

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0595

MANDATORY PENALTY
IN THE MATTER OF

TOWN OF DISCOVERY BAY CSD
DISCOVERY BAY WASTEWATER TREATMENT PLANT
CONTRA COSTA COUNTY

This Complaint is issued to the Town of Discovery Bay CSD (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 R5-2003-0067 and Order R5-2008-0179 (NPDES No. CA0078590).

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

1. The Town of Discovery Bay CSD owns the Discovery Bay Wastewater Treatment Plant (WWTP), which provides sewerage service to the Town of Discovery Bay in Contra Costa County. Treated domestic, commercial, and industrial wastewater is discharged to Old River, a water of the United States.
2. On 25 April 2003, the Central Valley Water Board issued WDRs Order R5-2003-0067 to regulate discharges of waste from the WWTP. On 4 December 2008, effective 23 January 2009, the Board issued WDRs Order R5-2008-0179, which rescinded Order R5-2003-0067 and established new requirements.
3. On 30 March 2009, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2009-0525 for mandatory minimum penalties for effluent violations from 1 January 2008 through 31 December 2008. The Discharger paid the administrative civil liability charged in Complaint R5-2009-0525 and the Board considers the matter resolved.
4. This Complaint covers the period of 1 January 2009 through 31 August 2009. On 7 October 2009, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations (ROV) for effluent limitation violations for the period of 1 January 2009 through 31 July 2009. Based on the Discharger's response via letter dated 21 October 2009, Board staff reevaluated the ROV. Additionally, this Complaint addresses violations which occurred during August 2009 that were not included in the draft ROV.
5. CWC section 13385(i) 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 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.

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. WDRs Order R5-2003-0067 Effluent Limitations B.2., states, in part:

...effluent discharged to Old River shall not exceed the following limits:

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>7-day Median</u>	<u>4-day Average</u>	<u>Daily Maximum</u>
TSS ²	mg/L	30	40	--	--	50
	lbs/day ³	525	700	--	--	875

² To be ascertained by a 24-hour composite

³ Based upon a design treatment capacity of 2.1 mgd.

8. WDRs Order R5-2008-0179 Effluent Limitations IV.A.1.a., states, in part:

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

Table 6. Final Effluent Limitations

<u>Parameter</u>	<u>Units</u>	<u>Effluent Limitations</u>				
		<u>Average Monthly</u>	<u>Average Weekly</u>	<u>Maximum Daily</u>	<u>Instantaneous Minimum</u>	<u>Instantaneous Maximum</u>
Total Suspended Solids	mg/L	30	40	50	---	---
	lbs/day ^[1]	525	700	875	---	---

^[1] Calculated with the following formula: 8.345 x concentration x flow, using a design flow of 2.1 mgd

e. **Total Coliform Organisms.** Effluent total coliform organisms shall not exceed:

- i. 23 most probable number (MPN) per 100 mL, as a 7-day median; and
- ii. 240 MPN/100 mL, more than once in any 30-day period.

9. According to the Discharger's self-monitoring reports, the Discharger committed eleven (11) non-serious violations of the above effluent limitations contained in WDRs Orders R5-2003-0067 and R5-2008-0179 during the period beginning 1 January 2009 and ending 31 August 2009. Eight 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 the eight non-serious violations is **twenty-four thousand dollars (\$24,000)**.
10. 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 Order.
11. 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 TOWN OF DISCOVERY BAY CSD 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 conducted at the Central Valley Water Board meeting scheduled on **17/18 March 2010**, unless one of the following occurs by **19 January 2010**:
 - a) The Discharger 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 conducted, the 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 Joe Karkoski for

PAMELA C. CREEDON, Executive Officer

17 December 2009

DATE

Attachment A: Record of Violations
BLH: 14 Dec 2009

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the Town of Discovery Bay CSD (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2009-0595 (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 R5-2009-0595" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **19 January 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 R5-2009-0595**

**Town of Discovery Bay CSD
Discovery Bay Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 January 2009 – 31 August 2009) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs R5-2003-0067 and R5-2008-0179)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
*	30-Dec-08	Coliform	MPN/100mL	23	840	7-day	4*	805136
*	31-Dec-08	TSS	mg/L	40	54	Weekly	4*	805133
*	31-Dec-08	TSS	lbs/day	700	853	Weekly	4*	805135
1	6-Jan-09	TSS	mg/l	50	66	Daily	4	830765
2	6-Jan-09	TSS	lbs/day	875	996	Daily	4	830766
3	10-Jan-09	TSS	mg/L	40	43	Weekly	4	830767
4	20-Jul-09	Coliform	MPN/100mL	23	27	7-day median	3	827792
5	22-Jul-09	Coliform	MPN/100mL	23	27	7-day median	3	844483
6	24-Jul-09	Coliform	MPN/100mL	23	27	7-day median	3	844484
7	25-Jul-09	Coliform	MPN/100mL	23	27	7-day median	4	849718
8	4-Aug-09	TSS	mg/L	50	63	Daily	4	846471
9	4-Aug-09	TSS	lbs/day	875	1061	Daily	4	846472
10	8-Aug-09	TSS	mg/L	40	44	Weekly	4	846473
11	8-Aug-09	TSS	lbs/day	700	703	Weekly	4	846474

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.

<u>VIOLATIONS AS OF:</u>	<u>08/31/2009</u>
Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	3
Non-serious Violations Subject to MPs:	8
<u>Total Violations Subject to MPs:</u>	<u>8</u>

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

* Supporting violations already assessed Mandatory Minimum Penalties under ACLC R5-2009-0525.