

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0607

MANDATORY PENALTY
IN THE MATTER OF

CITY OF NEVADA CITY
WASTEWATER TREATMENT PLANT
NEVADA COUNTY

This Complaint is issued to the City of Nevada City (hereafter referred to as Discharger) 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 to issue this Complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order 96-103 and R5-2002-0050 (NPDES No. CA0079901).

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

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system, and provides sewerage service to the City of Nevada City. Treated municipal wastewater is discharged to Deer Creek, a water of the United States and a tributary to the Yuba River.
2. On 3 May 1996, the Central Valley Water Board adopted Waste Discharge Requirements (WDRs) Order 96-103 to regulate discharges of waste from the wastewater treatment plant (WWTP). On 26 April 2002, the Central Valley Water Board adopted WDRs Order R5-2002-0050 which contained new requirements and rescinded WDRs Order 96-103. The Central Valley Water Board also adopted Cease and Desist Order (CDO) R5-2002-0051. CDO R5-2002-0051 established a time schedule until 15 April 2003 to comply with final effluent limitations for pH. It also provided a time schedule until 30 April 2007 to comply with final effluent limitations for ammonia, nitrate plus nitrite, and nitrite.
3. On 27 August 2008, Central Valley Water Board staff sent the Discharger a draft Record of Violations. The Discharger responded on 16 September 2008, and agreed with the Record of Violations.
4. CWC section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) states:

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

CWC section 13385 (h)(2) states:

For the purposes of this section, a 'serious violation' means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

CWC section 13385(i)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants."

5. CWC section 13323 states, in part:

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

6. WDRs Order 96-103 Effluent Limitations No. B.1. states, in part, "*Effluent shall not exceed the following limits.*"

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Monthly Median</u>	<u>Daily Maximum</u>
Chlorine Residual	mg/L	--	--	--	0.02

7. WDRs Order 96-103 Effluent Limitations No. B.3. states: "*The discharge shall not have a pH less than 6.5 nor greater than 8.5. Individual excursions below the minimum pH value of 6.5 or above the maximum pH value of 8.5 shall not exceed 60 minutes of any given excursion. The total duration of excursions shall not exceed 1% of the discharge time within a monthly reporting period.*"

8. WDRs Order R5-2002-0050 Effluent Limitations No. B.1. states, in part: “*Effluent shall not exceed the following limitations (from adoption until 31 March 2007):*”

<u>Constituents</u>	<u>Units</u>	<u>Average Monthly</u>	<u>Median Monthly</u>	<u>Average Weekly</u>	<u>Average Daily</u>	<u>Instantaneous Maximum</u>
BOD ₅ ¹	mg/L	10 ²	--	15 ²	30 ²	--
Total Suspended Solids	mg/L	10 ²	--	15 ²	30 ²	--
	lbs/day ³	58	--	86	170	--
Settleable Solids	mL/L	0.1	--	--	0.2	--
<u>Total Coliform Organisms</u>	MPN/100 mL		2.2	--	--	23

¹ 5-day, 20°C biochemical oxygen demand (BOD)

² To be ascertained by a 24-hour composite.

³ Based upon a design treatment capacity of 0.69 mgd (x mg/L x 8.345 x 0.69 mgd = y lbs/day)

9. WDRs Order R5-2002-0050 Effluent Limitations No. B.2. states, in part: “*Effluent shall not exceed the following limitations (from 1 April 2007 forward):*”

<u>Constituents</u>	<u>Units</u>	<u>Average Monthly</u>	<u>Average Weekly</u>	<u>7-Day Median</u>	<u>Average Daily</u>	<u>Instantaneous Maximum</u>
BOD ₅ ¹	mg/L	10 ²	15 ²	--	20 ²	--
Total Suspended Solids	mg/L	10 ²	15 ²	--	20 ²	--
	lbs/day ³	58	86	--	115	--
Settleable Solids	mL/L	0.1	--	--	0.2	--
<u>Total Coliform Organisms</u>	MPN/100 mL		--	2.2	--	23 ⁴

¹ 5-day, 20°C biochemical oxygen demand (BOD)

² To be ascertained by a 24-hour composite.

³ Based upon a design treatment capacity of 0.69 mgd (x mg/L x 8.345 x 0.69 mgd = y lbs/day)

⁴ The total coliform organisms concentration shall not exceed 23 MPN/100 mL more than once in any 30-day period. No sample shall exceed a concentration of 240 MPN/100 mL.

10. WDRs Order R5-2002-0050 Effluent Limitations No. B.3. states: “*The arithmetic mean of 20°C BOD (5-day) and of total suspended solids in effluent samples collected over a calendar month shall not exceed 5 percent of the arithmetic mean of the values for influent samples collected at approximately the same times during the same period (95 percent removal).*”
11. WDRs Order R5-2002-0050 Effluent Limitations No. B.4 states that: “*The discharge shall not have a pH less than 6.5 nor greater than 8.5.*” CDO R5-2002-0051 extended the date upon which the Discharger must have achieved compliance with the pH requirement to 15 April 2003.
12. According to the Discharger’s self-monitoring reports, the Discharger committed eight (8) serious Group I violations of the above effluent limitations contained in Order 96-103 and R5-2002-0050 during the period beginning 1 January 2000 and ending 30 April 2008. The violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels by more than 40 percent on these

occasions. The mandatory minimum penalty for these serious violations is **twenty-four thousand dollars (\$24,000)**.

13. According to the Discharger's self-monitoring reports, the Discharger committed one (1) serious violation of the above effluent limitations for Group II constituents contained in Order 96-103 and R5-2002-0050 during the period beginning 1 January 2000 and ending 30 April 2008. The violation is defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels by more than 20 percent on this occasion. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
14. According to the Discharger's self-monitoring reports, the Discharger committed twenty-nine (29) non-serious violations of the above effluent limitations contained in Order 96-103 and R5-2002-0050 during the period beginning 1 January 2000 and ending 30 April 2008. Fourteen (14) of the non-serious violations are subject to mandatory penalties under CWC section 13385(i)(1) because these violations were preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for these non-serious violations is **forty-two thousand dollars (\$42,000)**.
15. The total amount of the mandatory penalties assessed for the cited effluent violations is **sixty-nine thousand dollars (\$69,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
16. CWC section 13385 (k)(1) states, in part: *"In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works..."*
17. CWC section 13385 (k)(2) states, in part: *"For the purposes of this subdivision, 'a publicly owned treatment works serving a small community' means a publicly owned treatment works serving a population of 10,000 persons or fewer or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works."*
18. In response to the draft Record of Violations sent to the Discharger on 27 August 2008, the Discharger requested designation as a "small community with a financial hardship" and asked that the Central Valley Water Board apply money the Discharger had already expended on a complete compliance project to the MMPs.
19. On 22 September 2008, the Executive Director of the State Water Resources Control Board determined that the service area of the Nevada City Wastewater Treatment Plant meets the definition of a small community with a financial hardship.

20. The Discharger has spent \$5.59 million for engineering design and construction of an expansion and upgrade project to the WWTP. Of this amount, \$1,602,000 is from a grant and cannot be used to offset the mandatory minimum penalties. The Discharger has completed the compliance project to address the effluent violations for BOD, pH, settleable solids, total coliform organisms, and total suspended solids. With the completed compliance project, the Discharger has expended in excess of the mandatory minimum penalty that is required by CWC sections 13385(h) and (i).
21. The compliance project was performed in accordance with the State Water Resources Control Board Enforcement Policy.
22. Issuance of this Administrative Civil Liability Order to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

THE CITY OF NEVADA CITY 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 **sixty-nine thousand dollars (\$69,000)**.
2. The Central Valley Water Board considers payment of the above penalty satisfied through the completion of the compliance project described above in accordance with CWC section 13385(k).
3. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **5/6 February 2009**, unless the Discharger does the following by **10 December 2008**:
 - a) Waives the hearing by completing the attached form and returning it to the Central Valley Water Board.
4. 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.

JACK E. DEL CONTE, Assistant Executive Officer

10 November 2008

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent the City of Nevada City (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0607 (hereinafter the "Complaint");
2. 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" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint, and
4. I certify that the Discharger has expended an amount equal to or in excess of the assessed mandatory minimum penalties through completion of the compliance project specified in the Complaint. The Central Valley Water Board may accept the compliance project in lieu of monetary penalties. This waiver must be received by the Central Valley Water Board by **10 December 2008** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **5/6 February 2009** Central Valley Water Board meeting.
5. I understand that allowing the compliance project to satisfy payment of the penalties herein assessed constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Central Valley Water Board receive new information during this comment period, the Central Valley Water Board may withdraw the complaint and issue a new complaint. New information or comments include those submitted by personnel of the Central Valley Water Board who are not associated with the enforcement team's issuance of the Complaint.
6. 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.
7. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Complaint, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Complaint may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0607**

**City of Nevada City
Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 January 2000 – 30 April 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program Nos. 96-103 and R5-2002-0050)

#	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Flow Rate*</u>	<u>Remarks</u>
1	18-Jan-2000	pH	pH Units	6.5	<6.5	Instantaneous Maximum		3
2	19-Jan-2000	pH	pH Units	6.5	<6.5	Instantaneous Maximum		3
3	19-May-2001	Chlorine Residual	mg/L	0.02	5.6	Daily Maximum		2
4	19-May-2001	pH	pH Units	6.5	<6.5	Instantaneous Maximum		3
5	21-Mar-2002	pH	pH Units	6.5	<6.5	Instantaneous Maximum		3
6	25-Mar-2002	pH	pH Units	6.5	<6.5	Instantaneous Maximum		3
7	27-Mar-2002	pH	pH Units	6.5	<6.5	Instantaneous Maximum		3
8	16-Dec-2002	Total Suspended Solids	lbs/day	170	203	Average Daily	0.84	5
9	16-Dec-2002	Total Coliform	MPN/100 mL	23	50	Instantaneous Maximum		3
10	17-Dec-2002	Settleable Solids	mL/L	0.2	0.5	Average Daily		1
11	21-Dec-2002	Total Suspended Solids	lbs/day	86	104	Average Weekly	0.59	4
12	29-Dec-2003	Total Suspended Solids	mg/L	30	55	Average Daily		1
13	29-Dec-2003	Settleable Solids	mL/L	0.2	0.4	Average Daily		1
14	29-Dec-2003	Total Suspended Solids	lbs/day	170	454	Average Daily	0.99	5
15	3-Jan-2004	Total Suspended Solids	mg/L	15	34	Average Weekly		1
16	3-Jan-2004	Total Suspended Solids	lbs/day	86	281	Average Weekly	1.04	5
17	8-May-2005	pH	pH Units	8.5	8.8	Instantaneous Maximum		3
18	10-May-2005	Total Coliform	MPN/100 mL	23	900	Instantaneous Maximum		3
19	6-Jul-2005	pH	pH Units	8.5	8.8	Instantaneous Maximum		3
20	26-Sep-2005	pH	pH Units	6.5	6.0	Instantaneous Maximum		4
21	23-Nov-2005	Total Coliform	MPN/100 mL	23	220	Instantaneous Maximum		3
22	27-Nov-2005	BOD	mg/L	30	34	Average Daily		4
23	28-Nov-2005	Total Coliform	MPN/100 mL	23	1600	Instantaneous Maximum		4
24	30-Nov-2005	BOD	mg/L	30	48	Average Daily		1
25	30-Nov-2005	BOD	mg/L	10	12	Average Monthly		4
26	30-Nov-2005	Total Suspended Solids	mg/L	30	50	Average Daily		1
27	30-Nov-2005	BOD	% Removal	95%	94%	Calendar Month		4
28	1-Dec-2005	pH	pH Units	8.5	8.6	Instantaneous Maximum		4
29	2-Dec-2005	pH	pH Units	6.5	6.3	Instantaneous Maximum		4
30	3-Dec-2005	BOD	mg/L	15	41	Average Weekly		1
31	3-Dec-2005	Total Suspended Solids	mg/L	15	39	Average Weekly		1
32	3-Dec-2005	Total Suspended Solids	lbs/day	86	118	Average Weekly	0.469	4
33	15-May-2006	Total Coliform	MPN/100 mL	23	1600	Instantaneous Maximum		4
34	18-May-2006	Total Coliform	MPN/100 mL	23	1600	Instantaneous Maximum		4
35	31-May-2006	Total Coliform	MPN/100 mL	2.2	12	Median Monthly		4
36	29-Nov-2006	pH	pH Units	8.5	9.0	Instantaneous Maximum		3
37	13-Oct-2007	Total Coliform	MPN/100 mL	2.2	4.5	7-Day Median		3
38	20-Oct-2007	Total Coliform	MPN/100 mL	2.2	2.5	7-Day Median		3
39	3-Nov-2007	Total Coliform	MPN/100 mL	2.2	2.5	7-Day Median		3
40	2-Feb-2008	Total Coliform	MPN/100 mL	2.2	2.5	7-Day Median		4
41	9-Feb-2008	Total Coliform	MPN/100 mL	2.2	4	7-Day Median		4

ATTACHMENT A
NEVADA CITY
WASTEWATER TREATMENT PLANT
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0607

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.
5. Violations of mass rate limitation that are due only to wet weather not assessed MMPs because the permit limitation is based on dry weather treatment capacity.

<u>VIOLATIONS AS OF:</u>	<u>4/30/2008</u>
Group I Serious Violations:	8
Group II Serious Violations:	1
Non-Serious Violations, Exempt from MPs:	15
Non-serious Violations, Subject to MPs:	14
Mass Limit Violations, Not Subject to MPs:	3
<u>Total Violations Subject to MPs:</u>	<u>23</u>

Mandatory Minimum Penalty = (9 Serious Violations + 14 Non-Serious Violations) x \$3,000 = \$69,000

* Arithmetic mean of all 1-day flow rates in MGD of effluent while discharging to surface waters. Values greater than 0.69 MGD are considered wet weather flows.