

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2014-0505

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 section 13385, which authorizes the imposition of Administrative Civil Liability, and Water Code 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 North 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 is discharged to the Stockton Diverting Canal, a water of the United States and a tributary to the Calaveras River.
2. On 13 March 2003, the Central Valley Water Board issued WDRs Order R5-2003-0030 for the monthly average discharge of up to 0.72 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 daily 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. R5-2008-0170 (NPDES No. CA0081787), which contained new requirements and rescinded WDRs Order R5-2003-0030, except for enforcement purposes. WDRs Order 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) 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. On 23 March 2011, the Executive Officer of the Central Valley Water Board issued ACLC R5-2011-0523 for mandatory minimum penalties for effluent violations (identified in Attachment A to ACLC R5-2011-0523) that occurred from 1 May 2009 to 31 December 2010. The Discharger paid the civil liability and the board considers those effluent violations specifically listed in Attachment A to ACLC R5-2011-0523 to be resolved.
6. This Complaint addresses administrative civil liability for effluent violations that occurred during the period from 1 January 2011 through 31 December 2013. 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.
7. On 10 January 2014, Central Valley Water Board staff issued the Discharger a draft Record of Violations. On 23 January 2014, Discharger's consultant TRC Solutions responded on behalf of the Discharger and requested exemption of certain violations. In an e-mail dated 29 January 2014, Central Valley Water Board staff denied the request. In a phone conversation dated 29 January 2014, TRC Solutions agreed with the violations.
8. Water Code section 13385, subdivisions (h) and (i), require assessment of mandatory penalties and state, in part, the following:

Water Code section 13385, subdivision (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, subdivision (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.

9. 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.

10. WDRs Order R5-2008-0170 and NPDES No.CA0081787 Effluent Limitations and Discharge Specifications IV.A.1.Table 6, include, in part, the following effluent limitations:

Constituents	Units	Daily Maximum	Monthly Average
Copper (total)	µg/L	16.6	35.8 ¹
Chromium, Total	µg/L	--	50.0
Chromium (VI)	µg/L	16.3	5.7

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

11. According to the Discharger's self-monitoring reports, the Discharger committed eight (8) serious Group II violations and six (6) non-serious violations of the above effluent limitations contained in WDRs Orders R5-2003-0030 and R5-2008-0170 during the period beginning 1 January 2011 and ending 31 December 2013 as identified in Attachment A. The violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Orders R5-2003-0030 and R5-2008-0170 by 20 percent or more. Non-serious violations are subjected to mandatory minimum penalties if they do not fall within the first three violations in a six-month period. The combined mandatory minimum penalty for both serious and non-serious violations is **forty two thousand dollars (\$42,000)**.
12. The total amount of the mandatory penalties assessed for the cited effluent violations is **forty two thousand dollars (\$42,000)**. 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 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).

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 **forty two thousand dollars (\$42,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **5/6 June 2014**, unless one of the following occurs by **8 April 2014**:
 - a) The Discharger 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 **forty two thousand dollars (\$42,000)**; 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

Andrew Altevogt, Assistant Executive Officer

10 March 2014

DATE

Attachment A: Record of Violations

**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 R5-2014-0505 (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 **forty two thousand dollars (\$42,000)** by check that references "ACL Complaint R5-2014-0505" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the State Water Resources Control Board, Division of Administrative Services, ATTN: Accounting, P.O. Box 100, 18th Floor, Sacramento, CA 95812, by **8 April 2014**.
- 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 R5-2014-0505**

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

RECORD OF VIOLATIONS (1 January 2011 – 31 December 2013) 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>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>	
Violations under R5-2003-0030								
1	16-March-11	Copper, Total	µg/L	5.8	636.0	Monthly	2	897524
2	11-May-11	Copper, Total	µg/L	5.8	25.0	Monthly	2	902933
3	12-Oct-11	Copper, Total	µg/L	5.8	9.0	Monthly	2	913486
4	26-Jan-12	Chromium(VI)	µg/L	16.3	23.1	Daily	2	920188
5	15-Feb-12	Copper, Total	µg/L	5.8	10	Daily	2	922023
6	9-May-12	Total Dissolved Solids	mg/L	500	633	Monthly	3	928935
7	29-Jan-13	Chromium (VI)	µg/L	16.3	63.4	Daily	2	944296
8	29-Jan-13	Chromium (VI)	µg/L	5.7	63.4	Monthly	2	965709
9	29-Jan-13	Chromium, Total	µg/L	50	74	Daily	2	944295
10	20-Feb-13	Total Dissolved Solids	mg/L	500	525	Monthly	3	945762
11	31-May-13	Total Dissolved Solids	mg/L	500	526	Monthly	4	950252
12	28-June-13	Total Dissolved Solids	mg/L	500	573	Monthly	4	952254
13	7-Aug-13	Total Dissolved Solids	mg/L	500	516	Monthly	4	955613
14	25-Sept-13	Total Dissolved Solids	mg/L	500	527	Monthly	4	957648
15	9-Oct-13	Total Dissolved Solids	mg/L	500	517	Monthly	4	958798
16	6-Nov-13	Total Dissolved Solids	mg/L	500	514	Monthly	4	960670

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>12/31/2013</u>
Group I Serious Violations:	0
Group II Serious Violations:	8
Non-Serious Violations Not Subject To MMPs:	2
Non-serious Violations Subject to MMPs:	6
<u>Total Violations Subject to MMPs:</u>	<u>14</u>

Mandatory Minimum Penalty = (8 serious Violation + 6 Non-Serious Violations) x \$3,000 = \$42,000