

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2010-0527

MANDATORY PENALTY
IN THE MATTER OF

CITY OF AUBURN
WASTEWATER TREATMENT PLANT
PLACER COUNTY

This Complaint is issued to the City of Auburn (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, and CWC 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) Order R5-2005-0030 (NPDES No. CA0077712).

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 wastewater collection, treatment, and disposal system and provides sewerage service to the Auburn area. The City discharges treated municipal wastewater to Auburn Ravine, and the Sacramento River, waters of the United States.
2. On 17 March 2005, the Central Valley Water Board adopted WDRs Order R5-2005-0030 which contained new requirements and rescinded WDRs Order 98-189. On 17 March 2005, the Central Valley Water Board also adopted Cease and Desist Order (CDO) R5-2005-0031. CDO R5-2005-0031 provides a time schedule until 1 December 2009 to comply with final effluent limitations for aluminum, ammonia, chloroform, manganese, methyl tert butyl ether (MTBE), nitrite, nitrate + nitrite, and organochlorine pesticides. On 25 January 2008, the Central Valley Water Board issued CDO R5-2008-0010, which extended compliance deadlines contained in CDO R5-2005-0031 for aluminum, chloroform, nitrites, and nitrate-plus-nitrite until 16 May 2010 and contained additional compliance schedules for constituents regulated by WDRs Order R5-2005-0030. This Complaint considered the interim effluent limitations in WDRs Order R5-2005-0030 and the protection from Mandatory Minimum Penalties provided by CDOs R5-2005-0031 and R5-2008-0010.
3. On 10 November 2008, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2008-0599 for mandatory minimum penalties for effluent violations from 1 January 2000 through 30 April 2008. The Discharger paid the Administrative Civil Liability and the Board considers the matter resolved.
4. This Complaint covers the period of 1 May 2008 through 31 March 2010. On 3 May 2010, amended 25 May 2010, the Central Valley Water Board staff issued the

Discharger a draft Record of Violations for the above time period. The Discharger responded on 23 June 2010 and agreed with the violations.

5. CWC section 13385(h) requires 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.

6. 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.

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

(j) 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....

8. WDRs Order R5-2005-0030 Effluent Limitations B.1., include, in part, the following effluent limitations:

Effluent shall not exceed the following limits when less than 20:1 dilution is available:

<u>Constituents</u>	<u>Units</u>	<u>Average Monthly</u>	<u>Monthly Median</u>	<u>Average Weekly</u>	<u>Average Daily</u>	<u>Instantaneous Maximum</u>
Oil and Grease	mg/L	10	--	--	15	--
	lbs/day ³	140	--	--	210	--

³ Based upon a design treatment capacity of 1.67 mgd [x mg/L X 8.345 X 1.67 mgd = y lbs/day]

9. WDRs Order R5-2005-0030 Effluent Limitations B.4., include, in part, the following effluent limitations:

The effluent shall not exceed the following limitations (from **1 December 2009** forward):

<u>Constituents</u>	<u>Units</u>	<u>Average Monthly</u>	<u>Average 4-Day</u>	<u>Average Daily</u>	<u>Average 1-Hour</u>	<u>Instantaneous Maximum</u>
Chlorine, Total Residual	µg/L	--	0.01	--	0.02	--
	lbs/day	--	0.15	--	0.26	--

¹ Acid-soluble or total.

² Based upon a design treatment capacity of 1.67 mgd [x µg/L X (1 mg/1000 µg) X 8.345 X 1.67 mgd = y lbs/day].

10. According to the Discharger's self-monitoring reports, the Discharger committed four (4) serious Group I violations of the above effluent limitations contained in WDRs Order R5-2005-0030 during the period beginning 1 May 2008 and ending 31 March 2010. These violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels in WDRs Order R5-2005-0030 by 40 percent or more. The mandatory minimum penalty for these serious violations is **twelve thousand dollars (\$12,000)**.
11. According to the Discharger's self-monitoring reports, the Discharger committed four (4) serious Group II violations of the above effluent limitations contained in WDRs Order R5-2005-0030 during the period beginning 1 May 2008 and ending 31 March 2010. These violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2005-0030 by 20 percent or more. The mandatory minimum penalty for these serious violations is **twelve thousand dollars (\$12,000)**.
12. The total amount of the mandatory penalties assessed for the cited effluent violations is **twenty-four thousand dollars (\$24,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
13. 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 (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

THE CITY OF AUBURN 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 **twenty-four thousand dollars (\$24,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **22/23/24 September 2010**, unless the Discharger does one of the following by **26 July 2010**:
 - 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 **twenty-four thousand dollars (\$24,000)**; 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.

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 Frederick Moss for

PAMELA C. CREEDON, Executive Officer

25 June 2010

DATE

**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 Auburn (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2010-0527 (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 **twenty-four thousand dollars (\$24,000)** by check that references "ACL Complaint R5-2010-0527" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **26 July 2010**.
- 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.

(Print Name and Title)

(Signature)

(Date)

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2010-0527**

**City of Auburn
Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 May 2008 – 31 March 2010) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs R5-2005-0030)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
1	6-Dec-09	Chlorine Residual	µg/L	0.02	2	1-Hour Avg	2	856456
2	6-Dec-09	Chlorine Residual	lb/day	0.26	0.66	1-Hour Avg	2	856462
3	6-Dec-09	Chlorine Residual	µg/L	0.01	0.02	4-Day Avg	2	856463
4	6-Dec-09	Chlorine Residual	lb/day	0.15	0.21	4-Day Avg	2	856464
5	15-Dec-09	Oil and Grease	mg/L	15	58	Daily Avg	1	856467
6	15-Dec-09	Oil and Grease	lb/day	210	779	Daily Avg	1	856468
7	15-Dec-09	Oil and Grease	mg/L	10	58	Monthly Avg	1	856465
8	15-Dec-09	Oil and Grease	lb/day	140	779	Monthly Avg	1	856466

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 six-month period, thus is exempt.
4. Non-serious violation subject to mandatory minimum penalties.

<u>VIOLATIONS AS OF:</u>	<u>03/31/2010</u>
Group I Serious Violations:	4
Group II Serious Violations:	4
Non-Serious Exempt from MMPs:	0
Non-serious Violations Subject to MMPs:	0
<u>Total Violations Subject to MMPs:</u>	<u>8</u>

Mandatory Minimum Penalty = (8 serious Violation + 0 Non-Serious Violations) x \$3,000 = \$24,000