

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2012-XXXX

MANDATORY PENALTY  
IN THE MATTER OF

RIVIERA WEST MUTUAL WATER COMPANY  
DOMESTIC WATER TREATMENT PLANT  
LAKECOUNTY

This Order is issued to the Riviera West Mutual Water Company (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability. This Order is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Orders 96-099 and R5-2002-0130 (NPDES No. CA0083925).

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

1. The Discharger owns and operates a domestic water treatment plant (WTP), which provides potable water for the Riviera West area of Lake County near Konocti Bay.
2. On 3 May 1996, the Central Valley Water Board issued Waste Discharge Requirements ("WDRs") Order 96-099 (NPDES No. CA0083925) to regulate wastewater discharges from the Discharger's WTP to Clear Lake. On 19 July 2002, the Board issued WDRs Order R5-2002-0130, which contained new regulations and rescinded Order 96-099. The WDRs included effluent limitations and other requirements, and included a Monitoring and Reporting Program that requires the submittal of periodic monitoring reports. These monitoring reports were designed to ensure compliance with effluent limitations contained in the WDRs.
3. On 19 July 2002, the Central Valley Water Board also issued Cease and Desist Order (CDO) R5-2002-0131 requiring the Discharger to cease discharging contrary to WDRs Order R5-2002-0130. The CDO provided a time schedule until 19 July 2004 for the Discharger to comply with effluent limitations for chlorine, electrical conductivity, total dissolved solids, and aluminum.
4. The CDO further contained findings that the Discharger had not submitted any of the monitoring reports required under the previous WDRs. As described in the CDO, for the period from June 1996 (when the requirements of Order No. 96-099 were effective) through May 2002 (when the CDO was drafted) the Discharger: (a) failed to submit 23 of the 23 required quarterly reports; (b) failed to submit the results of 308 of the 308 required weekly effluent turbidity, pH, and chlorine residual samples; (c) failed to submit the results of 2,160 of the required 2,160 daily effluent flow samples; and (d) failed to submit the results of 308 of the required 308 weekly raw water turbidity, pH, and temperature samples. The CDO required the Discharger to comply immediately with requirements in Monitoring and Reporting Program R5-2002-0130, and listed the potential civil liabilities

that would accrue under CWC sections 13383 and 13268 if the Discharger failed to submit monitoring reports.

### Relevant Statutory Provisions

#### 5. Water Code section 13385 provides, in part:

- ...
- (h) (1) 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.
- (2) 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.
- (i) (1) 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.
- (2) For the purposes of this section, a "period of six consecutive months" means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.

#### 6. Water Code section 13385.1, which was amended in 2010, now provides, in part:

##### (a) [Serious Violation Defined]

- (1) For the purposes of subdivision (h) of Section 13385, a "serious violation" also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations. This paragraph applies only to violations that occur on or after January 1, 2004.
- (2) [Exclusion from the Definition of "Serious Violation" for Non-Discharge Reporting Violations]
- (A) Notwithstanding paragraph (1), a failure to file a discharge monitoring report is not a serious violation for purposes of subdivision (h) of Section 13385 at any time prior to the date a discharge monitoring report is required to be filed or within 30 days after receiving written notice from the state board or a regional board of the need to file a discharge monitoring report, if the discharger submits a written statement to the state board or the regional board that includes both of the following:
- (i) A statement that there were no discharges to waters of the United States reportable under the applicable waste discharge requirements during the relevant monitoring period.

- (ii) The reason or reasons the required report was not submitted to the regional board by the deadline for filing that report.
  - (B) Upon the request of the state board or regional board, the discharger may be required to support the statement with additional explanation or evidence.
  - (C) If, in a statement submitted pursuant to subparagraph (A), the discharger willfully states as true any material fact that he or she knows to be false, that person shall be subject to a civil penalty not exceeding ten thousand dollars (\$10,000). Any public prosecutor may bring an action for a civil penalty under this subparagraph in the name of the people of the State of California, and the penalty imposed shall be enforced as a civil judgment.
  - (D) Notwithstanding subparagraph (A), the failure to file a discharge monitoring report is subject to penalties in accordance with subdivisions (c) and (e) of Section 13385.
- (b) [Conditional Exemption from Continuous Accrual of \$3,000 Penalties for Unsubmitted Reports]
- (1) Notwithstanding paragraph (1) of subdivision (a), a mandatory minimum penalty shall continue to apply and shall be assessed pursuant to subdivision (h) of Section 13385, but only for each required report that is not timely filed, and shall not be separately assessed for each 30-day period following the deadline for submitting the report, if both of the following conditions are met:
    - (A) The discharger did not on any occasion previously receive, from the state board or a regional board, a complaint to impose liability pursuant to subdivision (b) or (c) of Section 13385 arising from a failure to timely file a discharge monitoring report, a notice of violation for failure to timely file a discharge monitoring report, or a notice of the obligation to file a discharge monitoring report required pursuant to Section 13383, in connection with its corresponding waste discharge requirements.
    - (B) The discharges during the period or periods covered by the report do not violate effluent limitations, as defined in subdivision (d), contained in waste discharge requirements.
  - (2) Paragraph (1) shall only apply to a discharger who does both of the following:
    - (A) Files a discharge monitoring report that had not previously been timely filed within 30 days after the discharger receives written notice, including notice transmitted by electronic mail, from the state board or regional board concerning the failure to timely file the report.
    - (B) Pays all penalties assessed by the state board or regional board in accordance with paragraph (1) within 30 days after an order is issued to pay these penalties pursuant to Section 13385.
  - (3) Notwithstanding paragraph (1), the failure to file a discharge monitoring report is subject to penalties in accordance with subdivisions (c) and (e) of Section 13385.
  - (4) This subdivision shall become inoperative on January 1, 2014.

Words in [brackets] have been added to provide explanation. The underlined text was added by Senate Bill 1284 of the 2009-10 Regular Session of the Legislature, and only applies to violations for which an administrative civil liability complaint or a judicial complaint has not been filed before July 1, 2010, without regard to the date on which the violations occurred in accordance with Water Code section 13385.1(e).

7. Water Code section 13261 provides, in relevant part:

- (a) A person who fails to furnish a report ... under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

...

(b)(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (a) in an amount not exceeding five thousand dollars (\$5,000) for each day the violation occurs.

...

(d)(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (c) in an amount not exceeding twenty-five thousand dollars (\$25,000).

### **Administrative Civil Liability Complaint**

8. CWC section 13385.1 took effect on 1 January 2004. This provision requires that the Board assess penalties for the failure to submit monitoring reports. Due to the Discharger's failure to submit reports, Central Valley Water Board staff is unable to determine whether the Discharger has discharged in compliance with the effluent limitations contained in its permits.
9. On 21 November 2008, the Assistant Executive Officer, acting as head of the Board's Prosecution Team, issued Administrative Civil Liability (ACL) Complaint R5-2008-0625 to the Riviera West Mutual Water Company. The Complaint proposed that the Board assess \$3,945,000 in mandatory minimum penalties. The majority of the penalties are for failure to submit discharge monitoring reports between 1 January 2004 and 30 June 2007, when WDRs Order R5-2002-0130 expired. Penalties were calculated through June 2008, when the Complaint was drafted.
10. As described above, the Discharger's failure to submit monitoring reports commenced in 2002, when the CDO was issued, and has continued until the present. This Administrative Civil Liability Order seeks mandatory minimum penalties for reports not submitted from the effective date of CWC 13385.1 on 1 January 2004 through the last report due under WDRs Order R5-2002-0130, which was 1 August 2007. This Order differs from the ACL Complaint in that penalties for annual reports have been removed, and penalties have been calculated to coincide with the due date of the last report and the expiration of the permit in 2007, and not the filing of the ACLC in 2008. This substantially reduced the penalty amount.
11. For the last three years, the Discharger has engaged the Prosecution Team in confidential settlement discussions to resolve the reporting violations, but those discussions have not yielded a resolution.
12. On 17 November 2009, effective 20 May 2010, the State Water Resources Control Board updated its *Water Quality Enforcement Policy*. The *Policy* clarifies what is meant by a "Discharge Monitoring Report" for the purposes of imposing mandatory minimum penalties.
13. In October 2010, the state legislature amended Water Code section 13385.1 to add exceptions for violations that had not been addressed by an administrative civil liability

complaint by 1 July 2010. Although the Prosecution Team had already issued a Complaint that covers many of the outstanding violations, there remained the possibility that the amendments to Water Code section 13385.1 (i.e., the underlined text in paragraph 6, above) would be applicable to Riviera West Mutual Water Company's discharges.

14. On 15 April 2011, the Prosecution Team requested that the Discharger complete "Reconciliation Reports" to determine which violations remain subject to Water Code section 13385.1, considering the clarifications made to the 2009 Water Quality Enforcement Policy and the modifications made to the Water Code. The letter, which was sent by certified mail, clearly states "it is vital" that the reports be returned by 15 May 2011. However, the Discharger has not submitted the reports nor has it contacted staff to discuss the letter.

#### **Unpermitted Discharges May Subject the Discharger to Additional Penalties**

15. WDRs Order R5-2002-0130 expired on 30 June 2007, and the Discharger has not submitted a complete Report of Waste Discharge to allow the permit to be updated. However, the Discharger continues to discharge backwash water to land and/or Clear Lake.
16. Prior to approximately June 2008, supernatant from filter backwash water was discharged directly to Clear Lake. The Discharger states that filter backwash water is now discharged to land. However, this area slopes to a drainage channel which drains into Clear Lake and it appears that there are no operational or structural controls to prevent waste from entering surface waters. Despite repeated requests for a complete Report of Waste Discharge ("RWD"), the Discharger has not submitted the information necessary to prepare Waste Discharge Requirements. Therefore, the Discharger is in violation of the Water Code and may also be in violation of the Federal Clean Water Act for unpermitted discharges of waste to surface waters.
17. On 2 March 2011, the Discharger was ordered, pursuant to Water Code section 13260, to either cease the discharge of waste or submit a complete RWD by 15 June 2011. The Discharger responded that it would submit the RWD by the required date. However, as of 25 October 2011, the Discharger has not submitted the RWD.

#### **Effluent Limit and Reporting Violations**

18. WDRs Order R5-2002-0130 Effluent Limitations B.1. states:

Effluent shall not exceed the following limits:

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>4-Day Average</u>	<u>1-Hour Average</u>	<u>Daily Maximum</u>
Bromodichloromethane	µg/L	0.56	--	--	--	--

19. WDRs Order R5-2002-0130 Effluent Limitations B.4. states:

The discharge shall not have a pH less than 6.5 nor greater than 8.5.

20. WDRs Order R5-2002-0130 Provision E.11. states, in part:

“The Discharger shall comply with Monitoring and Reporting Program No. R5-2002-0130...”  
Monitoring and Reporting Program (MRP) R5-2002-0130 includes requirements to monitor the raw water supply, receiving water, effluent, three species chronic toxicity, and sludge, and to submit the results on a monthly basis, by the first day of the second month following sample collection.

21. Monitoring and Reporting Program R5-2002-0130, Reporting, states in part:

“Monitoring results shall be submitted to the Regional Board by the first day of the second month following sample collection...”

22. CWC section 13385.1 took effect on 1 January 2004. This provision requires that the Board assess penalties for the failure to submit monitoring reports. The Discharger committed 861 serious violations for not submitting monitoring reports as required by WDRs Order R5-2002-0130 during the period beginning 1 January 2004 and ending 1 August 2007, which is the due date for the last monitoring report required by WDRs Order R5-2002-0130. A detailed list of the cited monitoring report violations is included in Attachment A, a part of this Order.
23. The monitoring report violations meet the definition of serious, as found in CWC section 13385.1(a)(1), because the reports were designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations. The mandatory minimum penalty for these serious violations is **two million five hundred eighty-three thousand dollars (\$2,583,000)**.
24. According to the Discharger’s one self-monitoring report, the Discharger committed one (1) serious Group II violation of the above effluent limitations contained in Orders 96-099 and R5-2002-0130 during the period beginning 1 January 2000 and ending 1 July 2007, when the permit expired. The violation is defined as serious because the measured concentration of a Group II constituent exceeded maximum prescribed levels by more than 20 percent. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
25. According to the Discharger’s one self-monitoring report, the Discharger committed three (3) non-serious violations of the above effluent limitations contained in WDRs Orders 96-099 and R5-2002-0130 during the period beginning 1 January 2000 and ending 1 July 2007, when the permit expired. Non-serious violations are subject to mandatory penalties under CWC section 13385(i)(1) only if they are preceded by three or more similar violations within a six-month period. Because of the non-submittal of monitoring reports, it is not possible to determine whether additional non-serious violations occurred

in the previous six months. Therefore, no penalties were assessed for these three non-serious violations.

26. The total amount of the mandatory penalties assessed for the cited effluent and reporting violations is **two million five hundred eighty-six thousand dollars (\$2,586,000)**. A detailed list of the cited effluent and reporting violations is included in Attachment A, a part of this Order.
27. Issuance of this Administrative Civil Liability Order 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).

**IT IS HEREBY ORDERED that:**

1. The Riviera West Mutual Water Company shall be assessed an administrative civil liability in the amount of **two million five hundred eighty-six thousand dollars (\$2,586,000)** in mandatory minimum penalties.
2. Payment must be made no later than 30 days from the date on which this order is adopted. Payment shall be in the form of a check made payable to the *State Water Pollution Cleanup and Abatement Account*, and shall have the number of this order written upon it.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., within 30 days after this Order was adopted. If the thirtieth day following the date that this order was adopted falls on a Saturday, Sunday, or state holiday, then the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

I, Pamela C. Creedon, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on \_\_\_\_\_.

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PAMELA C. CREEDON, Executive Officer

**ATTACHMENT A  
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2012-XXXX**

**Riviera West Mutual Water Company  
Domestic Water Treatment Plant**

RECORD OF VIOLATIONS (1 January 2000 – 1 August 2007, when last monitoring report was due)  
MANDATORY PENALTIES

Data reported under Monitoring and Reporting Program R5-2002-0130

**TABLE 1: MANDATORY PENALTIES FOR FAILURE TO SUBMIT REPORTS**

	<u>SMR</u>	<u>Due Date</u>	<u># of 30-day Periods Late</u>	<u>MMPs Accrued</u>	<u>Remarks</u>
1	Feb-04	1-Apr-04	41	\$120,000	1
2	Mar-04	1-May-04	40	\$117,000	1
3	Apr-04	1-Jun-04	39	\$114,000	1
4	May-04	1-Jul-04	38	\$111,000	1
5	Jun-04	1-Aug-04	37	\$108,000	1
6	Jul-04	1-Sep-04	36	\$105,000	1
7	Aug-04	1-Oct-04	35	\$102,000	1
8	Sep-04	1-Nov-04	34	\$99,000	1
9	Oct-04	1-Dec-04	33	\$96,000	1
10	Nov-04	1-Jan-05	32	\$93,000	1
11	Dec-04	1-Feb-05	31	\$90,000	1
12	Jan-05	1-Mar-05	30	\$87,000	1
13	Feb-05	1-Apr-05	29	\$84,000	1
14	Mar-05	1-May-05	28	\$81,000	1
15	Apr-05	1-Jun-05	27	\$78,000	1
16	May-05	1-Jul-05	26	\$75,000	1
17	Jun-05	1-Aug-05	25	\$72,000	1
18	Jul-05	1-Sep-05	24	\$69,000	1
19	Aug-05	1-Oct-05	23	\$66,000	1
20	Sep-05	1-Nov-05	22	\$63,000	1
21	Oct-05	1-Dec-05	21	\$60,000	1
22	Nov-05	1-Jan-06	20	\$57,000	1
23	Dec-05	1-Feb-06	19	\$54,000	1
24	Jan-06	1-Mar-06	18	\$51,000	1
25	Feb-06	1-Apr-06	17	\$48,000	1
26	Mar-06	1-May-06	16	\$45,000	1
27	Apr-06	1-Jun-06	15	\$42,000	1
28	May-06	1-Jul-06	14	\$39,000	1
29	Jun-06	1-Aug-06	13	\$36,000	1
30	Jul-06	1-Sep-06	12	\$33,000	1
31	Aug-06	1-Oct-06	11	\$30,000	1
32	Sep-06	1-Nov-06	10	\$27,000	1
33	Oct-06	1-Dec-06	9	\$24,000	1
34	Nov-06	1-Jan-07	8	\$21,000	1
35	Dec-06	1-Feb-07	7	\$18,000	1
36	Jan-07	1-Mar-07	6	\$15,000	1
37	Feb-07	1-Apr-07	5	\$12,000	1



	<u>SMR</u>	<u>Due Date</u>	<u># of 30-day Periods Late</u>	<u>MMPs Accrued</u>	<u>Remarks</u>
38	Mar-07	1-May-07	4	\$9,000	1
39	Apr-07	1-Jun-07	3	\$6,000	1
40	May-07	1-Jul-07	2	\$3,000	1
40	June-07	1-Aug-07	1	\$3,000	1

Remarks:

1. Serious Violation: Failure to file a discharge monitoring report for each complete period of 30 days following the deadline for submitting the report. The period ends in August 2007, when the last monitoring report required by the WDRs was due.

<b><u>VIOLATIONS AS OF:</u></b>	<b><u>8/1/2007</u></b>
Group I Serious Violations:	861
<b>Total Violations Subject to MPs:</b>	<b>861</b>

**Mandatory Minimum Penalty = (861 cumulative 30-day violations) x \$3,000 = \$2,583,000**

**TABLE 2: MANDATORY PENALTIES FOR EFFLUENT LIMITATIONS VIOLATIONS**

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
1	23-Dec-03	pH	pH Units	6.5	6.4	Instantaneous	3
2	14-Jan-04	pH	pH Units	6.5	6.2	Instantaneous	3
3	21-Jan-04	pH	pH Units	6.5	6.4	Instantaneous	3
4	31-Jan-04	Bromodichloromethane	µg/L	0.56	5.62	Daily	2

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.

<b><u>VIOLATIONS AS OF:</u></b>	<b><u>8/1/2007</u></b>
Group I Serious Violations:	0
Group II Serious Violations:	1
Non-Serious Exempt from MPs:	3
Non-serious Violations Subject to MPs:	0
<b><u>Total Violations Subject to MPs:</u></b>	<b><u>1</u></b>

**Mandatory Minimum Penalty = (1 Serious Violations) x \$3,000 = \$3,000**

**Total Mandatory Minimum Penalty = \$2,583,000 + \$3,000 = \$2,586,000**