

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0507

MANDATORY PENALTY
IN THE MATTER OF
HERSHEY FOODS CORPORATION
HERSHEY CHOCOLATE AND CONFECTIONARY CORPORATION
STANISLAUS COUNTY

This complaint is issued to Hershey Foods Corporation, Hershey Chocolate and Confectionary Corporation (hereafter Discharger) pursuant to (a) California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, (b) CWC section 13323, which authorizes the Executive Officer to issue this complaint, and (c) 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) Order Nos. 96-072 and R5-2002-0111 (NPDES No. CA0004146).

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

1. The Discharger owns and has operated the Hershey Chocolate and Confectionary Facility in Stanislaus County. Non-contact cooling water and reverse osmosis reject water were discharged to the Oakdale Irrigation District's Riverbank Lateral Canal, tributary to the Modesto Irrigation District Main Canal, tributary to the Stanislaus River, a water of the United States.
2. On 23 March 1996, the Regional Water Board adopted WDRs Order No. 96-072 to regulate discharges of waste from the facility. On 7 June 2002, the Regional Water Board adopted WDRs Order No. R5-2002-0111, rescinding Order No. 96-072. The WDRs include effluent limitations and other requirements regarding the waste discharge. On 31 January 2008, the Discharger closed the facility.
3. 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(i)(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 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.”*

4. 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.”

5. WDRs Order No. 96-072 Effluent Limitations No. B.1. includes, in part, the following effluent limitations:

<u>Constituent</u>	<u>Unit</u>	<u>30-Day Average</u>	<u>Daily Maximum</u>
BOD ¹	mg/L	5	10
COD ²	mg/L	10	15
Oil and Grease	mg/L	10	15

¹ 5-day, 20°C biochemical oxygen demand (BOD)

² Chemical Oxygen Demand

6. WDRs Order No. R5-2002-0111 Effluent Limitations No. B.1. includes, in part, the following effluent limitations:

<u>Constituent</u>	<u>Unit</u>	<u>30-Day Average</u>	<u>Daily Maximum</u>
BOD ¹	mg/L	5 ²	10 ²
COD ⁴	mg/L	10 ²	15 ²

¹ 5-day, 20°C biochemical oxygen demand (BOD)

² To be ascertained by a 24-hour composite

⁴ Chemical Oxygen Demand

7. According to the Discharger’s self-monitoring reports, the Discharger committed thirteen (13) serious violations of the effluent limitations contained in Order Nos. 96-072 and R5-2002-0111 during the period beginning 1 January 2000 and ending 31 January 2008. The violations are defined as serious because measured constituents exceeded

maximum prescribed levels by more than 40 percent on these occasions. The mandatory minimum penalty for these serious violations is **thirty-nine thousand dollars (\$39,000)**. A detailed list of the cited effluent violations is included in Attachment A, which is made a part of this Order.

8. 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 § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

HERSHEY FOODS CORPORATION, HERSHEY CHOCOLATE AND CONFECTIONARY CORPORATION IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **thirty-nine thousand dollars (\$39,000)**.
2. A hearing on this matter will be held at the Regional Water Board meeting scheduled on **24/25 April 2008**, unless the Discharger agrees to complete the following by **26 March 2008**:
 - a) Waive the hearing by completing the attached form and returning it to the Regional Water Board; and
 - b) Pay the proposed civil liability of **thirty-nine thousand dollars (\$39,000)** in full.
3. If a hearing on this matter is held, the Regional 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.

JACK DEL CONTE, Assistant Executive Officer

25 February 2008

**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 Hershey Chocolate Corporation, Hershey Chocolate and Confectionary Corporation (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0507 (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. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **thirty-nine thousand dollars (\$39,000)** by check, which contains a reference to "ACL Complaint No. R5-2008-0507" and is made payable to the "*State Water Pollution Cleanup and Abatement Account.*"
5. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Regional Board receive new information during this comment period, the Regional Board may withdraw the complaint, return payment, and issue a new complaint.
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)

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0507**

**Hershey Chocolate Company
Hershey Chocolate and Confectionary Corporation, Oakdale**

RECORD OF VIOLATIONS (1 January 2000 – 31 January 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program Nos. 96-072 and R5-2002-0111)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>CIWQS Number</u>	<u>Remarks</u>
1	13-Jan-00	BOD	mg/L	10	13	Daily	175421	3
2	31-Jan-00	BOD	mg/L	5	13	30-day	730424	1
3	17-Feb-00	BOD	mg/L	10	12	Daily	175420	3
4	29-Feb-00	BOD	mg/L	5	12	30-day	730427	1
5	13-Apr-00	BOD	mg/L	10	20	Daily	730428	1
6	30-Apr-00	BOD	mg/L	5	20	30-day	730429	1
7	13-Jul-00	Oil & Grease	mg/L	15	42	Daily	730431	1
8	31-Jul-00	BOD	mg/L	5	8	30-day	730434	1
9	31-Jul-00	Oil & Grease	mg/L	10	42	30-day	730435	1
10	13-Sep-01	BOD	mg/L	10	11	Daily	197673	3
11	30-Sep-01	BOD	mg/L	5	11	30-day	730436	1
12	08-Nov-01	BOD	mg/L	10	24	Daily	730438	1
13	30-Nov-01	BOD	mg/L	5	24	30-day	730439	1
14	30-Apr-02	BOD	mg/L	5	6	30-day	730441	3
15	11-Dec-02	COD	mg/L	15	45	Daily	730442	1
16	31-Dec-02	BOD	mg/L	5	9	30-day	730443	1
17	31-Dec-02	COD	mg/L	10	45	30-day	730445	1
18	31-Oct-03	COD	mg/L	10	11	30-day	730446	3
19	30-Oct-06	BOD	mg/L	5	6	30-day	730448	3

Remarks:

1. Serious Violation: For Group 1 pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group 2 pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties

<u>VIOLATIONS AS OF:</u>	<u>1/31/2008</u>
Group 1 Serious Violations:	13
Group 2 Serious Violations:	0
Non-Serious Exempt from MPs:	6
Non-serious Violations Subject to MPs:	0
<u>Total Violations Subject to MPs:</u>	13

Mandatory Minimum Penalty = (13 Serious Violations + 0 Non-Serious Violations) x \$3,000 = \$39,000