

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0501

MANDATORY PENALTY
IN THE MATTER OF

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION
EMPIRE MINE STATE HISTORIC PARK
NEVADA COUNTY

This Complaint is issued to the California Department of Parks and Recreation (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 R5-2006-0058 (NPDES No. CA0085171).

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

1. The Discharger owns and operates the Empire Mine State Historic Park. Wastewater is discharged from a constructed mine drain to an unnamed tributary to the South Fork of Wolf Creek, which is tributary to the South Fork of Wolf Creek, which in turn is tributary to Wolf Creek and the Bear River.
2. On 23 June 2006, effective 1 August 2006, the Central Valley Water Board issued WDRs Order R5-2006-0058. On 23 June 2006, the Board also issued Time Schedule Order (TSO) R5-2006-0059. TSO R5-2006-0059 required full compliance with the effluent limitations in Order R5-2006-0058 by 18 May 2010.
3. On 4 November 2010, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2010-0544 for mandatory minimum penalties (for effluent violations identified in Attachment A to Complaint R5-2010-0544) that occurred from 1 August 2006 through 31 July 2010. The Discharger has not paid the Administrative Civil Liability and the Board considers those effluent violations specifically listed in Attachment A to Complaint R5-2010-0544 unresolved.
4. This Complaint addresses administrative civil liability for effluent violations that occurred during the period from 1 August 2010 through 30 September 2010. These violations are specifically identified in Attachment A to this Complaint as subject to mandatory minimum penalties. Attachment A to this Complaint is attached hereto and incorporated herein by this reference. On 15 November 2010, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations for effluent limitation violations. The Discharger has not submitted any comments regarding the violations.
5. CWC section 13385 subdivisions (h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385 subdivision (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 subdivision (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 subdivision (i)(1) states, in part:

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.

6. 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.

7. WDRs Order R5-2006-0058 Final Effluent Limitations IV.A.1.a. states, in part:

- a. The discharge of mine drainage from the Magenta Drain portal shall maintain compliance with the following effluent limitations at Discharge Point EFF-001, with compliance measured at Monitoring Location EFF-001:

Parameter	Units	Effluent Limitations			
		Average Monthly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
pH	std units	--	--	6.5	8.5
Turbidity	NTU	5	--	--	--
Color	Color units	15	--	--	--
Arsenic	µg/L	10	--	--	--
Iron	µg/L	300	--	--	--
Manganese	µg/L	50	--	--	--

8. WDRs Order R5-2006-0058 Final Effluent Limitations IV.A.1.c. states, in part:
 - c. Dissolved Oxygen: Dissolved oxygen in the discharge shall be no less than:
 - i. 85 percent of saturation as the monthly median of the mean daily dissolved oxygen concentration;
9. According to the Discharger's self-monitoring reports, the Discharger committed four (4) serious Group I violations of the above effluent limitations contained in WDRs Order R5-2006-0058 during the period beginning 1 August 2010 and ending 30 September 2010. These violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels in WDRs Order R5-2006-0058 by 40 percent or more. The mandatory minimum penalty for these serious violations is **twelve thousand dollars (\$12,000)**.
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 WDRs Order R5-2006-0058 during the period beginning 1 August 2010 and ending 30 September 2010. These violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2006-0058 by 20 percent or more. 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 twelve (12) non-serious violations of the above effluent limitations contained in Order R5-2006-0058 during the period beginning 1 August 2010 and ending 30 September 2010. These non-serious violations are subject to mandatory penalties under CWC section 13385 subdivision (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 **thirty-six thousand dollars (\$36,000)**.
12. The total amount of the mandatory penalties assessed for the cited effluent violations is **fifty-four thousand dollars (\$54,000)**. As stated herein, a detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint. This Complaint addresses administrative civil liability for violations that are specifically identified in Attachment A as subject to mandatory minimum penalties.
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 subdivision (a)(2).

THE CALIFORNIA DEPARTMENT OF PARKS AND RECREATION 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 **fifty-four thousand dollars (\$54,000)**.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on this matter will be held at the Central Valley Water Board meeting scheduled on **6/7/8 April 2011**, unless the Discharger does one of the following by **7 February 2011**:
 - a) The Discharger waives the hearing by completing the attached form (checking off the box next to Option #1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **fifty-four thousand dollars (\$54,000)**; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
 - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the 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.
4. If this matter proceeds to hearing, the Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

Original signed by Frederick Moss for

PAMELA C. CREEDON, Executive Officer

7 January 2011

DATE

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the California Department of Parks and Recreation (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2011-0501 (hereafter Complaint). 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. The person who has been issued a complaint may waive the right to a hearing."

(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **fifty-four thousand dollars (\$54,000)** by check that references "ACL Complaint R5-2011-0501" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **7 February 2011**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant 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. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. 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.

(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2011-0501**

**California Department of Parks and Recreation
Empire Mine State Historic Park**

**RECORD OF VIOLATIONS (1 August 2010 – 30 September 2010) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs R5-2006-0058)**

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
*	31-Jul-10	TSS	mg/L	20	40	Monthly	1*	881629
*	31-Jul-10	Turbidity	NTU	5	16	Monthly	1*	881630
*	31-Jul-10	DO	% saturation	85	74	Monthly median	4*	881631
1	13-Aug-10	pH	SU	6.5	6.0	Instantaneous	4	884558
2	31-Aug-10	Arsenic	µg/L	10	92	Monthly	2	884559
3	31-Aug-10	Iron	µg/L	300	7000	Monthly	1	884560
4	31-Aug-10	Manganese	µg/L	50	2500	Monthly	1	884561
5	31-Aug-10	Color	color units	15	87	Monthly	4	884562
6	31-Aug-10	Turbidity	NTU	5	14	Monthly	4	884563
7	31-Aug-10	DO	% saturation	85	72	Monthly median	4	884564
8	1-Sep-10	pH	SU	6.5	6.3	Instantaneous	4	884625
9	8-Sep-10	pH	SU	6.5	6.2	Instantaneous	4	884626
10	17-Sep-10	pH	SU	6.5	6.0	Instantaneous	4	884627
11	23-Sep-10	pH	SU	6.5	6.2	Instantaneous	4	884628
12	28-Sep-10	pH	SU	6.5	5.7	Instantaneous	4	884629
13	30-Sep-10	Arsenic	µg/L	10	27	Monthly	2	884630
14	30-Sep-10	Iron	µg/L	300	2800	Monthly	1	884631
15	30-Sep-10	Manganese	µg/L	50	980	Monthly	1	884632
16	30-Sep-10	Color	color units	15	37	Monthly	4	884633
17	30-Sep-10	Turbidity	NTU	5	10	Monthly	4	884635
18	30-Sep-10	DO	% saturation	85	75	Monthly median	4	884636

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 violation falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory minimum penalties.

<u>VIOLATIONS AS OF:</u>	<u>9/30/2010</u>
Group I Serious Violations:	4
Group II Serious Violations:	2
Non-Serious Exempt from MMPs:	0
Non-serious Violations Subject to MMPs:	12
<u>Total Violations Subject to MMPs:</u>	<u>18</u>

Mandatory Minimum Penalty = (6 serious Violation + 12 Non-Serious Violations) x \$3,000 = \$54,000

* Violations previously addressed in ACLC R5-2010-0544.