

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0579

MANDATORY PENALTY
IN THE MATTER OF

KRAFT FOODS, INC.
VISALIA PLANT
TULARE COUNTY

This Complaint is issued to Kraft Foods, Incorporated, (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL), CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, and 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. 97-122 and R5-2005-0149 (NPDES No. CA0081752).

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

1. The Discharger owned and operated the Visalia Plant (Facility), a milk products processing plant at 715 North Divisadero Street in Visalia, California.
2. On 20 June 1997, the Regional Water Board adopted WDRs Order No. 97-122 to regulate discharges of non-contact cooling water from the Facility's cooling cycle for three cottage cheese process starter tanks and from evaporation pump seals to a storm drain that discharges to Mill Creek, a water of the United States. On 21 October 2005, the Regional Water Board adopted WDRs Order No R5-2005-0149, which prescribed new requirements for the discharge and rescinded WDRs Order No. 97-122, and adopted Time Schedule Order No. R5-2005-0150, which required the Discharger to develop and implement methods to comply with a new chlorine effluent limitation in WDRs Order No. R5-2005-0149 by 23 October 2006.
3. By 21 February 2006 letter, the Discharger stated that it initiated discharge of the Facility's non-contact cooling water to the City of Visalia municipal sewer and ceased discharge to Mill Creek on 19 January 2006. The letter requested the Regional Water Board rescind Order Nos. R5-2005-0149 and R5-2005-0150.
4. The Discharger sold the Facility to Provisions Food Company, which continues to discharge the Facility's non-contact cooling water to the City of Visalia municipal sewer.
5. On 31 July 2008, the Regional Water Board adopted Order No. R5-2008-0115, which rescinded WDRs Order No. R5-2005-0149 and Time Schedule No. R5-2005-0150.

6. CWC section 13385(h)(1) requires assessment of mandatory penalties and state, in part, the following:

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.

7. CWC section 13385.1(a)(1) states:

For purposes of subdivision (h) of Section 13385, a "serious violation" also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.

8. CWC section 13323 states, in part, that:

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. Monitoring and Reporting Program No. 97-122 stated, in part, that: "Monitoring results shall be submitted to the Regional Board by the 20th day of the month following sample collection."
10. Monitoring and Reporting Program No. R5-2005-0149 stated, in part, that: "Monitoring results shall be submitted to the Regional Board by the 1st day of the second month following sample collection."
11. On 1 August 2008, Regional Water Board staff issued the Discharger a Notice of Violation and draft Record of Violation identifying violations of WDRs Order Nos. 97-122 and R5-2005-0149 that are subject to Mandatory Minimum Penalties (MMPs). The draft Record of Violation covers the period from 1 January 2000 through 31 January 2006. According to the Discharger's self-monitoring reports, the Discharger committed 16 serious late reporting violations of Order No. 97-122 and three serious late reporting violations of Order No. R5-2005-0149 during this period. Attachment A to this Complaint identifies these serious late reporting violations. The MMPs for these serious late reporting violations is fifty-seven thousand dollars (\$57,000).
12. By 9 September 2008 letter, the Discharger indicated that, due to the transfer of Facility ownership to Provisions Food Company and records access issues, it is unable to complete a review of documentation and interview former employees for additional information regarding the cited violations. Therefore, Kraft indicated that it has no comments or corrections concerning the cited violations.

13. The total amount of the mandatory penalty assessed for the cited serious late reporting violations is fifty-seven thousand dollars (\$57,000).
14. 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, section 15321(a)(2).

KRAFT FOODS, INC. 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 **fifty-seven thousand dollars (\$57,000)**.
2. A hearing on this matter will be held at the Regional Water Board meeting scheduled on 4/5 December 2008, unless the Discharger agrees to:
 - a) Waive the hearing by completing the attached form and returning it to the Regional Water Board; and
3. Pay the proposed civil liability of fifty-seven thousand dollars (\$57,000) in full.
4. 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.

LOREN J. HARLOW, Assistant Executive Officer

25 September 2008

Attachment A: Record of Violations
JKW: 9/22/08

**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 Kraft Foods, Inc. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0579 (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 fifty-seven thousand dollars (\$57,000) by check, which contains a reference to "ACL Complaint No. R5-2008-0579" and is made payable to the "*State Waste Discharge Permit Fund.*"
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 the Assistant Executive Officer has complete discretion to modify or terminate this settlement.
7. 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. R5-2008-0579**

**Kraft Foods, Inc.
Visalia Plant**

RECORD OF VIOLATIONS (1 January 2000 – 31 January 2006) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program Nos. 97-122 and R5-2005-0149)

<u>Violation ID</u> ¹	<u>Violation Date</u>	<u>Violation Type</u> ²	<u>Violation Description</u> ³	<u>MMP Type</u> ⁴
248443	11/25/03	OEV	11M; pH; 6.0-9.0 ⁵ ; pH units; I; 9.64	Exempt
255812	2/26/04	OEV	2M; pH; 6.0-9.0 ⁵ ; pH units; I; 11.29	Exempt
776019	2/21/04	LREP	January 2004 SMR, due 2/20/04, received 11/29/04 (282 days late) (1st 30-day period)	Serious ⁶
776025	2/21/04	LREP	January 2004 SMR, due 2/20/04, received 11/29/04 (282 days late) (2nd 30-day period)	Serious
776026	2/21/04	LREP	January 2004 SMR, due 2/20/04, received 11/29/04 (282 days late) (3rd 30-day period)	Serious
776029	2/21/04	LREP	January 2004 SMR, due 2/20/04, received 11/29/04 (282 days late) (4th 30-day period)	Serious
776030	2/21/04	LREP	January 2004 SMR, due 2/20/04, received 11/29/04 (282 days late) (5th 30-day period)	Serious
776031	2/21/04	LREP	January 2004 SMR, due 2/20/04, received 11/29/04 (282 days late) (6th 30-day period)	Serious
776032	2/21/04	LREP	January 2004 SMR, due 2/20/04, received 11/29/04 (282 days late) (7th 30-day period)	Serious
776035	2/21/04	LREP	January 2004 SMR, due 2/20/04, received 11/29/04 (282 days late) (8th 30-day period)	Serious
776036	2/21/04	LREP	January 2004 SMR, due 2/20/04, received 11/29/04 (282 days late) (9th 30-day period)	Serious
260047	6/21/05	LREP	May 2005 SMR, due 6/20/05, received 8/1/05 (42 days late)	Serious
776042	8/21/05	LREP	July 2005 SMR, due 8/20/05, received 12/8/05 (110 days late) (1st 30-day period)	Serious
776043	8/21/05	LREP	July 2005 SMR, due 8/20/05, received 12/8/05 (110 days late) (2nd 30-day period)	Serious
776044	8/21/05	LREP	July 2005 SMR, due 8/20/05, received 12/8/05 (110 days late) (3rd 30-day period)	Serious
776045	9/21/05	LREP	August 2005 SMR, due 9/20/05, received 12/8/05 (79 days late) (1st 30-day period)	Serious
776046	9/21/05	LREP	August 2005 SMR, due 9/20/05, received 12/8/05 (79 days late) (2nd 30-day period)	Serious
776047	10/21/05	LREP	September 2005 SMR, due 10/20/05, received 12/8/05 (49 days late)	Serious

ACL COMPLAINT NO. R5-2008-0579
ATTACHMENT A
KRAFT FOODS, INC VISALIA PLANT
RECORD OF VIOLATIONS

<u>Violation ID</u> ¹	<u>Violation Date</u>	<u>Violation Type</u> ²	<u>Violation Description</u> ³	<u>MMP Type</u> ⁴
776048	2/2/06	LREP	December 2005 SMR, due 2/1/06, received 4/21/06 (79 days late) (1st 30-day period)	Serious
776049	2/2/06	LREP	December 2005 SMR, due 2/1/2006, received 4/21/2006 (79 days late) (2nd 30-day period)	Serious
776050	3/2/06	LREP	January 2006 SMR, due 3/1/06, received 4/21/2006 (51 days late)	Serious

¹ Violation ID in CIWQS

² Table of Abbreviations below defines abbreviations used in this table.

³ Violation Descriptions are coded as follows: Reporting period (e.g., 2M = February); constituent or parameter (e.g., pH, Flow); effluent limitation; units; limitation period; and reported result.

⁴ Exempt non-serious violations fall within the first three violations in a six-month period, thus are exempt. Serious violations are subject to MMPs.

⁵ WDRs Order No. 97-122 Effluent Limitation B.1

⁶ Pursuant to California Water Code Section 13385.1(a)(1)

<u>Abbreviation</u>	<u>Definition</u>
CIWQS	California Integrated Water Quality System database
I	Instantaneous
LREP	Late Report Violation
M	Monthly
MMP	Mandatory Minimum Penalty
OEV	Other Effluent Violation
SMR	Self Monitoring Report

<u>MMP VIOLATION TYPE</u>	<u>VIOLATION PERIOD</u> <u>1/1/2000 TO 1/31/2006</u>
Serious Late Reporting Violations Subject to MMPs:	19
Non-serious Violations Exempt from MMPs:	2
Total Violations Subject to MMPs:	19
<u>Mandatory Minimum Penalty = 19 Serious Violations x \$ 3,000 = \$ 57,000</u>	