

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2012-0507

MANDATORY PENALTY  
IN THE MATTER OF

CITY OF DAVIS  
WASTEWATER TREATMENT PLANT  
YOLO COUNTY

This Complaint is issued to the City of Davis (hereafter Discharger) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability, and Water Code section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Orders R5-2007-0132-01 and R5-2007-0132-02 (NPDES No. CA0079049).

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

1. The Discharger owns and operates a municipal wastewater collection, treatment, and disposal system, and provides sewerage service within the City of Davis. Treated municipal wastewater is discharged to either the Willow Slough Bypass or the Conway Ranch Toe Drain, both waters of the United States, and tributary to the Yolo Bypass.
2. In order to regulate discharges from the wastewater treatment plant, on 25 October 2007, the Central Valley Water Board adopted Waste Discharge Requirements (WDRs) Order R5-2007-0132. On 5 February 2009, the Central Valley Water Board amended the permit by adopting WDRs Order R5-2007-0132-01 and on 23 September 2010 amended the permit a second time by adopting WDRs Order R5-2007-0132-02.
3. On 18 March 2010, the Board issued Time Schedule Order (TSO) R5-2010-0029. TSO R5-2010-0029 provided a time schedule to comply with final effluent limitations for cyanide and selenium by 31 January 2015. The TSO was amended on 23 September 2010 by TSO-R5-2010-0029-01 which added a time schedule to comply with final effluent limitations for copper by 30 September 2014. This complaint considers the protection from mandatory minimum penalties provided by the Time Schedule Orders.
4. On 4 November 2010, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2010-0550 for mandatory minimum penalties for effluent violations from 1 April 2008 through 31 July 2010. The Discharger paid the civil liability and the Board considers those effluent violations specifically listed in Attachment A to ACLC R5-2010-0550 to be resolved.
5. This Complaint addresses administrative civil liability for effluent violations that occurred during the period from 1 August 2010 through 30 September 2012. 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.

6. On 1 November 2012, Central Valley Water Board staff issued the Discharger a draft Record of Violations for the period 1 August 2010 through 30 September 2012. On 5 November 2012, the Discharger responded and agreed with the violations
7. Water Code section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

Water Code 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.

Water Code 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.

Water Code section 13385 subdivision (i)(1) states, in part:

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.

8. 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.

9. Water Code section 13385(j) exempts certain violations from the mandatory minimum penalties, and states, in relevant part:

Subdivisions (h) and (i) do not apply to any of the following:

- 3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or 13308 if all of the following requirements are met:
  - C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible....For the purposes of this subdivision, the time schedule may not exceed five years in length .... The interim requirements shall include both of the following:
    - i) Effluent limitations for the pollutant or pollutants of concern.
    - ii) Actions and milestones leading to compliance with the effluent limitation.

10. TSO R5-2010-0550-01 contains interim effluent limitations for copper; however, as shown on Attachment A, the Discharger exceeded those interim effluent limits and therefore Water Code section 13385(j) does not exempt those particular violations from mandatory minimum penalties.

11. WDRs Order R5-2007-0132-01 Effluent Limitations IV.A.3.a., include, in part, the following effluent limitations:

- a. During the period beginning on the effective date of this Order and ending on October 25, 2017, the Discharger shall maintain compliance with the following limitations at D-001...

**Table 7a. Interim non-CTR Effluent Limitations – Discharge Point 001**

Parameter	Units	Effluent Limitations
		Instantaneous Maximum
Total Coliform Organisms <sup>1</sup>	MPN/100 mL	500

<sup>1</sup> Compliance is to be measured at Monitoring Location EFF-A as described in the attached MRP.

12. WDRs Order R5-2007-0132-02 Effluent Limitations IV.A.2.a, include, in part, the following effluent limitations:

- a. The Discharger shall maintain compliance with the effluent limitations specified in Table 6b:

**Table 6b. Effluent Limitations – Discharge Point 002**

Parameter	Units	Effluent Limitations	
		Average Monthly	Maximum Daily
Copper, Total Recoverable	µg/L	16	34

13. WDRs Order R5-2010-0132-02 Effluent Limitations IV.A.2.f, include, in part, the following effluent limitations:

- f. Total Residual Chlorine<sup>3</sup>: Effluent total residual chlorine shall not exceed the following:
  - i. 0.01 mg/L as a four-day average;
  - ii. 0.02 mg/L as a one-hour average.

<sup>3</sup> Compliance is to be measured at Monitoring Location EFF-A as described in the attached MRP.

14. TSO Order R5-2010-0029-01 includes, in part, the following interim effluent limitation:

- 4. The following interim effluent limitation shall be effective immediately. The interim effluent limitation at Discharge Point 002 for copper shall be effective up through 30 September 2014, or when the Discharger is able to come into compliance with final effluent limitations, whichever is sooner:

Parameter	Units	Maximum Daily Effluent Limitation
Copper, Total Recoverable	µg/L	39

- 15. According to the Discharger's self-monitoring reports, the Discharger committed one (1) serious Group I violation of the above effluent limitations contained in WDRs Order R5-2007-0132-02, as shown in Attachment A. This violation is defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels in WDRs Order R5-2007-0132-002 by 40 percent or more. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
- 16. According to the Discharger's self-monitoring reports, the Discharger committed three (3) non-serious violations of the above effluent limitations contained in Orders R5-2007-0132-01 and R5-2007-0132-02, as shown in Attachment A. None of the non-serious violations are subject to mandatory penalties under Water Code section 13385 subdivision (i)(1) because these violations were not preceded by three or more effluent limit violations within a six-month period.
- 17. The total amount of the mandatory penalties assessed for the alleged effluent violations is **three thousand dollars (\$3,000)**. As stated herein, a detailed list of the alleged effluent violations is included in Attachment A. This Complaint addresses administrative civil liability for the violation that is specifically identified in Attachment A as subject to mandatory minimum penalties.
- 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).

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

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **three thousand dollars (\$3,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **11/12 April 2013**, unless the Discharger does one of the following by **11 February 2013**:
  - 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, along with payment for the proposed civil liability of **three thousand dollars (\$3,000)**; or
  - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
  - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
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 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*

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PAMELA C. CREEDON, Executive Officer

11 January 2013

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DATE

Attachment A: Record of Violations

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the City of Davis (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2013-0507 (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 **three thousand dollars (\$3,000)** by check that references "ACL Complaint R5-2013-0507" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **11 February 2013**.
- 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  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0507**

**City of Davis  
Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 August 2010 – 30 September 2012) MANDATORY PENALTIES  
(Data reported under Monitoring and Reporting Programs R5-2007-0132, R5-2007-0132-01, and  
R5-2007-0132-02)

<u>Date</u>	<u>Parameter</u>	<u>Units</u>	<u>WDRs Limit / TSO Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
<i>Violations under NPDES Order R5-2007-0132</i>							
* 28-Feb-09	Total Suspended Solids	mg/L	50 / --	56	Average Monthly	3	824735
<i>Violations under NPDES Order R5-2007-0132-01</i>							
* 29-Mar-10	Total Residual Chlorine	mg/L	0.02 / --	0.75	1-hour Average	2	872204
* 29-Mar-10	Total Residual Chlorine	mg/L	0.02 / --	0.38	1-hour Average	5	872205
1 3-Sep-10	Total Coliform	MPN/ 100mL	500 / --	900	Inst. Maximum	3	884112
<i>Violations under NPDES Order R5-2007-0132-02</i>							
2 8-Feb-11	Total Recoverable Copper**	µg/L	34 / 39	40	Maximum Daily	3	895383
3 28-Feb-11	Total Recoverable Copper**	µg/L	16 / --	17.3	Average Monthly	3	896651
4 4-Apr-11	Total Residual Chlorine	mg/L	0.02 / --	0.29	1-hour Average	1	901080

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 violation falls within the first three violations in a 180-day period, thus is not subject to MMPs.
4. Non-serious violation subject to mandatory minimum penalties.
5. Not subject to mandatory minimum penalty per *SB 709 and SB 2165 Questions and Answers*.

**VIOLATIONS AS OF: 9/30/2012**

Group I Serious Violations:	1
Group II Serious Violations:	0
Non-Serious Violations Not Subject to MMPs:	3
Non-serious Violations Subject to MMPs:	0
<b><u>Total Violations Subject to MMPs:</u></b>	<b><u>1</u></b>

**Mandatory Minimum Penalty = (1 Serious Violation) x \$3,000 = \$3,000**

\* Addressed by ACLC R5-2010-0550

\*\* The Discharger exceeded the interim effluent limitation for copper on 8 February 2012. Therefore TSO R5-2010-0029-01 does not provide an exemption to a mandatory minimum penalty for copper during the February 2011 monitoring period. However, the copper effluent violations are not subject to MMPs because the effluent concentration was less than 20% over the WDRs limitation and fall within the first three violations in a 180-day period.

-- No corresponding limitation in the TSO.