

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R5-2009-0510

STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER
AND ORDER

IN THE MATTER OF
JESSE M. LANGE DISTRIBUTOR, INC.
CHICO, BUTTE COUNTY

This Administrative Civil Liability Order is issued to Jesse M. Lange Distributor, Inc. (hereafter Discharger) based on violations of Cleanup and Abatement Order No. 99-709 (CAO) and provisions of California Water Code (CWC) section 13350, which authorizes the imposition of Administrative Civil Liability for violations of a CAO.

WHEREAS:

1. The Discharger owns and operates a one-acre retail and wholesale petroleum distribution facility (facility) at 11226 Midway, Chico, California, Section 1, T21N, R1E, MDB&M, Butte County Assessor's Parcel Number 040-320-013.
2. The Discharger has stored petroleum at the facility both in aboveground storage tanks (ASTs) and underground storage tanks (USTs). On 13 March 1995, the Discharger filed an Underground Storage Tank Unauthorized Release (LEAK)/Contamination Site Report based on a facility investigation.
3. In 1997, gasoline fumes were reported in a utility vault east of the facility, and gasoline was discovered in soils and groundwater beneath Midway, a street adjacent to the facility.. Due to Benzene in groundwater, on 1 September 1998 Regional Water Board staff issued Butte County a notice pursuant to Section 25180.7 of the California Health and Safety Code (Proposition 65).
4. In 1998, Regional Water Board staff found Methyl tert-Butyl Ether (MtBE) at 39,000 micrograms/Liter (ug/L) in two private wells within 150 feet of the facility, to 95 and 230 feet below grade surface (bgs). Both wells were destroyed under the supervision of Butte County Department of Environmental Health.
5. On 28 April 1999, the Regional Water Board Assistant Executive Officer issued Cleanup and Abatement Order No. 99-709 requiring the Discharger to do the following:

- Install a free product removal system;
 - Submit a Registered Engineer's report on the ASTs, a site investigation work plan, a sensitive receptor survey, a Corrective Action Plan (CAP), and quarterly groundwater monitoring reports; and
 - Reimburse staff oversight costs.
6. Due to potential pollution both from ASTs and USTs, the State Water Resources Control Board's (State Board) Underground Storage Tank Cleanup Fund (Cleanup Fund) began reimbursing the Discharger 20% of investigation and cleanup costs. The Discharger alleged most pollution was from USTs and, on 1 August 2000, voluntarily sampled shallow soils. Results supported the allegation. Therefore, on 7 September 2000 the Cleanup Fund increased reimbursement to 80%.
 7. On 9 May 2001, the Discharger submitted a site investigation report indicating pollution had migrated in shallow groundwater into PG&E property.
 8. From December 2001 through about April 2002, the Discharger removed the AST system and around 1500 cubic yards of polluted soils, and installed a free product recovery trench and a new UST system.
 9. On 6 August 2002, the Discharger applied for Waste Discharge Requirements to discharge treated groundwater to surface waters. Regional Water Board staff found that General Order 5-00-119, which covered Discharge Of Groundwater From Cleanup Of Petroleum Fuel Pollution, would be appropriate to regulate this discharge.
 10. On 27 November 2002, the Discharger submitted a CAP that recommended enhanced free product recovery, soil vapor extraction, vacuum enhanced groundwater pump-and-treat, deeper aquifer investigation, domestic well sampling, and pilot tests for in-situ chemical oxidation, bio-stimulation, and bio-augmentation.
 11. On 7 February 2003, the Regional Water Board Assistant Executive Officer amended the CAO; this concurred with the CAP and required the following:
 - a. Submit **by 27 March 2003**, a work plan for soil vapor extraction and vacuum enhanced groundwater pump-and-treat pilot test describing system installation, inspection, and start-up, appropriate pilot testing, and report of findings.
 - b. **Within 90 days of staff concurrence**, implement the work plan for soil vapor extraction and vacuum enhanced groundwater pump-and-treat in accordance with the approved time schedule, which shall become part of the CAO.
 - c. Submit **by 17 April 2003**, work plans for in-situ chemical oxidation and bio-augmentation pilot studies describing test goals, bench tests, appropriate permitting, hydraulic controls to prevent generation of waste, fieldwork, system

installation, inspection, and start-up, criteria for full-scale systems, verification sampling, and long-term monitoring.

- d. Submit **by 17 April 2003**, a work plan for further aquifer investigation describing domestic well surveys and sampling, drilling and monitoring well installation, and a report of findings.
 - e. **Within 90 days of staff concurrence**, implement the work plans for in-situ chemical oxidation and bio-augmentation pilot studies, and further aquifer investigation in accordance with the approved time schedule, which shall become part of this Order.
 - f. **Continue quarterly monitoring program** and augment, as appropriate, based on findings from additional aquifer investigation. Quarterly monitoring reports shall be submitted within 30 days after the end of each calendar quarter until directed otherwise.
 - g. Continue to reimburse the Regional Water Board for reasonable costs associated with oversight of the cleanup of this facility. Failure to do so shall be considered a violation of the CAO.
 - h. Also, regarding remediation systems in place, the CAO required the following:

Upon startup of any remediation system(s), operate the remediation system(s) continuously, except for periodic and required maintenance or unpreventable equipment failure. The Discharger shall notify the Regional Water Board within 24 hours of any unscheduled shutdown of the remediation system(s) that lasts longer than 48 hours. This notification shall include the cause of the shutdown and the corrective action taken (or proposed to be taken) to restart the system. Any interruptions in the operation of the remediation system(s), other than for maintenance, emergencies, or equipment failure, without prior approval from Regional Water Board staff or without notifying the Regional Water Board within the specified time is a violation of the CAO.
12. On 20 January 2003, the Discharger submitted a work plan to enhance free product recovery; on 29 January 2003 staff approved the plan. On 30 April, and 16 June 2003, the Discharger submitted several plans; for pilot tests, soil vapor extraction, vacuum enhanced groundwater pump-and-treat, in situ chemical oxidation, bio-augmentation, and deeper aquifer investigation. On 8 July 2003, staff approved these plans and requested, by 31 October 2003, progress reports on the pilot tests, and by 30 January 2004, a report with recommendations for full-scale start-up.
 13. In June 2003, the Discharger installed monitoring wells on PG&E property; these showed MtBE up to 33,000 µg/L at 76 feet bgs. The Discharger also extracted about 1,200 gallons of gasoline on-site, from the Discharger's facility, with enhanced recovery.

THE PARTIES HEREBY STIPULATE AS FOLLOWS:

A. Statement of the Case

1. On 20 January 2003, the Discharger submitted a work plan to enhance free product recovery with additional free product skimmers and greater on-site temporary containment. On 19 July 2003, the Discharger failed to implement the work.
2. On 11 September 2003, the Discharger's consultant notified Regional Water Board staff they had stopped work due to the Discharger's failure to pay for their work. On 25 September 2003, the Discharger's consultant removed existing free product skimmers. After the third quarter 2003, the Discharger ceased corrective action and groundwater monitoring.
3. On 14 January 2004, the Executive Officer issued the Discharger a Notice of Violation (NOV). This requested, by 2 February 2004, a commitment to implement corrective actions and reimburse staff oversight costs. At the time, the Cleanup Fund had reimbursed \$427,196, and a \$1,072,804 balance remained.
4. The Discharger failed to commit to implement corrective actions and reimburse staff oversight costs. On 11 November 2004, Regional Water Board staff inspected the facility and met with the Discharger and consultant. Staff found that the Discharger was selling petroleum, and the consultant was refusing to resume work. At that time, the Discharger had a bad debt of \$11,264 for staff oversight costs. While the Discharger had not discharged treated groundwater to surface waters, the Discharger had two unpaid State Board invoices on the NPDES permit, which totaled \$11,376. On 12 January 2005, Regional Water Board staff recommended that the Executive Officer consider issuing an Administrative Civil Liability penalty.
5. On 17 May 2005, the Regional Water Board issued ACL Complaint No. R5-2005-0513. The Executive Officer of the Regional Water Board proposed a penalty of five hundred thousand dollars (\$500,000) for the violations mentioned in the complaint.
6. The Regional Water Board and the Discharger have since entered into negotiations, which included discussions of further remediation activities, the Discharger's financial status, and reimbursement of past oversight costs which at that time totaled \$26,418.70.

B. Relevant Legal Authority

CWC section 13304(a) states, in relevant part: *"Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or*

the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.”

CWC section 13304(c)(1) states: *“If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the state board to the extent of the latter's contribution to the cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds.”*

CWC section 13350 states, in relevant parts: *“(a) Any person who (1) violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, or (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).”*

“(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.

(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.

(2) The civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged.

(f) A regional board may not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.”

CWC Section 13327 states, in relevant part: *“In determining the amount of civil liability, the regional board ... shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.”*

C. Extent of Liability

The Executive Officer of the Regional Water Board proposes an assessment of an Administrative Civil Liability in the amount of five hundred fifty three thousand, nine hundred thirty six dollars (\$553,936). This includes \$540,000, an assessment of \$1,000 per calendar day from 25 September 2003 to 23 March 2005. On the first date, as in Stipulation A.2, the Discharger’s consultant removed free product skimmers from the facility, stopping all cleanup activity. On the second date, the Executive Officer concurred with Board staff’s recommendations for an ACL.

This also includes an assessment of \$13,936, the State Board balance as of 16 March 2005 for staff oversight costs.

D. Consideration of Factors

In considering the amount of the proposed civil liability, pursuant to CWC Section 13327, staff have taken into account the nature, circumstance, extent, and gravity of the violations; and with respect to violators, the ability to pay, the ability to stay in business, voluntary cleanup efforts, prior history of violations, the degree of culpability, economic benefit resulting from the violation, and other matters as justice may require.

1. Nature, Circumstance, Extent, and Gravity of the Violations

Most pollution is from leaking USTs. In 1994, facility ASTs were in violation of Federal Spill Prevention Control and Countermeasure (SPCC) Regulations. Most pollution, however, is likely from gasoline leakage under UST turbines, beginning 1995 or earlier.

Leakage extensively polluted shallow groundwater. Estimated near-source shallow MtBE mass flux, MtBE moving through a cross-section normal to groundwater flow in the shallowest facility water-bearing unit, is 653 grams/day (1.4 pounds/day). Free phase gasoline is at least 200 feet off-site. Dissolved Benzene, Toluene, Ethylbenzene, and Xylenes (BTEX) are 190, 180, 38, and 210 milligrams/Liter (mg/L), MtBE, 840 mg/L, and total petroleum hydrocarbons as gasoline and diesel (TPHg, TPHd), 28,000 and 2,200 mg/L. Benzene and MtBE, greater than 1,000 and 10,000 µg/L, are about 550 and 600 feet off-site. Detectable MtBE has likely migrated beyond PG&E, into Kinder Morgan (SFPP LP) property.

Deeper pollution extent is undefined. MtBE and BTEX have likely migrated deeper than 200 feet bgs. Pollution continues to degrade beneficial uses of water, and now disperses toward at least 15 identified nearby water supply wells.

Consideration of the nature, circumstance, extent, and gravity of the violations does not provide reason for reduction of the amount of civil liability to be imposed.

2. Susceptibility to Cleanup or Abatement

Pollutant mass and aquifer flow properties control all proposed cleanup methods. The shallowest water-bearing unit is somewhat problematic, with free phase gasoline, high heterogeneity, and relatively low overall permeability, but with high permeability in thin, discontinuous beds and preferential pathways along underground utilities. Deeper, confined aquifers have more dilute pollutants, and are less heterogeneous and more permeable. Also, data indicates native biodegraders. Therefore bio-stimulation and monitored natural attenuation may be feasible for deeper pollution, and distal shallow pollution after source concentrations are reduced. Since ACL issuance, the Discharger has installed an on-site dual phase extraction system and off-site batch extraction that has effectively removing the free phase gasoline from the shallow water-bearing unit. Additional investigation and evaluation for further remedial action is underway.

Consideration of susceptibility to cleanup and abatement, and continued site cleanup, provides reason for reduction of the amount of civil liability to be imposed.

3. Degree of Toxicity

Individual toxicity numerical limits for Water Quality Objectives (WQOs) of BTEX, MtBE, TPHg, and TPHd are provided in the following table with a multiple toxicity estimate.

Pollutant	Concentration µg/L	Toxicity WQO Limit µg/L	See Equation Below*
Benzene	190,000	0.15	1,266,667
Toluene	180,000	150	1,200
Ethylbenzene	38,000	300	127
Xylenes	210,000	1800	117
MtBE	840,000	13	64,615
TPHg	2,800,000	21	133,333
TPHd	220,000	56	3,929
			1,469,987

*n

$$\sum_{i=1}^n [\text{Concentration of Toxic Substance}]_i / [\text{Toxicological Limit for Substance in Water}]_i$$

where the sum should be less than one to meet Basin Plan Objectives for toxicity.

Toxicity is about 1.5 million times higher than Basin Plan Objectives.

Consideration of the degree of toxicity does not provide reason for reduction of the amount of civil liability to be imposed.

4. Ability to Pay

Regional Water Board staff recognize the Discharger's financial limitations. Currently, about \$980,000 has been expended for investigation and cleanup costs. The State Board Cleanup Fund reimbursement rate is 80% and the Discharger is responsible for 20%. Therefore, the Discharger has currently paid about \$200,000 of non-reimbursable expenses to abate the waste discharge from limited business proceeds.

Consideration of Discharger financial records provides reason for reduction of the amount of civil liability and extended payment schedule..

5. Ability to Stay in Business

Based on limited business proceeds as evidenced in multi-year financial records, large ACL will likely bankrupt the Discharger.

Consideration of Discharger financial records and the effect to stay in business, provides reason for reduction of the amount of civil liability to be imposed.

6. Voluntary Cleanup Efforts

The Discharger has voluntarily removed polluted soils, without a specific CAO directive. In August 2000, the Discharger voluntarily removed several cubic yards of polluted soil to collect evidence for better negotiation with the Cleanup Fund. In December 2001, the Discharger discovered and removed a cryptic heating oil UST from the facility. Since ACL issuance, the Discharger has installed an on-site dual phase extraction system and off-site batch extraction that has effectively removed the free phase gasoline from the shallow water-bearing unit. Additional investigation and evaluation for further remedial action is underway.

Consideration of cleanup efforts following issuance of the ACL complaint provides reason for reduction of the amount of civil liability to be imposed.

7. Prior History of Violations

In 1994, a US Environmental Protection Agency (USEPA) Inspector found violations of SPCC Regulations. In 1995, the Discharger reported UST leak; Butte County Department of Environmental Health then transferred lead agency status to the Regional Water Board. From that date, the Assistant Executive Officer has issued the Discharger six NOVs, the Executive Officer, the original and amended CAO. The following table summarizes prior violations and related actions.

Date	Enforcement	Description
7 June 1994	SPCC Inspection #94--0094, Notice of Violation	USEPA issued due to lack of appropriate secondary containments, fail-safe engineering, and other features out of compliance with SPCC Regulations. USEPA granted a compliance extension until 13 June 1996. <i>Based on Discharger's 13 August 1996 letter, USEPA extended compliance date five months.</i>
24 March 1995	Underground Storage Tank Unauthorized Release (LEAK)/Contamination Site Report	William Crowston, owner/operator, Jesse Lange Distributor, Inc., filed report. <i>Consultant detected leak from USTs; Butte County Department of Environmental Health transferred lead agency status to Regional Water Board.</i>
31 August 1998	Notice of Violation	The Assistant Executive Officer issued, based on facility inspection, for failure to discontinue releasing petroleum to the subsurface, further investigate extent of pollution, remove free product, file a Corrective Action Plan, in accordance with Title 23, Chapter 16, Division 3, California Health and Safety Code, and commit resources to comply with SPCC Regulations.

Date	Enforcement	Description
		<p>Indicated that a CAO was forthcoming.</p> <p><i>(Correspondence, 29 December 1998, indicates John Crowston became company president, therefore Discharger representative, around this time.)</i></p>
28 April 1999	Cleanup and Abatement Order No. 99-709	<p>The Executive Officer issued based on prior violations. Required by 1 June 1999 a free product removal system, an Engineer's Report on SPCC compliance, and site investigation work plan.</p> <p><i>Required by 1 September 1999 a sensitive receptor survey, by 1 January 2000 a Corrective Action Plan, and quarterly groundwater monitoring.</i></p>
12 July 1999	Notice of Violation	<p>The Assistant Executive Officer issued for failure to submit Engineer's report.</p>
30 December 1999	Notice of Violation	<p>The Assistant Executive Officer issued for failure to submit a CAP, or adequate reasons for a deadline extension. Requested as-builts for free product recovery system and, by 31 January 2000, three years of Federal and State tax records. The Discharger submitted tax records; staff forwarded them to the SWRCB.</p> <p><i>(Based on an 18 February 2005 conversation with an SWRCB economist, those tax records are now too old to be relevant in an Administrative Civil Liability assessment.)</i></p>
21 June 2000	Notice of Violation	<p>The Assistant Executive Officer issued for failures to complete a site investigation, submit a work plan for further free phase product removal, and submit documentation of adequate upgrades to bring the facility into SPCC compliance. Requested work plan for further site investigation and SPCC compliance by 30 June 2000, and a plan for further free product removal by 15 September 2000. Also requested a meeting with the Discharger at the Regional Water Board Redding office.</p> <p><i>That meeting, 27 June 2000, resulted in slight deadline extensions and Discharger's commitment to progress with cleanup and abatement.</i></p>
25 October 2000	Notice of Violation	<p>The Assistant Executive Officer issued for continued failure to complete off-site investigation, provide a work plan for further free product removal, and submit a CAP.</p>

Date	Enforcement	Description
7 February 2003	Amended Cleanup and Abatement Order No. 99-709	The Executive Officer issued to reflect cleanup efforts to date. Requires by 27 March 2003 a work plan for soil vapor extraction and vacuum enhanced groundwater pump-and-treat, by 1 April 2003 work plans for pilot tests and site investigation, and continued quarterly monitoring.
14 January 2004	Notice of Violation	The Assistant Executive Officer issued for failure to comply with the CAO. Requires by 2 February 2004 a report that describes the Discharger's intended actions to comply.
12 January 2005	Staff Enforcement	Staff letter issued for continued failure to comply with the CAO; recommends the Executive Officer pursue an Administrative Civil Liability.
17 May 2005	ACL Complaint	Order No. R5-2005-0513

Consideration of prior history of violations does not provide reason for altering the amount of civil liability to be imposed.

8. Degree of Culpability

Jesse M. Lange Distributor, Inc., Discharger, facility owner and operator over the total duration of violations, is culpable.

Based on consultants' soil and groundwater investigations, Jesse M. Lange Distributor, Inc. is responsible for the cleanup of impacts associated with the discharge of gasoline-related pollution.

Consideration of degree of culpability does not provide reason for altering the amount of civil liability to be imposed.

9. Economic Savings

Based on the above, it appears the Discharger delayed implementing corrective actions because they had no money. However, a precise determination as to the cost savings realized by the Discharger's failure to fulfill the required actions under the CAO cannot be ascertained by the Regional Water Board at this time.

Consideration of economic savings does not provide reason for altering the amount of civil liability to be imposed.

10. Other Matters that Justice May Require

Significant Regional Water Board staff hours have been dedicated to this case in an effort to gain compliance including the preparation of enforcement Orders to protect groundwater and surface water quality.

Partial funding for cleanup activities is available through the SWRCB Petroleum Underground Storage Tank Cleanup Fund (Fund). However, compliance with the California Underground Storage Tank Regulations (Title 23, Division 3, Chapter 16, Article 11) is an eligibility requirement and non-compliance jeopardizes funding from the State of California.

Consideration of other matters as justice may require does not provide reason for reduction of the amount of civil liability to be imposed.

E. Ongoing Obligations

Payment of the proposed Administrative Civil Liability does not satisfy the Discharger's obligation to comply with the tasks required by Amended Cleanup and Abatement Order No. 99-709 or Cleanup and Abatement Order R5-2007-0701. These Cleanup and Abatement Orders remain in full force and effect.

F. Right to Petition

Any person affected by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with California Water Code section 13320 and California Code of Regulations, title 23, section 2050. The petition must be received by the State Water Board, Office of Chief Counsel, P.O. Box 100, Sacramento, 95812 within 30 days that this Order becomes final. This Order does not become final until the public review period described in section K expires, at which point it will be signed by the Regional Water Board's Executive Officer. Copies of the law and regulations applicable to filing petitions are available at http://www.waterboards.ca.gov/public_notices/petitions/water_quality/ and also will be provided upon request.

G. Exemption from California Environmental Quality Act

Issuance of this Administrative Civil Liability Complaint 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).

H. Payment of Administrative Civil Liability

The Discharger shall pay an administrative civil liability in the amount of \$50,000 according to the following schedule:

Date	Amount Due
20 June 2009	\$8,400
20 October 2009	\$8,400
20 February 2010	\$8,400
20 June 2010	\$8,400
20 September 2010	\$8,400
20 December 2010	\$8,000

From 20 June 2009 to 20 December 2010, the Discharger shall submit a check in the stated amount to the Regional Water Board. The check shall be made payable to the “*State Water Pollution Cleanup and Abatement Account*” and shall have written on it the number of this ACL Order. The Regional Water Board agrees to hold \$450,000 of the ACL Complaint in abeyance if the Discharger agrees to continue site investigation and remediation activities in accordance with Amended CAO No. 99-709 and CAO No. R5-2007-0701.

I. Scope of Settlement

Upon receipt of the administrative civil liability, as detailed in section H of this Stipulation for Entry of Administrative Civil Liability Order and Order, this Order resolves violations alleged in ACL Complaint No. R5-2005-0513. The Discharger waives its right to a hearing on the resolution of the matters herein covered.

J. Right to Declare Order Null and Void and Withdraw the Order

This stipulated resolution is contingent on the Discharger’s ability to fully satisfy all of the terms of this Order. If the Discharger does not satisfy those requirements, the Regional Water Board may declare the stipulation null and void and withdraw this Order. In that event, the Discharger agrees that any statute of limitations period for the claims delineated herein has been tolled from the date of entry of the Order until the date of withdrawal of the Order, inclusive (“Tolling Period”). This means that the Tolling Period will not be included in computing the time limited by any statute of limitations under the causes of action that may arise out of the Covered Claims, in any statute of limitations is applicable. The Tolling Period will also not be considered as part of any defense of laches or similar defense concerning timeliness of commencing a civil action against the Discharger by the Regional Water Board.

K. Public Review and Final Effect of this Order

This Order constitutes a settlement of ACL Complaint No. R5-2005-0513, and ***does not become final until after a 10-day public notice and comment period expires.*** Should the Regional Water Board receive new information or comments during this comment period, the Regional Water Board’s Executive Officer may withdraw the Order, return payment, and issue a revised Order. New information or comments include those submitted by personnel of the Regional Water Board who are not associated with the enforcement team’s issuance of the Tentative Order.

L. Authority to enter into Stipulation

Each person executing this Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

M. Interpretation

This Order shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared this Order and any uncertainty and ambiguity shall not be interpreted against any one party.

N. Effect if Portion of Order is Unenforceable

If any portion of this Order is ultimately determined not to be enforceable, the entire Order shall become null and void.

O. Modification of Order

This Order shall not be modified by any of the Parties by oral representation made before or after the execution of this Order. All modifications must be in writing and approved by the Regional Water Board.

IT IS SO STIPULATED:

Original signed by John P. Crowston
Jesse M. Lange Distributor, Inc.

20 March 2009
(Date)

Approved as to Form:

Original signed by Kevin A. Hughey
Mr. Kevin A. Hughey
Attorney for Jesse M. Lange Distributor, Inc.

20 March 2009
(Date)

Original signed by James C. Pedri for
Ms. Pamela C. Creedon
Executive Officer
California Regional Water Quality Control Board, Central Valley Region

23 March 2009
(Date)

IT IS SO ORDERED by the Regional Water Quality Control Board, Central Valley Region,

Original signed by Pamela C. Creedon
Ms. Pamela C. Creedon
Executive Officer
California Regional Water Quality Control Board, Central Valley Region

1 April 2009
(Date)

No comments received during the 24 February 2009 to 13 March 2009 public review period.

KLC/EJR: sae