

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

REVISED ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0523

MANDATORY PENALTY
IN THE MATTER OF

SPX CORPORATIONS, SPX MARLEY COOLING TECHNOLOGIES
GROUNDWATER EXTRACTION AND TREATMENT SYSTEM
SAN JOAQUIN COUNTY

This Complaint is issued to the SPX Corporations, SPX Marley Cooling Technologies (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) R5-2003-0030 (NPDES No. CA0081787) and R5-2008-0170.

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 previously operated a cooling tower fabrication plant at 150 N.Sinclair Avenue in the East Stockton Area in San Joaquin County (site). As part of the fabrication operations, the Discharger operated a wood preservation process utilizing solutions containing copper, chromium and arsenic. Wood processing was discontinued at the site in January 1991; however past operational practices left waste constituents in soils and groundwater underlying the site. The discharger owns and operates a Groundwater Extraction and Treatment System (GETS) at the site. The GETS consists of a treatment plant with an electrochemical unit operating in parallel to an ion exchange unit that removes chromium from the extracted water. Treated water up to 0.94 million gallons per day (mgd) is discharged to the Stockton Diverting Canal, a tributary to the Calaveras River, a water of the United States.
2. On 13 March 2003, the Central Valley Water Board issued WDRs Order No. R5-2003-0030 for the discharge of approximately 0.7 million gallons per day (mgd) of treated groundwater from the former SPX-Marley Stockton facility to the Stockton Diverting Canal, a water of the United States and a tributary to the Calaveras River. The maximum design flow of the groundwater treatment system is 0.94 million gallons per day.
3. On 24 October 2008, the Central Valley Water Board issued WDRs Order No. R5-2008-0170 (NPDES No. CA0081787), which contained new requirements and rescinded WDRs Order R5-2003-0030, except for enforcement purposes. WDRs Order No. R5-2008-0170 did not become effective until 13 December 2008. On 25 January 2008, the Central Valley Water Board also adopted Time Schedule Order (TSO) No. R5-2008-0011 to regulate discharges of treated groundwater from the GETS.

4. On 6 April 2009, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2009-0506 for mandatory minimum penalties for effluent violations (identified in Attachment A to ACLC R5-2009-0506) that occurred from 1 January 2000 through 30 April 2008. The Discharger paid the civil liability and the Board considers those effluent violations specifically listed in Attachment A to ACLC R5-2009-0606 to be resolved.
5. This Complaint addresses administrative civil liability for effluent violations that occurred during the period from 1 May 2008 through 31 December 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.
6. On 4 February 2011, Central Valley Water Board staff issued the Discharger a draft Record of Violations. Discharger's consultant responded on behalf of discharger on 4 February 2010 via E-mail and agreed with the violations.
7. On 14 March 2011, Administrative Civil Liability Complaint R5-2011-0523 was issued for the amount of \$12,000. The Discharger's consultant responded and identified that the monthly average of two copper effluent values from November 2008 was 3.45 µg/L, which is less than 3.96 µg/L (i.e., 20% above the copper limit of 3.3 µg/L) and therefore is not a Group II serious violation and should not be subject to minimum penalties. The Regional Water Board staff concurs with the finding, and has revised the Administrative Civil Liability Complaint R5-2011-0523 to delete the 30 November 2008 violation. The penalty amount is now \$9,000.
8. 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 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.

9. 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.

10. WDRs Order R5-2003-0030 Effluent Limitations B.5., include, in part, the following effluent limitations:

Constituents	Units	Daily Maximum	Monthly Average
Copper (total)	µg/L	--	3.3 ¹

WDR Order R5-2008-0170 Effluent Limitations F-8, include the following effluent limitations:

- 11. According to the Discharger's self-monitoring reports, the Discharger committed ~~four (4)~~ three (3) serious Group II violations of the above effluent limitations contained in WDRs Orders R5-2003-0030 and R5-2008-0170 during the period beginning 1 May 2008 and ending 31 December 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 No.s R5-2003-0030 and R5-2008-0170 by 20 percent or more. The mandatory minimum penalty for these serious violations is ~~twelve thousand dollars (\$12,000)~~ **nine thousand dollars (\$9,000)**.
- 12. The total amount of the mandatory penalties assessed for the cited effluent violations is ~~twelve thousand dollars (\$12,000)~~ **nine thousand dollars (\$9,000)**.

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.

13. 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

¹ Final effluent limitations effective 1 June 2003, unless compliance schedule justification is submitted. Otherwise, these final limits become effective 1 February 2008.

(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 ~~twelve thousand dollars (\$12,000)~~ **nine thousand dollars (\$9,000)**.
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 ~~twelve thousand dollars (\$12,000)~~ **nine thousand dollars (\$9,000)**; 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.

PAMELA C. CREEDON, Executive Officer

23 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 SPX Corporations, SPX Marley Cooling Technologies (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2011-0523 (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 ~~twelve thousand dollars (\$12,000)~~ **nine thousand dollars (\$9,000)** by check that references "ACL Complaint R5-2011-0523" 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
REVISED ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0523**

**SPX Cooling Technologies (Former Marley Cooling Tower Facility)
Groundwater Extraction and Treatment Facilities (GETS)**

RECORD OF VIOLATIONS (1 May 2008 – 31 December 2010) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs R5-2003-0030, R5-2008-0170
and NPDES No. CA0081787)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
Violations under R5-2003-0030								
1	31-Oct-08	Copper, Total	µg/L	3.3	4.95	Monthly	2	826475
2	30-Nov-2008	Copper, Total	µg/L	3.3	3.45	Monthly	2	826476
32	30-Sept-08	Copper, Total	µg/L	3.3	4.10	Monthly	2	826474
43	30-June-08	Copper, Total	µg/L	3.3	6.65	Monthly	2	826471

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 minimum penalties.

<u>VIOLATIONS AS OF:</u>	<u>12/31/2010</u>
Group I Serious Violations:	0
Group II Serious Violations:	04 3
Non-Serious Violations Not Subject To MMPs:	0
Non-serious Violations Subject to MMPs:	0
<u>Total Violations Subject to MMPs:</u>	<u>04 3</u>

Mandatory Minimum Penalty = (04 3 serious Violation + 0 Non-Serious Violations) x \$3,000 = \$12,000 - \$9,000



**California Regional Water Quality Control Board
Central Valley Region
Katherine Hart, Chair**



Linda S. Adams
Acting Secretary for
Environmental Protection

11020 Sun Center Drive, #200, Rancho Cordova, California 95670-6114
(916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>

Edmund G. Brown Jr.
Governor

23 March 2011

Mr. Daniel McGrade
SPX Corporation
13515 Ballantyne Corporate Place
Charlotte, NC 28277

**CERTIFIED MAIL
7010 0290 0000 8536 0140**

REVISED

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0523 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, SPX COOLING TECHNOLOGIES (FORMER MARLEY COOLING TOWER FACILITY), SAN JOAQUIN COUNTY

Enclosed is a Revised Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code section 13385, for violations of Waste Discharge Requirements (WDRs) and Monitoring and Reporting Programs (MRP) R5-2003-0030, and Order R5-2008-0170 (NPDES No. CA0081787) by the SPX Cooling Technologies (Discharger) from its Groundwater Extraction and Treatment System (GETS) at the site. The Complaint charges the Discharger with administrative civil liability in the amount of **nine thousand dollars (\$9,000)**, which represents the sum of accrued Mandatory Minimum Penalties for effluent limitation violations (identified in Attachment A of the Complaint) that occurred from 1 May 2008 through 31 December 2010.

On 4 February 2011, Central Valley Water Board staff issued a draft Record of Violations (ROV). The Discharger did not provide any comments however, on 4 February 2011 discharger's consultant responded via E-mail and agreed with the violations.

On 14 March 2011, Administrative Civil Liability Complaint R5-2011-0523 was issued for the amount of \$12,000. The Discharger's consultant responded and identified that the monthly average of two copper effluent values from November 2008 was 3.45 µg/L, which is less than 3.96 µg/L (i.e., 20% above the copper limit of 3.3 µg/L) and therefore is not a Group II serious violation and should not be subject to minimum penalties.

The Regional Water Board staff concurs with the finding, and has revised the Administrative Civil Liability Complaint R5-2011-0523 to delete the 30 November 2008 violation. The penalty amount is now \$9,000.

Pursuant to CWC section 13323, the Discharger may:

- Pay the proposed administrative civil liability and waive its right to a hearing (Option #1 on the attached waiver form);

California Environmental Protection Agency

- Ask that the hearing be postponed to facilitate settlement discussions or for other reasons (Options #2 or #3 on the attached waiver form); or
- Contest the Complaint and/or enter into settlement discussions without signing the enclosed waiver.

If the Central Valley Water Board does not receive a signed waiver **by 13 April 2011**, a hearing will be scheduled for the **8/9/10 June 2011** Board meeting in Rancho Cordova. This hearing will be governed by the attached Hearing Procedures, which have been approved by the Board Chair for use in adjudicating matters such as this one. Any objections to the Hearing Procedures must be received by David Coupe, whose contact information is listed in the Hearing Procedures, by **5 p.m. on 28 March 2011**.

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations. The settlement will be considered final pending a 30-day comment period, starting from the date this Complaint is issued. Interested parties may comment on the proposed action during this period by submitting written comments to the Central Valley Water Board staff person listed below. Should the Central Valley Water Board receive new information or comments during this comment period, the Executive Officer may withdraw the complaint, return payment, and issue a new complaint. If the Central Valley Water Board does not hold a hearing on the matter, and if the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement.

In order to conserve resources, this letter transmits paper copies of the documents to the Discharger only. Interested persons may download the documents from the Central Valley Water Board's Internet website at:

http://www.waterboards.ca.gov/centralvalley/tentative_orders/.

Copies of these documents can also be obtained by contacting or visiting the Central Valley Water Board's office weekdays between 8:00 AM and 5:00 PM.

If you have any questions or comments regarding the Revised Administrative Civil Liability Complaint, please contact Sid Sewalia at (916) 464-4658 or ssewalia@waterboards.ca.gov.

ANTONIA J. K. VORSTER
SUPERVISING WATER RESOURCES CONTROL ENGINEER
Cleanup Program Manager

Enclosure: **Revised** ACLC R5-2011-0523
Hearing Procedures
Waiver Form

cc w/o encl: Ms. Pamela Creedon, Executive Officer
Mr. Kenneth Greenberg, USEPA, Region 9, San Francisco
Ms. Mayumi Okamoto, Office of Enforcement, SWRCB, Sacramento

California Environmental Protection Agency

Mr. Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Mr. Ken Landau, Central Valley Water Board Advisory Team, Sacramento
Mr. David Coupe, Office of Chief Counsel, SWRCB, Sacramento
Ms. Carol Oz, Department of Fish and Game, Region 2, Rancho Cordova
Mr. Harlin Knoll, Environmental Health Division, San Joaquin County, Stockton
Mr. Bill Jennings, California Sportfishing Protection Alliance, Stockton
Mr. Jae Kim, Tetra Tech, Fairfax, VA
Mr. Martin Herrmann, Department of Toxic Substances Control, Sacramento

Central Valley Regional Water Quality Control Board

HEARING PROCEDURE
FOR **REVISED** ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R5-2011-0523

ISSUED TO
SPX CORPORATIONS, SPX MARLEY COOLING TECHNOLOGIES
GROUNDWATER EXTRACTION AND TREATMENT SYSTEM
SAN JOAQUIN COUNTY

SCHEDULED FOR 8/9/10 JUNE 2011

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Executive Officer has issued a Revised Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (CWC) sections 13323 to SPX Corporations, SPX Marley cooling Technologies (Discharger), alleging violations of CWC section 13385 for discharges from the Discharger's wastewater treatment plant that exceeded permitted effluent limitations.

The Complaint proposes that an administrative civil liability in the amount of \$9,000 be imposed. A hearing is currently scheduled to be conducted before the Central Valley Water Board during its 8/9/10 June 2011 meeting.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Central Valley Water Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Central Valley Water Board meeting agenda. The meeting will be held at

11020 Sun Center Drive, Suite 200, Rancho Cordova, California.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Central Valley Water Board's web page at:

http://www.waterboards.ca.gov/centralvalley/board_info/meetings

Hearing Procedure

The hearing will be conducted in accordance with this Hearing Procedure. This Hearing Procedure has been approved by the Central Valley Water Board Chair in model format, and is subject to further revision by the Central Valley Water Board's Advisory Team or the Board Chair. A copy of the general procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available at: <http://www.waterboards.ca.gov> or will be made available upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648, subdivision (b) and herein, Chapter 5 of the Administrative Procedures Act (commencing with Gov't Code § 11500) does not apply to this hearing.

ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE CENTRAL VALLEY WATER BOARD'S ADVISORY TEAM NO LATER THAN 28 MARCH 2011 OR THEY WILL BE WAIVED. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

The Discharger shall contact the Prosecution Team to try to resolve objections regarding due dates, the hearing date and hearing time limits BEFORE submitting objections to the Advisory Team.

Hearing Participants

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the Central Valley Water Board, staff or others, at the discretion of the Central Valley Water Board.

The following participants are hereby designated as parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. SPX Corporations, SPX Marley Cooling Technologies

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received no later than 5 p.m. on **4 April 2011**, by the Advisory Team attorney (contact information listed below). The request shall include an explanation of the basis for status as a designated party (i.e., how the issues to be addressed in the hearing and the potential actions by the Central Valley Water Board affect the person, and the need to

present evidence or cross-examine witnesses), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be received by the Advisory Team, the person requesting party status, and all other parties by 5 p.m. on **13 April 2011**. The parties will be notified by 5 p.m. on **22 April 2011** whether the request has been granted or denied.

Primary Contacts

Advisory Team:

Kenneth Landau, Assistant Executive Officer
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone: (916) 464-4726
klandau@waterboards.ca.gov

David Coupe, Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 327-4439; fax: (916) 341-5199
dcoupe@waterboards.ca.gov

Prosecution Team:

Pamela Creedon, Executive Officer
Frederick Moss, Assistant Executive Officer
Antonia J. K. Vorster, Environmental Program Manager
Duncan Austin, Senior Water Resources Control Engineer
Alexander MacDonald, Senior Water Resources Control Engineer
Sid Sewalia, Water Resources Control Engineer
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone: (916) 464-4625; fax: (916) 464-4645
amacdonald@waterboards.ca.gov

Mayumi Okamoto, Staff Counsel
State Water Resources Control Board, Office of Enforcement
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 341-5674; fax: (916) 341-5896
mokamoto@waterboards.ca.gov

Discharger:

Mr. Daniel McGrade
SPX Corporation
13515 Ballantyne Corporate Place
Charlotte, NC 28277
E-mail: Dan.McGrade@spx.com

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Central Valley Water Board (Prosecution Team) have been separated from those who will provide advice to the Central Valley Water Board (Advisory Team). Members of the Advisory Team are: Mr. Kenneth Landau and Mr. David Coupe. Members of the Prosecution Team are: Ms. Pamela Creedon, Mr. Frederick Moss, Ms. Antonia Vorster, Mr. Duncan Austin, Mr. Alex MacDonald, Mr. Sid Sewalia, and Ms. Mayumi Okamoto. Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Pamela Creedon regularly advises the Central Valley Water Board in other, unrelated matters, but is not advising the Central Valley Water Board in this proceeding. Mayumi Okamoto is an attorney with the State Water Resources Control Board's Office of Enforcement and has not advised the Central Valley Water Board on any matter. Other members of the Prosecution Team act or have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Central Valley Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested person on the one hand, and a Central Valley Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

The following communications to the Advisory Board must be copied to all designated parties: Objections to this Hearing Procedure; requests for modifications to this Hearing Procedure; requests for designated party status, or objections thereto; and all written evidence, legal argument or policy statements from designated parties. This is not an all-inclusive list of ex parte communications.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined **25** minutes to present evidence (including evidence presented by witnesses called by the designated party), cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations,

and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received by 5:00 p.m. on **20 May 2011**. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Central Valley Water Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments or legal argument require extra time, and why the Discharger could not adequately provide the testimony, comments or legal argument in writing before the hearing.

A timer will be used, but will not run during Board questions or the responses to such questions, or during discussions of procedural issues.

Submission of Evidence and Policy Statements

Case in Chief: The Prosecution Team, the Discharger and each other designated party must submit the following information in writing in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Central Valley Water Board to consider. Evidence and exhibits already in the public files of the Central Valley Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3. Board members will generally not receive copies of materials incorporated by reference, and the referenced materials are generally not posted on the Board's website.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony. (This information is not required for rebuttal witnesses or rebuttal testimony.)
4. The qualifications of each expert witness, if any. (This information is not required for rebuttal witnesses.)

The Prosecution Team's information must include the legal and factual basis for its claims against each Discharger; a list or attached copy of all evidence on which the Prosecution Team relies, which must include, at a minimum, all documents cited in the complaint or Staff Report; and the witness information required under items 3-4 for all witnesses, including staff.

The Prosecution Team shall submit one hard copy and one electronic copy to Kenneth Landau and one electronic copy to David Coupe. Each other designated party shall submit 3 hard copies and one electronic copy to Kenneth Landau and one electronic copy to David Coupe. Kenneth Landau and David Coupe must receive all submissions no later than 5:00 p.m. on the applicable due date under Important Deadlines, below.

Rebuttal: Any designated party that would like to submit written evidence, legal analysis or policy statements to rebut the information previously submitted by other designated parties shall submit 3 hard copies and one electronic copy of their rebuttal information to Kenneth

Landau and one electronic copy of the information to David Coupe so that they are received by 5 p.m. on the due date under Important Deadlines, below. "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other designated parties' submissions. Rebuttal shall be limited to the scope of the materials previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

Copies: Board members will receive copies of all materials submitted in hard copy or electronic format. The Board's copies will be printed in black and white from the designated parties' electronic copies. Designated parties who are concerned about print quality of all or any part of their written materials should submit a high-resolution pdf or provide an extra nine paper copies for the Board members. For items with voluminous submissions, Board members may receive copies electronically only. Electronic copies are also posted on the Board's website.

Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy and mailing center. However, the Board will not reject materials solely for failure to provide electronic copies.

Other Matters: By **26 May 2011**, the Prosecution Team shall prepare a summary agenda sheet ("buff sheet") for this item to be included in the Board members' agenda package and posted on the internet. The buff sheet shall clearly state that it was prepared by the Prosecution Team. The Prosecution Team shall provide a copy of the buff sheet to all parties by mail or email.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by **26 May 2011**. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Central Valley Water Board may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the Central Valley Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. Designated parties must provide the Advisory Team with a printed copy of such materials at or before the hearing, for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA. This file shall be considered part of the official administrative record

for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Central Valley Water Board's Chair. Many of these documents are also posted on-line at:
http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml

Although the web page is updated regularly, to assure access to the latest information, you may contact Antonia Vorster (contact information above).

Questions

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information above).

IMPORTANT DEADLINES

(Note: The Advisory Team will generally adhere to this schedule unless the discharger submits a waiver and it is accepted.)

All required submissions must be received by 5:00 p.m. on the due date.

14 March 2011	Prosecution Team issues ACL Complaint to Discharger and Advisory Team and publishes Public Notice
28 March 2011	Objections due on proposed Hearing Procedure
4 April 2011	Deadline for submission of request for designated party status.
13 April 2011	Deadline for opposition to request for designated party status.
13 April 2011	Discharger's deadline for submitting signed form to waive right to hearing within 90 days.
22 April 2011	Advisory Team issues decision on requests for designated party status, if any.
22 April 2011	Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.
12 May 2011	Remaining Designated Parties' (including the Discharger's) deadline for submission of all information required under "Evidence and Policy Statements," above.
12 May 2011	Prosecution Team submits an electronic copy to Kenneth Landau and David Coupe of all documents cited in the complaint or Staff Report, unless previously submitted.
20 May 2011	Requests for additional hearing time (see Hearing Time Limits, above).
23 May 2011	All Designated Parties shall submit any rebuttal evidence, written rebuttal to legal argument and/or written rebuttal to policy statements; and all evidentiary objections to other Designated Parties' submittals.
26 May 2011	Prosecution Team's deadline to submit the buff sheet
26 May 2011	Interested persons' comments are due.
3 June 2011	If <i>new</i> rebuttal evidence or argument is submitted, deadline for designated parties to submit any requests for additional time at the hearing to respond to the rebuttal.
8/9/10 June 2011:	Hearing