

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0533

MANDATORY PENALTY
IN THE MATTER OF

OLIVEHURST PUBLIC UTILITY DISTRICT
WASTEWATER TREATMENT PLANT
YUBA COUNTY

This Complaint is issued to the Olivehurst Public Utility District (hereafter referred to as Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL), 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) Order No. R5-2004-0094 (NPDES No. CA0077836).

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

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system, and provides sewerage service to the community of Olivehurst. Treated municipal wastewater is discharged to the Western Pacific Interceptor Drainage Canal, a water of the United States and a tributary to the Bear River.
2. On 6 December 1996, the Regional Water Board adopted Waste Discharge Requirements (WDRs) Order No. 96-282 to regulate discharges of waste from the wastewater treatment plant (WWTP). On 25 January 2002, the Regional Water Board adopted WDRs Order No. R5-2002-0001 and rescinded WDRs Order No. 96-282. On 9 July 2004, the Regional Water Board adopted WDRs Order No. R5-2004-0094, which contained new requirements and rescinded Order No. R5-2002-0001.
3. CWC section 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.”*

4. 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.”

5. There were no effluent violations of Order No. 96-282 or Order No. R5-2002-0001 subject to MMPs. There were no effluent violations of Order No. R5-2004-0094 prior to 13 July 2005.

6. WDRs Order No. R5-2004-0094 Effluent Limitations No. B.1. states, in part, *“Effluent from the wastewater treatment plant shall not exceed the following limits (from adoption until 30 November 2007).”*

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Monthly Median</u>	<u>Daily Maximum</u>	<u>Daily Average</u>
BOD ¹	mg/L	30 ²	45 ²	---	---	60 ²
	lbs/day ³	451	676			901
Total Coliform Organisms	MPN/100mL	---	---	23	240	---
Settleable Solids	mL/L	0.1	---	---	0.2	---

¹ 5-day, 20°C biochemical oxygen demand

² To be ascertained by a 24-hour composite

³ Based upon a design treatment capacity of 1.8 mgd.

7. WDRs Order No. R5-2004-0094 Effluent Limitations No. B.2. states, in part, *“Effluent from the wastewater treatment plant shall not exceed the following interim priority pollutant limits (from adoption until 30 November 2007).”*

<u>Constituents</u>	<u>Unit</u>	<u>Daily Average</u>
Dibromochloromethane ¹	µg/l	2.2
	lbs/day ²	0.033

¹ See Provision No. 5 of this Order for the effective compliance date for dibromochloromethane, dichlorobromomethane, tetrachloroethene, bis(2-ethylhexyl)phthalate, and copper

² Based upon a design treatment capacity of 1.8 mgd.

[Footnote 1 references the fact that the limits for Dibromochloromethane are interim limits. Because the Discharger submitted the compliance schedule justification required by Order No. R5-2004-094, these limits remained in effect until November of 2007. Provision 5 of the Order states that if the discharger had not submitted the compliance schedule justification, new limits would have taken effect in September of 2004. The interim limits, which remained in effect until November of 2007, were nonetheless violated five times. Those occasions are listed in Attachment A to this Complaint, as violations 22, 23, 27, 29, and 30.]

8. WDRs Order No. R5-2004-094 Effluent Limitations No. B.4 states that: *“The discharge shall not have a pH less than 6.5 nor greater than 8.5.”*
9. According to the Discharger’s self-monitoring reports, the Discharger committed ten (10) serious Group I violations of the above effluent limitations contained in Order No. R5-2004-094 during the period beginning 1 January 2000 and ending 30 November 2007. The violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels by more than 40 percent on these occasions. The mandatory minimum penalty for these serious violations is **thirty thousand dollars (\$30,000)**.
10. According to the Discharger’s self-monitoring reports, the Discharger committed two (2) serious violations of the above effluent limitations for Group II constituents contained in Order No. R5-2004-094 during the period beginning 1 January 2000 and ending 30 November 2007. 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 thirty-seven (37) non-serious violations of the above effluent limitations contained in Order No. R5-2004-094 during the period beginning 1 January 2000 and ending 30 November 2007. Thirty-two (32) 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 **ninety-six thousand dollars (\$96,000)**.
12. The total amount of the mandatory penalties assessed for the cited effluent violations is **one hundred thirty-two thousand dollars (\$132,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.

13. CWC section 13385 (k)(1) states, in part:

“In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works...”

14. CWC section 13385 (k)(2) states, in part:

“For the purposes of this subdivision, ‘a publicly owned treatment works serving a small community’ means a publicly owned treatment works serving a population of 10,000 persons or fewer or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works.”

15. Staff at the State Water Resources Control Board has determined that the Olivehurst Public Utility District Wastewater Treatment Plant is a publicly owned treatment works serving a small community.
16. The Discharger has spent \$25.1 million for engineering design and construction of an expansion and upgrade project to the WWTP. The Discharger has completed the compliance project to address the effluent violations for BOD, pH, settleable solids, total coliform organisms, and dibromochloromethane. With the completed compliance project, the Discharger has expended in excess of the mandatory minimum penalty that is required by CWC sections 13385(h) and (i).
17. The compliance project was performed in accordance with the State Water Resources Control Board Enforcement Policy.
18. 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 OLIVEHURST PUBLIC UTILITY DISTRICT 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 **one hundred thirty-two thousand dollars (\$132,000)**.
2. The Regional Water Board considers payment of the above penalty satisfied through the completion of the compliance project described above in accordance with CWC section 13385(k).
3. A hearing on this matter will be held at the Regional Water Board meeting scheduled on **11 September/12 September 2008**, unless the Discharger agrees to waive the hearing

by completing the attached form and returning it to the Regional Water Board by
16 July 2008.

4. 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

16 June 2008

Attachment A: Record of Violations
BLH: 06/16/08

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent the Olivehurst Public Utility District (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0533 (hereinafter the "Complaint");
2. I am informed of the right provided by California Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of service of the Complaint;
3. I hereby waive the Discharger's right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of service of the Complaint; and
4. I certify that the Discharger has expended an amount equal to or in excess of the assessed mandatory minimum penalties through completion of the compliance project specified in the Complaint. The Regional Water Board will accept the compliance project in lieu of monetary penalties.
5. I understand the completion of the above compliance project 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 during this comment period, the Regional Water Board may withdraw the complaint and issue a new complaint.
6. 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.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0533

Olivehurst PUD
Wastewater Treatment Plant

RECORD OF VIOLATIONS (1 January 2000 – 30 November 2007) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program No. R5-2004-0094)

	<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-Jul-05	Coliform	MPN/100mL	240	1600	Daily	3
2	15-Jul-05	Coliform	MPN/100mL	240	1600	Daily	3
3	22-Jul-05	Coliform	MPN/100mL	240	350	Daily	3
4	29-Jul-05	Coliform	MPN/100mL	240	280	Daily	4
5	31-Jul-05	Coliform	MPN/100mL	23	120	Monthly Med	4
6	5-Aug-05	Coliform	MPN/100mL	240	330	Daily	4
7	9-Aug-05	Coliform	MPN/100mL	240	1600	Daily	4
8	23-Aug-05	Coliform	MPN/100mL	240	350	Daily	4
9	26-Aug-05	Coliform	MPN/100mL	240	540	Daily	4
10	31-Aug-05	Coliform	MPN/100mL	23	62	Monthly Med	4
11	2-Sep-05	Coliform	MPN/100mL	240	350	Daily	4
12	9-Sep-05	Coliform	MPN/100mL	240	1600	Daily	4
13	13-Sep-05	Coliform	MPN/100mL	240	900	Daily	4
14	23-Sep-05	Coliform	MPN/100mL	240	1600	Daily	4
15	27-Sep-05	Coliform	MPN/100mL	240	1600	Daily	4
16	30-Sep-05	Coliform	MPN/100mL	240	1600	Daily	4
17	30-Sep-05	Coliform	MPN/100mL	23	900	Monthly Med	4
18	27-Dec-05	Coliform	MPN/100mL	240	1600	Daily	4
19	28-Dec-05	Coliform	MPN/100mL	240	1600	Daily	4
20	29-Dec-05	Settleable Solids	mg/L	0.2	1.5	Daily	1
21	23-Jan-06	pH	pH units	6.5	6.4	Instant.	4
22	8-Feb-06	Dibromochloromethane	µg/l	2.2	5.9	Daily	2
23	8-Feb-06	Dibromochloromethane	lbs/day	0.033	0.087	Daily	2
24	16-Feb-06	pH	pH units	6.5	6.3	Instant.	4
25	17-Mar-06	Coliform	MPN/100mL	240	1600	Daily	4
26	20-Mar-06	Coliform	MPN/100mL	240	900	Daily	4
27	26-Apr-06	Dibromochloromethane	µg/l	2.2	2.6	Daily	4
28	27-Apr-06	Coliform	MPN/100mL	240	900	Daily	4
29	18-May-06	Dibromochloromethane	µg/l	2.2	2.5	Daily	4
30	18-May-06	Dibromochloromethane	lbs/day	0.033	0.038	Daily	4
31	20-Jun-06	Coliform	MPN/100mL	240	500	Daily	4
32	22-Jun-06	Coliform	MPN/100mL	240	1600	Daily	4
33	22-Jun-06	pH	pH units	8.5	9.1	Instant.	4
34	26-Jun-06	Coliform	MPN/100mL	240	1600	Daily	4
35	30-Jun-06	Coliform	MPN/100mL	23	30	Monthly Med	4
36	6-Jul-06	Coliform	MPN/100mL	240	350	Daily	4
37	6-Jul-06	pH	pH units	8.5	8.6	Instant.	4

ATTACHMENT A
 OLIVEHURST PUBLIC UTILITY DISTRICT WWTF
 WASTEWATER TREATMENT PLANT
 ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0533

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
38	13-Sep-06	BOD	mg/L	60	380	Daily	1
39	13-Sep-06	BOD	lbs/day	901	4600	Daily	1
40	16-Sep-06	BOD	mg/L	45	200	Weekly	1
41	16-Sep-06	BOD	lbs/day	676	2400	Weekly	1
42	28-Sep-06	BOD	mg/L	60	130	Daily	1
43	28-Sep-06	BOD	lbs/day	901	1410	Daily	1
44	30-Sep-06	BOD	mg/L	45	47	Weekly	4
45	30-Sep-06	BOD	mg/L	30	63	Monthly	1
46	30-Sep-06	BOD	lbs/day	451	737	Monthly	1
47	30-Sep-06	BOD	% removal	85	49	Monthly	1
48	7-Aug-07	pH	pH units	8.5	8.8	Instant.	3
49	8-Aug-07	pH	pH units	8.5	9	Instant	3

Remarks:

1. Serious Violation: For Group 1 pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group 2 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>11/30/2007</u>
Group 1 Serious Violations:	10
Group 2 Serious Violations:	2
Non-Serious Exempt from MPs:	5
Non-serious Violations Subject to MPs:	32
<u>Total Violations Subject to MPs:</u>	<u>44</u>

Mandatory Minimum Penalty = (12 Serious Violations + 32 Non-Serious Violations) x \$3,000 = \$132,000