

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0504

MANDATORY PENALTY
IN THE MATTER OF

WETSEL-OVIATT LUMBER COMPANY
EL DORADO COUNTY

This complaint is issued to the Wetsel-Oviatt Lumber Company (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 No. R5-2002-0162 (NPDES No. CA0079979).

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

1. The Discharger owns and operates the Wetsel-Oviatt Lumber Company. The Discharger intermittently discharged commingled process and storm water to an ephemeral drainage of Deer Creek, a water of the United States, tributary to the Cosumnes River, tributary to the San Joaquin River. On 25 August 2006, the Discharger requested rescission of the NPDES Permit because it had closed the mill, had removed the buildings, and was proceeding with site cleanup.
2. On 6 September 2002, the Regional Water Board adopted WDRs Order No.R5-2002-0162 to regulate discharges of waste from the lumber mill. The WDRs included effluent limitations and other requirements regarding the wastewater discharges. Due to the facility closure, the Regional Water Board rescinded WDRs Order No. R5-2002-0162 on 6 December 2007.
3. 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(i)(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 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.”*

4. 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.”

5. WDRs Order No. R5-2002-0162 Effluent Limitations No. B.1. include, in part, the following effluent limitations:

<u>Constituent</u>	<u>Unit</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>
Oil and Grease	mg/L	10	--	15
Total Suspended Solids	mg/L	--	--	10

6. According to the Discharger’s self-monitoring reports, the Discharger committed four (4) serious violations of the effluent limitations contained in Order No. R5-2002-0162 during the period beginning 6 September 2002 and ending 30 November 2007, because measured constituents exceeded maximum prescribed levels by more than 40 percent on these occasions. The mandatory minimum penalty for these serious violations is **twelve thousand dollars (\$12,000)**.
7. According to the Discharger’s self-monitoring reports, the Discharger committed two (2) non-serious violations of the effluent limitations contained in Order No. R5-2002-0162 during the period beginning 6 September 2002 and ending 31 August 2007. The two (2) non-serious violations are subject to mandatory penalties under CWC section 13385(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 **six thousand dollars (\$6,000)**.
8. The total amount of the mandatory penalties assessed for the cited effluent violations is **eighteen thousand dollars (\$18,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Order.

9. 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 (Public Resources Code Section 21000, et. seq.), in accordance with Title 14 California Code of Regulations, Enforcement Actions by Regulatory Agencies, Section 15321(a)(2).

WETSEL-OVIATT LUMBER CO. IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **eighteen thousand dollars (\$18,000)**.
2. A hearing on this matter will be held at the Regional Water Board meeting scheduled on 24/25 April 2008, unless the Discharger agrees to:
 - a) Waive the hearing by completing the attached form and returning it to the Regional Water Board; and
 - b) Pay the proposed civil liability of **eighteen thousand dollars (\$18,000)** in full.
3. If a hearing on this matter is held, the Regional 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.

KENNETH D. LANDAU, Assistant Executive Officer

6 February 2008

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent Wetsel-Oviatt Lumber Co. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0504 (hereinafter the "Complaint");
2. I am informed of the right provided by California Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint;
3. I hereby waive the Discharger's right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of issuance of the Complaint; and
4. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **eighteen thousand dollars (\$18,000)** by check, which contains a reference to "ACL Complaint No. R5-2008-0504" and is made payable to the "*State Water Pollution Cleanup and Abatement Account.*"
5. I understand the payment of the above amount constitutes a settlement of violations alleged in the Complaint that will not become final until after a public comment period.
6. I understand that the Assistant Executive Officer has complete discretion to modify or terminate this settlement.
7. 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.

(Print Name and Title)

(Signature)

(Date)

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0504**

**Wetsel-Oviatt Lumber Company
Wetsel-Oviatt Lumber Mill**

RECORD OF VIOLATIONS (1 January 2000 – 30 November 2007) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program No. R5-2002-0162)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Result</u>	<u>Period Type</u>	<u>Remarks</u>
1	7-Feb-05	TSS	mg/L	10	23	Daily	1
2	8-Feb-05	TSS	mg/L	10	15	Daily	1
3	9-Feb-05	TSS	mg/L	10	16	Daily	1
4	10-Feb-05	TSS	mg/L	10	12	Daily	4
5	10-Feb-05	Oil and Grease	mg/L	15	211	Daily	1
6	11-Feb-05	TSS	mg/L	10	13	Daily	4

Remarks:

1. Serious Violation: For Group 1 pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group 2 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.
4. Non-serious violation subject to mandatory penalties.

<u>VIOLATIONS AS OF:</u>	<u>11/30/2007</u>
Group 1 Serious Violations:	4
Group 2 Serious Violations:	0
Non-Serious Exempt from MPs:	0
Non-serious Violations Subject to MPs:	2
<u>Total Violations Subject to MMPs:</u>	<u>6</u>

Mandatory Minimum Penalty = (4 Serious Violations + 2 Non-Serious Violations) x \$3,000 = \$18,000