

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION**

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**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2016-0511**

**ORIGINAL SIXTEEN TO ONE MINE, INC.  
SIXTEEN TO ONE MINE  
SIERRA COUNTY**

**PROSECUTION TEAM'S LEGAL AND TECHNICAL ANALYSIS  
SUPPORTING ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2016-0511**

## **I. Introduction**

The Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) Prosecution Team recommends the Central Valley Water Board assess an administrative civil liability in the amount of six thousand (\$6,000) against Original Sixteen to One Mine, Inc. (hereinafter Discharger) for alleged violations of Waste Discharge Requirements Order R5-2015-0002 (2015 WDRs). Specifically, the Prosecution Team alleges that the Discharger violated the 2015 WDRs when it exceeded maximum daily and average monthly effluent limitation for antimony in April 2015. These alleged effluent exceedances are subject to Mandatory Minimum Penalties (MMPs) under Water Code section 13385, subdivision (h).

The Prosecution Team asserts that the proposed administrative civil liability is appropriate for the reasons explained in Administrative Civil Liability Complaint (Complaint) R5-2016-0511, Attachment A to the Complaint, and for the reasons discussed herein.

## **II. Background**

The Discharger owns and operates the Sixteen to One Mine (Facility), an underground hard rock gold mine. The Facility discharges mine drainage via the 21 Tunnel Portal to Kanaka Creek, tributary to Middle Fork Yuba River and a water of the United States.

Discharges from the Facility were regulated by the Central Valley Water Board under WDRs Order R5-2002-0043 (2002 WDRs), which was adopted on 1 March 2002 and amended on 30 April 2003, as well as Cease and Desist Order R5-2002-0044. (Exhibits 9-12.)

On 5 February 2015, the Board adopted the 2015 WDRs which contained new requirements and superseded the 2002 WDRs except for enforcement purposes. (Exhibit 4.) The 2015 WDRs became effective on 16 April 2015. A minor modification letter was issued on 10 September 2015 to correct an error in the monitoring report due dates. (Exhibit 5.)

Under the 2015 WDRs, the maximum daily and average monthly effluent limitations for antimony are 12 µg/L and 6 µg/L, respectively.

On 17 April 2015, the Board issued Time Schedule Order (TSO) R5-2015-0035 pursuant to Water Code section 13300. (Exhibit 8.) The TSO provides protection from MMPs for electrical conductivity, arsenic, antimony, cadmium, copper, iron, lead, manganese, and nickel until 16 April 2020. The Complaint considers the protection from MMPs provided by the TSO.

Under the TSO, the maximum daily and average monthly interim effluent limitations for antimony are 50 µg/L and 35 µg/L, respectively.

On April 28, 2015, the Discharger's Self-Monitoring Report indicates a waste discharge with an daily antimony effluent value of 62.3 µg/L. (Exhibit 22.) The Discharger only reported one sampling event during April 2015; thus, this daily value is also used as the monthly average.

## **III. Regulatory Framework**

Water Code section 13385, subdivision (h) requires assessment of MMPs. These penalties are mandatory in that the Board is required by statute to assess a penalty. Under the statute, the minimum amount of the penalty is three thousand dollars (\$3,000) per violation. The Board does not have the discretion to order an administrative civil liability (ACL) below this amount.

However, the Board does have the discretion to assess an ACL above the minimum, so long as the ACL is calculated pursuant to the State Water Resource Control Board's Water Quality Enforcement Policy and is at or below the statutory maximum allowed under Water Code section 13385, subdivision (c).

Water Code 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.

Water Code section 13385, subdivision (h)(2) defines a serious violation as:

[A]ny 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.

Antimony is a Group II pollutant under Appendix A to 40 Code of Federal Regulations part 123.45, since it is a metal not specifically listed in Appendix A under Group I pollutants.

Water Code section 13385, subdivision (i) provides additional authority for assessing MMPs for chronic violations. This case does not involve chronic violations and the MMPs are not alleged under Water Code section 13385, subdivision (i).

Water Codes section 13385, subdivisions (j)(3) provides MMP protection for "[a] violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to [Water Code] Section 13301 or a time schedule order issued pursuant to [Water Code] Section 13300 or 13308" if certain requirements are met. One of these requirements is that the discharger must be in compliance with the cease and desist order or the time schedule order.

#### **IV. The Proposed Mandatory Minimum Penalty is Appropriate**

The Assistant Executive Officer of the Central Valley Water Board issued the Complaint alleging that the Discharger violated the 2015 WDRs when it exceeded maximum daily and average monthly effluent limitations for antimony in April 2015. These alleged effluent exceedances are subject to MMPs under Water Code section 13385, subdivision (h).

The measured concentration of antimony, a Group II pollutant, exceeded the maximum daily and average monthly effluent limitations contained in the 2015 WDRs by 519% and 1038%, respectively in April 2015. This is well above the 20% exceedance level necessary to impose MMPs under Water Code section 13385, subdivision (h).

Under Water Code section 13385, subdivision (j)(3), the TSO would typically provide protection from MMPs. For this protection to apply, the Discharger must be in compliance with the TSO. The TSO lists the maximum daily and average monthly interim effluent limitations for antimony as 50 µg/L and 35 µg/L, respectively. On April 28, 2015, the Discharger's Self-Monitoring Report indicates a waste discharge with an antimony effluent value of 62.3 µg/L, which is above the

maximum daily interim effluent limit for antimony in the TSO. The Discharger did not report other waste discharges during April 2015; thus, this value is also used as the monthly average, which is likewise above the average monthly interim effluent limit for antimony. Therefore, the Discharger did not comply with the TSO, and the TSO does not protect the Discharger from the MMPs alleged in the Complaint.

#### **V. Previous Arguments Raised by the Discharger are Irrelevant**

The Discharger raised three categories of arguments in this case. First, in a 4 January 2016 letter (Exhibit 16) in response to the 18 December 2015 Notice of Violation and Draft Record of Violations (Exhibit 15), the Discharger requested information as to why antimony monitoring was added to the 2015 WDRs when it was not required under the 2002 WDRs. The Discharger reiterated this request in the 24 February 2016 letter accompanying its waiver to a hearing within 90 days and request to engage in settlement negotiations (24 February 2016 Letter). The 24 February 2016 Letter also stated the subject of antimony is "new and unfamiliar" to the Discharger and put forth arguments implying there should not be an effluent limitation for antimony.

The Discharger is correct that antimony monitoring was not required under the 2002 WDRs. Antimony was added as a water quality based effluent limitation (WQBEL) to the 2015 WDRs because "the discharge has a reasonable potential to cause or contribute to an in-stream excursion above a water quality standard for antimony." (Exhibit 6, Att. F, p. F-28.) The Discharger had the opportunity to question the addition of antimony to the 2015 WDRs, but did not do so. The Discharger's comments and the Regional Board's response regarding the draft 2015 WDRs are included as Exhibits 2 and 3, respectively, and demonstrate that the Discharger objected to the effluent limitation for arsenic, but not antimony. If the Discharger was concerned about the addition of antimony to the 2015 WDRs, it should have raised the issue prior to adoption of the 2015 WDRs. Now, the Discharger is bound by the 2015 WDRs and these arguments are irrelevant to the imposition of MMPs in this case.

The Discharger's second argument, as alleged in both its 4 January 2016 Letter and 24 February 2016 Letter, is that the laboratory could have made a mistake in its reporting. Yet, the Discharge admits in both its 4 January 2016 Letter and 24 February 2016 Letter that it has no evidence to substantiate this claim. Unless the Discharger can prove a laboratory error, this argument is unsubstantiated and irrelevant to this case. It is noted that the Discharger does not submit laboratory reports with its monitoring reports, and has not submitted the laboratory reports with either its 4 January or 24 February 2016 Letters, and therefore Board staff have not had an opportunity to review them.

Lastly, the Discharger argues in the 4 January 2016 Letter that the proposed MMPs are excessive considering the lack of history in the area. (Exhibit 16.) The proposed penalty of six thousand dollars (\$6,000) in MMPs is not excessive, it is the minimum allowed by statute. Furthermore, the alleged lack of history is irrelevant to this case because, again, the proposed penalty of six thousand (\$6,000) is not discretionary and is the minimum allowed by statute.

#### **VI. Conclusion**

For the reasons stated above in the Prosecution Team's Legal and Technical Analysis, the Complaint, and Attachment A to the Complaint, the Central Valley Water Board should assess MMPs in the amount of six thousand dollars (\$6,000), as proposed.

Prosecution Team's Legal and Technical Analysis  
ACLC R5-2016-0511

For the Prosecution Team:

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