

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2014-0560

MANDATORY PENALTY  
IN THE MATTER OF

MCELVANY INC.  
BLOSSOM GROVE SUBDIVISION PROJECT  
SAN JOAQUIN COUNTY

This Complaint is issued to McElvany Inc. (hereafter Discharger) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability, Water Code section 13323, which authorizes the Executive Officer to issue this Complaint and Water Code section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint alleges that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Orders R5-2008-0082-030 and R5-2013-0073-030. Both Orders are assigned NPDES No. CAG995002.

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) alleges the following:

1. On 20 March 2013, the Discharger applied for coverage under the *Limited Threat Discharges of Treated/Untreated Groundwater from Cleanup Sites, Wastewater from Super Chlorination Projects, and Other Limited Threat Wastewater to Surface Water* (Limited Threat General Order) R5-2008-0082, and on 30 April 2013, the Executive Officer issued Notice of Applicability (NOA) R5-2008-0082-030 for coverage under the Limited Threat General Order.
2. On 31 May 2013, the Board issued WDRs Order R5-2013-0073, which contained new requirements and rescinded WDR R5-2008-0082, except for enforcement purposes. The Discharger was automatically enrolled under Limited Threat General Order R5-2013-0073-030. On 6 June 2014, the Board issued Order R5-2014-0080 which amended the Limited Threat General Order. The amended Order is assigned WDRs Order R5-2013-0073-01. The Discharger automatically retained enrollment under the amended Order.
3. On 15 July 2014, the Discharger requested its enrollment under the Limited Threat General Order be terminated, and on 22 July 2014, the Executive Officer terminated the Discharger's coverage.
4. This Complaint addresses administrative civil liability for late report violations that occurred during the period from 30 April 2013 through 31 March 2014. These violations are specifically identified in Attachment A to this Complaint as subject to mandatory minimum penalties. Attachment A to this Complaint is attached hereto and incorporated herein by this reference.

5. The Limited Threat General Order requires that Dischargers submit quarterly monitoring reports which are designed to show whether or not the Discharger complied with the effluent limits in the Order. This Order assesses penalties for the failure to submit the 2<sup>nd</sup> Quarter 2013, Third Quarter 2013, 4<sup>th</sup> Quarter 2013 and 1<sup>st</sup> Quarter 2014 monitoring reports. The Monitoring and Reporting section of the 30 April 2013 Notice of Applicability states, in part:

Monitoring reports shall be submitted to the Central Valley Water Board on a quarterly basis, beginning with the Second Quarter 2013. If the discharge has not begun there is no need to monitor. However, a monitoring report must be submitted stating that there has been no discharge. Quarterly monitoring reports must be submitted until your coverage is formally terminated...even if there is no discharge during the reporting quarter.

The Enforcement section of the Notice of Applicability states:

Failure to comply with the Limited Threat General Order may result in enforcement actions, which could include civil liability. Effluent limitation violations are subject to a Mandatory Minimum Penalty (MMP) of \$3,000 per violation. In addition, late monitoring reports may be subject to MMPs. When discharges do not occur during a quarterly report monitoring period, the Discharger must still submit a quarterly monitoring report indicating that no discharge occurred to avoid being subject to enforcement actions.

6. As described below, the Water Code requires assessment of MMPs for each 30 day period in which a monitoring report has not been received, unless the Discharger submits a statement certifying that there were no discharges to waters of the United States during the monitoring period. On 3 July 2014, Central Valley Water Board staff sent the Discharger a Notice of Violation (NOV) for the missing reports and provided an opportunity to explain the reason for the lack of reports and to certify whether or not there was a discharge during the period. The Discharger responded on 10 July 2014 and submitted monitoring reports for discharges during the 2<sup>nd</sup> and 3<sup>rd</sup> Quarters 2013. The Discharger also certified that discharges stopped by 13 September 2013, and that there was no discharge during the 1<sup>st</sup> or 2<sup>nd</sup> Quarters of 2014.
7. On 17 July 2014, Central Valley Water Board staff issued a NOV and draft Record of Violations, proposing to assess MMPs for the 2<sup>nd</sup> and 3<sup>rd</sup> Quarter 2013 missing reports. In a 30 July 2014 telephone conversation, the Discharger acknowledged the violations and requested that MMPs not be assessed. Because there was a discharge to surface water, the penalties are mandatory and not discretionary.
8. Water Code section 13385(h) requires assessment of mandatory penalties and states, in part, the following:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

9. Water Code section 13385.1 subdivision states, in part:

Water Code section 13385.1(a)(1) states:

For the purposes of subdivision (h) of Section 13385, a “serious violation” also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations. This paragraph only applies to violations that occur on or after January 1, 2004.

Water Code section 13385.1(a)(2)(A) states:

Notwithstanding paragraph (1), a failure to file a discharge monitoring report is not a serious violation for purposes of subdivision (h) of Section 13385 at any time prior to the date a discharge monitoring report is required to be filed or within 30 days after receiving written notice from the state board or a regional board of the need to file a discharge monitoring report, if the discharger submits a written statement to the state board or the regional board that includes both of the following:

- (i) A statement that there were no discharges to waters of the United States reportable under the applicable waste discharge requirements during the relevant monitoring period.
- (ii) The reason or reasons the required report was not submitted to the regional board by the deadline for filing that report.

10. Water Code section 13323 states, in part:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

11. WDRs Order R5-2008-0082 Self-Monitoring Reports (SMRs), Attachment E-X.B.3., states, in part:

- 3. Monitoring periods and reporting for all required monitoring shall be completed according to the following schedule:

**Table E-7 Monitoring Periods and Reporting Schedule**

Sampling Frequency	Monitoring Period Begins On...	Monitoring Period	SMR Due Date
1/Discharge Event	Notice of Applicability effective date	All	1 May 1 August 1 November 1 February

12. WDRs Order R5-2013-0073 Self-Monitoring Reports (SMRs), Attachment E-X.B.3., states, in part:

- 3. Monitoring periods and reporting for all required monitoring shall be completed according to the following schedule:

**Table E-7 Monitoring Periods and Reporting Schedule**

Sampling Frequency	Monitoring Period Begins On...	Monitoring Period	SMR Due Date
1/Discharge Event	Notice of Applicability effective date	All	1 May 1 August 1 November 1 February

13. The 2<sup>nd</sup> Quarter 2013 self-monitoring report was required to be submitted by 1 August 2013. The Discharger did not submit it by the deadline; however, in response to the 3 July 2014 NOV the Discharger submitted the 2<sup>nd</sup> Quarter 2013 monitoring report and stated that discharges occurred during the quarter. The monitoring report was submitted on 10 July 2014, which is 343 days after the required deadline in the Monitoring and Reporting Program. Because there was a discharge, in accordance with California Water Code section 13385.1(a), the failure to timely submit the 2<sup>nd</sup> Quarter 2013 self-monitoring report is subject to a mandatory minimum penalty of \$3,000 for each 30-day period late. The Discharger committed eleven (11) serious violations for failure to timely submit the 2<sup>nd</sup> Quarter 2013 self-monitoring report required by WDRs Orders R5-2008-0082-01 and R5-2013-0073. The mandatory minimum penalty for these serious violations is **thirty three thousand dollars (\$33,000)**.
14. The 3<sup>rd</sup> Quarter 2013 self-monitoring report was required to be submitted by 1 November 2013. The Discharger did not submit it by the deadline; however, in response to the 3 July 2014 NOV the Discharger submitted the 3<sup>rd</sup> Quarter 2013 monitoring report and stated that discharges occurred during the quarter. The monitoring report was submitted on 10 July 2014, which is 251 days after the required deadline in the Monitoring and Reporting Program. Because there was a discharge, in accordance with California Water Code section 13385.1(a), the failure to timely submit the 3<sup>rd</sup> Quarter 2013 self-monitoring report is subject to is subject to a mandatory minimum penalty of \$3,000 for each 30-day period late. The Discharger committed eight (8) serious violations for failure to timely submit the 3<sup>rd</sup> Quarter self-monitoring report required by WDRs Orders R5-2008-0082-01 and R5-2013-0073. The mandatory minimum penalty for these serious violations is **twenty four thousand dollars (\$24,000)**.
15. The 4<sup>th</sup> Quarter 2013 and 1<sup>st</sup> Quarter 2014 self-monitoring reports were required to be submitted by 1 February 2014 and 1 May 2014. The Discharger did not submit the reports. In response to the 3 July 2014 NOV, the Discharger certified that there was no discharge to surface waters during these monitoring periods. Therefore, pursuant to Water Code section 13385.1(a)(2)(A), mandatory minimum penalties do not apply to this violation. This Complaint does not address or resolve this violation. The Central Valley Board reserves its right to take any enforcement action authorized as law.
16. The total amount of the mandatory penalties assessed for the alleged effluent violations is **fifty seven thousand dollars (\$57,000)**. As stated herein, a detailed list of the alleged effluent violations is included in Attachment A. This Complaint addresses administrative civil liability for violations that are specifically identified in Attachment A as subject to mandatory minimum penalties.

17. On 14 February 2014, the Executive Officer designated Andrew Altevogt, Assistant Executive Officer, as the Lead Prosecution Officer for all enforcement matters originating in the Rancho Cordova Office. The 14 February 2014 Delegation of Authority also authorizes Andrew Altevogt to issue Administrative Civil Liability Complaints.
18. Issuance of this Administrative Civil Liability Complaint to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

**MCELVANY INC. IS HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **fifty seven thousand dollars (\$57,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **4/5 December 2014**, unless the Discharger does one of the following by **8 October 2014**:
  - a) Waives the hearing by completing the attached form (checking off the box next to Option 1) and returning it to the Central Valley Water Board. In addition, submits payment for the proposed civil liability of **fifty seven thousand dollars (\$57,000)** to the State Water Board with a copy of the check to the Central Valley Water Board; or
  - b) Requests to engage in settlement discussions by checking the box next to Option 2 on the attached form, and returning it to the Board along with a letter describing the issues to be discussed. The Central Valley Water Board must agree to the postponement; or
  - c) Requests to delay the hearing by checking off the box next to Option 3 on the attached form, and returning it to the Board along with a letter describing the proposed length of delay and the issues to be discussed. The Central Valley Water Board must agree to the postponement.
3. If a hearing on this matter is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

4. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

ORIGINAL SIGNED BY  
ANDREW ALTEVOGT, Assistant Executive Officer

8 September 2014  
DATE

Attachment A: Record of Violations

MoF/WSW: 8 Sept 14

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent the McElvany Inc. (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2014-0560 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

**(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)**

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **fifty seven thousand dollars (\$57,000)** by check that references "ACL Complaint R5-2014-0560" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the State Water Resources Control Board, Accounting Office, Attn: ACL Payment at PO Box 1888, Sacramento, California, 95812-1888 by **8 October 2014**. The waiver and a copy of the check must be submitted to the Central Valley Water Board at 11020 Sun Center Drive #200, Rancho Cordova California, 95670 by **8 October 2014**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

**(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

**(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

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(Print Name and Title)

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(Signature)

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(Date)

**ATTACHMENT A TO ACLC R5-2014-0560**

**McElvany Inc.**  
**Blossom Grove Subdivision Project**  
**MANDATORY PENALTIES FOR FAILURE TO SUBMIT REPORTS**  
 RECORD OF VIOLATIONS (30 April 2013 through 31 March 2014) MANDATORY PENALTIES  
 (Data reported under Monitoring and Reporting Program R5-2008-0082-030 and R5-2013-0073-030)

	<u>SMR</u>	<u>Due Date</u>	<u>Received Date</u>	<u># of 30-day Periods Late</u>	<u>Discharge</u>	<u># of 30-day periods Subject to MMPs</u>	<u>Remarks</u>	<u>CIWQS</u>
1	2Q2013	1-Aug-13	10-Jul-14	11	Yes	11	1	*
2	3Q 2013	1-Nov-13	10-Jul-14	8	Yes	8	1	†
3	4Q 2013	1-Feb-14	10-Jul-14	5	No	0	2	971780
4	1Q 2014	1-May-14	10-Jul-14	2	No	0	2	971781

Remarks:

1. Serious Violation: Failure to file a discharge monitoring report for each complete period of 30 days following the deadline for submitting the report when a discharge occurred.
2. Violation not subject to MMPs because no discharge occurred. However, discretionary penalties may still be assessed. This violation is not addressed or resolved in this Complaint. The Central Valley Board reserves the right to take any enforcement action authorized by law

<b><u>VIOLATIONS AS OF:</u></b>	<b><u>3/31/14</u></b>
Serious Violations Subject MMPs:	19
<u>Violations not subject to MMPs:</u>	<u>7</u>
<b>Total Violations Subject to MMPs:</b>	<b>19</b>

**Mandatory Minimum Penalty = (19 Serious violations) x \$3,000 = \$57,000**

\* CIWQS Violation IDs 972396-972406

† CIWQS Violation IDs 971779 and 972389-972395