

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0558

MANDATORY PENALTY
IN THE MATTER OF

SAN JOAQUIN COUNTY SERVICE AREA 31
FLAG CITY WASTEWATER TREATMENT PLANT
SAN JOAQUIN COUNTY

This Complaint is issued to San Joaquin county Service Area 31, Flag City, Wastewater Treatment Plant (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, 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) R5-2003-0061 (NPDES No. CA0082848).

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

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system, and provides sewerage service for San Joaquin County Service Area 31, Flag City Wastewater Treatment Plant. Treated wastewater is discharged to Highline Canal, tributary to the Sacramento-San Joaquin Delta, a water of the United States.
2. On 25 April 2003, the Regional Water Board adopted WDRs Order No. R5-2003-0061 and Cease and Desist Order (CDO) No. R5-2003-0062. CDO No. R5-2003-0062 established a time schedule until 1 January 2008 to comply with final effluent limitations for ammonia, nitrate, manganese, copper, barium, total trihalomethanes, and electrical conductivity. On 10 September 2004, the Regional Water Board adopted Resolution No. R5-2004-0126, extending the compliance schedule for Provisions F.3 and F.6 to 1 November 2005. The final compliance dates were then extended to 1 January 2008, pursuant to Resolution No. R5-2005-0091. Finally, on 26 October 2007, the Regional Water Board adopted Resolution R5-2007-0141 amending the final compliance date to 24 April 2008. This Complaint considered the interim effluent limitations in WDRs Order No. R5-2003-0061, as amended, and the protection from Mandatory Minimum Penalties provided by CDO No. R5-2003-0062.
3. On 11 April 2008, the Discharger ceased discharging because it diverted all the wastewater to the City of Lodi. On 12 June 2008, the Regional Water Board adopted Resolution R5-2008-0083 rescinding WDRs Order No. R5-2003-0061 (NPDES Permit CA0082848) and CDO R5-2003-0062.
4. CWC sections 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 No. R5-2003-0061 Effluent Limitations No. B.2, include, in part, the following effluent limitations: “effluent shall not exceed the following interim limitations.”

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>7-day Median</u>	<u>Daily Average</u>	<u>Daily Maximum</u>
Total Coliform Organisms	MPN/100 mL	--	--	23	--	240

7. According to the Discharger’s self-monitoring reports, the Discharger committed thirty-seven (37) non-serious violations of the above effluent limitations contained in Order No. R5-2003-0061 during the period beginning 25 April 2003 and ending 10 April 2008. Twenty (20) 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 **sixty thousand dollars (\$60,000)**.

8. The total amount of the mandatory penalties assessed for the cited effluent violations is **sixty thousand dollars (\$60,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
9. 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).

SAN JOAQUIN COUNTY SERVICE AREA 31, FLAG CITY WASTEWATER TREATMENT PLANT, IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **sixty thousand dollars (\$60,000)**.
2. A hearing on this matter will be held at the Regional Water Board meeting scheduled on **23/24 October 2008**, unless the Discharger agrees to complete the following by **28 August 2008**:
 - a) Waive the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Regional Water Board, along with payment for the proposed civil liability of **sixty thousand dollars (\$60,000)**; or
 - b) Agree to enter into settlement discussions with the Regional Water Board and request that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Regional Water Board.
3. If a hearing on this matter is held, the Regional 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

29 July 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 **San Joaquin County Service Area 31, Flag City Wastewater Treatment Plant**, (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0558 (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 California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) within ninety (90) days of service of the Complaint; and
4. **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
 - a. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **sixty thousand dollars (\$60,000)** by check, which contains a reference to "ACL Complaint No. R5-2008-0558" and is made payable to the "*State Water Pollution Cleanup and Abatement Account.*" Payment must be received by the Regional Water Board by **27 August 2008** or this matter will be placed on the Regional Water Board's agenda for adoption as initially proposed in the Complaint.
 - b. I understand the payment of the above amount 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 Regional Water Board receive new information or comments during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Regional Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. 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.

-or-

5. **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time)** I certify that the Discharger will promptly engage the Regional Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is not waiving its right to a hearing on this matter. I understand that this waiver is a request to delay the hearing so the Discharger and Regional Water Board staff can discuss settlement. It does not constitute the Regional Water Board's agreement to delay the hearing. A hearing on the matter may be held before the Regional Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Regional Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0558

San Joaquin County Service Area 31
Flag City Wastewater Treatment Plant

RECORD OF VIOLATIONS (25 April 2003 – 10 April 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program No. R5-2003-0061)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
1	13-May-03	Coliform	MPN/100m L	23	110	7-day median	3
2	16-May-03	Coliform	MPN/100m L	23	67	7-day median	3
3	20-May-03	Coliform	MPN/100m L	23	97	7-day median	3
4	22-May-03	Coliform	MPN/100m L	23	130	7-day median	4
5	5-Jun-03	Coliform	MPN/100m L	240	1600	Daily	4
6	5-Jun-03	Coliform	MPN/100m L	23	1600	7-day median	4
7	8-Jun-03	Coliform	MPN/100m L	240	1600	Daily	4
8	8-Jun-03	Coliform	MPN/100m L	23	1600	7-day median	4
9	13-Jun-03	Coliform	MPN/100m L	240	300	Daily	4
10	13-Jun-03	Coliform	MPN/100m L	23	950	7-day median	4
11	3-Jul-03	Coliform	MPN/100m L	23	27	7-day median	4
12	30-Dec-03	Coliform	MPN/100m L	23	26	7-day median	3
13	18-Feb-04	Coliform	MPN/100m L	23	50	7-day median	3
14	20-Feb-04	Coliform	MPN/100m L	23	40	7-day median	3
15	27-Jul-04	Coliform	MPN/100m L	23	29	7-day median	3
16	5-Aug-04	Coliform	MPN/100m L	23	240	7-day median	4
17	10-Aug-04	Coliform	MPN/100m L	23	121	7-day median	4
18	10-Jan-05	Coliform	MPN/100m L	23	50	7-day median	4
19	13-Jan-05	Coliform	MPN/100m L	23	26	7-day median	4
20	28-Mar-05	Coliform	MPN/100m L	240	280	Daily	3
21	28-Mar-05	Coliform	MPN/100m L	23	280	7-day median	4
22	28-Nov-05	Coliform	MPN/100m L	23	30	7-day median	3
23	9-Dec-05	Coliform	MPN/100m L	23	50	7-day median	3
24	13-Dec-05	Coliform	MPN/100m L	23	26	7-day median	3
25	9-Jan-06	Coliform	MPN/100m L	23	41	7-day median	4

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
26	14-Feb-06	Coliform	MPN/100m L	23	126	7-day median	4
27	4-Oct-06	Coliform	MPN/100m L	23	56	7-day median	3
28	17-Jan-07	Coliform	MPN/100m L	23	170	7-day median	3
29	23-Jan-07	Coliform	MPN/100m L	23	110	7-day median	3
30	25-Jan-07	Coliform	MPN/100m L	23	32	7-day median	4
31	29-Jan-07	Coliform	MPN/100m L	23	50	7-day median	4
32	1-Feb-07	Coliform	MPN/100m L	23	46	7-day median	4
33	20-Nov-07	Coliform	MPN/100m L	23	1600	7-day median	3
34	21-Nov-07	Coliform	MPN/100m L	23	825	7-day median	3
35	20-Nov-07	Coliform	MPN/100m L	240	1600	Daily	3
36	19-Dec-07	Coliform	MPN/100m L	23	31	7-day median	4
37	20-Dec-07	Coliform	MPN/100m L	23	50	7-day median	4

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>04/10/2008</u>
Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	17
Non-serious Violations Subject to MPs:	20
<u>Total Violations Subject to MPs:</u>	20

Mandatory Minimum Penalty = (0 Serious Violations + 20 Non-Serious Violations) x \$3,000 = \$60,000