unless the communication is copied to all other designated and interested parties (if written) or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted. Communications among the designated and interested parties themselves are not *ex parte* contacts.

## **Hearing Time Limits**

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have 30 minutes to testify, present evidence, and cross-examine witnesses, and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Additional time may be provided at the discretion of the Advisory Staff (prior to the hearing) or the Regional Board Chair (at the hearing) upon a showing that additional time is necessary.

## **Submission of Evidence and Policy Statements**

The following information must be submitted in advance of the hearing:

Prosecution Team: Send to Tom Vandenberg, the Discharger, and any other designated parties by 5:00 p.m. **on the date specified in the Table.**

Discharger: Send to Tom Vandenberg, the Prosecution Team, and any other designated parties by **5:00 p.m. on the date specified in the Table.**

1. All evidence, testimony (except rebuttal testimony) and exhibits proposed to be offered at the hearing. Evidence and exhibits already in the public files of the Regional Water Board may be submitted by reference so long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

In lieu of electronically transmitting copies of the above information, the Prosecution Team may create an “ftp” website or similar electronic data website containing this information so long as it is accessible to the Advisory Team, the Discharger, and any other designated party. If such a website is used, the Prosecution Team shall confirm as soon as possible with the Advisory Team, the Discharger, and any other designated party that the website is accessible. If the website is not accessible to any party, the Prosecution Team shall provide the information contained on the website to that party in electronic form, unless otherwise directed by that party.

Any designated party, who would like to submit information that rebuts the information previously submitted by other designated parties, may provide that rebuttal information to Tom Vandenberg, the Discharger, and all other designated parties **no later than 5:00 p.m. on May 20, 2011** in electronic form, unless otherwise directed by the recipient(s). Rebuttal information shall be limited to the scope of the information previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

Interested persons may submit one (1) copy of non-evidentiary policy statements by the close of the hearing.

In accordance with Title 23, CCR, Section 684.4, the Regional Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the Regional Board and will not be included in the administrative record for this proceeding. Accordingly, oral testimony offered at the hearing that is beyond the scope of the previously submitted written testimony may be excluded. Power Point and other computer assisted visual presentations must be submitted to the Advisory Team by **5:00 p.m. on June 9, 2011**. Electronic submissions are acceptable, unless otherwise directed by any intended recipient(s). . Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

### **Request for Pre-hearing Conference**

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code Section 13228.15. A pre-hearing conference may address any of the matters described in Government Code Section 11511.5(b), including, but not limited to, the following matters:

- (1) Exploration of settlement possibilities;
- (2) Preparation of stipulations;
- (3) Clarification of issues;
- (4) Rulings on identity and limitation of the number of witnesses;
- (5) Objections to proffers of evidence;

- (6) Order of presentation of evidence and cross-examination;
- (7) Rulings regarding issuance of subpoenas and protective orders;
- (8) Schedules for the submission of written briefs and schedules for the commencement and conduct of the hearing; and,
- (9) Exchange of witness lists and of exhibits or documents to be offered in evidence at the hearing.

Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted as early as practicable to the Advisory Team with a copy to all other designated parties. The requests may be electronically submitted, unless otherwise directed by any recipient(s). No party who participates in a pre-hearing conference is precluded from appearing before the Regional Water Board at any subsequent hearing relating to the matter.

### **Evidentiary Objections**

Any designated party objecting to evidence, testimony, or exhibits submitted by another designated party must submit a written objection (electronic submission is acceptable, unless otherwise directed by any recipient) to the Advisory Team with a copy to all other designated parties by **5:00 p.m. on June 2, 2011**. The Advisory Team will notify the parties in writing as soon as possible about further action to be taken on such objections and when that action will be taken. At the discretion of the Advisory Team, a pre-hearing telephonic conference may be scheduled to discuss any further actions to be taken on the objections.

### **Evidentiary Documents and File**

The ACL Complaint, related evidentiary documents, and comments received are on file and may be inspected or copied at the office of the Colorado River Basin Regional Water Quality Control Board, 73-720 Fred Waring Drive, Suite 100, Palm Desert, CA. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record, absent a contrary ruling by the Regional Water Board Chair. In addition, many of these documents may also be posted on-line at <[www.waterboards.ca.gov/coloradoriver](http://www.waterboards.ca.gov/coloradoriver)>. Although the web page is updated regularly, please contact Doug Wylie at [dwyllie@waterboards.ca.gov](mailto:dwyllie@waterboards.ca.gov) or (760) 346-6585 to assure access to the latest information.

### **Questions**

Questions concerning this proceeding may be addressed to Tom Vandenberg by e-mail at [tvandenberg@waterboards.ca.gov](mailto:tvandenberg@waterboards.ca.gov) or by phone at (916) 341-5195.

## **TABLE OF IMPORTANT DEADLINES**

April 12, 2011	Prosecution Team issues ACL Complaint to Discharger and Advisory Team, electronically posts the Notice of Public Hearing and Hearing Procedure, and sends the Discharger a copy of the Notice.
April 18, 2011	Deadline for objections, if any, to proposed hearing procedure.
April 18, 2011	Deadline for requests for designated party status.
April 25, 2011	Deadline for oppositions to requests for designated party status.
April 25, 2011	Discharger's deadline for waiving right to hearing.
May 2, 2011	Prosecution Team's deadline for submitting all information required under "Written Evidence, Testimony, Exhibits, and Policy Statements" and Preliminary Witness List.
May 2, 2011	Advisory Team issues decision on any requests for designated party status.
May 20, 2011	Remaining Designated Parties' deadline for submitting all information required under "Written Evidence, Testimony, Exhibits, and Policy Statements."
June 2, 2011	Designated Parties' deadline for submitting any evidentiary objections.
June 9, 2011	Designated Parties' deadline for submitting any rebuttal information, Power Point, and other computer assisted visual presentations for use at the hearing.
June 23, 2011	Hearing Date.

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R7-2013-0028  
ISSUED TO  
CITY OF BRAWLEY, OWNER/OPERATOR  
MUNICIPAL WASTEWATER TREATMENT PLANT  
City of Brawley — Imperial County

**THE CITY OF BRAWLEY IS HEREBY GIVEN NOTICE THAT:**

1. The City of Brawley, California (hereinafter Discharger), is alleged to have violated effluent limitations of Waste Discharge Requirements (WDRs) Orders R7-2005-0021 and R7-2010-0022 (NPDES Permit CA7000009) and Cease and Desist Order R7-2008-0008 for which the Regional Water Quality Control Board, Colorado River Basin (Regional Board) may impose civil liability pursuant to California Water Code (CWC) sections 13350 and 13385.
2. CWC section 13323 authorizes the Executive Officer of the Regional Board to issue this Administrative Civil Liability Complaint (Complaint), and CWC section 7 authorizes the Executive Officer to delegate these powers and duties to the Assistant Executive Officer.
3. The Discharger owns and operates a Wastewater Treatment Plant (WWTP) located at 1550 Best Road, Brawley, California 92227. The WWTP services the City of Brawley. According to a Report of Waste Discharge submitted by the Discharger, dated December 28, 2009, the WWTP has a design capacity of 5.9 million gallons per day (mgd). The Discharger's WWTP is a publicly owned treatment works (POTW), as defined in Title 40 of the Code of Federal Regulations (40 CFR) section 403.3, and discharges its effluent into the New River via Discharge Point 001, which is tributary to the Salton Sea. The New River and the Salton Sea are waters of the United States.
4. Section 303(d) of the federal Clean Water Act (CWA) (33 U.S.C. section 1251 et seq.) requires states to identify those surface waters for which effluent limitations required by the CWA are not stringent enough to implement any applicable water quality standard and to develop Total Maximum Daily Loads (TMDLs) for those pollutants causing the impairment. (33 U.S.C. section 1313(d).) The list of impaired waters, referred to as the Section 303(d) List, is then required to be submitted to the United States Environmental Protection Agency (USEPA) for its review and approval. The Section 303(d) List is combined with other surface water quality information required to be reported biennially to USEPA pursuant to CWA section 305(b). Because USEPA guidance requires the two reports to be integrated, the combined report is called the California 303(d)/305(b) Integrated Report. On October 11, 2011, the USEPA approved the 2010 Integrated Report, the most current report, and its 2010 Section 303(d) List, which replaces the 2006 Section 303(d) List.
5. For the New River, the Section 303(d) List identifies the following pollutants: various pesticides, various metals, nutrients, organic enrichment (low dissolved oxygen), PCBs, pathogens, sediment, toxaphene, toxicity, and trash. Given the number and severity of pollutants impairing the New River, the Regional Board has made the development of

TMDLs for the New River a priority. In addition, cleanup of the New River is also a priority for Cal/EPA under the New River Improvement Project Strategic Plan.

- For the Salton Sea, the Section 303(d) List identifies the following pollutants: arsenic, chlorpyrifos, DDT, enterococcus, nutrients, and salinity. As with the New River, cleanup of the Salton Sea is a Regional Board priority.

**City of Brawley Wastewater Treatment Facilities and their Governing Discharge Permits**

- From 1999 to approximately February 2012, the Discharger owned and operated various configurations of a WWTP whose main treatment system has been wastewater treatment ponds. During this time period, the Regional Board adopted four different waste discharge requirements (WDRs) for the WWTP. Table 1, below, identifies the Regional Board WDRs and describes the WWTP processes governed by the WDRs during this period:

WDRs Order (NPDES Permit CA7000009)	Effective Date	Description of WWTP	WWTP Design Capacity (mgd)
95-014	3/29/1995 to 6/27/2000	Two bar screens, an aerated grit chamber, two primary clarifiers, two aeration ponds with floating aerators, three stabilization ponds, two anaerobic digesters, and sludge drying beds	3.9
00-087	6/28/2000 to 6/28/2005	Two bar screens, an aerated grit chamber, two primary clarifiers <sup>1</sup> , two aeration ponds with floating aerators, three stabilization ponds, two anaerobic digesters, and sludge drying bed.	3.9 (until expansion completed)  5.9 (after expansion completed)
R7-2005-0021	6/29/2005 to 5/19/2010	Two bar screens, an aerated grit chamber, five treatment lagoons, and Ultraviolet light disinfection system, sludge drying beds.	5.9
R7-2010-0022	5/20/2010 to present	Headworks, five treatment lagoons, and Ultraviolet light disinfection system, sludge drying beds (5/20/2010 to 2/2012).	5.9

1. According to Regional Board records, the Discharger stopped using the clarifiers in 2002.

**Regulatory Overview (1999-2008)**

- Table 2, below, summarizes the Regional Board enforcement Orders issued against the Discharger from 1999 to 2010. Attachment “A,” hereto made a part of this Complaint by reference, summarizes the Discharger noncompliance record with Regional Board WDRs

and enforcement orders. As shown in Table 2, below, and Attachment “A,” the Discharger has had chronic noncompliance problems with every set of WDRs the Regional Board has adopted since 1999 and has also violated Regional Board enforcement orders. The specific violations and other relevant factors leading to the enforcement orders are described below.

Year	Enforcement Order
1999	Time Schedule Order 99-054
2004	Cleanup and Abatement Order 2004-0079
2008	Cease and Desist Order R7-2008-0008 Special Order R7-2008-0069 amending CDO
2009	Time Schedule Order R7-2009-0035
2010	Special Order R7-2010-0003 amending CDO

\* Table does not include the eight Regional Board Administrative Civil Liability Orders issued in this time period.

9. In April 1999, the Regional Board issued Time Schedule Order (TSO) 99-054, pursuant to CWC section 13300, because flow data reported by the Discharger showed that the WWTP was running at 80% of its design capacity and because average daily flows into the WWTP violated and threatened to violate the 3.9 mgd flow limit established by WDRs Order 95-014. TSO 99-054 required the Discharger to complete expansion of the treatment capacity of the WWTP from 3.9 to 5.9 mgd by March 1, 2002. In response to the TSO, the Discharger removed accumulated sludge from one of its ponds and from its anaerobic digesters, added to the WWTP an ultraviolet (UV) disinfection system, and added aeration to one of its ponds. However, the Discharger did not complete the WWTP expansion until June 2002 due to delays during construction of the upgrades. As a result, the Discharger violated the March 1, 2002 plant expansion deadline requirement in TSO 99-054, but no enforcement action was taken by the Regional Board for the violation of the TSO.
  
10. In spite of the increase in treatment capacity to 5.9 mgd achieved in June 2002, the Discharger continued to be in chronic noncompliance with the toxicity limitations contained in Effluent Limitation A.6 of WDRs Order 00-087 because: (a) its treatment ponds were inherently inadequate because those types of ponds were not designed to effectively deal with the ammonia load into the WWTP and (b) the Discharger failed to establish and implement adequate institutional controls to ensure proper management of industrial discharges into its WWTP.
  
11. Brawley Beef Company, a slaughterhouse that began discharging its wastewater into the City’s sewage collection system in 2001 and that was later sold to National Beef Company, has been a main source of the ammonia and other compliance problems at the WWTP. Regional Board records of communications between Regional Board staff and the Discharger indicate that the Discharger has also been aware that institutional controls (i.e., a pretreatment program) were required to properly handle the wastes from this industrial discharger since on or about late 2001/early 2002. Moreover, WDRs Order 00-087, section F., “Pretreatment”, required the Discharger to comply with all federal pretreatment requirements specified in 40 CFR Part 403 “[i]n the event that significant industrial wastewater is being discharged to the wastewater treatment facility.” In the event a pretreatment program was required, Pretreatment F.1.b. required the Discharger to seek and obtain formal approval of its Pretreatment Plan from the Regional Board’s Executive

Officer. In addition, Pretreatment F.2 required the Discharger to submit annual reports to USEPA, the State Water Board and the Regional Board describing the Discharger's pretreatment activities over the previous 12 months, including a summary of analytical results of pollutants USEPA has identified are known or suspected to be discharged by industrial users; a discussion of upset, interference, or pass through incidents which the Discharger knows, or suspects, were caused by industrial users; a summary of inspection and sampling activities conducted by the Discharger together with information and data regarding industrial users; and a summary of the compliance and enforcement activities taken against industrial users. Because of the Discharger's chronic noncompliance with the toxicity limitations contained in WDRs Order 00-087, the Discharger was required to comply with all of the Pretreatment provisions of Section F. of WDRs Order 00-087, including preparation and submittal of a Pretreatment Plan to the Regional Board's Executive Officer for approval. The Discharger's failure to timely comply with these Pretreatment requirements led the Regional Board's Executive Officer to take enforcement action by issuing Cleanup and Abatement Order (CAO) R7-2004-0079, which is described in more detail below.

12. From 2000 to 2004, the Regional Board assessed \$75,000 in mandatory minimum penalties (MMPs) for the Discharger's violations of WDRs Order Nos. 95-014 and 00-087, with 17 of the 25 violations being toxicity violations (\$51,000 of the \$75,000 total MMPs assessed). Further, in an effort to bring the Discharger into compliance with its NPDES permit, and following issuance of ten (10) Notices of Noncompliance that failed to bring the Discharger into compliance, in June 2004 the Regional Board Executive Officer issued CAO R7-2004-0079. The CAO required the Discharger to address the cause of toxicity and complete WWTP upgrades by January 31, 2006, to bring the discharge from the WWTP into compliance with the NPDES permit.
13. In response to CAO R7-2004-0079, the Discharger hired a consultant, Nolte Associates, Inc. (Nolte), for the research, design, and construction of improvements to the existing WWTP. These improvements included the reconfiguration of the existing treatment facility's flow distribution system and the installation of flow return pumps. The new pumping and piping system was to be configured to optimize nitrification and denitrification of the wastewater flowing through the treatment system. The Discharger also contracted with the Citizens Congressional Task Force for the New River and Nolte to build a "Free Water Surface" constructed wetland in an attempt to address the continuing toxicity issue and enhance the quality of the Discharger's undisinfected WWTP effluent. The Free Water Surface constructed wetland would provide physical, chemical, and biological treatment that would polish the effluent to further decrease the biochemical oxygen demand (BOD), total suspended solids (TSS), and ammonia levels in the treatment wastewater. Effluent from the wetland would then be redirected to the existing WWTP's UV disinfection system prior to the discharge to the New River.
14. WDRs Order R7-2005-0021, page 10, Effluent Limitations IV.A.1.b, contains the following final effluent limitations with which the Discharger is required to maintain compliance:  
  
"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 [sic], 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 <sup>1</sup>	54	590

15. The Discharger did not complete the WWTP improvements described in Finding 13, above, until July 7, 2006. Moreover, the improvements failed to achieve their intended objectives. Subsequently, because of this failure and the lack of an approved pretreatment program, the Discharger found itself in chronic violation of Effluent Limitations IV.A.1.b of WDRs Order R7-2005-0021 cited in Finding 14, above, which required the Regional Board in 2008 to assess the Discharger \$369,000 in mandatory minimum penalties just for the ammonia violations. (See Administrative Civil Liability (ACL) Orders R7-2008-0043 (80 ammonia violations = \$240,000 in MMPs) and R7-2008-0064 (43 ammonia violations = \$129,000 in MMPs).) The Regional Board also assessed a \$45,000 penalty in discretionary administrative civil liability against the Discharger in ACL Order R7-2008-0043 because the Discharger was 157 days late in complying with the deadline specified in the CAO.

**Pretreatment Program, CDO R7-2008-0008, and Current NPDES Permit**

16. Under Federal Regulations, certain Publicly Owned Treatment Works (POTWs) are required to establish formal pretreatment programs approved by the agency overseeing pretreatment implementation, the “Approval Authority”. [40 CFR 403.8.] Any POTW with a total design flow greater than 5 million gallons per day (mgd) receiving pollutants from Industrial Users which Pass Through or Interfere with the operation of the POTW are required to establish a Pretreatment Program [40 CFR 403.8(a).] These programs must be approved by the appropriate Approval Authority. [40 CFR 403.11.] Under the NPDES Memorandum of Agreement between the USEPA and the California State Water Resources Control Board, the Regional Water Boards are the Approval Authority for purposes of implementation of a Pretreatment Program. The Pretreatment Program is also needed to protect the integrity of the POTW and safety of POTW personnel and other personnel who work on the sewage collection system [40 CFR 403.5, *Prohibited discharges, et seq.*].

17. Consistent with WDRs Order 00-87, Pretreatment Section F; Provisions VI.C.6.b of WDRs Order R7-2005-0021; Section 2233, Title 23, California Code of Regulations; 40 CFR parts 35 and 403 pretreatment requirements; and pretreatment standards under Section 307 of the Clean Water Act; the Discharger was required to submit a Pretreatment Program for approval. The Pretreatment Program was to address compliance with all prescriptive requirements under 40 CFR.

18. As shown in Finding Nos. 8 through 15, cited above, since 1999 the Discharger has struggled to comply with its previous NPDES permit limits for chronic and acute toxicity, Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS), and bacteria limits, and particularly with its current NPDES permit limits for ammonia. Based on the

<sup>1</sup> Based on a flow of 5.9 mgd.

Discharger's history of non-compliance with effluent limitations and actual and potential harm to water quality, Regional Board staff reasonably concluded that the Discharger's WWTPs did not have the necessary capacity to properly treat existing ammonia loads from domestic sewer users, let alone increased ammonia loads from new industrial users, including National Beef Company, even with the upgrades to flow and treatment capacity the Discharger completed in response to TSO 99-054 and CAO R7-2004-0079.

19. On November 20, 2001, the Discharger adopted Wastewater Pretreatment Ordinance 2001-08 to prevent the introduction of pollutants that will either pass through or interfere with the City of Brawley's treatment facilities and to enable the City of Brawley to comply with its NPDES permit, WDRs Order 00-087. The pretreatment ordinance contained limitations for concentrations of ammonia in pretreated wastewater. However, this ordinance has never been approved by the Regional Board, and the Ordinance's limits were not based on local limits that are required to be established in accordance with Federal Regulations. Further, the Discharger had the power to impose fines up to \$5,000 per violation per day against the National Beef Company for violation of its Ordinance, but it failed to do so before 2008.
20. On March 19, 2008, and based on the foregoing, the Regional Board adopted Cease and Desist Order (CDO) R7-2008-0008 to require the Discharger to cease and desist from discharging wastes in violation of WDRs Order R7-2005-0021 and to implement corrective actions in accordance with specified tasks and time schedules.
21. In pertinent part, these tasks required the Discharger to complete its additional proposed POTW upgrades, to achieve full compliance with WDRs Order R7-2005-0021 by December 31, 2010, to submit required design plans and specifications and long-term revenue plan for operation and maintenance of proposed upgrades, and to prepare and submit a Pretreatment Program for Regional Board approval and implementation in accordance with the following tasks, milestones, and deadlines:

Task	Milestone Description	Milestone Submittal	Completion date
2.A	Develop proposed Pretreatment Program	Submit proposed Pretreatment Program	December 15, 2008
2.B	Complete Long-term revenue plan	Submit copy of revenue plan	December 15, 2008
2.C	Develop and adopt local limits and revised Pretreatment Ordinance	Submit written certification that it has begun implementing Pretreatment Program	February 15, 2009
2.D	Issue all pending CIU permits	Submit written certification of issuance of CIU permits	May 15, 2009
2.E	Achieve Full Compliance with approved Pretreatment Program	Submit written certification of issuance of CIU permits for full compliance	June 15, 2009

22. The above-referenced Pretreatment Program requirements were in part designed to improve water quality by decreasing total ammonia from the Discharger's industrial users, specifically National Beef. To that end, the Regional Board provided the Discharger with higher interim effluent limits pursuant to Special Board Order R7-2008-0069 adopted by

the Regional Board on November 19, 2008, with the expectation that compliance with the Pretreatment Program Requirements would ultimately improve water quality and facilitate the WWTP upgrades project's compliance with WDRs Order R7-2005-0021.

23. As noted in the finding above, the Regional Board adopted Special Board Order R7-2008-0069, which amended CDO R7-2008-0008 by establishing interim limits for ammonia, pursuant to CWC section 13385(j)(3)(C), to provide the Discharger an exemption from being assessed additional MMPs for violation of its ammonia NPDES Permit limits while it completed its new WWTP. Among other requirements, this statutory provision requires for any time schedule that exceeds one year from the effective date of the enforcement order that the time schedule include interim requirements and the dates for their achievement. (CWC section 13385(j)(3)(C)(iii).) In addition, CWC section 13385(j)(3) provides in relevant part that the MMP provisions of CWC section 13385, subdivisions (h) and (i), do not apply to any violation of an effluent limitation where the waste discharge is in compliance with a CDO issued pursuant to CWC section 13301. Thus, exemption from the MMPs is contingent on the Discharger complying with the CDO. The interim effluent limits for Total Ammonia as Nitrogen added by Special Board Order R7-2008-0069 are shown below:

Constituents	Units	Interim Effluent Limitations	
		Average Monthly	Maximum Daily
Total Ammonia as Nitrogen	mg/L	120	120
	lbs/day <sup>1</sup>	5,900	5,900

24. On January 21, 2010, and at the request of the Discharger, the Regional Board also adopted Special Board Order R7-2010-0003. This Special Board Order amended CDO R7-2008-0008 by extending the deadline to complete the new WWTP and to bring the discharge into compliance with Regional Board requirements from December 31, 2010, to June 30, 2012.
25. On May 20, 2010, the Regional Board adopted WDRs Order R7-2010-0022. WDRs Order R7-2010-0022 rescinded WDRs Order R7-2005-0021 (as amended by Order R7-2008-0027) except for enforcement purposes, for specific effluent limitations, prohibitions, specifications, and provisions necessary to protect the beneficial uses of the surface and ground waters within the Colorado River Basin Region. WDRs Order R7-2010-0022, pages 12-14, Effluent Limitations Nos. A.1.a and A.1.d, contains the following effluent discharge limitations:

“The Discharger shall maintain compliance with the following effluent limitations at Discharge Point 001, with compliance measured at Monitoring Location EFF-001 as described in the attached MRP (Attachment E) except as modified by any applicable interim Effluent Limitations specified in Section IV.A.2 and Table 8, below:

[Table 6. Summary of Final Effluent Limitations (Existing Facility)]

Parameter	Units	Effluent Limitations		
		Average Monthly	Maximum Weekly	Maximum Daily

Biochemical Oxygen Demand (BOD)	mg/L	45	65	---
	lbs/day <sup>1</sup>	2,214	3,198	---
Cyanide <sup>2</sup>	µg/L	3.0	---	9.2
	lbs/day <sup>1</sup>	0.15	---	0.45

<sup>1</sup> The mass-based effluent limitations are based on a design capacity of 5.9 MGD

<sup>2</sup> Expressed as free cyanide. Non-distillation analysis methods for available cyanide, such as UEPA OIA-1677 or ASTM D6888-04, shall be used to measure compliance with the free cyanide effluent limitation.

**“Bacteria:** The bacterial density in the wastewater effluent discharged to the New River shall not exceed the following values, as measured by the following bacterial indicators:

- i. ***E. Coli.*** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a Most Probable Number (MPN) of 126 per 100 milliliters, nor shall any sample exceed the maximum allowable bacterial density of a MPN of 400 per 100 milliliters.
- ii. **Fecal Coliform.** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a MPN of 200 per 100 milliliters, nor shall more than ten percent of the total samples during any 30-day period exceed a MPN of 400 per 100 milliliters.
- iii. **Enterococci.** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a MPN of 33 MPN per 100 milliliters, nor shall any sample exceed the maximum allowable bacterial density of a MPN of 100 per 100 milliliters.”

### **Alleged New Violations of NPDES Permit Limits**

26. Because CDO R7-2008-0008 did not include interim limits for ammonia from the date it was adopted on March 19, 2008, until November 17, 2008, when Special Board Order R7-2008-0069 was adopted to add interim limits for ammonia, CDO R7-2008-0008 did not satisfy CWC section 13385(j)(3)(C)’s requirement that a time schedule exceeding one year in length include interim requirements. As a result, all of the requirements specified in CWC section 13385(j)(3) to qualify for exemption from MMPs were not satisfied. Therefore, the Discharger was not exempt from MMPs if it violated the NPDES permit limits for ammonia during this time period (3/19/2008 – 11/17/2008). Self-monitoring reports submitted by the Discharger show that the wastewater discharged from the WWTP exceeded the effluent limitations for ammonia as nitrogen set forth in WDRs Order R7-2005-0021 on sixty-seven (67) occasions during this time period. Attachment “B,” attached hereto and incorporated herein by this reference, identifies the violations. The total amount of the MMPs for the violations cited in Attachment “B” is \$216,000.
27. The self-monitoring reports submitted by the Discharger from May 10, 2010, to July 31, 2011, showed that the Discharger also violated the effluent limitations for cyanide, BOD, and bacteria referenced in Finding 25, above. A summary of each violation of WDRs

Order R7-2010-0022 is contained in Attachment "C," which is incorporated in and made a part of this ACL Complaint by reference. The total amount of the MMP for the violations cited in Attachment "C" is \$162,000.

**Alleged Violations of Pretreatment Requirements of CDO R7-2008-0008**

28. The Discharger violated Cease and Desist Order R7-2008-0008, as amended by Special Board Orders R7-2008-0069 and R7-2010-0003.
29. Consistent with WDRs Order 00-0887, Pretreatment Section F; Provision VI.C.6.b. of WDRs Order R7-2005-0021; Section 2233, Title 23, California Code of Regulations; 40 CFR Parts 35 and 403 pretreatment requirements; and pretreatment standards under Section 307 of the Clean Water Act; the Discharger was required by CDO R7-2008-0008 to prepare, submit for approval, and implement a Regional Board approved Pretreatment Program as follows:

Task	Milestone Description	Milestone Submittal	Completion date
2.A	Develop proposed Pretreatment Program	Submit proposed Pretreatment Program	December 15, 2008
2.B	Complete Long-term revenue plan	Submit copy of revenue plan	December 15, 2008
2.C	Develop and adopt local limits and revised Pretreatment Ordinance	Submit written certification that it has begun implementing Pretreatment Program	February 15, 2009
2.D	Issue all pending CIU permits	Submit written certification of issuance of CIU permits	May 15, 2009
2.E	Achieve Full Compliance with approved Pretreatment Program	Submit written certification of issuance of CIU permits for full compliance	June 15, 2009

30. The Discharger has violated all of the tasks specified above. However, the Discharger did submit a proposed Pretreatment Program to the Regional Board staff in January 2013, over four (4) years after it was due.
31. Specifically, the Discharger violated Task 2.C of Ordered Paragraph 3 in CDO R7-2008-0008 by failing to develop and adopt local limits by February 15, 2009. At this time, because the other tasks outlined above are related to the completion of Task 2.C., Regional Board staff is only seeking penalties for violation of Task 2.C. There are 1474 days of violation for the period beginning February 15, 2009 and ending the date the complaint was issued, February 28, 2013. These 1474 days of violation are subject to administrative civil liability pursuant to CWC section 13350, subdivision (a)(1). Although the Discharger
32. In the alternative, Regional Board staff believes the Discharger's failure to comply with key requirements of CDO R7-2008-0008 could result in mandatory minimum penalties totaling \$504,000. These penalties are based on violation of the effluent limitations for

ammonia as set forth in the permit. Essentially, because the Discharger violated the CDO, it should not be afforded the exemption it was ostensibly granted in the CDO. Without the exemption, the Discharger would have incurred the mandatory minimum penalties set forth in Attachment "D," which is incorporated in and made a part of this ACL Complaint by reference.

33. As stated above, violation of CDO R7-2008-0008 with respect to implementation of the Pretreatment Program by the Discharger has significant impacts on water quality. The effluent from the WWTP causes toxicity. The Discharger was allowed interim effluent limitations based in part on its commitment to comply with the Pretreatment Program requirements as set forth in the CDO. Had Regional Board staff known that such requirements would not be met, staff would never have allowed or agreed to Regional Board approval of interim effluent limits or exemption from MMPs for ammonia violations in the CDO. Because the Discharger has not implemented its Pretreatment Program, however, the threat and actual impact to water quality continues.
34. In addition, because the Discharger has not implemented its Pretreatment Program, National Beef Company is currently using all of the Discharger's new WWTP treatment capacity (see also Finding 46, below).
35. Based on the Discharger's extensive history of violations, impact to water quality, and other punitive factors, Regional Board staff is asking the Regional Board to impose discretionary penalties related to violation of Task 2.C of Ordered Paragraph 3 in CDO R8-2008-0008.

### **Water Code Sections which Provide for Assessment of Administrative Civil Liability**

36. 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.
37. 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."
38. CWC section 13385, subdivision (i)(1), also requires the Regional Board to assess an MMP 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 (hereafter "chronic violation"):
  - i. Violates a waste discharge requirement effluent limitation;
  - ii. Fails to file a report pursuant to Section 13260;
  - iii. Files an incomplete report pursuant to Section 13260; or

- iv. 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.

39. CWC section 13385 subdivision (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.”

40. CWC section 13350 subdivision (a) states:

“A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or a state board, .....shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

41. CWC section 13350 subdivision (e)(1) states:

“The civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs.

42. The violations of requirements Tasks 2.C-2.E of Ordered Paragraph 3 in CDO R7-2008-0008, as they relate to the pretreatment requirements, are subject to Water Code section 13350.

### **Factors Considered in Determining Administrative Civil Liability**

43. Pursuant to CWC section 13385, subdivision (e), and section 13327, in determining the amount of any civil liability, the Regional Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require. In addition, with respect to violations based on CWC section 13385, subdivision (e) of CWC section 13385 further requires that at a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

44. On November 17, 2009, the State Water Board adopted Resolution 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385, subdivision (e), and section 13327. The entire Enforcement Policy can be found at:

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf)

45. The Discharger has the worst record of compliance for POTWs in the Imperial Valley. This weighs heavily against the Discharger.
46. The Discharger has accepted wastewater from National Beef and its predecessors since 2001 under contracts instead of using a pretreatment permitting system as it would be required to do under an approved Pretreatment Program. The wastewater from a slaughterhouse plant, in spite of the slaughterhouse's attempt to pretreat it before discharging it into the Discharger's collection system, contains high concentrations of ammonia as nitrogen, which causes the WWTP effluent to be toxic. According to a wastewater rate study prepared by the Discharger in 2008, the average ammonia concentration discharged by National Beef to the Brawley WWTP was 53.9 mg/l, which is significantly higher than typical concentrations seen in domestic sewage (< 30 mg/L). National Beef Company has also discharged wastes into the Discharger's WWTP with unusually high concentrations of BOD and TSS (i.e., discharged slugs of inadequately pretreated wastewater), which also hinder the WWTP's ability to comply with WDR permit requirements. In short, the Discharger put itself in a predicament by having to accept the wastes from the slaughterhouse, essentially regardless of waste quality, so long as National Beef Company paid whatever surcharges were applicable under the terms of the contracts with the Discharger. Consequently, not only this has resulted in adverse water quality impacts, it has also threatened and continues to threaten the integrity of the WWTP, the sewage collection system, and the safety of WWTP and collection system personnel. This weighs heavily against the Discharger.
47. Between 2001 and February 2008, the Discharger violated its effluent limitation for ammonia no less than **eighty-four (84) times**. During this same time period, National Beef was discharging pretreated wastewater with high concentrations of ammonia to the WWTP, resulting in "Pass Through" of the wastewater treatment plant system as defined by federal regulations and in the Brawley Pretreatment Ordinance. In spite of the shortcomings of its Ordinance, the Discharger had the ability to impose fines of up to \$5,000 per violation per day against the National Beef Company for violation of the Ordinance to curb the extent of violations, but it failed to do so before 2008.
48. In 2008, the Discharger recognized that it was undercharging National Beef Company for the cost of accepting the slaughterhouse wastewater at its WWTP. The Discharger established a surcharge system to bill National Beef based on the concentrations of ammonia, BOD, TSS, and total flow of pretreated wastewater discharged to the WWTP. The Discharger also began issuing fines to National Beef Company for exceedances of pretreatment limits of the Ordinance in late 2008.
49. Water quality data collected by the Discharger and reported to the Regional Board pursuant to the Discharger's self-monitoring program permit requirements shows that National Beef has continuously discharged wastewater with high concentrations of ammonia to the WWTP. Prior to the completion of the new WWTP, these discharges were causing Pass Through of ammonia at the WWTP.

50. From November 19, 2008 through June 2012, the Discharger violated the effluent limits contained in its NPDES Permit limits for total ammonia as nitrogen at least two hundred forty-one (241) times. As stated in Finding 32, above, these violations may be subject to mandatory minimum penalties because the Discharger was not in full compliance with the CDO. The Discharger was only in compliance with the interim CDO ammonia limits. Essentially, because the Discharger violated the CDO, it should not be afforded the exemption it was granted in the CDO. The amount of MMPs for the 241 violations would be \$504,000, as shown in Attachment D. However, for the purposes of this Complaint, Regional Board staff is not electing to pursue that legal theory (that MMPs apply for noncompliance with the CDO), and instead Regional Board staff is pursuing penalties for the violations of the CDO Pretreatment Program provisions.
51. From November 2008 to the present time, the Discharger has sought penalties against National Beef Company of \$5,000/day for violations of its Pretreatment Ordinance. These penalties total \$678,000. The issuance of penalties has not resulted in any discernible improvements in the quality of pretreated wastewater being discharged by National Beef Company. The Discharger deposited the fines collected under the Pretreatment Ordinance into its General Fund towards projects not associated with the wastewater treatment plant.
52. Had Regional Board staff known that the Discharger would not comply with the Pretreatment Program requirements specified in CDO R7-2008-0008 and the apparent accounting scheme the Discharger followed to have the National Beef Company fines paid going into the City's General Fund for non-WWTP uses, Regional Board staff would never have presented to the Regional Board for consideration of adoption Special Board Order R7-2008-0069, which provided the Discharger with interim effluent limits for Total Ammonia as Nitrogen and thus, an exemption from MMPs for future violations of its ammonia permit limits. Instead, Regional Board staff would have recommended the Regional Board take additional enforcement action against the Discharger at that time, including referral to the Attorney General for injunctive relief, for its failure to take meaningful action toward developing an approved Pretreatment program to address instances of Pass Through resulting from discharges of pretreated wastewater from National Beef Company, and for investigation of its apparent accounting scheme.
53. On July 21, 2009, the City of Brawley received \$24,595,000 in financial assistance from the State Water Resources Control Board (State Board) Revolving Fund to build its new WWTP. Of this amount, \$10,000,000 is principal forgiveness (i.e., a grant) from the American Recovery and Reinvestment Act of 2009. The breakdown of the State Board financial package is as follows:

\$14,343,188 – Loan from repayment money
\$ 251,812 – Loan using Federal Cap Grant money
\$10,000,000 – Principal Forgiveness
<hr/>
\$24,595,000

In March 2012, the Discharger completed construction and put into operation its new WWTP. However, the discharge from the National Beef Company's slaughterhouse is currently using over 80% of the treatment capacity of the new WWTP, in part because the

Discharger has failed to develop and implement an approved Pretreatment Program, as required by federal regulations and Board orders. In essence, the Discharger is inappropriately using public funds to subsidize this industrial user. This is a matter that is beyond the scope of this Complaint, but may warrant further investigation.

54. Staff time to investigate this matter and prepare Administrative Civil Liability Complaint (ACLC) R7-2013-0028 and supporting information is estimated to be 420 Hours as of February 28, 2013. Based on an average cost to the State of \$150 per hour, the total cost is \$63,000.
55. It is important to note that the effluent discharged by the Discharger was toxic and that its discharge had a significant effect on the water quality of the New River, whose cleanup has been designated a priority by Cal/EPA and the Regional Board. This has been accounted for in the application of the discretionary penalty assessment methodology set forth in the Enforcement Policy.
56. The required factors, including Finding Nos. 43 through 55, above, have been considered for the violations alleged herein using the discretionary penalty assessment methodology in the Enforcement Policy, as explained in detail in Attachments "E" (Brawley WWTP ACLC Methodology) and "F" (Penalty Calculation), which are incorporated herein and made a part of this ACL Complaint by reference.

#### **Maximum Administrative Civil Liability Available to the Regional Board**

57. Pursuant to CWC sections 13350 and 13385, the total maximum administrative civil liability that may be imposed for the violations alleged in this Complaint is **\$7,370,000**. This is comprised of \$378,000 in mandatory minimum penalties, as described in Attachments A and B, and \$7,748,000 in penalties for violations of the Pretreatment Program Requirements set forth in Ordered Paragraph 3 in CDO R7-2008-0008.

#### **Minimum Administrative Civil Liability the Regional Board Must Assess**

58. The Enforcement Policy requires that the **minimum liability** for non-mandatory minimum penalties imposed must be at least 10% higher than the economic benefit so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations. In addition, the penalty imposed must include staff costs.
59. The economic benefit of non-compliance for the Discharger's violation of the CDO is \$1,176,162. Accounting for the 10% markup, the minimum liability that must be assessed for violation of the CDO is \$1,293,778 plus staff costs.
60. In this matter the economic benefit of non-compliance related to the Discharger's failure to comply with the CDO's Pretreatment requirements, the staff costs, together with the mandatory minimum penalties of \$378,000, result in a total **minimum liability of \$1,671,778 plus staff costs. The staff costs are \$63,000**, as of February 28, 2013.

### **Proposed Administrative Civil Liability the Regional Board Assess**

61. Based on consideration of the above facts, application of the penalty methodology, and the Discharger's ability to pay, the Assistant Executive Officer of the Regional Water Quality Control Board, Colorado River Basin, proposes that civil liability be imposed administratively on the Discharger in the amount of **\$1,671,778 plus \$63,000 in staff costs**. The specific factors considered in this penalty are detailed in Attachments "E" and "F."
62. Notwithstanding the issuance of this Complaint, the Regional Water Quality Control Board, Colorado River Basin, retains the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements for which penalties have not yet been assessed or for violations that may occur subsequent to the issuance of this Complaint.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT**

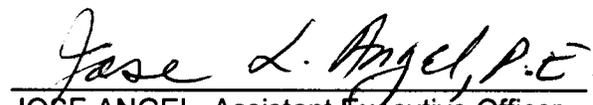
63. Issuance of this Complaint is an enforcement action and is, therefore, exempt from the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.), pursuant to title 14, California Code of Regulations, section 15321, subsection (a)(2).

### **THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Regional Board proposes that the Discharger be assessed:
  - a. A mandatory minimum penalty of three hundred seventy-eight thousand dollars (\$378,000) for each of the effluent limit violations of cyanide, BOD and bacteria identified in Attachments "B" and "C".
  - b. A penalty of \$1,293,778 for violation of the Pretreatment Program Requirements specified in Ordered Paragraph 3 in CDO R7-2008-0008, to recover the economic benefit the Discharger derived from noncompliance with Regional Board orders as required by the Enforcement Policy and \$63,000 to recover staff costs for prosecuting this matter.
  - c. This results in a total penalty in the amount of \$1,734,778. This penalty represents the minimum liability that the Board can impose on the Discharger.
2. CWC section 13323(b) provides that the Regional Board shall conduct a hearing within 90 days after issuance of this Complaint. Such a hearing shall be held unless the Discharger chooses either of the following two options:
  - a. Waive the right to a Hearing before the Regional Board and pays the proposed penalty of \$1,734,778 in full; or

- b. Waive the right to a Hearing before the Regional Board within 90 days after service of this Complaint to engage the Regional Board Prosecution Team in settlement discussions. Waiver of the right to a Hearing before the Region Board within 90 days does not preclude the Regional Board Prosecution Team from proceeding to hearing within 90 days.
3. If the Discharger chooses Option 2.a, above, an authorized representative must sign the enclosed waiver and return it along with a check for the full amount of the proposed liability, made payable to the "State Water Pollution Cleanup and Abatement Account" within thirty (30) days of the date of this Complaint. Payment will be deemed settlement of this Complaint, but the settlement shall not become final until thirty (30) days from the date of Public Notice 7-13-14 to allow the public and other interested persons to comment on this action. The waiver and payment must be mailed to:

California Regional Water Quality Control Board  
Colorado River Basin Region  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260
4. If the Discharger chooses Option 2.b, above, an authorized representative must sign the enclosed waiver and submit it within thirty (30) days of this Complaint. The Discharger must also submit a settlement proposal to the Regional Board within sixty (60) days of this Complaint. The waiver and settlement proposal must be mailed to the address listed above.
5. If a hearing on this matter is held, the Regional 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.
6. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.

  
\_\_\_\_\_  
JOSE ANGEL, Assistant Executive Officer  
*2/28/2013*  
\_\_\_\_\_  
Date

**ATTACHMENT A: CITY OF BRAWLEY SUMMARY OF NONCOMPLIANCE RECORD**

Year	Description of Noncompliance/violation	Regional Board Action Taken
1999	Discharger violates and threatens violation of flow limitation of WDRs Order 99-014	Regional Board issues Time Schedule Order (TSO) 99-054, requiring Discharger to expand capacity by March 2002.
2000	Discharger violates toxicity limitations of WDRs Order 00-087. Discharger also in threatened violation of Pretreatment Program provisions of WDRs Order 00-087.	Board assesses \$3,000 in administrative civil liability (ACL) against the Discharger for violations.
2001	Discharger is in chronic violation of toxicity limitations of WDRs Order 00-087. Also violates Permit flow limit. Discharger also violates BOD and TSS Permit limitations and Monitoring and Reporting Requirements. Discharger also in threatened violation of Pretreatment Program provisions of WDRs Order 00-087.	Regional Board issues over 10 Non-compliance letters to Discharger, and asks Discharger to identify source of toxicity and take corrective action. Board also assesses \$6,000 in ACL against the Discharger for violations.
2002	Discharger in chronic non-compliance with toxicity limitations of WDRs Order 00-087. Discharger also violates TSO 99-054 by not completing expansion by deadline specified by Board. Discharger also in threatened violation of Pretreatment Program provisions of WDRs Order 00-087.	Regional Board assesses \$33,000 in ACL against Discharger for violations, but does not take additional enforcement against Discharger for violation of TSO.
2003	Discharger in chronic non-compliance with toxicity limitations of WDRs Order 00-087. It also violates BOD, TSS, and coliform Permit limitations. Discharger also in violation of Pretreatment Program provisions of WDRs Order 00-087.	Regional Board issues 10 Non-compliance letters to Discharger. Regional Board also issues \$33,000 ACL Complaint against Discharger.
2004	Discharger in chronic non-compliance with toxicity limitations of WDRs Order 00-087. Ammonia into WWTP a significant problem. Discharger also in violation of Pretreatment Program provisions of WDRs Order 00-087.	Regional Board assesses \$33,000 in ACL against Discharger for violations. Regional Board Executive Officer issues Cleanup and Abatement Order R7-2004-0079 requiring Discharger to upgrade WWTF and address chronic noncompliance with toxicity.

**ATTACHMENT A: CITY OF BRAWLEY SUMMARY OF NONCOMPLIANCE RECORD**

Year	Description of Noncompliance/violation	Regional Board Action Taken
2005	Discharger violates toxicity limits of WDRs 00-087 and Zinc and free cyanide limitations of WDRs Order R7-2005-0021. It also threatens violation of new ammonia limitations. Discharger also in violation of Pretreatment Program provisions of WDRs Order R7-2005-0021.	Regional Board cites Discharger for violations.
2006	Discharger violates Zinc and coliforms limitations of WDRs Order R7-2005-0021. It also violates monitoring and reporting requirements. Further, it threatens violation of ammonia limits and is in violation of Pretreatment Program provisions of WDRs Order R7-2005-0021.	Regional Board cites Discharger for effluent violations.
2007	Discharger violates bacteria and ammonia limits of WDRs Order R7-2005-0021. Discharger also fails to comply with tasks and deadlines prescribed by CAO R7-2004-0079. It is also in violation of Pretreatment Program provisions of WDRs Order R7-2005-0021.	Regional Board cites Discharger for 2006 coliforms violations and for ammonia violations.
2008	Discharger in chronic violations of WDRs Order R7-2005-0021. It also violates its monitoring and reporting requirements by not using a certified lab for analyses of bacteria.	Regional Board assesses \$483,750 in ACL against Discharger for violations of WDRs and CAO. Regional Board suspends most of the assessed liability by allowing the Discharger to direct \$256,875 towards SEPs. Regional Board also adopts Cease and Desist Order (CDO) R7-2008-0008 against Discharger. It also adopts Special Order to amend CDO to include interim ammonia limits.
2009	Discharger violates WDRs Order R7-2005-0021 and in threatened violation of Cease and Desist Order. Discharger violates coliform limits of WDRs Order R7-2005-0021.	Regional Board assesses \$16,000 in MMPs for ammonia violations that occurred in 2008. Regional Board issues Time Schedule Order R7-2009-0035, requiring Discharger to use certified lab for bacteria violations.

**ATTACHMENT A: CITY OF BRAWLEY SUMMARY OF NONCOMPLIANCE RECORD**

Year	Description of Noncompliance/violation	Regional Board Action Taken
2010	Discharger in violation of Cease and Desist Order and in violation of BOD, cyanide, and bacteria limits of WDRs Order R7-2010-0022.	Regional Board assesses \$16,000 in discretionary liability against Discharger for monitoring violations. Board suspends \$8,000 of the liability by allowing Discharger to complete a SEP.
2011	Discharger in chronic violation of CDO R7-2008-0008. It also violates BOD and bacteria limits of WDRs Order R7-2010-0022.	Regional Board Assistant Executive Officer issues ACL Complaint R7-2011-0013 (\$45,000), against Discharger for violations. This was rescinded to address additional violations.
2012	Discharger in chronic noncompliance with CDO R7-2008-0008. It also violates bacteria, free cyanide, and BOD effluent limits of WDRs Order R7-2010-0022.	Regional Board staff starts comprehensive investigation on all noncompliance issues.

**ATTACHMENT B: SUMMARY OF MMP VIOLATIONS OF WDRs R7-2005-0021 (3/19/08 to 11/17/08)**

	Assessed Violation CIWQS Number	Date	Description	Serious Violation as Defined by CWC 13385(h)?	Amount that must be Assessed (\$)
1	775251	03/19/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 19.60 mg/L	Yes	3,000
2	775252	03/19/2008	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 682 lbs/day	No	3,000
3	775255	03/26/2008	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 613 lbs/day	No	3,000
4	775253	03/26/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 17.92 mg/L	Yes	3,000
5	775258	03/31/2008	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 656 lbs/day	Yes	3,000
6	775257	03/31/2008	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 19.48 mg/L	Yes	3,000
7	775263	04/02/2008	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 814 lbs/day	No	3,000
8	775260	04/02/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 23.52 mg/L	Yes	3,000
9	775265	04/09/2008	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 775 lbs/day	No	3,000
10	775264	04/09/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 24.08 mg/L	Yes	3,000
11	775314	04/16/2008	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 762 lbs/day	No	3,000
12	775266	04/16/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 22.96 mg/L	Yes	3,000
13	775323	04/23/2008	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 881 lbs/day	Yes	3,000
14	775315	04/23/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 25.76 mg/L	Yes	3,000
15	775327	04/30/2008	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 854 lbs/day	Yes	3,000
16	775326	04/30/2008	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 25.87 mg/L	Yes	3,000
17	775324	04/30/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 33.04 mg/L	Yes	3,000

**ATTACHMENT B: SUMMARY OF MMP VIOLATIONS OF WDRs R7-2005-0021 (3/19/08 to 11/17/08)**

	Assessed Violation CIWQS Number	Date	Description	Serious Violation as Defined by CWC 13385(h)?	Amount that must be Assessed (\$)
18	775325	04/30/2008	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,036 lbs/day	Yes	3,000
19	775331	05/07/2008	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 792 lbs/day	No	3,000
20	775328	05/07/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 26.32 mg/L	No	3,000
21	775333	05/14/2008	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 879 lbs/day	Yes	3,000
22	775332	05/14/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 28.32 mg/L	Yes	3,000
23	775336	05/21/2008	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 865 lbs/day	Yes	3,000
24	775334	05/21/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 28.56 mg/L	Yes	3,000
25	775337	05/28/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 37.52 mg/L	Yes	3,000
26	775339	05/28/2008	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,180 lbs/day	Yes	3,000
27	775341	05/31/2008	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 929 lbs/day	Yes	3,000
28	775340	05/31/2008	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 30.18 mg/L	Yes	3,000
29	786110	06/4/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 42.0 mg/L	Yes	3,000
30	786114	06/4/2008	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,282 lbs/day	Yes	3,000
31	786111	06/11/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 17.92 mg/L	Yes	3,000
32	786113	06/18/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 22.40 mg/L	Yes	3,000
33	786115	06/18/2008	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 687 lbs/day	No	3,000
34	786116	06/30/2008	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 21.56 mg/L	Yes	3,000

**ATTACHMENT B: SUMMARY OF MMP VIOLATIONS OF WDRs R7-2005-0021 (3/19/08 to 11/17/08)**

	Assessed Violation CIWQS Number	Date	Description	Serious Violation as Defined by CWC 13385(h)?	Amount that must be Assessed (\$)
35	786117	06/30/2008	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 662 lbs/day	Yes	3,000
36	786118	07/02/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 19.04 mg/L	Yes	3,000
37	786123	07/02/2008	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 610 lbs/day	No	3,000
38	786119	07/09/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 15.68 mg/L	No	3,000
39	786120	07/16/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 21.28 mg/L	Yes	3,000
40	786124	07/16/2008	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 616 lbs/day	No	3,000
41	786121	07/23/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 20.16 mg/L	Yes	3,000
42	786125	07/23/2008	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 594 lbs/day	No	3,000
43	786122	07/28/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 20.16 mg/L	Yes	3,000
44	786126	07/28/2008	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 610 lbs/day	No	3,000
45	786128	07/31/2008	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 19.26 mg/L	Yes	3,000
46	786129	07/31/2008	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 571 lbs/day	Yes	3,000
47	799717	08/04/2008	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 593 lbs/day	No	3,000
48	799713	08/04/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 17.92 mg/L	No	3,000
49	799714	08/11/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 18.48 mg/L	No	3,000
50	799715	08/18/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 16.80 mg/L	No	3,000
51	799716	08/25/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 16.80 mg/L	No	3,000

**ATTACHMENT B: SUMMARY OF MMP VIOLATIONS OF WDRs R7-2005-0021 (3/19/08 to 11/17/08)**

	Assessed Violation CIWQS Number	Date	Description	Serious Violation as Defined by CWC 13385(h)?	Amount that must be Assessed (\$)
52	799719	08/31/2008	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 549 lbs/day	Yes	3,000
53	799718	08/31/2008	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 17.50 mg/L	Yes	3,000
54	814568	09/02/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 17.36 mg/L	Yes	3,000
55	814569	09/02/2008	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 598 lbs/day	No	3,000
56	814570	09/08/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 17.92 mg/L	No	3,000
57	814571	09/15/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 17.36 mg/L	No	3,000
58	814572	09/22/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 15.68 mg/L	No	3,000
59	814574	09/29/2008	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 678 lbs/day	No	3,000
60	814573	09/29/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 18.48 mg/L	Yes	3,000
61	814577	09/30/2008	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 585 lbs/day	Yes	3,000
62	814576	09/30/2008	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 17.36 mg/L	Yes	3,000
63	814559	10/06/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 14.56 mg/L	No	3,000
64	814562	10/13/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 14.59 mg/L	No	3,000
65	814566	10/21/2008	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 631 lbs/day	No	3,000
66	814563	10/21/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 19.60 mg/L	Yes	3,000
67	814564	10/27/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 16.80 mg/L	No	3,000
68	814567	10/31/2008	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 507 lbs/day	Yes	3,000

**ATTACHMENT B: SUMMARY OF MMP VIOLATIONS OF WDRs R7-2005-0021 (3/19/08 to 11/17/08)**

	Assessed Violation CIWQS Number	Date	Description	Serious Violation as Defined by CWC 13385(h)?	Amount that must be Assessed (\$)
69	814565	10/31/2008	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 16.39 mg/L	Yes	3,000
70	814534	11/03/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 18.48 mg/L	Yes	3,000
71	814535	11/10/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 16.80 mg/L	Yes	3,000
72	814536	11/17/2008	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 14.56 mg/L	No	3,000

**Accrued Mandatory Minimum Penalty: \$216,000**

**ATTACHMENT C: SUMMARY OF MMP VIOLATIONS OF WDRs R7-2010-0022**

	Assessed Violation CIWQS Number	Date	Description	Serious Violation as Defined by CWC 13385(h)?	Amount that must be Assessed (\$)
1	877112	5/10/2010	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 300 MPN/100 mL	No	0 <sup>1</sup>
2	877422	5/24/2010	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 240 MPN/100 mL	No	0 <sup>2</sup>
3	877423	5/31/2010	Exceeded Monthly Average for Enterococci. Limitation = 33 MPN/100 mL; Reported value = 77.6 MPN/100 mL	No	0 <sup>2</sup>
4	886572	10/13/2010	Exceeded Daily Maximum for Free Cyanide. Limitation = 9.2 µg/L; Reported value = 17 µg/L	Yes	3,000
5	886577	10/13/2010	Exceeded Daily Maximum for Free Cyanide. Limitation = 0.45 lbs/day; Reported value = 0.51 lbs/day	No	3,000
6	886583	10/31/2010	Exceeded Monthly Average for Free Cyanide. Limitation = 3 µg/L; Reported value = 17 µg/L	Yes	3,000
7	886584	10/31/2010	Exceeded Monthly Average for Free Cyanide. Limitation = 0.15 lbs/day Reported value = 0.51 lbs/day	Yes	3,000
8	888336	11/10/2010	Exceeded Daily Maximum for Free Cyanide. Limitation = 0.45 lbs/day; Reported value = 0.5 lbs/day	No	3,000
9	888337	11/10/2010	Exceeded Daily Maximum for Total Cyanide. Limitation = 9.2 µg/L; Reported value = 18 µg/L	Yes	3,000
10	888179	11/30/2010	Exceeded Monthly Average for Free Cyanide. Limitation = 3.0 µg/L Reported value = 18.0 µg/L	Yes	3,000
11	888335	11/30/2010	Exceeded Monthly Average for Free Cyanide. Limitation = 0.15 lbs/day Reported value = 0.5 lbs/day	Yes	3,000
12	890044	12/13/2010	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 2,400 MPN/100 mL	No	3,000
13	890043	12/20/2010	Exceeded Daily Maximum for Fecal Coliform. Limitation = 400 MPN/100 mL; Reported value = 500 MPN/100 mL	No	3,000
14	890045	12/20/2010	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 1,600 MPN/100 mL	No	3,000
15	893170	12/31/2010	Exceeded Monthly Average for Enterococci. Limitation = 33 MPN/100 mL; Reported value = 78 MPN/100 mL	No	3,000

<sup>1</sup> This is a Supporting Violation

**ATTACHMENT C: SUMMARY OF MMP VIOLATIONS OF WDRs R7-2010-0022**

	Assessed Violation CIWQS Number	Date	Description	Serious Violation as Defined by CWC 13385(h)?	Amount that must be Assessed (\$)
16	891966	1/24/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 500 MPN/100 mL	No	3,000
17	891967	1/31/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 130 MPN/100 mL	No	3,000
18	891968	1/31/2011	Exceeded Monthly Average for Enterococci. Limitation = 33 MPN/100 mL; Reported value = 69 MPN/100 mL	No	3,000
19	901545	02/04/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 240 MPN/100 mL	No	3,000
20	901547	02/07/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 1,600 MPN/100 mL	No	3,000
21	901548	02/11/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 1,600 MPN/100 mL	No	3,000
22	901549	02/16/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 1,600 MPN/100 mL	No	3,000
23	901551	02/21/2011	Exceeded Daily Maximum for E. coli Limitation = 400 MPN/100 mL; Reported value = 2,419 MPN/100 mL	No	3,000
24	901554	02/28/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 500 MPN/100 mL	No	3,000
25	901558	02/28/2011	Exceeded Monthly Average for Enterococci. Limitation = 33 MPN/100 mL; Reported value = 1,260 MPN/100 mL	No	3,000
26	901630	03/04/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 900 MPN/100 mL	No	3,000
27	901629	03/05/2011	Biochemical Oxygen Demand (5-day @ 20°C) Weekly Average (Mean) limit is 65 mg/L and reported value was 84 mg/L.	No	3,000
28	901627	03/07/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 1,600 MPN/100 mL	No	3,000
29	901626	03/14/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 1,600 MPN/100 mL	No	3,000
30	901625	03/21/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 1,600 MPN/100 mL	No	3,000
31	901623	03/30/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 1,600 MPN/100 mL	No	3,000

**ATTACHMENT C: SUMMARY OF MMP VIOLATIONS OF WDRs R7-2010-0022**

	Assessed Violation CIWQS Number	Date	Description	Serious Violation as Defined by CWC 13385(h)?	Amount that must be Assessed (\$)
32	901621	03/31/2011	BOD (5-day @ 20°C) Monthly Average (Mean) limit is 2,214 lbs/day; reported value was 2,662 lbs/day.	No	3,000
33	901624	03/31/2011	Exceeded Monthly Average for Enterococci. Limitation = 33 MPN/100 mL; Reported value = 1,426 MPN/100 mL	No	3,000
34	901061	04/04/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 1,600 MPN/100 mL	No	3,000
35	901077	04/06/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 1,600 MPN/100 mL	No	3,000
36	901075	04/11/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 1,600 MPN/100 mL	No	3,000
37	901062	04/18/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 1,600 MPN/100 mL	No	3,000
38	901079	04/25/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 1,600 MPN/100 mL	No	3,000
39	901078	04/30/2011	Exceeded Monthly Average for Enterococci. Limitation = 33 MPN/100 mL; Reported value = 1,600 MPN/100 mL	No	3,000
40	903786	05/02/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 1,600 MPN/100 mL	No	3,000
41	903794	05/09/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 1,600 MPN/100 mL	No	3,000
42	903796	05/16/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 500 MPN/100 mL	No	3,000
43	903801	05/18/2011	Exceeded Daily Maximum for Fecal Coliform. Limitation = 400 MPN/100 mL; Reported value = 900 MPN/100 mL	No	3,000
44	903800	05/21/2011	Biochemical Oxygen Demand (5-day @ 20°C) Weekly Average (Mean) limit is 65 mg/L and reported value was 66 mg/L.	No	3,000
45	903802	05/23/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 900 MPN/100 mL	No	3,000
46	903795	05/28/2011	Biochemical Oxygen Demand (5-day @ 20°C) Weekly Average (Mean) limit is 65 mg/L and reported value was 96 mg/L.	Yes	3,000
47	903798	05/30/2011	Exceeded Daily Maximum for Enterococci. Limitation = 100 MPN/100 mL; Reported value = 1,600 MPN/100 mL	No	3,000

**ATTACHMENT C: SUMMARY OF MMP VIOLATIONS OF WDRs R7-2010-0022**

	Assessed Violation CIWQS Number	Date	Description	Serious Violation as Defined by CWC 13385(h)?	Amount that must be Assessed (\$)
48	903885	05/31/2011	Biochemical Oxygen Demand (5-day @ 20°C) Monthly Average (Mean) limit is 45 mg/L and reported value was 56.7 mg/L.	No	3,000
49	903790	05/31/2011	Exceeded Monthly Average for Enterococci. Limitation = 33 MPN/100 mL; Reported value = 741 MPN/100 mL	No	3,000
50	908780	06/01/2011	Exceeded Daily Maximum for E. coli Limitation = 400 MPN/100 mL; Reported value = 2,419 MPN/100 mL	No	3,000
51	908782	06/06/2011	Exceeded Daily Maximum for E. coli Limitation = 400 MPN/100 mL; Reported value = 2,419 MPN/100 mL	No	3,000
52	908784	06/13/2011	Exceeded Daily Maximum for E. coli Limitation = 400 MPN/100 mL; Reported value = 2,419 MPN/100 mL	No	3,000
53	908786	06/20/2011	Exceeded Daily Maximum for E. coli Limitation = 400 MPN/100 mL; Reported value = 1,733 MPN/100 mL	No	3,000
54	908781	06/27/2011	Exceeded Daily Maximum for E. coli Limitation = 400 MPN/100 mL; Reported value = 2,419 MPN/100 mL	No	3,000
55	908783	06/30/2011	Exceeded Daily Maximum for E. coli Limitation = 400 MPN/100 mL; Reported value = 2,419 MPN/100 mL	No	3,000
56	908785	07/02/2011	Biochemical Oxygen Demand (5-day @ 20°C) Weekly Average (Mean) limit is 65 mg/L and reported value was 99 mg/L.	Yes	3,000
57	908787	07/31/2011	Biochemical Oxygen Demand (5-day @ 20°C) Monthly Average (Mean) limit is 45 mg/L and reported value was 60.8 mg/L.	No	3,000

**Accrued Mandatory Minimum Penalty: \$162,000**

**ATTACHMENT "D"****Summary of Violations Board Order R7-2010-0022**

Note: These MMP violations may be assessed if the Discharger is found to be not in compliance with CDO R7-2008-0008 and its amendments

	Assessed Violation CIWQS Number	Date	Description	Serious Violation as Defined by CWC 13385(h)?	Amount that must be Assessed
1	814537	11/24/2008	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 17.92 mg/L.	Yes	3,000
2	814538	11/30/2008	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 1.1 mg/L. Reported Value = 16.94 mg/L.	Yes	3,000
3	814539	11/30/2008	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 54 lb/day. Reported Value = 549.3 lb/day.	Yes	3,000
4	817592	12/1/2008	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 15.68 mg/L.	No	3,000
5	817598	12/8/2008	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 21.84 mg/L.	Yes	3,000
6	817602	12/8/2008	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 708.5 lb/day.	No	3,000
7	817599	12/15/2008	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 21.84 mg/L.	Yes	3,000
8	817603	12/15/2008	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 679.4 lb/day.	No	3,000
9	817600	12/22/2008	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 19.60 mg/L.	Yes	3,000
10	817604	12/22/2008	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 642.40 lb/day.	No	3,000
11	817601	12/29/2008	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 19.04 mg/L.	Yes	3,000
12	817606	12/29/2008	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 590.70 lb/day.	No	3,000
13	817607	12/31/2008	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 1.1 mg/L. Reported Value = 19.60 mg/L.	Yes	3,000
14	817608	12/31/2008	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 54 lb/day. Reported Value = 620.40 lb/day.	Yes	3,000

**ATTACHMENT "D"****Summary of Violations Board Order R7-2010-0022**

Note: These MMP violations may be assessed if the Discharger is found to be not in compliance with CDO R7-2008-0008 and its amendments

	Assessed Violation CIWQS Number	Date	Description	Serious Violation as Defined by CWC 13385(h)?	Amount that must be Assessed
15	814517	1/5/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 19.04 mg/L.	Yes	3,000
16	814523	1/5/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 603.73 lb/day.	No	3,000
17	814519	1/12/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 22.96 mg/L.	Yes	3,000
18	814525	1/12/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 754.45 lb/day.	No	3,000
19	814520	1/19/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 19.04 mg/L.	Yes	3,000
20	814526	1/19/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 651.05 lb/day.	No	3,000
21	814522	1/26/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 24.08 mg/L.	Yes	3,000
22	814527	1/26/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 767.16 lb/day.	No	3,000
23	814528	1/30/2009	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 1.1 mg/L. Reported Value = 21.28 mg/L.	Yes	3,000
24	814529	1/30/2009	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 54 lb/day. Reported Value = 694.1 lb/day.	Yes	3,000
25	820884	2/2/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 28.56 mg/L.	Yes	3,000
26	820890	2/2/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 933 lb/day.	Yes	3,000
27	820887	2/9/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 24.08 mg/L.	Yes	3,000
28	820891	2/9/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 831 lb/day.	Yes	3,000

**ATTACHMENT "D"**

## Summary of Violations Board Order R7-2010-0022

Note: These MMP violations may be assessed if the Discharger is found to be not in compliance with CDO R7-2008-0008 and its amendments

	Assessed Violation CIWQS Number	Date	Description	Serious Violation as Defined by CWC 13385(h)?	Amount that must be Assessed
29	820888	2/16/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 21.28 mg/L.	Yes	3,000
30	820892	2/16/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 667 lb/day.	No	3,000
31	820889	2/23/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 20.72 mg/L.	Yes	3,000
32	820893	2/23/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 689 lb/day.	No	3,000
33	820894	2/28/2009	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 1.1 mg/L. Reported Value = 23.66 mg/L.	Yes	3,000
34	820895	2/28/2009	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 54 lb/day. Reported Value = 780 lb/day.	Yes	3,000
35	839774	5/4/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 14 mg/L.	No	3,000
36	839775	5/11/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 20.16 mg/L.	Yes	3,000
37	839779	5/11/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 673 lb/day.	No	3,000
38	839776	5/18/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 19.6 mg/L.	Yes	3,000
39	839780	5/18/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 603 lb/day.	No	3,000
40	839777	5/25/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 22.96 mg/L.	Yes	3,000
41	839781	5/25/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 741 lb/day.	No	3,000
42	839778	5/31/2009	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 1.1 mg/L. Reported Value = 19.18 mg/L.	Yes	3,000

**ATTACHMENT "D"****Summary of Violations Board Order R7-2010-0022**

Note: These MMP violations may be assessed if the Discharger is found to be not in compliance with CDO R7-2008-0008 and its amendments

	Assessed Violation CIWQS Number	Date	Description	Serious Violation as Defined by CWC 13385(h)?	Amount that must be Assessed
43	839782	5/31/2009	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 54 lb/day. Reported Value = 623.87 lb/day.	Yes	3,000
44	839552	6/1/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 20.16 mg/L.	Yes	3,000
45	839573	6/1/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 644 lb/day.	No	3,000
46	839569	6/8/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 20.16 mg/L.	Yes	3,000
47	839574	6/8/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 612 lb/day.	No	3,000
48	839572	6/30/2009	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 1.1 mg/L. Reported Value = 12.21 mg/L.	Yes	3,000
49	839575	6/30/2009	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 54 lb/day. Reported Value = 379.63 lb/day.	Yes	3,000
50	849571	7/13/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 12.32 mg/L.	No	3,000
51	849572	7/20/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 13.44 mg/L.	No	3,000
52	849573	7/27/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 14.56 mg/L.	No	3,000
53	849574	7/31/2009	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 1.1 mg/L. Reported Value = 10.92 mg/L.	Yes	3,000
54	849575	7/31/2009	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 54 lb/day. Reported Value = 353.64 lb/day.	Yes	3,000
55	860321	8/31/2009	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 54 lb/day. Reported Value = 185.13 lb/day.	Yes	3,000
56	860319	8/31/2009	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 1.1 mg/L. Reported Value = 5.56 mg/L.	Yes	3,000

**ATTACHMENT "D"****Summary of Violations Board Order R7-2010-0022**

Note: These MMP violations may be assessed if the Discharger is found to be not in compliance with CDO R7-2008-0008 and its amendments

	Assessed Violation CIWQS Number	Date	Description	Serious Violation as Defined by CWC 13385(h)?	Amount that must be Assessed
57	860318	9/30/2009	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 54 lb/day. Reported Value = 229.94 lb/day.	Yes	3,000
58	860231	9/30/2009	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 1.1 mg/L. Reported Value = 6.86 mg/L.	Yes	3,000
59	860372	10/19/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 12.6 mg/L.	No	3,000
60	860374	10/19/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 629 lb/day.	No	3,000
61	860373	10/26/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 18.76 mg/L.	Yes	3,000
62	860375	10/31/2009	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 1.1 mg/L. Reported Value = 12.88 mg/L.	Yes	3,000
63	860349	11/2/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 22.12 mg/L.	Yes	3,000
64	860350	11/2/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 738 lb/day.	No	3,000
65	860351	11/9/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 19.04 mg/L.	Yes	3,000
66	860352	11/9/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 699 lb/day.	No	3,000
67	860353	11/16/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 25.48 mg/L.	Yes	3,000
68	860354	11/16/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 899 lb/day.	Yes	3,000
69	860355	11/23/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 25.02 mg/L.	Yes	3,000
70	860356	11/23/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 942 lb/day.	Yes	3,000

**ATTACHMENT "D"****Summary of Violations Board Order R7-2010-0022**

Note: These MMP violations may be assessed if the Discharger is found to be not in compliance with CDO R7-2008-0008 and its amendments

	Assessed Violation CIWQS Number	Date	Description	Serious Violation as Defined by CWC 13385(h)?	Amount that must be Assessed
71	860357	11/30/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 16.52 mg/L.	No	3,000
72	860358	11/30/2009	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 1.1 mg/L. Reported Value = 21.67 mg/L.	Yes	3,000
73	860359	11/30/2009	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 54 lb/day. Reported Value = 771 lb/day.	Yes	3,000
74	862962	12/7/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 19.88 mg/L.	Yes	3,000
75	862963	12/7/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 642 lb/day.	No	3,000
76	862964	12/14/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 21.00 mg/L.	Yes	3,000
77	862966	12/21/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 25.48 mg/L.	Yes	3,000
78	862967	12/21/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 865 lb/day.	Yes	3,000
79	862968	12/28/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 26.88 mg/L.	Yes	3,000
80	862969	12/28/2009	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 930 lb/day.	Yes	3,000
81	862970	12/31/2009	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 1.1 mg/L. Reported Value = 22.89 mg/L.	Yes	3,000
82	862971	12/31/2009	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 54 lb/day. Reported Value = 788 lb/day.	Yes	3,000
83	869303	1/4/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 27.44 mg/L.	Yes	3,000
84	869309	1/4/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 982 lb/day.	Yes	3,000

**ATTACHMENT "D"****Summary of Violations Board Order R7-2010-0022**

Note: These MMP violations may be assessed if the Discharger is found to be not in compliance with CDO R7-2008-0008 and its amendments

	Assessed Violation CIWQS Number	Date	Description	Serious Violation as Defined by CWC 13385(h)?	Amount that must be Assessed
85	869305	1/11/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 24.92 mg/L.	Yes	3,000
86	869310	1/11/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 983 lb/day.	Yes	3,000
87	869306	1/18/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 21.00 mg/L.	Yes	3,000
88	869311	1/18/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 778 lb/day.	No	3,000
89	869307	1/25/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 17.92 mg/L.	Yes	3,000
90	869312	1/25/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 773 lb/day.	No	3,000
91	869308	1/31/2010	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 1.1 mg/L. Reported Value = 22.82 mg/L.	Yes	3,000
92	869314	1/31/2010	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 54 lb/day. Reported Value = 879 lb/day.	Yes	3,000
93	869371	2/1/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 23.52 mg/L.	Yes	3,000
94	869375	2/1/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 940 lb/day.	Yes	3,000
95	869372	2/8/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 27.72 mg/L.	Yes	3,000
96	869376	2/8/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 839 lb/day.	Yes	3,000
97	860376	2/9/2010	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 54 lb/day. Reported Value = 435.39 lb/day.	Yes	3,000
98	869373	2/15/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 22.68 mg/L.	Yes	3,000

**ATTACHMENT "D"****Summary of Violations Board Order R7-2010-0022**

Note: These MMP violations may be assessed if the Discharger is found to be not in compliance with CDO R7-2008-0008 and its amendments

	Assessed Violation CIWQS Number	Date	Description	Serious Violation as Defined by CWC 13385(h)?	Amount that must be Assessed
99	869374	2/22/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 22.96 mg/L.	Yes	3,000
100	869379	2/22/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 708 lb/day.	No	3,000
101	869380	2/28/2010	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 1.1 mg/L. Reported Value = 24.22 mg/L.	Yes	3,000
102	869382	2/28/2010	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 54 lb/day. Reported Value = 750 lb/day.	Yes	3,000
103	869736	3/2/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 24.64 mg/L.	Yes	3,000
104	869759	3/2/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 880 lb/day.	Yes	3,000
105	862965	3/3/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 715 lb/day.	No	3,000
106	869760	3/8/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 1,757 lb/day.	Yes	3,000
107	869754	3/8/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 24.08 mg/L.	Yes	3,000
108	869755	3/15/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 22.12 mg/L.	Yes	3,000
109	869761	3/15/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 812 lb/day.	No	3,000
110	869756	3/22/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 23.80 mg/L.	Yes	3,000
111	869762	3/22/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 687 lb/day.	No	3,000
112	869757	3/29/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 24.64 mg/L.	Yes	3,000

**ATTACHMENT "D"**

## Summary of Violations Board Order R7-2010-0022

Note: These MMP violations may be assessed if the Discharger is found to be not in compliance with CDO R7-2008-0008 and its amendments

	Assessed Violation CIWQS Number	Date	Description	Serious Violation as Defined by CWC 13385(h)?	Amount that must be Assessed
113	869764	3/29/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 754 lb/day.	No	3,000
114	869758	3/31/2010	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 1.1 mg/L. Reported Value = 23.86 mg/L.	Yes	3,000
115	869765	3/31/2010	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 54 lb/day. Reported Value = 978 lb/day.	Yes	3,000
116	878151	4/5/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 27.72 mg/L.	Yes	3,000
117	878157	4/5/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 786 lb/day.	No	3,000
118	878152	4/12/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 29.96 mg/L.	Yes	3,000
119	878158	4/12/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 949 lb/day.	Yes	3,000
120	878153	4/19/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 29.12 mg/L.	Yes	3,000
121	878159	4/19/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 923 lb/day.	Yes	3,000
122	878154	4/26/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 32.48 mg/L.	Yes	3,000
123	878160	4/26/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 1,111 lb/day.	Yes	3,000
124	878156	4/30/2010	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 1.1 mg/L. Reported Value = 29.82 mg/L.	Yes	3,000
125	878162	4/30/2010	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 54 lb/day. Reported Value = 942 lb/day.	Yes	3,000
126	877114	5/3/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 32.76 mg/L.	Yes	3,000

**ATTACHMENT "D"**

## Summary of Violations Board Order R7-2010-0022

Note: These MMP violations may be assessed if the Discharger is found to be not in compliance with CDO R7-2008-0008 and its amendments

	Assessed Violation CIWQS Number	Date	Description	Serious Violation as Defined by CWC 13385(h)?	Amount that must be Assessed
127	877117	5/3/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 1,093 lb/day.	Yes	3,000
128	877115	5/17/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 33.32 mg/L.	Yes	3,000
129	877118	5/17/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 1,056 lb/day.	Yes	3,000
130	877424	5/24/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 34.44 mg/L.	Yes	3,000
131	877427	5/24/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 1,062 lb/day.	Yes	3,000
132	877429	5/31/2010	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 1.1 mg/L. Reported Value = 34.02 mg/L.	Yes	3,000
133	877430	5/31/2010	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 54 lb/day. Reported Value = 1,084 lb/day.	Yes	3,000
134	877425	5/31/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 12 mg/L. Reported Value = 35.56 mg/L.	Yes	3,000
135	877428	5/31/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 590 lb/day. Reported Value = 1,127 lb/day.	Yes	3,000
136	880533	7/5/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 157 lb/day. Reported Value = 1,429 lb/day.	Yes	3,000
137	880532	7/5/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 3.2 mg/L. Reported Value = 47.6 mg/L.	Yes	3,000
138	880535	7/12/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 157 lb/day. Reported Value = 1,093 lb/day.	Yes	3,000
139	880534	7/12/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 3.2 mg/L. Reported Value = 36.4 mg/L.	Yes	3,000
140	880536	7/19/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 3.2 mg/L. Reported Value = 31.08 mg/L.	Yes	3,000

**ATTACHMENT "D"****Summary of Violations Board Order R7-2010-0022**

Note: These MMP violations may be assessed if the Discharger is found to be not in compliance with CDO R7-2008-0008 and its amendments

	Assessed Violation CIWQS Number	Date	Description	Serious Violation as Defined by CWC 13385(h)?	Amount that must be Assessed
141	880537	7/19/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 157 lb/day. Reported Value = 933 lb/day.	Yes	3,000
142	880539	7/26/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 157 lb/day. Reported Value = 762 lb/day.	Yes	3,000
143	880538	7/26/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 3.2 mg/L. Reported Value = 26.88 mg/L.	Yes	3,000
144	880531	7/31/2010	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 103 lb/day. Reported Value = 1,054 lb/day.	Yes	3,000
145	880530	7/31/2010	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 2.1 mg/L. Reported Value = 35.49 mg/L.	Yes	3,000
146	883858	8/2/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 157 lb/day. Reported Value = 629 lb/day.	Yes	3,000
147	883859	8/2/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 3.2 mg/L. Reported Value = 22.84 mg/L.	Yes	3,000
148	883861	8/9/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 157 lb/day. Reported Value = 523 lb/day.	Yes	3,000
149	883862	8/9/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 3.2 mg/L. Reported Value = 22.4 mg/L.	Yes	3,000
150	883863	8/16/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 157 lb/day. Reported Value = 667 lb/day.	Yes	3,000
151	883865	8/16/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 3.2 mg/L. Reported Value = 23.52 mg/L.	Yes	3,000
152	883866	8/22/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 157 lb/day. Reported Value = 419.0 lb/day.	Yes	3,000
153	883868	8/22/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 3.2 mg/L. Reported Value = 12.88 mg/L.	Yes	3,000
154	884142	8/30/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 3.2 mg/L. Reported Value = 10.08 mg/L.	Yes	3,000

**ATTACHMENT "D"****Summary of Violations Board Order R7-2010-0022**

Note: These MMP violations may be assessed if the Discharger is found to be not in compliance with CDO R7-2008-0008 and its amendments

	Assessed Violation CIWQS Number	Date	Description	Serious Violation as Defined by CWC 13385(h)?	Amount that must be Assessed
155	884141	8/31/2010	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 103 lb/day. Reported Value = 559 lb/day.	Yes	3,000
156	884140	8/31/2010	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 2.1 mg/L. Reported Value = 18.34 mg/L.	Yes	3,000
157	883882	9/6/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 157 lb/day. Reported Value = 303 lb/day.	Yes	3,000
158	883883	9/6/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 3.2 mg/L. Reported Value = 10.08 mg/L.	Yes	3,000
159	883879	9/13/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 157 lb/day. Reported Value = 235 lb/day.	Yes	3,000
160	883881	9/13/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 3.2 mg/L. Reported Value = 7.84 mg/L.	Yes	3,000
161	883877	9/20/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 157 lb/day. Reported Value = 247 lb/day.	Yes	3,000
162	883878	9/20/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 3.2 mg/L. Reported Value = 8.96 mg/L.	Yes	3,000
163	883875	9/27/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 157 lb/day. Reported Value = 433 lb/day.	Yes	3,000
164	883876	9/27/2010	Exceeded Daily Maximum for Total Ammonia as Nitrogen. Limitation = 3.2 mg/L. Reported Value = 16.24 mg/L.	Yes	3,000
165	883873	9/30/2010	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 103 lb/day. Reported Value = 305 lb/day.	Yes	3,000
166	883874	9/30/2010	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 2.1 mg/L. Reported Value = 10.78 mg/L.	Yes	3,000
167	932046	6/6/2012	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 2.1 mg/L. Reported Value = 8.4 mg/L.	Yes	3,000
168	932047	6/30/2012	Exceeded Monthly Average Limit for Total Ammonia as Nitrogen. Limitation = 2.1 mg/L. Reported Value = 2.94 mg/L.	Yes	3,000

**Accrued Mandatory Minimum Penalty:**

**\$504,000**

**ATTACHMENT "E"**  
**CITY OF BRAWLEY - ADMINISTRATIVE CIVIL LIABILITY METHODOLOGY APPLIED**

The following is a discussion of the Enforcement Policy's administrative civil liability methodology applied to each of the violations alleged in Administrative Civil Liability Complaint R7-2013-0028. Violations of the CDO are non-discharge violations for purposes of applying the Enforcement Policy's administrative civil liability methodology and are subject to liability pursuant to Water Code section 13350.

**Steps 1 & 2: Potential for Harm for Discharge Violations**

Steps 1 and 2 apply only when a discharge is involved. Because the alleged pretreatment program violations for this Complaint, which relate to the Discharger's alleged failure to develop and implement a Pretreatment Program in accordance with the tasks and milestones specified in CDO R7-2008-0008, do not involve any discharges, Steps 1 and 2 do not apply.

**Step 3: Per Day Assessments for Non-Discharge Violations**

This factor is determined by a matrix analysis based upon the Potential for Harm and Deviation from Applicable Requirements.

- a. Potential for Harm is determined to be "major." The Enforcement Policy defines a "major" potential for harm as follows:

*Major-The characteristics of the violation present a particularly egregious threat to beneficial uses, and/or the circumstances of the violation indicate a very high potential for harm. Additionally, non-discharge violations involving particularly sensitive habitats should be considered major.*

Regional Board staff has gone out of its way to give the Discharger more than enough time than necessary to develop and implement a Pretreatment Program. As set forth in the ACL complaint, implementation of the Pretreatment Program is vital to reducing the high level of ammonia, TSS, BOD, and other constituents that are being discharged by the Discharger's single significant industrial user, National Beef, into the Discharger's WWTP. The Self-Monitoring Reports submitted pursuant to the Discharger's permit demonstrate that this inadequately treated industrial waste has caused or contributed to the Discharger's inability to consistently meet the final effluent limitations for these constituents. Although there have been no ammonia effluent limitation violations as a result of the Regional Board's adoption of interim effluent limits for ammonia, these limits were established only with the understanding and the Discharger's assurances that it would abide by the CDO and develop and implement a Pretreatment Program. But the Discharger's failure to timely develop and implement this Pretreatment Program has resulted in: (1) over 241 violations of the NPDES permit's effluent limitations for the other constituents of TSS and BOD; (2) a

WWTP that is running at or over design treatment capacity on a regular basis; and (3) a continuing threat from a POTW that does not have the treatment capacity to handle the solids from National Beef and its other industrial users. The net effect of the Discharger's failure to timely develop and implement its required Pretreatment Program is to compromise water quality for all residents of the City of Brawley by creating additional and unnecessary wear and tear on a facility, thereby diminishing the effectiveness of the systems utilized to handle overall treatment. In addition, even though these alleged Pretreatment Program violations do not directly involve a "discharge" per se, the particularly sensitive habitats into which this less effectively treated wastewater from the POTW discharges—here, the New River—is another factor that calls for categorizing the "potential for harm" as "major." The New River is well-known as one of the most polluted water bodies in the U.S. Adding inadequately treated pollutants and contaminants only exacerbates that serious water quality problem.

- b. The Deviation from Requirements is determined to be "major." The Enforcement Policy defines a "major" deviation from requirements as follows:

*Major-The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).-*

“”

- c. The Discharger has failed to develop and adopt local limits and achieve full compliance with an Approved Pretreatment Program. Even though the **wastewater treatment plant** has been operational for over six months and the Discharger's consultants have represented that the Discharger could have already developed local limits, the Discharger has refused to comply with the CDO's Pretreatment Program tasks and milestones. The milestones set in the CDO are now over three years overdue, but at no time did the Discharger ever request an extension or modification of any of the milestones or tasks. As a result, the CDO's Pretreatment Program requirements have been rendered completely ineffective. The Pretreatment Program has not been implemented, the Discharger continues to violate its WWTP's NPDES permit limits, and the Discharger continues to accept wastewater from its industrial users well beyond its WWTP's treatment capabilities, thereby causing its permit limits for BOD and TSS, to be exceeded and violated. The Enforcement Policy's Table 3 provides three factors to select from for potential for harm and deviation from requirements: 0.4, 0.55, and 0.7. Enforcement staff has concluded that the minimum level of **0.7** is appropriate as a conservative evaluation of a "major" potential for harm and a "major" deviation from requirements due to the Discharger's long-standing failure to comply with the Pretreatment Program requirements set forth in the CDO, and the overall high potential for harm to water quality as a result of that failure.

### Initial Amount of Liability

For Violation of the CDO, the initial base liability amount is calculated as follows:

(Per Day Factor) X (Number Of Days Of Violation) X (Maximum Per Day Liability)  
= Initial Base Liability

In this case, the amount calculated would be:

$(0.7) \times 1474 \text{ days (2/15/09 – 2/28/13)} \times (\$5,000/\text{day}) = \$5,159,000$

### **Step 4: Adjustment Factors—Violator’s Conduct Factors**

#### A. Adjustment for Violator’s Culpability

For the violator’s culpability factor, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior.

The Discharger was aware of and should have been able to comply with the requirements of the development and implementation of the Pretreatment Program in accordance with the tasks and milestones set forth in the CDO. The Discharger’s consultants stated that it would be able to develop local limits by February 15, 2009, the first milestone deadline the Discharger failed to meet, and the Discharger never contacted the Regional Board to request an extension of that deadline. The Discharger has continued to fine National Beef for violations of the NPDES permit’s ammonia effluent limitations it is exempt from complying with and has provided no evidence that it has made any progress in implementing local limits. In the meantime, the Discharger has deposited the penalties collected in the General Fund and applied them to non-wastewater programs and costs, instead of using those penalties to develop and implement the Pretreatment Program. Based upon these circumstances, a culpability factor of **1.4** has been selected for Violation of the Pretreatment Program requirements of the CDO.

#### B. Adjustment for Cleanup and Cooperation

For this second adjustment factor—the violator’s efforts to cleanup or cooperate with regulatory authorities after the violation—the Enforcement Policy suggests an adjustment multiplier range between 0.75 and 1.5. The Policy explains that a lower multiplier is appropriate for situations where there is a high degree of cleanup and/or cooperation and a higher multiplier is appropriate for situations where cleanup and/or cooperation is minimal or absent. In this case, a Cleanup and Cooperation multiplier adjustment factor of **1.1** is applied to the violation of the CDO’s Pretreatment Program requirements.

For three years the Discharger has failed to develop or implement its Pretreatment Program; specifically, institution of its local limits and application to wastewater received from its industrial users. After continued follow-up by Regional Board staff, the Discharger has finally begun the process of developing local limits. However, based on past progress, Regional Board staff does not believe implementation will begin for some time. This is in part based on Regional Board staff's understanding of the process by which local limits will be implemented. Although Regional Board staff has begun to receive cooperation from the Discharger, the Discharger's three-year history of lackluster cooperation does not give Regional Board staff any assurance that the Discharger's future performance will be any different. Given that the Discharger knew it would not meet the deadlines set forth in the CDO, as evidenced by its inability to comply with the deadlines, Regional Board staff reasonably expected the Discharger to timely communicate its progress made, to request deadlines be revised as needed, and to make significant efforts to put in place and enforce local limits. None of that occurred.

### C. Adjustment for History of Violations

The Enforcement Policy recommends that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used for this factor. In this case, a multiplier of **1.1** has been selected based upon a history of the Discharger's many prior violations.

### **Step 5: Determination of Total Base Liability Amount**

Total Base Liability Amount is determined by multiplying the initial liability amounts for each violation calculated from Step 3 by the adjustment factors determined from Step 4:

(Initial Base Liability) x (Culpability) x (Cleanup/Cooperation) x (History) = Total Base Liability

Based upon the adjustment factors determined for Step 4, the Total Base Liability for Violation of the Pretreatment Program requirements specified in the CDO is calculated as follows:

$(\$5,159,000) \times (1.4) \times (1.1) \times (1.1) = \$8,739,346$

The adjusted Total Base Liability Amount established by the Enforcement Policy exceeds the statutory maximum liability amount. Therefore, the adjusted Total Base Liability Amount for violations of the CDO will be reduced to the statutory maximum liability amount of \$7,370,000.

### **Step 6: Ability to Pay and Ability to Continue in Business**

The Enforcement Policy provides that if a regional water board has sufficient financial information to assess the violator's ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted.

In this case, Regional Board staff is aware of the fines totaling \$613,000, collected by the Discharger, which were recently transferred from its General Fund into a separate WWTP Fund. This amount does not represent the total fines the Discharger collected from the penalties it imposed on National Beef from 2009-2013, only the amount it transferred into the WWTP Fund. In addition, Regional Board staff is aware that the Discharger has additional monies from fines it collected that were not transferred and additional monies in its General Fund that could be used to pay any penalty. Finally, Regional Board staff is aware that the Discharger is continuing to collect fines from its industrial users.

Based on the above, Regional Board staff does not believe the proposed penalty to be assessed the Discharger will result in widespread hardship to the service population or undue hardship to the Discharger. Therefore, Regional Board staff has concluded that the Total Base Liability Amount should not be adjusted.

### **Step 7: Other Factors as Justice May Require**

Staff time to investigate this matter and prepare the Administrative Civil Liability Complaint (ACLC) R7-2013-0028 and supporting information is estimated to be 420 hours. Based on an average cost to the State of \$150 per hour, the total cost is \$63,000.

### **Step 8: Economic Benefit**

Please see memo dated February 28, 2013, from Gerald Horner, Office of Research, Planning and Performance

### **Step 9: Maximum and Minimum Liability Amounts for Violation of CDO**

Please see ACL Complaint.

<b>ATTACHMENT "F"</b>				
City of Brawley Penalty Calculations Methodology				
<b>Discharger Name/ID:</b>	City of Brawley Municipal WWTP NPDES Permit CA0105015		<b>Violation 1: Failure to Comply with CDO Pre-Treatment Requirements</b>  n/a	
<b>Discharge Violations</b>	<b>Step 1</b>	Potential Harm Factor		
	<b>Step 2</b>	Per Gallon Factor Gallons Statutory / Adjusted Max per Gallon (\$) <b>Total</b>		
		Per Day Factor Days Statutory Max per Day <b>Total</b>		
<b>Non-Discharge Violations</b>	<b>Step 3</b>	Per Day Factor Days Statutory Max per Day <b>Total</b>	0.7	
			1474	
			\$5,000	
			\$5,159,000	
<b>Initial Amount of the ACL</b>			<b>\$5,159,000</b>	
<b>Add'l Factors</b>	<b>Step 4</b>	Culpability	1.4	\$7,222,000
		Cleanup and Cooperation	1.1	\$7,944,860
		History of Violations	1.1	\$8,739,346
	<b>Step 5</b>	<b>Total Base Liability Amount</b>		<b>\$8,739,346</b>
	<b>Step 6</b>	Ability to Pay & to Continue in Business	1	<b>\$8,739,346</b>
	<b>Step 7</b>	Other Factors as Justice May Require	1	<b>\$8,739,346</b>
		Staff Costs	\$63,000	<b>\$8,739,346</b>
	<b>Step 8</b>	Economic Benefit	\$1,176,162	
	<b>Step 9</b>	Minimum Liability Amount (Economic Benefit + 10%)	\$1,293,778	
		Maximum Liability Amount	\$7,370,000	
	<b>Step 10</b>	<b>Final Liability Amount</b>		<b>\$7,370,000</b>

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## State Water Resources Control Board

**TO:** Anna Kathryn Benedict  
Senior Staff Counsel  
Office of Enforcement

Ellen Howard  
Staff Counsel  
Office of Enforcement

**FROM:** Gerald Horner  
Economist  
Office of Research, Planning and Performance

**DATE:** February 28, 2013

**SUBJECT: CITY OF BRAWLEY ECONOMIC BENEFIT OF NONCOMPLIANCE OF  
AVOIDING THE IMPLEMENTATION AND OPERATION OF A WASTEWATER  
PRETREATMENT PROGRAM**

This memo is in response to your request of December 6, 2012 for a determination of The City of Brawley's (Brawley) economic benefit resulting from not implementing a Wastewater Pretreatment Program and instituting fines on industrial clients for not meeting sewage discharge effluent limits.

The results of this analysis are to be used to determine the minimum amount of the assessed liability in ACL Complaint No. R7-2013-0028 pursuant to California Water Code section 13268.

The Porter-Cologne Act requires that certain civil liabilities be set at a level that accounts for any "economic benefit or savings" violators gained through their violations. To establish the amount of civil liabilities, the Office of Enforcement uses a "Penalty Calculation Methodology" that addresses the economic benefit of noncompliance.<sup>1</sup>

### Summary

The economic benefit of not having a wastewater pretreatment program and collecting fines from dischargers is \$1,176,162. Procedures used to estimate the economic benefit of noncompliance is detailed in the following sections.

### The BEN Model

The U.S. Environmental Protection Agency developed the BEN computer model to calculate the economic benefit a discharger derives from delaying and/or avoiding compliance with

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<sup>1</sup> Water Quality Enforcement Policy, Office of Enforcement, State Water Resources Control Board, May 20, 2010, Page 9-21.

environmental regulations.<sup>2</sup> The next section describes the structure of the BEN model and details the procedures used in calculating the economic benefit of noncompliance.

### **Economic Benefit Overview**

Economic benefit represents the financial gains that a violator accrues by delaying and/or avoiding expenditures to meet mandated pollution control requirements. Funds not spent on environmental compliance are available for other profit-making activities or, alternatively, a defendant avoids the costs associated with obtaining additional funds for environmental compliance. Economic benefit represents the amount by which a defendant is financially better off from not having complied with environmental requirements in the specified timeframe. The appropriate economic benefit calculation should represent the amount of money that would make the violator indifferent between compliance and noncompliance. If the civil penalty does not recover at least this economic benefit, then the violator will retain an economic gain and have no financial incentive to comply. Because of the precedent of this retained gain, other regulated companies may see an economic advantage in similar noncompliance, and the penalty will fail to deter potential violators. Economic benefit does not represent compensation to the enforcement agency as in a typical "damages" calculation for a tort case, but instead is the minimum amount by which the violator must be penalized so as to return it to the financial position it would have been in had it complied on time.

### **BEN Model Methodology**

The economic benefit calculation must incorporate the economic concept of the "time value of money." Stated simply, a dollar today is worth more than a dollar tomorrow, because you can invest today's dollar to start earning a return immediately. Thus, the further in the future the dollar is, the less it is worth in "present-value" terms. Similarly, the greater the time value of money (i.e., the greater the "discount" or "compound" rate used to derive the present value), the lower the present value of future costs.

To calculate a violator's economic benefit, BEN uses standard financial cash flow and net present value analysis techniques, based on modern and generally accepted financial principles. First, BEN calculates the costs of complying on-time and of complying late, adjusted for inflation (price adjusted), depreciation, and tax deductibility. To compare the on-time and delayed compliance costs in a common measure, BEN calculates the present value of both streams of costs, or "cash flows," as of the date of initial noncompliance. BEN derives these values by discounting the annual cash flows at an average cost of capital throughout this time period.

BEN then subtracts the delayed-case present value from the on-time-case present value to determine the initial economic benefit as of the noncompliance date. Finally, BEN compounds this initial economic benefit forward to the penalty payment date at the same cost of capital to determine the final economic benefit of noncompliance. The BEN model focuses exclusively on the economic benefit from delayed and/or avoided costs (its analysis encompasses only the cost differential between compliance and noncompliance). BEN, thereby, employs a simplifying assumption that the finances of a violator's compliant and noncompliant conditions are identical but for the compliance cost differential.

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<sup>2</sup> BEN Version 4.7.0 was developed under the direction of Jonathan Libber, BEN/ABEL Coordinator, Office of Enforcement and Compliance Assurance, U.S. EPA. Technical assistance provided to EPA by Industrial Economics, Incorporated (IEc), Cambridge, MA.

Pollution control expenditures can include: (1) capital investments (e.g., pollution control equipment); (2) one-time nondepreciable expenditures (e.g., setting up a reporting system, or acquiring land); and (3) annually-recurring costs (e.g., operating and maintenance costs, or groundwater monitoring costs). Each of these expenditures can be either delayed or avoided. BEN's baseline assumption is that capital investments and one-time nondepreciable expenditures are merely delayed over the period of noncompliance, whereas annual costs are avoided entirely over this period. BEN does allow, however, analysis of any combination of delayed and avoided expenditures.

BEN calculates the violator's discount/compound rate based on entity type and financial information from the date of noncompliance to the penalty payment date. As noted above, the discount/compound rate quantifies the time value of money. BEN discounts and compounds all cash flows at the cost of capital, averaged over the time period from the noncompliance date to the compliance or penalty payment date, whichever is later. To calculate an average discount/compound rate for a trust, BEN uses the cost of debt for a privately owned entity.

BEN derives a violator's economic benefit in several steps. First, BEN price adjusts compliance costs from the cost estimate date to the date when they would have been expended had the violator complied on time (on-time scenario) and to the date when they will be expended as the violator comes into compliance (delay scenario). Next, BEN uses these costs to compute the total cost of complying on-time and of complying late, adjusted for inflation, depreciation, and taxes. BEN also calculates the present value of both scenarios as of the date of initial noncompliance, so that they can be compared in a common metric. Then, BEN subtracts the delayed scenario present value from the on-time scenario present value to determine the initial economic benefit as of the noncompliance date. Finally, BEN compounds<sup>3</sup> this initial economic benefit forward to the penalty payment date.

All costs must be price adjusted to the date of noncompliance using an inflation index. Inflation indices are more precise than an annual inflation rate, but they require an index value for every relevant month. Therefore, BEN contains a database of monthly index values for several price indices from 1987 to 2029. Annual updates keep indices current and add future values. For projected future inflation, BEN extrapolates each cost index forward in time at a forecasted rate, based upon projections from industry groups and government agencies.

### **Revenue Gained from Noncompliance**

The BEN model has three categories of avoided or delayed costs: 1) capital investment; 2) one-time nondepreciable expenditures; and 3) annual recurring costs. In this case, costs are not germane, but the revenue gained by not establishing and maintaining a wastewater pretreatment program represents an economic benefit of noncompliance. Monetary penalties were assessed dischargers for not meeting influent standards that would have been met if a wastewater pretreatment program existed. A wastewater pretreatment process consists of one or more treatment devices designed to remove sufficient pollutants from wastewaters to allow an industry to comply with Brawley's Wastewater Pretreatment Ordinance No. 2001-08. Instead of entering avoided annual costs in the BEN model, the amount of the penalties collected from the discharger are entered. Since the revenue collected is different in each year, a separate

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<sup>3</sup> Compounding is the process of adding earned interest to the principal so that, from that moment on, the interest that has been added also earns interest. The alternative is simple interest where interest is not added to the principal. The use of compounding interest is standard practice in finance and economics.

BEN model run must be made for each year. BEN will then calculate the net present value, or the economic benefit of not conducting a pretreatment program.<sup>4</sup>

### **National Beef Wastewater Violations and Penalty Payments**

National Beef's violations of Brawley's Wastewater Pretreatment Ordinance No. 2001-08 began in November of 2008. However, payments to Brawley began in 2009 and continue to the present (Table 1). Four dates or time periods are associated with each payment, the violation period, the invoice date, the check date and the date of receipt. Payments were aggregated annually by the date the payment was received by Brawley.

Wastewater penalties were \$58,000 in 2009, \$160,000 in 2010, \$300,000 in 2011, and \$160,000 in 2012. The four year total is \$678,000.

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<sup>4</sup> The BEN Help System, Overview: Economic Benefit: Context, Theory and Methodology. "Sales can be entered as a "cost" in BEN, which will then calculate the profit's after-tax net present value."

**Table 1. National Beef Wastewater Violations Penalty Payments, City of Brawley, 2009-2012.**

<u>Violation Period</u>	<u>Detail</u>	<u>Received</u>	<u>Amount</u>	<u>Totals</u>
<b>2009</b>				
Oct-09		10/19/2009	<u>\$58,000</u>	
<b>2009 Total</b>				<b>\$58,000</b>
<b>2010</b>				
Mar-10		5/3/2010	\$60,000	
Jun-10	\$40,000			
Aug-10	<u>\$5,000</u>			
Total:	\$45,000	11/3/2010	\$45,000	
Jul-10		11/15/2010	\$50,000	
Nov-10		12/27/2010	<u>\$5,000</u>	
<b>2010 Total</b>				<b>\$160,000</b>
<b>2011</b>				
Dec-10		2/28/2011	\$45,000	
Jan-11		3/7/2011	\$50,000	
Feb-11		3/21/2011	\$60,000	
Mar-11		5/18/2011	\$60,000	
Apr-11		6/13/2011	\$30,000	
May-11		6/28/2011	\$25,000	
Jun-11		7/26/2011	<u>\$30,000</u>	
<b>2011 Total</b>				<b>\$300,000</b>
<b>2012</b>				
Nov-11		1/12/2012	\$5,000	
Dec-11		2/14/2012	\$20,000	
Jan-12		3/7/2012	\$5,000	
Feb-12		4/6/2012	\$10,000	
Apr-12		6/11/2012	\$5,000	
May-12		7/3/2012	\$30,000	
Jun-12		7/24/2012	\$20,000	
Jul-12		9/10/2012	\$25,000	
Aug-12		9/24/2012	\$20,000	
Sep-12		11/13/2012	<u>\$20,000</u>	
<b>2012 Total</b>				<b>\$160,000</b>
			<b>Total:</b>	<b><u>\$678,000</u></b>

Source: City of Brawley, Accounting Detail Reports: Wastewater Collection, Other Revenues, Other Fines and Penalties; General Fund, Due from Other Governments, 2/1/2012.

### The Economic Benefit of Noncompliance

The economic benefit of noncompliance is estimated by making separate BEN model runs for each annual payment total, and the annual cost of operating the pretreatment program that was not implemented. The pretreatment cost not expended by Brawley represents an economic benefit to Brawley.

Table 2, column 2 presents the revenue for the four years of penalties that were aggregated in Table 1. The last row of Table 2 lists the \$100,000 annual cost for the management and operation of a wastewater pretreatment program.

Dates necessary to estimate the economic benefits of are also presented in Table 2. The Payment Estimate date (column 3) is used to establish when the value of the transaction took place or, in the case of the pretreatment program, when the cost estimate was made. These dates are used by BEN to account for the effect of inflation when calculating the time value of money.

The BEN model also requires a noncompliance and a compliance date. When estimating the net present value of revenue gained by noncompliance, these dates represent the extent of the revenue or cost. The Penalty Payment data is the used to calculate the time value of the revenue or cost.

The total benefit of noncompliance is estimated at \$1,176,162.

**Table 2. National Beef Wastewater Violations Penalty Payments, City of Brawley, 2009-2012.**

	Penalty/Cost Amount	Payment Estimate	Date of		Penalty Payment	Benefit of Noncompliance
			Beginning	Ending		
2009 National Beef Penalty Revenue	\$58,000	10/19/2009	1/1/2009	12/31/2009	5/1/2013	\$68,487
2010 National Beef Penalty Revenue	\$160,000	5/3/2010	1/1/2010	12/31/2010	5/1/2013	\$182,490
2011 National Beef Penalty Revenue	\$300,000	5/18/2011	1/1/2011	12/31/2011	5/1/2013	\$328,268
2012 National Beef Penalty Revenue	\$160,000	7/3/2012	1/1/2012	12/31/2012	5/1/2013	\$166,816
Annual Cost of Pretreatment Program <sup>1</sup>	\$100,000	2/20/2013	1/1/2009	12/31/2012	5/1/2013	\$430,100
<b>Total</b>						<b>\$1,176,162</b>

Source: BEN Version 4.7.0, 12/19/13

<sup>1</sup> Colorado River Regional Water Quality Control Board staff, 2/19/2013.

CC: Gail Linck, Office of Research, Planning and Performance