

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2018-0508

MANDATORY PENALTY
IN THE MATTER OF

AEROJET ROCKETDYNE INC.
GROUNDWATER EXTRACTION AND TREATMENT SYSTEMS
SACRAMENTO COUNTY

This Complaint is issued to Aerojet Rocketdyne Inc. (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) Orders R5-2014-0126 and R5-2017-0095 (NPDES No. CA0083861).

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

1. The Discharger owns and operates fifteen groundwater treatment systems (GETs) in eastern Sacramento and around the cities of Rancho Cordova, Carmichael, and Folsom in the County of Sacramento. Currently, twelve of those systems discharge to surface waters and three discharge to land. A majority of the treated groundwater that is discharged from these treatment systems to surface waters is discharged to the American River or to Buffalo Creek, both tributary to the American River. One treatment facility discharges to Morrison Creek, tributary to the Sacramento River. The American River, Sacramento River, Buffalo Creek, and Morrison Creek are waters of the United States.
2. On 10 October 2014, effective 10 October 2014, the Central Valley Water Board adopted WDRs Order R5-2014-0126 authorizing the discharge of treated groundwater from the Discharger's GETs as described above and rescinded WDRs Order R5-2013-0155, except for enforcement purposes.
3. On 11 August 2017, effective 1 September 2017, the Central Valley Water Board issued Order R5-2017-0095 and rescinded WDRs Order R5-2014-0126, except for enforcement purposes.
4. On 9 June 2017, the Executive Officer of the Central Valley Water Board issued Settlement Agreement and Stipulation for Entry of Administrative Civil Liability (Stipulated Order) Order R5-2017-0531 for effluent violations which occurred from 1 November 2013 to 30 November 2015. The Discharger paid \$30,000 of the penalty and entered into an agreement to complete a Supplemental Environmental Project (SEP) in the amount of \$15,000. The Discharger completed the SEP and Board considers those effluent violations specifically listed in Attachment A to Stipulated Order R5-2017-0531 to be resolved.
5. This Complaint addresses administrative civil liability for effluent limitation violations that occurred between 1 December 2015 and 30 November 2017. These violations are specifically identified as subject to mandatory minimum penalties in Attachment A to this Complaint, which is attached hereto and incorporated herein by reference.
6. On 31 January 2018, Central Valley Water Board staff issued the Discharger a draft Record of Violations (ROV) for the period from 1 December 2015 through 30 November 2017. On 6

February 2017, the Discharger responded via email to the ROV and stated that these effluent violations should not be considered as serious violations because none of these violations exceed the drinking water Maximum Contaminant Levels (MCLs). Therefore, the Discharger asserts that these violations should be considered non-serious violations.

The Discharger also objected to Board staff's approach for citing multiple violations for a single sample value when it exceeded multiple effluent limitations, such as a daily maximum concentration, mass loading, and a monthly average, with a single sample analytical result. Regional Board staff appreciate the Discharger's response to the ROV; however, Board staff do not agree with the Discharger's interpretation of serious and non-serious violations. According to the 2017 State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) defines a "serious violation" as:

"A serious violation is any waste discharge that exceeds the effluent limitation for a Group I pollutant by 40 percent or more, or a Group II pollutant by 20 percent or more (see Appendix A to 40 CFR 123.45)..."

Therefore, Board staff has determined that these effluent violations qualify as serious violations per 40 CFR 123.45. In addition, for purposes of assessing mandatory minimum penalties, Board staff determines the number of WDRs effluent limitations that were violated based on monitoring data and other evidence that the discharger submitted. If only one sample is collected during a monitoring period, that one sample is the only data available to determine compliance with multiple effluent limitations, such as a daily maximum concentration limitation and a monthly average effluent limitation. A violation is cited for any limitation that is exceeded based on Water Code Section 13385(h) or (i).

In addition, the Discharger requested that the 30 November 2016 (CIWQS violation ID #1038364) violation for N-Nitrosodimethylamine be dismissed because Board staff's monthly average calculation only included effluent concentration from two samples instead of three samples, which lowers the calculated monthly average concentrations and results in compliance with the WDRs effluent limitation. Upon further investigation, Board staff determined that one sample result was inadvertently reported under the wrong month. After Board staff had the Discharger correct the November 2016 eSMR, Board staff reevaluated the November 2016 eSMR and agrees that the average monthly discharge concentration was below the effluent limitation. Therefore, Board staff has dismissed CIWQS Violation ID #1038364.

The Discharger argues that the WDRs has set the effluent limitations to the lowest possible level and any detection of the constituent would constitute a serious violation. Board Compliance and Enforcement staff do not have the enforcement discretion to modify effluent limitations contained in a Board adopted WDRs Order. Several limitations in the WDRs are very low; however, the WDRs were adopted following a public comment period where the Discharger had the opportunity to contest the draft WDRs. NPDES Permits are renewed in five-year cycles. There will be an opportunity to request modifications to the future WDRs in your Report of Waste Discharge, which is due by 12 April 2019.

7. Water Code section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

Water Code 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.

Water Code 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.

Water Code 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.

8. Water Code 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.

9. WDRs Order R5-2014-0126, Effluent Limitations IV.A.2.a include, in part, the following final effluent limitations for Discharge Point M-002 (GET/E/F):

Parameter	Units	Effluent Limitation	
		Average Monthly	Maximum Daily
Acetaldehyde	µg/L	5	5
	lbs/day	0.51	0.51
N-nitrosodimethylamine	µg/L	0.002	0.010
	lbs/day	0.00096	0.00096

10. WDRs Order R5-2014-0126, Effluent Limitations IV.A.7.a include, in part, the following final effluent limitations for Discharge Point M-007 (GET KA):

Parameter	Units	Effluent Limitation	
		Average Monthly	Maximum Daily
Trichloroethylene	µg/L	0.5	0.7
	lbs/day	0.017	0.024

11. WDRs Order R5-2014-0126, Effluent Limitations IV.A.17.a include, in part, the following final effluent limitations for Discharge Point M-017 (White Rock GET):

Parameter	Units	Effluent Limitation	
		Average Monthly	Maximum Daily
cis-1,2-dichloroethylene	µg/L	0.5	0.7
	lbs/day	0.0054	0.0054
Trichloroethylene	µg/L	0.05	0.7
	lbs/day	0.0054	0.0078

12. WDRs Order R5-2014-0126, Effluent Limitations IV.A.18.a include, in part, the following final effluent limitations for Discharge Point M-018 (Well 4665)

Parameter	Units	Effluent Limitation	
		Average Monthly	Maximum Daily
N-nitrosodimethylamine	µg/L	0.002	0.010
	lbs/day	0.0000022	0.00011

13. According to the Discharger’s self-monitoring reports, the Discharger committed nine (9) serious Group II violations of the above effluent limitations contained in WDRs Order R5-2014-0126, as shown in Attachment A. These violations are defined as serious because measured concentration of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2014-0126 by 20 percent or more. The mandatory minimum penalty for these violations is **twenty seven thousand dollars (\$27,000)**.
14. The total amount of the mandatory penalties assessed for the alleged effluent limitation violations is **twenty seven thousand dollars (\$27,000)**. As stated herein, a detailed list of the alleged effluent violations is included in Attachment A. This Complaint addresses administrative civil liability for violations that are specifically identified as subject to mandatory minimum penalties in Attachment A.
15. On 21 December 2015, the Executive Officer designated Andrew Altevogt, Assistant Executive Officer, as the Lead Prosecution Officer for all enforcement matters originating in the Central Valley Region. The 21 December 2015 Delegation of Authority also authorizes Andrew Altevogt to issue Administrative Civil Liability Complaints.
16. Issuance of this Administrative Civil Liability Complaint to enforce Water Code 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).

AEROJET ROCKETDYNE INC. 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 seven thousand dollars (\$27,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **31 May/1 June 2018**, unless one of the following occurs by **29 March 2018**:
 - 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. In addition, submits payment for the proposed civil liability of **twenty seven thousand dollars (\$27,000)** to the State Water Board with a copy of the check to the Central Valley Water Board; or
 - b) Requests to engage in settlement discussions by checking the box next to Option 2 on the attached form, and returning it to the Board along with a letter describing the issues to be discussed. The Central Valley Water Board must agree to the postponement; or
 - c) Requests to delay the hearing by checking off the box next to Option 3 on the attached form, - and returning it to the Board along with a letter describing the proposed length of delay and the issues to be discussed. The Central Valley Water Board must agree to the postponement.
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 Assistant 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
ANDREW ALTEVOGT, Assistant Executive Officer

5 March 2018
DATE

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent Aerojet Rocketdyne Inc. (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2018-0508 (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 seven thousand dollars (\$27,000)** by check that references "ACL Complaint R5-2018-0508" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the State Water Resources Control Board, Accounting Office, Attn: ACL Payment at PO Box 1888, Sacramento, California, 95812-1888 by **29 March 2018**. The waiver and a copy of the check must be submitted to the Central Valley Water Board, Attn: Howard Hold at 11020 Sun Center Drive #200, Rancho Cordova, California, 95670 by **29 March 2018**.
- 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 Assistant 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 - R5-2018-0508

Aerojet Rocketyne, Inc. Aerojet Groundwater Extraction and Treatment Systems

RECORD OF VIOLATIONS (1 December 2015 – 30 November 2017) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs R5-2014-0126 and R5-2017-0095)

	<u>Date</u>	<u>Parameter</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
<i>Violations Under R5-2014-0126</i>								
<u>Effluent Monitoring Location M-002 (GET/E/F)</u>								
1	2-Jun-16	Acetaldehyde	µg/L	5	7.1	Daily Maximum	2	1011578
2	31-Jan-17	N-Nitrosodimethylamine	µg/L	0.002	0.004	Average Monthly	2	1022066
<u>Effluent Monitoring Location M-007 (GET KA)</u>								
1	3-Jan-17	Trichloroethene	µg/L	0.7	0.9	Daily Maximum	2	1022067
2	31-Jan-17	Trichloroethene	µg/L	0.5	0.9	Average Monthly	2	1022068
<u>Effluent Monitoring Location M-017 (White Rock GET)</u>								
1	10-May-16	cis-1,2-Dichloroethene	µg/L	0.7	3.9	Daily Maximum	2	1010308
2	10-May-16	Trichloroethene	µg/L	0.7	23	Daily Maximum	2	1010309
3	10-May-16	Trichloroethene	lbs/day	0.0078	0.0661	Daily Maximum	2	1038365
<u>Effluent Monitoring Location M-018 (Well 4665)</u>								
1	3-Aug-16	N-Nitrosodimethylamine	µg/L	0.010	0.012	Daily Maximum	2	1013942
2	31-Aug-16	N-Nitrosodimethylamine	µg/L	0.007	0.012	Average Monthly	2	1013941

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 180-day period, thus is not subject to mandatory minimum penalties. Penalties that may be assessed for this violation are discretionary. This violation is not addressed or resolved in this ROV.
4. Non-serious violation subject to mandatory minimum penalties.

<u>VIOLATIONS AS OF:</u>	<u>11/30/17</u>
Group I Serious Violations:	0
Group II Serious Violations:	9
Non-Serious Violations Not Subject to MMPs:	0
<u>Non-Serious Violations Subject to MMPs:</u>	<u>0</u>
Total Violations Subject to MMPs:	9

Mandatory Minimum Penalty = (9 Group II Serious Violations Subject to MMPs) x \$3,000 = \$27,000