



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt Resolution Authorizing Administrative Settlement with California Regional Water Quality Control Board for Discharge Violations

MEETING DATE: August 19, 2009

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution authorizing administrative settlement with the California Regional Water Quality Control Board (Board).

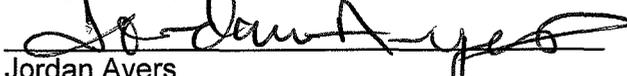
BACKGROUND INFORMATION: On May 13, 2009, the City of Lodi received a draft Administrative Civil Liability Complaint (ACLC) from the Board outlining proposed Minimum Mandatory Penalties (MMP) for non-serious discharge violations that occurred between January 1, 2000 and March 31, 2009. A total of seven violations were noted and these are in addition to the seven violations addressed in complaint R5-2008-0562 that covered the period between January 1, 2000 and December 31, 2007. The proposed MMP's are associated with operational issues, sampling errors, coliform limitation exceedences, and other minor issues. A copy of the ACLC is provided in Exhibit A.

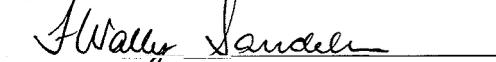
On June 15, 2009, City staff responded to the ACLC (Exhibit B) agreeing with the proposed violations and requested the Board consider the Statute of Limitations pursuant to Federal Clean Water Act (CWA) and the California Code of Civil Procedure, Section 338(i). The Board responded on July 16, 2009 (Exhibit C) stating the Statute of Limitations in the Clean Water Act does not apply to this type of administrative proceeding because it applies only to actions by the Federal Government. Additionally, the administrative action falls outside the scope of California Code of Civil Procedure, Section 338(i) because it only applies to time limits on civil suits in the courts. Although the Board's order requires payment by August 17, 2009, City staff has been allowed delayed payment pending City Council action on August 19, 2009.

The California Water Code Section 13385 allows the Board to impose administrative civil liabilities (MMP) for each discharge violation that qualifies for a MMP. The current MMP for both serious and non-serious violations is \$3,000 per occurrence. Staff recommends the City pay the fine of \$21,000. Failure to pay the fine could result in increased oversight by the Regional Board and additional penalties for nonpayment.

FISCAL IMPACT: Wastewater operations costs will increase by \$21,000.

FUNDING AVAILABLE: Budgeted Expenditure


Jordan Ayers
Deputy City Manager/Internal Services Director


F. Wally Sandelin
Public Works Director

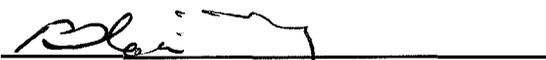
Prepared by Charles Swimley, Water Services Manager

FWS/CS/dsg

Attachments

cc: D. Stephen Schwabauer, City Attorney
Charles E. Swimley, Jr., Water Services Manager
Del Kerlin, Wastewater Treatment Superintendent

APPROVED:


Blair King, City Manager



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114

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Arnold
Schwarzenegger
Governor

13 May 2009

F. Wally Sandelin
Public Works Director
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

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MAY 14 2009



CITY OF LODI
PUBLIC WORKS DEPARTMENT

DRAFT RECORD OF VIOLATIONS FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, CITY OF LODI WHITE SLOUGH WATER POLLUTION CONTROL FACILITY, SAN JOAQUIN COUNTY

Enclosed is a draft Record of Violations (ROV) that staff has prepared prior to issuance of an Administrative Civil Liability Complaint (ACLC). The ACLC will be issued pursuant to California Water Code Section 13385 for violations of effluent limitations of Waste Discharge Requirements Orders 5-00-013 and R5-2007-0113 (NPDES No. CA0079243) by the City of Lodi's White Slough Facility. The ACLC would propose an Administrative Civil Liability of eighteen thousand dollars (\$18,000) in mandatory minimum penalties (MMPs) for effluent limitation violations.

The attached ROV lists effluent violations which our records show occurred at the facility from 1 January 2000 through 31 March 2009. During review of this matter, staff determined that ACL Complaint R5-2008-0562 (previously issued to the City of Lodi) had not included four violations subject to MMPs. The attached ROV includes these four violations. In addition, staff has identified two violations subject to MMPs that occurred since issuance of ACL Complaint R5-2008-0562. In summary, MMPs in the amount of twelve thousand dollars (\$12,000) are due for the omitted violations from 1 January 2000 through 31 December 2007, and six thousand dollars (\$6,000) for the additional violations that occurred from 1 January 2008 through 31 March 2009 for a total of eighteen thousand dollars (\$18,000). In the attached ROV, the violations currently subject to MMPs are shown in bold.

Please review the attached ROV for accuracy and submit any comments/corrections by **15 June 2009**. We plan to issue the ACLC after that date. If you have any questions or comments regarding the violations, please contact Barry Hilton at (916) 464-4762 or bhilton@waterboards.ca.gov.

Wendy Wyels

WENDY WYELS
Supervisor
Compliance and Enforcement Section

Enclosure: Attachment A

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-XXXX**

City of Lodi

White Slough Water Pollution Control Facility

RECORD OF VIOLATIONS (1 January 2000 - 31 March 2009) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program Nos. 5-00-031 and R5-2007-0113)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>	<u>CIWQS</u>
1	24-Feb-00	pH	pH units	6.5	6.4	Instantaneous	3	174274
2	21-Oct-00	Coliform	MPN/100ml	500	1600	Daily	3	185932
3	28-Oct-00	Coliform	MPN/100ml	500	1600	Daily	3	185933
4	11-Nov-00	Coliform	MPN/100ml	500	1600	Daily	3	185934
5	28-Jan-01	pH	pH units	6.5	6.3	Instantaneous	4	185877
6	1-Feb-01	pH	pH units	6.5	6.4	Instantaneous	4	185930
7	22-Feb-01	Coliform	MPN/100ml	500	1600	Daily	4	185931
8	26-Feb-01	pH	pH units	6.5	6.4	Instantaneous	4	185936
9	22-Oct-01	TSS	mg/L	50	51	Daily	3	205118
10	7-Feb-02	Coliform	MPN/100ml	500	1600	Daily	3	205119
11	13-Nov-02	TSS	mg/L	50	67	Daily	3	205334
12	24-Dec-02	Coliform	MPN/100ml	500	900	Daily	3	205335
13	6-Mar-03	Coliform	MPN/100ml	500	1600	Daily	3	247230
14	8-Nov-05	Coliform	MPN/100ml	23	50	Daily	3	368528
15	11-Nov-05	pH	pH units	6.5	6.4	Instantaneous	3	756451
16	12-Nov-05	Coliform	MPN/100ml	2.2	8	7-day	3	368534
17	29-Nov-05	Coliform	MPN/100ml	23	50	Daily	4	368529
18	31-Jan-06	Coliform	MPN/100ml	23	30	Daily	4	368545
19	20-Feb-06	Coliform	MPN/100ml	23	240	Daily	4	368555
20	24-Feb-06	Coliform	MPN/100ml	23	300	Daily	4	368556
21	3-Apr-06	Coliform	MPN/100ml	23	50	Daily	4	756463
22	13-Oct-06	Coliform	MPN/100ml	23	30	Daily	3	756464
23	30-Oct-06	Coliform	MPN/100ml	23	30	Daily	3	756465
24	12-Mar-07	Coliform	MPN/100ml	23	50	Daily	3	756502
25	4-Sep-07	Coliform	MPN/100ml	23	50	Daily	3	756506
26	15-Sep-07	Coliform	MPN/100ml	23	80	Daily	3	756526
27	15-Sep-07	Coliform	MPN/100ml	2.2	3	7-day	4	756532
28	22-Sep-07	Coliform	MPN/100ml	2.2	7	7-day	4	756548
29	29-Sep-07	Coliform	MPN/100ml	2.2	7	7-day	4	756563
30	2-Feb-08	Coliform	MPN/100ml	2.2	4	7-day median	4	756568
31	5-Nov-08	Manganese	µg/L	119	130	Daily Max	3	817498
32	8-Nov-08	Coliform	MPN/100ml	2.2	11	7-day median	3	817493
33	10-Jan-09	Coliform	MPN/100ml	2.2	4	7-day median	3	817500
34	27-Feb-09	Coliform	MPN/100ml	23	27	Instantaneous	4	817489

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.

ADDITIONAL VIOLATIONS FROM 1/1/2000 THROUGH 12/31/2007

Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	0
Non-serious Violations Subject to MPs:	4
<u>Total Additional Violations Subject to MPs:</u>	<u>4</u>

Additional Mandatory Minimum Penalty (2000-2007) = (0 Serious Violations + 4 Non-Serious Violations) x \$3,000 = \$12,000

<u>VIOLATIONS FROM 1/1/2008 T</u>	<u>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:	2
<u>Total Violations Subject to MPs:</u>	<u>2</u>

Mandatory Minimum Penalty (2008) = (0 Serious Violations + 2 Non-Serious Violations) x \$3,000 = \$6,000

Total Mandatory Minimum Penalty Due= \$12,000 + \$6,000 = \$18,000

CITY COUNCIL

LARRY D. HANSEN,
Mayor
PHIL KATZAKIAN,
Mayor Pro Tempore
SUSAN HITCHCOCK
BOB JOHNSON
JOANNE MOUNCE

CITY OF LODI

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BLAIR KING,
City Manager

RANDI JOHL,
City Clerk

D. STEPHEN SCHWABAUER,
City Attorney

F. WALLY SANDELIN,
Public Works Director

June 15, 2009

Ms. Wendy Wyels
Supervisor, NPDES Compliance and Enforcement Section
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova CA 95670-6114

SUBJECT: Administrative Civil Liability Complaint- Mandatory Minimum Penalties
City of Lodi White Slough Water Pollution Control Facility
Order Number R5-2007-0113 and R5-00-031

Dear Ms. Wyels:

The purpose of this letter is to present the City of Lodi's (City's) review of the draft Record of Violations (draft ROV) issued by the Central Valley Regional Water Quality Control Board (Regional Board) on May 13, 2009. The draft ROV outlines violations of effluent limitations by the City's White Slough Water Pollution Control Facility (WPCF) that have occurred since January 28, 2000 through March 31, 2009. We understand that this draft ROV supplements the Administrative Civil Liability Compliant (ACLC) R5-2008-0562 previously issued to the City by the Regional Board, with four (4) additional alleged violations for the period of January 1, 2000 through December 31, 2007, as well as five (5) violations between January 1, 2008 and March 31, 2009. In summary, the draft ROV includes six (6) violations subject to Mandatory Minimum Penalties (MMPs); resulting in a fine of \$18,000 for the City.

As mentioned in our response to the previous ACLC R5-2008-0562, we request clarification on the statute of limitations that applies to MMPs. Specifically, the City believes imposition of penalties for violations occurring more than three years ago is barred by the statute of limitations under the Porter-Cologne Water Quality Act (Code of Civ. Proc. §338(i)). At a minimum, a five year statute of limitations applies under federal law, as Chapter 5.5 of the Water Code to be construed "to ensure consistency" with the requirements for state programs implementing the Clean Water Act (CWC § 13372(a)), and the statute of limitations for penalties assessed pursuant to the Clean Water Act is five years. (28 U.S.C. §2462; see also *Public Interest Research Group of New Jersey, Inc. v. Powell Duffryn Terminals*, 913 F. 2d 64, 75 (3rd Cir. 1990)). If the Regional Board

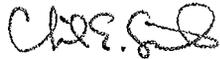
Ms. Wendy Wyels
California Regional Water Quality Control Board
Page 2

intends to assess penalties outside the allowable time periods, the City requests that the Regional Board explain the legal basis for this action.

We have reviewed the alleged violations and take no exception that they meet the Regional Board's interpretations regarding the assessment of MMPs. The City intends to pay the assessed MMPs, but requests that prior to issuing the ACLC, that the February 1, 2001 pH violation be revisited with respect to the Water Code statute of limitations. Thank you for your consideration.

Please contact me at (209) 333-6740 or at cswimley@lodi.gov if you have any questions in this matter.

Sincerely,



Charles E. Swimley, Jr., P.E.
Water Services Manager

CES/myn

cc: F. Wally Sandelin, Public Works Director
Del Kerlin, Wastewater Treatment Superintendent
Ms. Roberta Larson, Somach, Simmons & Dunn
Ms. Kathryn Gies, West Yost Associates



California Regional Water Quality Control Board

Central Valley Region

Karl E. Longley, ScD, P.E., Chair

CC: Del Kerlin
Charles Swinler



Arnold

Schwarzenegger
Governor

Linda S. Adams

Secretary for
Environmental
Protection

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Exhibit C

16 July 2009

JUL 20 2009

F. Wally Sandelin
Public Works Director
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910



CITY OF LODI
PUBLIC WORKS DEPARTMENT

CERTIFIED MAIL

7006 2150 000 7132 2453

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2009-0555 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, CITY OF LODI WHITE SLOUGH WATER POLLUTION CONTROL FACILITY, SAN JOAQUIN COUNTY

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code section 13385, for violations of Waste Discharge Requirements (WDRs) Order Nos. 5-00-031 and R5-2007-0113 (NPDES No. CA0079243) by the City of Lodi White Slough Water Pollution Control Facility. The Complaint charges the City of Lodi (Discharger) with civil liability in the amount of **twenty-one thousand dollars (\$21,000)**. This represents the sum of accrued Mandatory Minimum Penalties for effluent limitation violations not addressed in Complaint R5-2008-0562 (violations 6, 18-20) plus violations which occurred from January 2008 through 31 March 2009.

On 13 May 2009, Central Valley Water Board staff issued a draft Record of Violations (ROV). On 15 June 2009, the Discharger responded and agreed with the violations. This Complaint increases the civil liability from \$18,000 to \$21,000 because violation 34, the fourth violation during the preceding 180 days, was incorrectly coded as exempt from MMPs.

The Discharger requested consideration of the statute of limitations pursuant to the Federal Clean Water Act (CWA) and in the California Code of Civil Procedure, section 338(i). The statute of limitations in the CWA does not apply to this type of administrative proceeding because it only applies to actions by the federal government. This administrative action falls outside the scope of California Code of Civil Procedure, section 338(i) because it only applies to time limits on the commencement of civil suits in the courts.

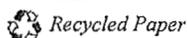
Pursuant to CWC section 13323, the Discharger may:

- Pay the assessed civil liability and waive its right to a hearing before the Central Valley Water Board by signing the enclosed waiver (checking off the box next to item #4) and submitting it to this office by **17 August 2009**, along with payment for the full amount;
- Agree to enter into settlement discussions with the Central Valley 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 submitting it to this office by **47 August 2009**; or
- Contest the Complaint and/or enter into settlement discussions with the Central Valley Water Board without signing the enclosed waiver.

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California Environmental Protection Agency



CITY OF LODI
MUNICIPAL SERVICE CENTER

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations in the Complaint. This settlement will be considered final pending a 30-day period, starting from the date of this Complaint, during which time interested parties may comment on this action by submitting information to this office, attention Barry Hilton. Should the Central Valley Water Board receive 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. If the Central Valley Water Board does not hold a hearing on the matter, and if the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement.

If the Central Valley Water Board does not receive a signed waiver within 30 days of the date of this Complaint (**by 17 August 2009**), then a hearing will be scheduled for the **7/8/9 October 2009** Central Valley Water Board meeting in Rancho Cordova. The Central Valley Water Board's Prosecution Team has prepared the enclosed draft Hearing Procedure to govern the conduct of such a hearing. Any objections to this draft Hearing Procedure must be received by Lori Okun, whose contact information is listed in the draft Hearing Procedure, **by 5 p.m. on 27 July 2009**.

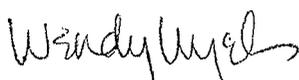
Any comments or evidence concerning the enclosed Complaint must be submitted in accordance with the deadlines contained in the draft Hearing Procedure, unless these deadlines are changed by the Central Valley Water Board's Adjudicatory Team, either on their own accord or upon request.

In order to conserve resources, this letter transmits paper copies of the documents to the Discharger only. Interested persons may download the documents from the Central Valley Water Board's Internet website at:

http://www.waterboards.ca.gov/centralvalley/tentative_orders/.

Copies of these documents can also be obtained by contacting or visiting the Central Valley Water Board's office weekdays between 8:00 AM and 5:00 PM.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Barry Hilton at (916) 464-4762 or bhilton@waterboards.ca.gov.



WENDY WYELS

Supervisor

Compliance and Enforcement Section

Enclosure: ACLC No. R5-2009-0555
Draft Hearing Procedures
Hearing Waiver

cc w/ encl: Mr. Kenneth Landau, Central Valley Water Board, Rancho Cordova
Mr. Kenneth Greenberg, USEPA, Region 9, San Francisco
Mr. Reed Sato, Office of Enforcement, SWRCB, Sacramento
Mr. Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Ms. Lori Okun, Office of Chief Counsel, SWRCB, Sacramento
Ms. Emel Wadhvani, Office of Chief Counsel, SWRCB, Sacramento
Ms. Carol Oz, Department of Fish and Game, Region 2, Rancho Cordova
San Joaquin County Environmental Health Department, Stockton
Mr. Bill Jennings, California Sportfishing Protection Alliance, Stockton

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0555

MANDATORY PENALTY
IN THE MATTER OF

CITY OF LODI
WHITE SLOUGH WATER POLLUTION CONTROL FACILITY
SAN JOAQUIN COUNTY

This Complaint is issued to the City of Lodi, White Slough Water Pollution Control Facility, (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) Orders 5-00-031 and R5-2007-0113 (NPDES No. CA0079243).

The 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 for the City of Lodi. Treated wastewater is discharged to Dredger Cut, tributary to White Slough, tributary to Bishop Cut, tributary to the Sacramento-San Joaquin Delta, a water of the United States.
2. On 28 January 2000, the Central Valley Water Board issued WDRs Order 5-00-031 to regulate discharges of waste from the water pollution control facility (WPCF).
3. On 10 September 2004, the Central Valley Water Board issued Resolution R5-2004-0125, which extended certain compliance deadlines contained in WDRs Order 5-00-031 from 1 May 2004 to 21 January 2005.
4. On 14 September 2007, the Central Valley Water Board issued WDRs Order R5-2007-0113, effective 3 November 2007, which contained new requirements and rescinded WDRs Order 5-00-031. Although this matter was petitioned to the State Water Resources Control Board, and an Order is currently being finalized that will remand portions of these WDRs to the Central Valley Water Board for re-consideration, the subject of this petition was unrelated to the effluent limit violations that are charged in this Complaint.
5. On 14 September 2007, the Central Valley Water Board issued Time Schedule Order (TSO) R5-2007-0114, providing a time schedule and establishing interim effluent limits until 17 May 2010 for nitrate, nitrite, and manganese.
6. On 14 August 2008, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2008-0562 for mandatory minimum penalties (MMPs) for effluent violations from 1 January 2000 through

31 December 2007. The Discharger paid the Complaint and the Central Valley Water Board considers the matter resolved regarding the cited violations.

On 13 May 2009, Central Valley Water Board staff sent the Discharger a draft Record of Violations (ROV). The ROV included violations not included in ACLC R5-2008-0562 as well as violations accrued since issuance of that Order. On 15 June 2009, the Discharger responded. The Discharger agreed with the violations not previously assessed MMPs and the additional new violations. In addition, staff have determined that violation 34 on the draft Record of Violations is subject to MMPs because it was the fourth violation within the preceding 180-day period.

8. The Discharger requested clarification regarding the five-year statute of limitations in the federal Clean Water Act (CWA). This statute of limitations in the CWA only applies to actions by the federal government and does not apply to this type of administrative proceeding.

The Discharger requested clarification regarding the three-year statute of limitations in the California Code of Civil Procedures, section 338(i). The Code section of which section 338 is a part makes it clear that section 338 applies only to time limits on the commencement of civil suits in the courts. Title 2 is intended to prescribe time periods for the bringing of civil law suits. This administrative complaint falls outside the scope of section 338. (See also *Bernd v. Eu* (1979) 100 Cal.App.3d 511, 161 Cal.Rptr. 58; *Rudolph v. Athletic Commission* (1960) 177 Cal.App.2d 1, 22, 1 Cal.Rptr. 898).

10. CWC sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

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.

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.

12. WDRs Order 5-00-031 Effluent Limitations No. B.1, states, in part: *“The effluent shall not exceed the following limits:”*

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u> <u>e</u>	<u>Weekly Average</u> <u>e</u>	<u>Daily Average</u> <u>e</u>	<u>Daily Maximum</u>
<u>Total Suspended Solids</u>	mg/L	20 ²	40 ²	--	50 ²

² To be ascertained by a flow proportional 24-hour composite sample.

13. WDRs Order 5-00-031 Effluent Limitations No. B.2, states, in part: *“Interim total coliform organism and BOD wastewater effluent limits shall be in effect through 30 April 2004. The interim effluent limits are as follows:”*

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u> <u>e</u>	<u>Weekly Average</u> <u>e</u>	<u>Daily Maximum</u>
<u>Total Coliform</u>	MPN/100m L	23 ¹	--	500

¹ Monthly median value.

This deadline was extended by Resolution R5-2004-0125 to 21 January 2005.

14. WDRs Order 5-00-031 Effluent Limitations No. B.3., states, in part: *“The effluent shall not exceed the following limits in accordance with the time schedule in Provision H.2.”*

<u>Constituents</u>	<u>Units</u>	<u>Daily Average</u> <u>e</u>	<u>Monthly Average</u> <u>e</u>	<u>Weekly Average</u> <u>e</u>	<u>Daily Maximum</u>
<u>Total Coliform Organisms</u>	MPN/100m L	--	--	2.2 ⁴	23

⁴ As a 7-day median.

Provision H.2 was amended by Resolution R5-2004-0125 to extend the time schedule for full compliance to 21 January 2005 from 30 April 2004.

15. WDRs Order 5-00-031 Effluent Limitations B.7., requires, in part, *“The discharge shall not have a pH less than 6.5 nor greater than 8.5.”*
16. WDRs Order R5-2007-0113 Effluent Limitations No. IV.A.1.e., Total Coliform Organisms, states: *“Effluent total coliform organisms shall not exceed:*
- i. 2.2 most probable number (MPN) per 100 mL, as a 7-day median; and
 - ii. 23 MPN/100 mL, more than once in any 30-day period.

17. According to the Discharger's self-monitoring reports, the Discharger committed thirty-five (35) non-serious violations of the above effluent limitations contained in Orders 5-00-031 and R5-2007-0113 during the period beginning 1 January 2000 and ending 31 March 2009. Fourteen (14) of the non-serious violations are subject to mandatory penalties (MMPs) under CWC section 13385(i)(1) because these violations were preceded by three or more similar violations within a six-month period. Seven (7) of these were assessed MMPs under ACLC R5-2008-0562. The mandatory minimum penalty for the **seven (7) additional** non-serious violations is **twenty-one thousand dollars (\$21,000)**.
18. The total amount of the mandatory penalties assessed for the cited effluent violations is **twenty-one thousand dollars (\$21,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
19. 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 LODI 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-one thousand dollars (\$21,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **7/8/9 October 2009**, unless the Discharger does either of the following by **17 August 2009**:
 - a) Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **twenty-one thousand dollars (\$21,000)**; or
 - b) Agrees to enter into settlement discussions with the Central Valley Water Board and requests 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 Central Valley Water 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.

ORIGINAL SIGNED BY

PAMELA C. CREEDON, Executive Officer

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2009-0555
MANDATORY PENALTY
CITY OF LODI
WHITE SLOUGH WATER POLLUTION CONTROL FACILITY
SAN JOAQUIN COUNTY

-5-

16 July 2009

DATE

Attachment A: Record of Violations
BLH: 20-Jul-09

**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 Lodi (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2009-0555 (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. **(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 **twenty-one thousand dollars (\$21,000)** by check, which contains a reference to "ACL Complaint No. R5-2009-0555" and is made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **17 August 2009** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **71819 October 2009** Central Valley Water Board meeting.
 - 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 Central Valley Water Board receive new information or comments during this comment period, the Regional Water Board's Executive Officer may withdraw the complaint, return payment, 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.
 - 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. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I certify that the Discharger will promptly engage the Central Valley 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. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley 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 Central Valley 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 recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2009-0555

City of Lodi

White Slough Water Pollution Control Facility

RECORD OF VIOLATIONS (1 January 2000 – 31 March 2009) MANDATORY PENALTIES

(Data reported under Monitoring and Reporting Program Nos. 5-00-031 and R5-2007-0113)

New violations are in boldface type.

	<u>Date</u>	<u>Violation</u>	<u>Units</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>PeriodType</u>	<u>Remarks</u>	<u>CIWQS</u>
1	24-Feb-00	pH	pH units	6.5	6.4	Instantaneous	3*	174274
2	21-Oct-00	Coliform	MPN/100mL	500	1600	Daily	3*	185932
3	28-Oct-00	Coliform	MPN/100mL	500	1600	Daily	3*	185933
4	11-Nov-00	Coliform	MPN/100mL	500	1600	Daily	3*	185934
5	28-Jan-01	pH	pH units	6.5	6.3	Instantaneous	4*	185877
6	1-Feb-01	pH	pH units	6.5	6.4	Instantaneous	4	185930
7	22-Feb-01	Coliform	MPN/100mL	500	1600	Daily	4*	185931
8	26-Feb-01	pH	pH units	6.5	6.4	Instantaneous	4*	185936
9	22-Oct-01	TSS	mg/L	50	51	Daily	3*	205118
10	7-Feb-02	Coliform	MPN/100mL	500	1600	Daily	3*	205119
11	13-Nov-02	TSS	mg/L	50	67	Daily	3*	205334
12	24-Dec-02	Coliform	MPN/100mL	500	900	Daily	3*	205335
13	6-Mar-03	Coliform	MPN/100mL	500	1600	Daily	3*	247230
14	8-Nov-05	Coliform	MPN/100mL	23	50	Daily	3*	368528
15	11-Nov-05	pH	pH units	6.5	6.4	Instantaneous	3*	756451
16	12-Nov-05	Coliform	MPN/100mL	2.2	8	7-day	3*	368534
17	29-Nov-05	Coliform	MPN/100mL	23	50	Daily	4*	368529
18	31-Jan-06	Coliform	MPN/100mL	23	30	Daily	4	368545
19	20-Feb-06	Coliform	MPN/100mL	23	240	Daily	4	368555
20	24-Feb-06	Coliform	L	23	300	Daily	4	368556
21	3-Apr-06	Coliform	MPN/100mL	23	50	Daily	4*	756463
22	13-Oct-06	Coliform	MPN/100mL	23	30	Daily	3*	756464
23	30-Oct-06	Coliform	MPN/100mL	23	30	Daily	3*	756465
24	12-Mar-07	Coliform	MPN/100mL	23	50	Daily	3*	756502
25	4-Sep-07	Coliform	MPN/100mL	23	50	Daily	3*	756506
26	15-Sep-07	Coliform	MPN/100mL	23	80	Daily	3*	756526
27	15-Sep-07	Coliform	MPN/100mL	2.2	3	7-day	3*	756532
28	22-Sep-07	Coliform	MPN/100mL	2.2	7	7-day	4*	756548
29	29-Sep-07	Coliform	MPN/100mL	2.2	7	7-day	4*	756563
30	2-Feb-08	Coliform	L	2.2	4	7-day median	4	756568
31	30-Sep-08	BOD	mg/L	10	11	Monthly	3	824450
32	5-Nov-08	Manganese	µg/L	119	130	Daily Max	3	817498
33	8-Nov-08	Coliform	MPN/100mL	2.2	11	7-day median	3	817493
34	10-Jan-09	Coliform	L	2.2	4	7-day median	4	817500
35	27-Feb-09	Coliform	MPN/100mL	23	27	Instantaneous	4	817489

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 46 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.

ADDITIONAL VIOLATIONS FROM 1/1/2000 THROUGH 12/31.

Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	0
Non-serious Violations Subject to MPs:	4
<u>Total Additional Violations Subject to MPs:</u>	<u>4</u>

Additional Mandatory Minimum Penalty (2000-2007) = (0 Serious Violations + 4 Non-Serious Violations) x \$3,000 = \$12,000

VIOLATIONS FROM 1/1/2008 THROUGH 3/31/2009

Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	3
Non-serious Violations Subject to MPs:	3
<u>Total Violations Subject to MPs:</u>	<u>3</u>

Mandatory Minimum Penalty (2008) = (0 Serious Violations + 3 Non-Serious Violations) x \$3,000 = \$9,000

Total Mandatory Minimum Penalty Due= \$12,000 + \$9,000 = \$21,000

* Violations assessed Mandatory Minimum Penalties in Administrative Civil Liability Complaint R5-2008-0562.

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
ADMINISTRATIVE SETTLEMENT WITH CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD FOR
ALLEGED DISCHARGE VIOLATIONS

WHEREAS, the California Water Code Section 13385 allows the California Regional Water Quality Control Board (Board) to impose administrative civil liabilities (fines) for each discharge violation that qualified for a Mandatory Minimum Penalty (MMP); and

WHEREAS, on May 13, 2009, the City of Lodi received a draft Administrative Civil Liability Complaint (ALCL) from the Board outlining alleged MMP's for non-serious discharge violations that were not addressed in complaint R5-2008-0562 (which covered violations between January 1, 2000 and December 31, 2007) plus violations that occurred between January 1, 2008 and March 31, 2009. The purported violations are associated with operational upsets, sampling errors, coliform limitation exceedences, and other minor issues; and

WHEREAS, on June 15, 2009, the City responded to the Draft ALCL agreeing with the alleged violations and, at Council direction, requested the Board consider the Statute of Limitations pursuant to Federal Clean Water Act (CWA) and the California Code of Civil Procedure, Section 338(i). In the July 16, 2009 ALCL, the Board responds the Statute of Limitations in the Clean Water Act does not apply to this type of administrative proceeding because it applies only to actions by the Federal Government. Additionally, the administrative action falls outside the scope of California Code of Civil Procedure, Section 338(i) because it only applies to time limits on civil suits in the courts; and

WHEREAS, the California Water Code Section 13385 allows the Board to impose administrative civil liabilities (fines) for each discharge violation that qualifies for an MMP. The current MMP for both serious and non-serious violations is \$3,000 per occurrence. Staff recommends the City pay the fine of \$21,000.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize payment for the alleged civil liability of \$21,000 to the California Regional Water Quality Control Board not previously addressed in Complaint R5-2008-0562 (Violations 6, 18-20) plus violations which occurred from January 1, 2008 through March 31, 2009.

Dated: August 19, 2009

I hereby certify that Resolution No. 2009-115 was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 19, 2009, by the following vote:

- AYES: COUNCIL MEMBERS – Hitchcock, Johnson, Katakian, Mounce, and Mayor Hansen
- NOES: COUNCIL MEMBERS – None
- ABSENT: COUNCIL MEMBERS – None
- ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL
City Clerk