

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0585-A1  
For

MANDATORY PENALTY  
IN THE MATTER OF

UNION PACIFIC RAILROAD COMPANY  
DUNSMUIR RAILYARD  
WDID NO. 5A471001002

SISKIYOU COUNTY

This Administrative Civil Liability Complaint (Complaint) is issued to Union Pacific Railroad Company, Dunsmuir Railyard (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, 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 R5-2008-0082-0017 (NPDES No. CA0083178). This complaint supersedes ACLC R5-2011-0585.

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

1. Discharger operates a groundwater extraction and treatment system for the removal of petroleum contamination. Treated groundwater is discharged through a subsurface infiltration gallery, Discharge D-001, constructed in river gravels and fill immediately adjacent to the Sacramento River, a water of the United States.
2. On 13 July 2010, the Central Valley Water Board issued Waste Discharge Requirements Order R5-2008-0082-0017 (NPDES No. CA0083178), to regulate discharges of process water and storm water runoff generated from groundwater extraction and treatment operations at the facility.
3. On 18 May 2011, Central Valley Water Board staff issued the Discharger a Notice of Violation for effluent violations subject to mandatory minimum penalties. An administrative civil liability complaint assessing these violations was issued on July 14, 2011. In response to the July Complaint, the discharger elected to waive their right to a hearing within 90 days to enter in to settlement negotiations with the Regional Board. During the settlement process, Regional Board staff re-reviewed the Discharger's self-monitoring reports (SMRs) and identified additional violations that are subject to mandatory minimum penalties (Attachment A). This amended complaint provides notice of these additional violations and covers all violations subject to mandatory minimum penalties during the time period 1 July 2010 and 31 July 2011.

4. 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 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

5. 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.

6. WDRs Order No. R5-2008-0082-0017 Final Effluent Limitations IV.A.1.a. states, in part:
- a. The Discharger shall maintain compliance with the following effluent limitations specified in Table 4 below at Discharge Point D-001, with compliance measured at Monitoring Location EFF-002 as described in the attached MRP (Attachment E):

**Table 4. Effluent Limitations – Hardness-Dependent Metals**

Parameter	Units	Hardness in mg/L (H)							
		H<50		50≤ H <100		100≤ H <200		H ≥200	
		Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily
Lead, total recoverable	ug/L	0.4	0.9	1.8	3.6	4.4	8.8	6.3	12.6
Zinc, total recoverable	ug/L	18.5	37.0	46.8	93.9	84.2	168.9	107.5	215.6

**ALLEGED EFFLUENT LIMITATIONS VIOLATIONS**

7. On 21 July 2010, the total recoverable lead concentration at EFF-001 was reported as 52 ug/L or 1,344 percent greater than the allowed total recoverable lead maximum daily effluent limitation of 3.6 ug/L. This violation is defined as a serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0082-0017 by 20 percent or more. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
8. On 21 July 2010, the total recoverable lead concentration at EFF-001 was calculated as 52 ug/L or 2,788 percent greater than the allowed total recoverable lead average monthly effluent limitation of 1.8 ug/L for July 2011. This violation is defined as a serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0082-0017 by 20 percent or more. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
9. On 9 August 2010, the total recoverable monthly lead concentration at EFF-001 was reported as 0.71 ug/L or 77.5 percent greater than the allowed total recoverable lead average monthly effluent limitation of 0.4 ug/L. This violation is defined as a serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0082-0017 by 20 percent or more. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
10. On 17 January 2011, the total recoverable monthly lead concentration at EFF-001 was reported as 1.4 ug/L or 250 percent greater than the allowed total recoverable lead average monthly effluent limitation of 0.4 ug/L. This violation is defined as a serious violation because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0082-0017 by 20 percent or more. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.

11. On 17 January 2011, the total recoverable lead concentration at EFF-001 was reported as 1.4 ug/L or 55.6 percent greater than the allowed total recoverable lead maximum daily effluent limitation of 0.9 ug/L. This violation is defined as a serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0082-0017 by 20 percent or more. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
12. On 17 January 2011 the total recoverable zinc concentration at EFF-001 was reported as 30 ug/L or 62.2 percent greater than the allowed total recoverable zinc average monthly effluent limitation of 18.5 ug/L. This violation is defined as a serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0082-0017 by 20 percent or more. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
13. On 2 February 2011, the total recoverable lead concentration at EFF-001 was reported as 4.3 ug/L or 377 percent greater than the allowed total recoverable lead maximum daily effluent limitation of 1.8 ug/L. The receiving water hardness at the time was 49.8 mg/L. This violation is defined as a serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0082-0017 by 20 percent or more. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
14. On 2 February 2011, the total recoverable lead concentration at EFF-001 was calculated as 4.3 ug/L or 975 percent greater than the allowed total recoverable lead average monthly effluent limitation of 0.4 ug/L for February 2011. The receiving water hardness at the time was 49.8 mg/L. This violation is defined as a serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0082-0017 by 20 percent or more. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
15. On 28 March 2011, the total recoverable zinc concentration at EFF-001 was reported as 19 ug/L or 2.7 percent greater than the allowed total recoverable zinc average monthly effluent limitation of 18.5 ug/L. This non-serious violation is subject to mandatory penalties under CWC section 13385 subdivision (i)(1) because this violation was preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for this non-serious violation is **three thousand dollars (\$3,000)**.
16. On 25 July 2011, the total monthly average recoverable lead concentration at EFF-001 was calculated as 1.3 ug/L or 225 percent greater than the allowed total recoverable lead average monthly effluent limitation of 0.4 ug/L. This violation is defined as a serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0082-0017 by 20 percent or more. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.

17. On 25 July 2011, the total recoverable lead concentration at EFF-001 was calculated as 1.3 ug/L or 44.4 percent greater than the allowed total recoverable lead maximum daily effluent limitation of 0.9 ug/L. This violation is defined as a serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2008-0082-0017 by 20 percent or more. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
18. The total amount of the mandatory penalties assessed for the cited effluent violations is **thirty-three thousand dollars (\$33,000)**. 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.
19. Issuance of this Administrative Civil Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from 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 subsection (a)(2).

**UNION PACIFIC RAILROAD, DUNSMUIR RAILYARD IS HEREBY GIVEN NOTICE THAT:**

- 1) The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **thirty-three thousand dollars (\$33,000)**.
- a) The discharger may accept the liability for mandatory penalties and submit payment for the proposed civil liability of **thirty-three thousand dollars (\$33,000) by 14 December 2011**;
- b) If the discharger elects to go to hearing on this matter, a hearing will be scheduled during the February 2012 Board Meeting. If a hearing 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.

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.

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ROBERT A CRANDALL, Assistant Executive Officer

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(date)

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0585-A1**

This waiver supersedes the waiver associated with ACLC R5-2011-0585. By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Union Pacific Railroad (hereafter Discharger) in connection with Administrative Civil Liability Complaint **R5-2011-0585-A1** (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 **thirty-three thousand dollars (\$33,000)** by check that references "ACL Complaint **R5-2011-0585-A1**" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **14 December 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 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. R5-2011-0585-A1**  
**Union Pacific Railroad Company,**  
**Dunsmuir Railyard**

Record of Violations (1 July 2010 – 31 July 2011)

Violation Date	Discharge Point	Pollutant/Parameter	Effluent Limit	Analytical Results	Percentage Over	Violation Type	180-day Violation Count	CIWQS Violation No.	MMP	Penalty Status
7/21/2010	D-001	Lead, total recoverable	3.6 ug/L MDEL	52 ug/L	1,344%	Serious Group II	1	879637	\$3,000	New Assessment
7/21/2010	D-001	Lead, total recoverable	1.8 ug/L AMEL	52 ug/L	2,788%	Serious Group II	2	898104	\$3,000	New Assessment
8/9/2010	D-001	Lead, total recoverable	0.4 ug/L AMEL	0.71 ug/L	77.5%	Serious Group II	3	908946	\$3,000	New Assessment
1/17/2011	D-001	Lead, total recoverable	0.4 ug/L AMEL	1.4 ug/L	250%	Serious Group II	4	908947	\$3,000	New Assessment
1/17/2011	D-001	Lead, total recoverable	0.9 ug/L MDEL	1.4 ug/L	55.6%	Serious Group II	5	908948	\$3,000	New Assessment
1/17/2011	D-001	Zinc, total recoverable	18.5 ug/L AMEL	30 ug/L	62.2%	Serious Group II	6	908949	\$3,000	New Assessment
2/2/2011	D-001	Lead, total recoverable	0.9 ug/L MDEL	4.3 ug/L	377%	Serious Group II	5	893652	\$3,000	New Assessment
2/2/2011	D-001	Lead, total recoverable	0.4 ug/L AMEL	4.3 ug/L	975%	Serious Group II	6	898106	\$3,000	New Assessment
3/28/2011	D-001	Zinc, total recoverable	18.5 ug/L AMEL	19 ug/L	2.7%	Non-Serious	6	898110	\$3,000	New Assessment
7/25/2011	D-001	Lead, total recoverable	0.4 ug/L AMEL	1.3 ug/L	225%	Serious Group II	4	906709	\$3,000	New Assessment
7/25/2011	D-001	Lead, total recoverable	0.9 ug/L MDEL	1.3 ug/L	44.4%	Serious Group II	5	906708	\$3,000	New Assessment
							<b>Total New Assessment:</b>		<b>\$33,000</b>	

Notes: Serious Group I: any waste discharge that exceeds the effluent limitations for a group I pollutant by 40% or more.  
 Serious Group II: any waste discharge that exceeds the effluent limitations for a group II pollutant by 20% or more.  
 Non-Serious Violation: A non-serious violation occurs if the discharger does any one of the following four or more times in any period of 180 days:  
 (a) violates a WDR effluent limitation;  
 (b) fails to file a report of waste discharge pursuant to California Water Code section 13260;  
 (c) files an incomplete report of waste discharge pursuant to California Water Code section 13260; or  
 (d) violates a whole effluent toxicity limitation where the WDRs do not contain pollutant-specific effluent limitations for any toxic pollutants.  
 AMEL: Average Monthly Effluent Limitation  
 MDEL: Daily Maximum Effluent Limitation\  
 N/A: Not Applicable