

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0531

MANDATORY PENALTY
IN THE MATTER OF

CALIFORNIA DEPARTMENT OF GENERAL SERVICES
OFFICE OF STATE PUBLISHING
SACRAMENTO COUNTY

This Complaint is issued to the California Department of General Services (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2005-0086 (NPDES No. CA0078875).

The 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 the Office of State Publishing which provides printing and communications services to state, federal, and municipal agencies. Non-contact cooling water from air-conditioning heat exchange coils and on-site storm water is discharged into the American River.
2. On 24 June 2005, the Central Valley Water Board issued WDRs Order R5-2005-0086, which contained new requirements and rescinded WDRs Order 98-060 except for enforcement purposes.
3. On 24 June 2005, the Central Valley Water Board also issued Time Schedule Order (TSO) R5-2005-0087, which included, among others, interim effluent limitations for barium, manganese, and total dissolved solids (TDS) and allowed the Discharger until 1 June 2010 to comply with the final effluent limitations for these constituents. The TSO also provided protection from mandatory minimum penalties for a five year period so long as the Discharger was in compliance with TSO R5-2005-0087. TSO R5-2005-0087 expired on 1 June 2010.
4. On 28 June 2010, the Central Valley Water Board issued TSO R5-2010-0907, which extended the date to comply with final effluent limitations for barium, manganese, and TDS to 1 November 2010 and added requirements to comply with final effluent limitations for arsenic, cadmium, copper, lead, nickel and selenium. However, this TSO does not provide protection from mandatory minimum penalties for barium, manganese and TDS because more than five years have elapsed from the adoption of TSO R5-2005-0087.
5. On 3 February 2011, the Central Valley Water Board rescinded WDRs R5-2005-0086 and TSO R5-2010-0907, except for purposes of enforcement, after the Discharger notified

Board staff on 29 December 2010 that discharges of non-contact cooling water to the American River have ceased.

6. On 4 November 2010, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2010-0548 for mandatory minimum penalties for effluent violations (identified in Attachment A to ACLC R5-2010-0548) that occurred from 1 April 2008 through 31 July 2010. The Discharger paid the civil liability and the Board considers those effluent violations specifically listed in Attachment A to ACLC R5-2010-0548 to be resolved.
7. This Complaint addresses administrative civil liability for effluent violations that occurred from 1 August 2010 through 30 November 2010. These violations are specifically identified in Attachment A to this Complaint as subject to mandatory minimum penalties. Attachment A to this Complaint is attached hereto and incorporated herein by this reference. In determining the proposed administrative civil liability, the Executive Officer considered the protection from MMPs provided by TSO R5-2005-0087 from 24 June 2005 until 1 June 2010 as a result of the Discharger's compliance with interim effluent limitations in TSO R5-2005-0087. However, because more than five years has lapsed since the adoption of TSO R5-2005-0087, compliance with interim effluent limitations in TSO R5-2010-0907 does not exempt the Discharger from MMPs.
8. On 31 January 2011, Central Valley Water Board staff issued the Discharger a draft Record of Violations (ROV). The Discharger responded on 4 February 2011 and stated that (a) TSO R5-2010-0907 provided protection from MMPs for the barium, manganese and TDS effluent violations and (b) the pH violations were not subject to MMPs if there were not three previous pH violations in a six-month period. Staff have reviewed both the 2005 TSO and the 2010 TSO and have determined that the barium, manganese, and TDS violations are subject to MMPs because the five years of protection from MMPs for these constituents allowed under the TSOs expired on 1 June 2010.¹ The pH violations are subject to MMPs because there were more than three effluent limitation violations of any constituent during the preceding 180 day period. The Discharger also stated that the barium and manganese violations listed in the draft ROV as occurring on 31 October 2010 are not violations because there were no discharges of non-contact cooling water on 31 October 2010. Central Valley Water Board staff reviewed the draft ROV and self-monitoring reports submitted by the Discharger and determined that the barium and manganese violations actually occurred on 12 October 2010, not 31 October 2010. The corrected date is shown in Attachment A of this Complaint.
9. CWC section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) states:

¹ Finding 14 of TSO R5-2010-0907 states, in part, "...For arsenic, barium, manganese, and TDS, TSO No. R5-2005-0087 provided protection from MMPs beginning 24 June 2005. Because the five years of protection ends on 24 June 2010, additional protection from MMPs is not allowed in this Order."

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.

10. 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.

11. WDRs Order R5-2005-0086 Effluent Limitations B.1., include, in part, the following effluent limitations:

1. Effluent shall not exceed the following limits unless otherwise

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>
Barium	µg/L	--	100
Manganese	µg/L	--	50
	lbs/day ¹		0.54
<u>Total Dissolved Solids</u>	mg/L	--	125

¹ Based upon an average discharge flow of 1.3 mgd for Discharge 001.

12. WDRs Order R5 2005-0086 Effluent Limitations B.3., states the following effluent limitations:
 3. The discharge shall not have a pH less than 6.5 nor greater than 8.5.
13. According to the Discharger's self-monitoring reports, the Discharger committed four (4) serious Group I violations of the above effluent limitations contained in WDRs Order R5-2005-0086 during the period beginning 1 August 2010 and ending 30 November 2010 as identified in Attachment A. These violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels in WDRs Order R5-2005-0086 by 40 percent or more. The mandatory minimum penalty for these serious violations is **twelve thousand dollars (\$12,000)**.
14. According to the Discharger's self-monitoring reports, the Discharger committed two (2) serious Group II violations of the above effluent limitations contained in WDRs Order R5-2005-0086 during the period beginning 1 August 2010 and ending 30 November 2010 as identified in Attachment A. These violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2005-0086 by 20 percent or more. The mandatory minimum penalty for these serious violations is **six thousand dollars (\$6,000)**.
15. According to the Discharger's self-monitoring reports, the Discharger committed two (2) non-serious violations of the above effluent limitations contained in Order R5-2005-0086 during the period beginning 1 August 2010 through 30 November 2010 as identified in Attachment A. The non-serious violations are subject to mandatory penalties under CWC section 13385 subdivision (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)**.
16. The total amount of the mandatory penalties assessed for the cited effluent violations is **twenty-four thousand dollars (\$24,000)**. As stated herein, a detailed list of the cited effluent violations is included in Attachment A. This Complaint addresses administrative civil liability for violations that are specifically identified in Attachment A as subject to mandatory minimum penalties.
17. 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 (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **twenty-four thousand dollars (\$24,000)**.

2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **8/9/10 June 2011**, unless the Discharger does one of the following by **13 April 2011**:
 - a) Waives the hearing by completing the attached form (checking off the box next to Option 1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **twenty-four thousand dollars (\$24,000)**; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
 - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the 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.
4. 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.

Original signed by Frederick Moss for
PAMELA C. CREEDON, Executive Officer

14 March 2011

DATE

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the California Department of General Services (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2011-0531 (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 **twenty-four thousand dollars (\$24,000)** by check that references "ACL Complaint R5-2011-0531" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **13 April 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 engage in settlement discussions.) 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, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(OPTION 3: 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 R5-2011-0531**

**California Department of General Services
Office of State Publishing**

**RECORD OF VIOLATIONS (1 August 2010 – 30 November 2010) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2005-0086)**

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>	<u>CIWQS</u>
1	27-Aug-10	Barium	µg/L	100	130	Daily Max	2	889604
2	27-Aug-10	Manganese	µg/L	50	256	Daily Max	1	889606
3	27-Aug-10	Manganese	lbs/day	0.54	2.0	Daily Max	1	889607
4	27-Aug-10	TDS	mg/L	125	310	Daily Max	1	889608
5	12-Oct-10	Barium	µg/L	100	148	Daily Max	2	889605
6	12-Oct-10	Manganese	µg/L	50	264	Daily Max	1	889611
7	25-Oct-10	pH	SU	6.5	6.3	Instantaneous Min	4	889609
8	26-Oct-10	pH	SU	6.5	6.1	Instantaneous Min	4	889610

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violation falls within the first three violations in a six-month period, thus is not subject to mandatory minimum penalties.
4. Non-serious violation subject to mandatory penalties.

<u>VIOLATIONS AS OF:</u>	<u>11/30/2010</u>
Group I Serious Violations:	4
Group II Serious Violations:	2
Non-Serious Violations Not Subject to MMPs:	0
Non-serious Violations Subject to MMPs:	2
Total Violations Subject to MMPs:	8

Mandatory Minimum Penalty = (6 serious Violation + 2 Non-Serious Violations) x \$3,000 = \$24,000