

**MEMORANDUM
DEPARTMENT OF FACILITY SERVICES
COUNTY OF PLACER**

To: **BOARD OF SUPERVISORS**

Date: **OCTOBER 20, 2009**

From:  **JAMES DURFEE / WILL DICKINSON**

Subject: **PAYMENT OF AN ADMINISTRATIVE CIVIL LIABILITY FOR SEWER
MAINTENANCE DISTRICT 1**

ACTION REQUESTED / RECOMMENDATION: Staff recommends your Board ratify payment of an Administrative Civil Liability to the State Water Pollution Cleanup and Abatement Account in the amount of \$6,000 for violations of permit discharge standards at the Sewer Maintenance District 1 Wastewater Treatment Plant, (Plant 1).

BACKGROUND: Sewer Maintenance District 1, (SMD 1) provides sewer service to approximately 7,800 Equivalent Dwelling Units in the North Auburn area. Plant 1, constructed in 1961, uses biological and filtration processes that cannot consistently meet all current regulatory standards defined in the permit for Plant 1 approved by the Regional Water Quality Control Board (RWQCB) in June 2005. Violations of the discharge standards included in the permit are subject to Mandatory Minimum Penalties (MMPs) of \$3,000 per violation.

On July 16, 2009, SMD 1 received the attached Administrative Civil Liability Complaint (ACLC) from the RWQCB for three discharge violations at Plant 1 during calendar year 2008. The ACLC included the assessment of \$6,000 in MMPs for 2 of the 3 violations. Two of the violations identified in the ACLC were for exceedances of the permit discharge standards for copper and lead. The other violation was for exceeding the ammonia standard. In order to achieve long term compliance with these standards, staff is proceeding with the following tasks as directed by your Board:

- Prepare a preliminary design for an upgrade and expansion of Plant 1.
- Proceed with a Request for Proposals (RFP) for the final project design.
- Proceed with an RFP for preparation of an Environmental Impact Report.
- Continue to explore opportunities for additional grant funding of the Regional Sewer Project and request an extension of time for compliance with Regional Water Quality Control Board permit requirements.

Staff reviewed the ACLC and concluded the RWQCB correctly assessed the MMPs. The ACLC included an MMP payment remittance deadline of August 17, 2009. The shortness of this deadline required staff to pay the penalty prior to your Board's approval.

ENVIRONMENTAL CLEARANCE: Payment of the ACLC is not considered a project under the California Environmental Quality Act Guidelines.

FISCAL IMPACT: Adequate funding exists in the Fiscal Year 2009/10 SMD 1 Operations Budget to pay the \$6,000 MMPs included in the ACLC.

JD:WD:BZ

ATTACHMENT: ACLC

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0556

MANDATORY PENALTY
IN THE MATTER OF

PLACER COUNTY DEPARTMENT OF FACILITY SERVICES
PLACER COUNTY SEWER MAINTENANCE DISTRICT NO. 1
WASTEWATER TREATMENT PLANT
PLACER COUNTY

This Complaint is issued to the Placer County Department of Facility Services, Placer County Sewer Maintenance District No. 1, (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 R5-2005-0074 (NPDES No. CA0079316).

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 to the unincorporated area of North Auburn in Placer County. The wastewater treatment plant provides tertiary treatment when influent flows are 3.5 million gallons per day (mgd) or less and a mixture of secondary and tertiary treatment when flows are greater than 3.5 mgd. Treated municipal wastewater is discharged to Rock Creek, a water of the United States.
2. On 23 June 2005, the Central Valley Water Board issued WDRs Order R5-2005-0074, which contained new regulations and rescinded Order 97-113. The WDRs include effluent limitations and other requirements regarding the wastewater discharges.
3. On 23 June 2005, the Central Valley Water Board issued Cease and Desist Order R5-2005-0075 requiring the Discharger to cease and desist from discharging wastewater contrary to WDRs Order R5-2005-0074.
4. On 20 June 2008, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2008-0537 for mandatory minimum penalties for effluent violations from 1 January 2001 through 31 December 2007. The Discharger paid the Complaint and the Central Valley Water Board considers the matter resolved.
5. On 12 May 2009, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations for effluent limitation violations for the period from 1 January 2008 through 31 December 2008. In its response, dated 21 May 2009, the Discharger agreed that it exceeded the interim limit for copper, but claimed that the effluent complied with the final effluent limitation for copper if the latter were calculated

based on the hardness measured in the effluent. However, the final effluent limitation for copper must be based on the hardness observed in Rock Creek at Monitoring Point R2 and not the hardness in the effluent (Information Sheet, page 47 and Attachment F, WDRs Order R5-2005-0074). Because there is no hardness data available for Rock Creek on 1 January 2008, compliance with the final effluent limitation for copper cannot be determined. Therefore determination of the violation is based only on the interim limit for copper.

6. 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 II 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.

7. 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.

8. WDRs Order R5-2005-0074 Effluent Limitations B.1. states, in part, "*Effluent shall not exceed the following limits:*"

30-Day 4-Day 1-hour

<u>Constituents</u>	<u>Units</u>	<u>Average</u>	<u>Average¹</u>	<u>Average²</u>
Total Ammonia ⁴	mg/L	Attach. E ¹	Attach D Calculate ⁵	Attach. C Calculate ⁵
	lbs/day ³	Calculate ⁵		

¹ Continuous Concentration (Chronic)
² Maximum concentration (Acute)
³ Based upon the Design Dry Weather Flow Rate of 2.18 mgd (x mg/L x 8.345 x 2.18 mgd = y lbs/day).
⁴ Temperature and pH must be determined concurrently.
⁵ Based upon the Design Dry Weather Flow Rate of 2.18 mgd (x mg/L x 8.345 x 2.18 mgd = y lbs/day), where x is the value obtained from Attachment C, D, or E, as specified above.

Note Attachment C is a table entitled "pH Dependent Effluent Limitations For Ammonia Criteria Maximum Concentrations (CMC)"
Attachment D is a table entitled "Temperature and pH Dependent Effluent Limitations For Ammonia (2.5CCC)"
Attachment E is a table entitled "Temperature and pH Dependent Effluent Limitations For Ammonia (CCC)"

9. WDRs Order R5-2005-0074 Effluent Limitations B.5. states, in part: "... prior to 30 March 2010 effluent shall not exceed the following interim limits:"

<u>Constituents</u>	<u>Units</u>	<u>Daily Maximum</u>
Copper	µg/L	6.33
Lead	µg/L	4.25

10. According to the Discharger's self-monitoring reports, the Discharger committed two (2) serious Group II violations of the above effluent limitations contained in Order R5-2005-0074 during the period beginning 1 January 2008 and ending 31 December 2008. The violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels by more than 20 percent on these occasions. The mandatory minimum penalty for these serious violations is **six thousand dollars (\$6,000)**.
11. According to the Discharger's self-monitoring reports, the Discharger committed one (1) non-serious violation of the above effluent limitations contained in Order R5-2005-0074 during the period beginning 1 January 2008 and ending 31 December 2008. This non-serious violation is not subject to mandatory penalties under CWC section 13385(i)(1) because this violation was not preceded by three or more similar violations within a six-month period.
12. The total amount of the mandatory penalties assessed for the cited effluent violations is **six thousand dollars (\$6,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Order.
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).

PLACER COUNTY DEPARTMENT OF FACILITY SERVICES, PLACER COUNTY SEWER MAINTENANCE DISTRICT NO. 1, 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 **six thousand dollars (\$6,000)**.
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 agrees to complete 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 **six thousand dollars (\$6,000)**; 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 conducted, 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

16 July 2009
DATE

Attachment A: Record of Violations
BLH: 16 Jul 2009

**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 Placer County Department of Facility Services (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2009-0556 (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 proposed civil liability in the amount of six thousand dollars (\$6,000) by check, which will contain a reference to "ACL Complaint R5-2009-0556" and will be 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 **7/8/9 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 Central Valley 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. R5-2009-0556

Placer County Facility Services Department
Sewer Maintenance District No. 1
Wastewater Treatment Plant

RECORD OF VIOLATIONS (1 January 2008 – 31 December 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2005-0074)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period</u> <u>Type</u>	<u>Remarks</u>	<u>CIWQS</u>
1	4-Jan-08	Copper	µg/L	6.33	21.90	Daily	2	779821
2	4-Jan-08	Lead	µg/L	4.25	25.2	Daily	2	779822
3	30-Apr-08	Ammonia	mg/L	5.23	6.26	Monthly	3	805341

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>12/31/2008</u>
Group I Serious Violations:	0
Group II Serious Violations:	2
Non-Serious Exempt from MPs:	1
Non-serious Violations Subject to MPs:	0
Total Violations Subject to MPs:	2

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

