



California Regional Water Quality Control Board Central Valley Region



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Schwarzenegger
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2 March 2005

CERTIFIED MAIL

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CERTIFIED MAIL

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Mr. David Lieb, Environmental Manager
Marley Cooling Tower Company
200 North Wagner Avenue
Stocton, CA 95215

Mr. Dan McGrade, Director
SPX Corp., Environmental Health and Safety
13515 Ballantyne Corporate Place
Charlotte, NC 28277

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2005-0508; MARLEY COOLING TOWER COMPANY, SAN JOAQUIN COUNTY,

Enclosed is an Administrative Civil Liability Complaint issued pursuant to Section 13385 of the California Water Code for violations of Waste Discharge Requirements Order No. 93-221 (NPDES No. CA0081787) by the Marley Cooling Tower Company. The Complaint proposes an administrative civil liability of \$129,000. We understand that Marley Cooling Tower Company has also agreed to pay an additional \$40,000 to the California Department of Fish and Game (DFG) in restitution for resource damages plus \$10,000 for penalties and DFG staff costs.

You may agree to pay the civil liability and waive a hearing before the Regional Water Quality Control Board, Central Valley Region ("Regional Board") on the matter. If you waive a hearing, a duly authorized person must sign the waiver and submit it to this office, along with a check payable to the "State Water Resources Control Board Cleanup and Abatement Account" in the full amount of the civil liability. However, any waiver will not be effective until 30 days from the date of this Complaint to allow other interested persons to comment on this action. If the Regional Board does not receive a waiver and a check for the full amount by **30 March 2005**, a hearing will be scheduled at the 28/29 April 2005 Regional Board Meeting in Sacramento. Persons wishing to submit comments on this action should submit written comments within 30 days from the date of this letter to the Regional Board, attention: Antonia Vorster.

If you have any questions or comments, please contact Antonia Vorster at (916) 464-4746.

THOMAS R. PINKOS
Executive Officer

Enclosure
cc: See Attached List

California Environmental Protection Agency



cc: David Irely, Office of the District Attorney, Stockton
Mr. James Tsojvold, DTSC, Sacramento
Ms. Kathi Moore, U.S. Environmental Protection Agency, Region IX, San Francisco
Ms. Lisa Brown, CalEPA, Sacramento
Mr. Mark Bradley, State Water Resources Control Board, Sacramento
Ms. Frances McChesney, State Water Resources Control Board, Sacramento
Mr. Phil Isorena, State Water Resources Control Board, Sacramento
Mr. Joe Spano, Department of Health Services, Office of Drinking Water, Stockton
Department of Health Services, Environmental Management Branch, Sacramento
Ms. Janna Herren, Department of Fish & Game, Region II, Rancho Cordova
Delta Protection Commission, Walnut Grove
Department of Environmental Health, San Joaquin County, Stockton
Mr. Steve Macaulay, California Urban Water Agencies, Sacramento
Mr. Richard Denton, Contra Costa Water District, Concord
Mr. Dante Nomellini, Jr., Central Delta Water Agency, Stockton
Mr. John Herrick, South Delta Water Agency, Stockton
Mr. Eric Parfrey, Sierra Club, Stockton
Mr. Bill Jennings, Delta Keeper, Stockton

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2005-0508
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

MARLEY COOLING TOWER COMPANY
SAN JOAQUIN COUNTY

This complaint is issued to the Marley Cooling Tower Company, (hereafter Discharger) based on a finding of violations of NPDES Waste Discharge Requirements Order No. 93-221 (NPDES No. CA0081787), 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.

The Executive Officer of the Regional Water Quality Control Board, Central Valley Region (Regional Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger owns and operates a groundwater extraction and treatment facility, which extracts groundwater polluted with chromium, treats the polluted water by removing the chromium, and discharges the treated water. The treated water is discharged to the Stockton Diverting Canal, a water of the United States.
2. On 22 October 1993 the Regional Board adopted Waste Discharge Requirements Order No. 93-221 (NPDES No. CA0081787) prescribing waste discharge requirements for the Marley Cooling Tower Company groundwater extraction and treatment facility.
3. Between the close of business on 16 September and the morning of 17 September 2002, the pH control system for the treatment plant failed. The pH meter controlling the pH adjustment pump, which delivers caustic to treatment plant effluent, began providing a false "low" pH signal which in turn caused the pH adjustment pump to continuously operate. This resulted in the release of approximately 2160 gallons (estimated maximum amount) of 50% by weight sodium hydroxide into approximately 222,066 gallons of treated water which was discharged as effluent into the Stockton Diverting Canal. This high pH discharge in turn raised the pH in the canal, measured by DeltaKeeper on September 19, 2002 at a pH of 10.8, causing a significant fish kill. According to DFG field estimates, approximately 1,000 dead fish were noted, and the total number estimated to be killed was 4,000 to 5,000. The fish included black bass, catfish, buffalo carp, Sacramento suckers, bluegill, and assorted smaller sunfish-type fish. Tadpoles and crayfish were also killed.
4. The discharge violated the pH effluent limitations of Order No. 93-221 set forth in B.2 which states "*the discharge shall not have a pH less than 6.5 nor greater than 8.5*".
5. The discharge violated receiving water quality prohibitions of Order No. 93-221 as set forth in items E.4 and E.9. Section E.4 states, "*the discharge shall not cause*

concentrations of any materials in the receiving waters which are deleterious to human, aquatic, or plant life”. Section E.9 states, “the discharge shall not cause the following in the receiving water... the normal ambient pH to fall below 6.5, exceed 8.5, or change by more the 0.5 units”..

6. The Discharger discovered the treatment plant malfunction on the morning of September 17, 2002. However, the Discharger did not report the malfunction to the Regional Board until the evening of September 19, 2002, after the Discharger had been notified of the fish kill by the Department of Fish and Game. The Discharger violated the Standard Provisions and Reporting Requirements for Waste Discharge Requirements (National Pollutant Discharge Elimination System) dated 1 March 1991 (Standard Provisions). Item B.1 of the Standard Provisions states, in part, *“In the event the Discharger does not comply or will be unable to comply for any reason, with any prohibition, daily maximum effluent limitation, or receiving water limitation of this Order, The Discharger shall notify the Board ... within 24 hours of having knowledge of such noncompliance... ”.*
7. The discharge violated Provision F.6 and Standard Provision A.22 of Order No. 93-221, which require that neither the discharge nor its treatment shall create a nuisance or pollution as defined in CWC Section 13050. The discharge of the high pH effluent at levels that exceed the effluent limitations constitutes pollution.
8. CWC Section 13385 states, in part:

“(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

“(1) Section 13375 or 13376”.

(2) Any waste discharge requirements...issued pursuant to this chapter...”

“(5) Any requirements of Section 301, 302, 306, 307,308, 318, 401, or 405 of the Clean Water Act, as amended”.

“(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

“(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

“(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons”.

“(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, 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 its ability to continue its 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 that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation”.

9. The maximum statutory liability is \$2,220,000 (\$10,000 for each day of violation plus approximately \$2,210,000 (\$10 multiplied by 221,066 gallons)).
10. The violation of Effluent Limitation B.2, for pH limits, is subject to mandatory minimum penalties pursuant to CWC Section 13385(h). The amount of the mandatory minimum penalty that must be imposed is \$3,000 for each serious violation. The administrative civil liability proposed to be assessed in this complaint pursuant to CWC section 13385(a) exceeds the mandatory minimum penalty amount.
11. The factors considered in setting the amount of the liability include the large volume of the discharge and Discharger’s failure to promptly notify the Board. Mitigating factors include the Discharger’s prompt response in returning to compliance, cleaning up the dead fish and caustic residuals, and the Discharger’s history of good compliance. The Discharger did not derive an economic benefit from the acts that constitute the violation. Included in the amount of liability is approximately \$29,000 in staff costs incurred in responding to the discharge.
12. 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).

THE MARLEY COOLING TOWER COMPANY IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes to assess Administrative Civil Liability in the amount of **one hundred twenty-nine thousand dollars (\$129,000)**. The amount of the liability proposed is based upon consideration of the factors in CWC Section 13385 and the State Water Resources Control Board’s Water Quality Enforcement Policy.
2. A hearing on this matter will be held at the Regional Board meeting scheduled on **28-29 April 2005**, unless the Discharger agrees to waive the hearing and pay the proposed civil liability in full

3. If a hearing on this matter is held, the Regional 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. The Discharger may waive the right to a hearing. If you wish to waive the hearing, **within 30 days of the date of this complaint**, sign and return the waiver to the Regional Board's office with a check in the amount of the civil liability made payable to the "State Water Resources Control Board Cleanup and Abatement Account." Any waiver will not be effective until 30 days from the date of this complaint to allow interested persons to comment on this action.

THOMAS R. PINKOS, Executive Officer

Date

**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 the Marley Cooling Topwer Company (hereinafter “Discharger”) in connection with Administrative Civil Liability Complaint No. R5-2005-0508 (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. Without admitting liability for the matters alleged in the Complaint, I certify that the Discharger will remit payment for the civil liability imposed in the amount of **\$129,000** by check, which contains a reference to “ACL Complaint No. R5-2005-0508” and is made payable to the “*State Water Resources Control Board 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 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)