

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0624

MANDATORY PENALTY
IN THE MATTER OF

THE VENDO COMPANY
GROUNDWATER REMEDIATION SYSTEM
FRESNO COUNTY

This Complaint is issued to The Vendo Company (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL), 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) Orders 99-012 and R5-2006-0016 (NPDES No. CA0083046).

The Assistant 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 a Groundwater Remediation System at a former vending machine manufacturing facility that was owned and operated by the Discharger in Fresno, Fresno County. Treated groundwater is discharged to Bullard Canal, a tributary to the San Joaquin River and a water of the United States.
2. On 30 April 1999, the Central Valley Water Board issued WDRs Order 99-012 to regulate discharge of treated groundwater from the Groundwater Remediation System to Bullard Canal.
3. On 26 February 2006, the Central Valley Water Board issued WDRs Order R5-2006-0016, which prescribed new requirements for the discharge and rescinded WDRs Order 96-107.
4. CWC section 13385(h) requires assessment of mandatory penalties and states, 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 II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

5. CWC section 13323 states, in relevant 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 Orders 99-012 and R5-2006-0016 prescribe, in part, the following effluent limitations:

WDRs Order:		99-012	R5-2006-0016	
WDRs Effective Dates:		(4/30/99-1/25/06)	(1/26/06-current)	
<u>Constituent</u>	<u>Units</u>	<u>Maximum Daily</u>	<u>Monthly Median</u>	<u>Maximum Daily</u>
Trichloroethene (TCE)	µg/L	5	< 0.5	< 0.5
cis-1,2-Dichloroethene (cis-1,2-DCE)	µg/L	5	< 0.5	< 0.5

7. On 17 July 2008, Central Valley Water Board staff (staff) issued the Discharger a Notice of Violation (NOV) and a draft Record of Violations for the period of 1 January 2000 through 31 March 2008 for violations of WDRs Order R5-2006-0016 subject to Mandatory Minimum Penalties (MMPs). The draft Record of Violations identified two (2) serious effluent limitation violations subject to MMPs pursuant to CWC section 13385(h). By letter dated 31 July 2008, the Discharger responded to the NOV. Upon receipt of the Discharger's response, staff performed a more detailed review of Central Valley Water Board records for this discharge and extended the violation review period from 31 March 2008 to 31 July 2008, and, as a result, discovered seven (7) additional serious effluent limitation violations.

8. On 3 November 2008, staff issued the Discharger a revised NOV and draft Record of Violations that identified nine (9) serious effluent limitation violations subject to MMPs pursuant to CWC section 13385(h), two (2) of which were associated with other violations that occurred the same day due to operational upsets (i.e., pollutant breakthrough in the Groundwater Remediation System's granular activated carbon treatment vessels). By letter dated 17 November 2008, the Discharger responded to the revised NOV and draft Record of Violations. Staff reviewed the Discharger's response and determined that the Discharger did not provide evidence indicating that any of the violations identified in the revised draft Record of Violations as subject to MMPs were incorrect or otherwise should not be subject to MMPs. Staff then re-evaluated the Discharger's self-monitoring data and determined that two violations of the limitation for monthly median effluent TCE cited in the revised draft Record of Violations (one in August 2004, the other in March 2005) had been created in error.

9. Attachment A to this Complaint is the final Record of Violations, which covers the period of 1 January 2000 through 31 July 2008, and identifies seven (7) serious effluent limitation violations subject to MMP pursuant to CWC section 13385(h). Attachment B to this Complaint is a technical staff memorandum dated 24 November 2008 that details staff's analysis of the Discharger's response and changes made to the revised draft Record of Violation described in Finding 8.
10. The total amount of the penalty assessed for the violations identified in Attachment A as subject to MMPs is **twenty-one thousand dollars (\$21,000)**.
11. 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 California Code of Regulations, title 14, section 15321(a)(2).

THE VENDO COMPANY 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 **twenty-one thousand dollars (\$21,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled in **5/6 February 2009**, unless the Discharger does either of the following by **9 January 2009**:
 - a. Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **twenty-one thousand dollars (\$21,000)**; or
 - b. Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board along with a letter describing the issues to be discussed.
3. If a hearing on this matter is held, 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.

LOREN J. HARLOW, Assistant Executive Officer

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent **The Vendo Company** (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0624 (hereinafter the "Complaint");
2. 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" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) within ninety (90) days of service of the Complaint; and
4. **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
 - a. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **twenty-one thousand dollars (\$21,000)** by checks that contains a reference to "ACL Complaint R5-2008-0624" made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Regional Water Board by **9 January 2009** or this matter will be placed on the Regional Water Board's agenda for adoption as initially proposed in the Complaint.
 - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Regional Water Board receive new information or comments during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. 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 Complaint.
 - c. 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.

-or-

5. **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A
 ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0624
 THE VENDO COMPANY
 GROUNDWATER REMEDIATION SYSTEM
 RECORD OF VIOLATIONS (1 January 2000 – 31 July 2008) MANDATORY PENALTIES
 (Data reported under Monitoring and Reporting Programs 99-012 and R5-2006-0016)

<u>Violation ID¹</u>	<u>Violation Date²</u>	<u>Violation Type³</u>	<u>Violation Description⁴</u>	<u>MMP Type⁵</u>
783900	7/31/2004	CAT2	7M; cis-1,2-DCE; < 0.5; ug/l; M; 1.6	Serious
783903	8/31/2004	CAT2	8M; cis-1,2-DCE; < 0.5; ug/L; M; 3.2 ⁶	Serious
783922	3/31/2005	CAT2	3M; cis-1,2-DCE; < 0.5; ug/L; M; 2.2	Serious
783926	7/31/2005	CAT2	7M; cis-1,2-DCE; < 0.5; ug/L; M; 3.0 ⁶	Serious
783928	12/31/2005	CAT2	12M; cis-1,2-DCE; < 0.5; ug/L; M; 1.8	Serious
778539	1/9/2007	CAT2	1M; cis-1,2-DCE; < 0.5; ug/L; D; 0.82	Serious
778541	9/5/2007	CAT2	9M; cis-1,2-DCE; < 0.5; ug/L; D; 0.81	Serious

- ¹ Violation ID in CIWQS
- ² Violation date is last day of the month for violations of monthly median effluent limitations.
- ³ Table of Abbreviations below defines abbreviations used in this table.
- ⁴ Violation descriptions are coded as follows: Reporting period (e.g., 4M = April); constituent or parameter (e.g., TCE); effluent limitation; units; limitation period; and result.
- ⁵ Serious violations are subject to MMP pursuant to CWC section 13385(h).
- ⁶ Represents an average of two samples for that month

<u>Abbreviation</u>	<u>Definition</u>
CAT2	Violation of Group II pollutant effluent limitation as defined in Enforcement Policy
cis-1,2-DCE	cis-1,2-Dichloroethene
CIWQS	California Integrated Water Quality System database
D	Daily
M	Monthly
MMP	Mandatory Minimum Penalty
TCE	Trichloroethene

<u>MMP VIOLATION TYPE</u>	<u>VIOLATION PERIOD 1/1/2000 TO 7/31/2008</u>
Serious Violations of Group II Pollutant Effluent Limitation Subject to MMPs:	7
Total Violations Subject to MMPs:	7
<u>Mandatory Minimum Penalty = 7 x \$3,000 = \$21,000</u>	



California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair

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Arnold
Schwarzenegger
Governor

Linda S. Adams
Secretary for
Environmental Protection

TO: Jo Anne Kipps
Senior Engineer
Compliance and Enforcement Unit

FROM: Jeff Hannel
Engineering Geologist
Compliance and Enforcement Unit

DATE: 24 November 2008

SIGNATURE: _____

SUBJECT: THE VENDO COMPANY, RESPONSE TO REVISED NOV AND DRAFT RECORD OF VIOLATIONS SUBJECT TO MMP

The Vendo Company (Discharger) owns and operates a Groundwater Remediation System (GWRS) at a former vending machine manufacturing facility that was owned and operated by the Discharger in the City of Fresno. Treated groundwater is discharged to Bullard Canal, a water of the United States and a tributary to the San Joaquin River. The discharge is permitted under NPDES No. CA0083046, specifically, Waste Discharge Requirements (WDRs) Order R5-2006-0016, which currently regulates the discharge, and rescinded WDRs Order 99-012, which was in effect from 30 April 1999 through 25 January 2006.

WDRs Orders 99-012 and R5-2006-0016 prescribe, in part, the following effluent limitations:

<u>Constituent</u>	<u>Units</u>	WDRs Order: 99-012		WDRs Order: R5-2006-0016
		Maximum	Monthly	Maximum
		Daily	Median	Daily
Trichloroethene (TCE)	µg/L	5	< 0.5	< 0.5
cis-1,2-Dichloroethene (cis-1,2-DCE)	µg/L	5	< 0.5	< 0.5

On 17 July 2008, Central Valley Water Board staff (staff) issued the Discharger a Notice of Violation (NOV) and a draft Record of Violations for the period of 1 January 2000 through 31 March 2008 for violations of WDRs Order R5-2006-0016. The draft Record of Violations identified two effluent limitation violations subject to Mandatory Minimum Penalty (MMP). The Discharger responded to the NOV by letter dated 31 July 2008. Upon receipt of the Discharger's response, staff performed a more detailed review of Central Valley Water Board records for this discharge to assess the circumstances under which the WDRs Order R5-2006-0016 was issued. During the review, staff discovered five additional effluent limitation violations subject to MMP. Attachment A to Administrative Civil Liability R5-2008-0624 is the final Record of Violations subject to MMP.

The Discharger's comments to the first and second NOV's, along with staff's responses and recommendations, are summarized below.

Discharger Response Summary, 17 July 2008 NOV

The GWRS was designed to remove TCE from groundwater and to date has removed about 212 pounds of TCE. The presence of cis-1,2-DCE in groundwater is likely due to natural attenuation of TCE. As TCE concentrations have been reduced in groundwater, so have concentrations of cis-1,2-DCE, which has not been detected in GWRS influent above the Maximum Contaminant Level (MCL) of 6.0 µg/L (listed as 0.006 mg/L in Table 64444-A of Title 22, California Code of Regulations).

The GWRS uses granular activated carbon (GAC) to remove TCE. The Discharger operates the GWRS to comply with California Department of Toxic Substances Control (DTSC) Consent Order 89/90-003, which does not identify cis-1,2-DCE as a constituent of concern. The Discharger indicates that the GWRS was not designed to be efficient in removing cis-1,2-DCE, and would need to be modified to comply with effluent limitations for cis-1,2-DCE in WDRs Order R5-2006-0016.

The Discharger notes that the daily maximum effluent limitations of <0.5 µg/L each for TCE and cis-1,2-DCE in WDRs Order R5-2006-0016 are lower than the daily maximum effluent limitations of 5 µg/L in WDRs Order 99-012. The Discharger claims that the modifications required to prevent exceedances of the lower effluent limitations for cis-1,2-DCE would cost in excess of \$250,000. The GAC is changed out every seven to eight months at a cost of about \$50,000 per change out to maintain concentrations of cis-1,2-DCE at levels compliant with the effluent limitation in WDRs Order R5-2006-0016. The change outs would only be necessary every 24 months if WDRs Order R5-2006-0016 prescribed effluent limitations just for TCE. The additional GAC necessary to meet the effluent limitation for cis-1,2-DCE are estimated to increase project costs \$400,000 over the next five years.

The Discharger operates other groundwater remediation systems in the area and has removed a combined total of about 2,300 pounds of TCE from area groundwater. The Discharger is working with the California Department of Public Health, the City of Fresno, and DTSC to explore options outside the NPDES permit for continued operation of the GWRS. The Discharger plans to request a modification of WDRs Order R5-2006-0016 to allow cost-effective operation of the GWRS. The Discharger believes it is in the best interests of the people of the State of California to continue operation of the GWRS. The Discharger requests a temporary waiver of the 0.5 µg/L daily maximum effluent limitation for cis-1,2-DCE and requests that the ACL Complaint be dismissed.

Staff's Comments to 31 July 2008 Discharger Letter

The monthly median effluent limitations for TCE and for cis-1,2-DCE in WDRs Order 99-012 (<0.5 µg/L) is equal to the daily maximum effluent limitation for these two constituents in WDRs Order R5-2006-0016. Since monitoring was required monthly, the monthly median is the equivalent of the daily maximum unless the Discharger elects to monitor the effluent more frequently than required. Since the Discharger rarely monitored more frequently than required, the effluent limitations for cis-1,2-DCE and TCE in the two Orders are essentially the same.

On 19 October 2005, the Central Valley Water Board circulated for public comment the Tentative Waste Discharge Requirements (TWDRs) for The Vendo Company's GWRS. The State Water Resources Control Board and Fresno Irrigation District submitted written

comments to the TWDRs, but the Discharger did not. Central Valley Water Board records on this discharge indicate staff discussed the TWDRS with the Discharger's consultant, BSK, Inc. However, it appears that the discussion dealt primarily with monitoring provisions in the TWDRs. The public comment period would have been the appropriate time for the Discharger to raise objections to the proposed effluent limitations, especially since the Discharger had five exceedances of effluent limitations of cis-1,2-DCE contained in WDRs Order 99-012 in the 18 months prior to the issuance of WDRs Order R5-2006-0016.

There is no documentation in the case file for this discharge to indicate that the Discharger, or any other interested party, objected to the effluent limitations for cis-1,2-DCE when TWDRS for WDRs Order 99-012 were circulated for public comment in 1999 or following its adoption by the Central Valley Water Board. There is, however, documentation in the case file that the Discharger submitted a request for relaxation of effluent limitations included in WDRs Order 93-018, the precursor to WDRs Order 99-012.

A staff memorandum dated 11 September 1995 notes that in a report dated 1 December 1994, the Discharger requested that the Central Valley Water Board eliminate the 0.5 µg/L monthly median effluent limitation for volatile organic compounds (VOCs). Staff reviewed applicable state and federal laws, regulations, and policies; influent, effluent, and receiving water quality data; and consistency with other permitted facilities both within and outside the Central Valley Region. As a result, staff concluded that the effluent limitations for VOCs included in WDRs Order 93-018 are based on Best Available Treatment Economically Achievable (BAT) and that technology-based requirements define achievable treatment levels for a particular pollutant or class of pollutants. The memorandum questioned whether GAC by itself is BAT for the GWRS, and noted that other dischargers in similar circumstances have employed air stripping or both technologies (i.e., GAC + air stripping = BAT). Staff determined the effluent limitations in WDRs Order 93-018 to be consistent with other permits and recommended the Central Valley Water Board deny the Discharger's request to eliminate the monthly median effluent limitations. It must be noted that exceedances of monthly median effluent limitations for dichlorodifluoromethane, 1,1-dichloroethane, and cis-1,2-DCE had occurred between January 1994 and June 1994.

State Water Resources Control Board Resolution 68-16, *Statement of Policy With Respect to Maintaining High Quality of Waters of California*, requires implementation of best practical treatment or control (BPTC) to ensure that the highest water quality is maintained consistent with the maximum benefit to the people of the State. WDRs Order R5-2006-0016 notes that the Discharger had not submitted an analysis to the Central Valley Water Board demonstrating that degradation resulting from discharges of VOCs at concentrations in excess of quantifiable levels would be consistent with the maximum benefit of the people of the State. This demonstration would be required before the Central Valley Water Board could issue waste discharge requirements with effluent limitations greater than quantifiable (technology-based) limits.

After receiving the Discharger's comments to the 17 July 2008 NOV, staff extended the MMP violation review period to 31 July 2008, re-evaluated the Discharger's monitoring data, and determined that an additional five exceedances of effluent limitations subject to MMP had occurred. On 3 November 2008, staff issued the Discharger a second NOV that identified nine violations of effluent limitations, of which seven were subject to MMP and two were determined not subject to MMP due to their association with single operational upsets pursuant to California Water Code section 1338(f) (i.e., Violation IDs 783910 and 783924).

Discharger Response to 3 November 2008 NOV

In its 17 November 2008 letter response to the second NOV, the Discharger requested State Water Resources Control Board conduct a hearing of the matter. The Discharger did not dispute that the exceedances occurred, nor did the Discharger offer any data or explanations that would allow staff to dismiss the violations.

Staff Re-evaluation of Discharger Monitoring Data

Staff re-evaluated the Discharger's self-monitoring data collected in August 2004 and in March 2005, months in which the 3 November 2008 draft Record of Violations identified two violations of the monthly median effluent TCE limitation as not subject to MMP because of a single operational upset pursuant to California Water Code (CWC) section 13385(f) (Violation IDs 783910 and 783924). Cis-1,2-DCE was detected in the effluent samples collected in August 2004 (2.9 µg/L) and in March 2005 (1.5 µg/L) in concentrations exceeding the monthly median limitation of < 0.5 µg/L, but less than the daily maximum effluent limitation of 5 µg/L. Confirmation samples were collected in each of those months and cis-1,2-DCE was detected at 3.4 µg/L and 2.8 µg/L, respectively, and TCE was detected at 0.74 µg/L and 0.71 µg/L, respectively. Since TCE was not detected in the first samples collected in August 2004 and in March 2005 (i.e., the reported result in these two months was "< 0.5 µg/L"), the monthly median effluent limitation for TCE was not exceeded in either month. Staff dismissed Violation IDs 783910 and 783924 from the California Integrated Water Quality System database. The monthly median effluent cis-1,2-DCE limitation was exceeded in each month. The presence of both TCE and cis-1,2-DCE in the confirmation effluent samples does not support the Discharger's argument that effluent limitations for cis-1,2-DCE are the sole reason for additional change outs of the GAC. It appears that continued operation of the GWRS after cis-1,2-DCE has been detected in the effluent will result in TCE being detected in the effluent shortly thereafter.

Staff's Recommendation

The Discharger has not disputed that seven (7) serious violations of effluent limitations had occurred between 1 January 2000 and 31 July 2008. Although staff concurs that it is in the best interests of the people of the State of California for the Discharger to continue operating the GWRS, the CWC does not exempt exceedances of effluent limitations subject to MMP under these circumstances (i.e., discharges to waters of the U.S. of effluent from groundwater remediation systems). Since the Discharger has not presented evidence that the exceedances did not occur, and staff are not authorized to waive MMP, staff recommends the ACL Complaint be issued for seven serious violations subject to MMP.

The CWC does not allow for staff to authorize temporary waivers of effluent limitations included in NPDES permits. The Discharger may submit a request for modification of the effluent limitations for cis-1,2-DCE in WDRs Order R5-2006-0016. However, the Discharger's request in 1994 to eliminate the monthly median effluent limitations for VOCs, including cis-1,2-DCE, was not approved.