

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2005-0513

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

JESSE M. LANGE DISTRIBUTING, INC.
BUTTE COUNTY

This Administrative Civil Liability Complaint (hereafter Complaint) is issued to Jesse M. Lange Distributing, Inc. (hereafter Discharger) based on findings of failure to comply with California Water Code (CWC) Section 13304 and Section 13267. This Complaint is issued pursuant to CWC Sections 13350 and 13268(a) and (b), which authorize the imposition of Administrative Civil Liability.

The Executive Officer of the California 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 one-acre retail and wholesale petroleum distribution facility (site) at 11226 Midway, Chico, California, Section 1, T21N, R1E, MDB&M, Butte County Assessors Parcel Number 040-320-007. The site has stored and distributed petroleum from underground storage tank (UST) and aboveground storage tank (AST) systems. On 13 March 1995, the Discharger reported, in accordance with CWC Section 25295, an unauthorized release of gasoline from the UST system.
2. In 1997, gasoline fumes were reported in a utility vault east of the facility, and gasoline was discovered in soils and groundwater beneath Midway, a street immediately west of the facility. In accordance with California Health and Safety Code Section 25299.54, the Discharger submitted a claim to the California Underground Storage Tank Cleanup Fund (Cleanup Fund) for reimbursement of eligible corrective action costs associated with the gasoline release. On 27 June 1997, the Cleanup Fund accepted the claim. Since unreported releases may have occurred from the AST system, the Cleanup Fund only reimburses the Discharger for 80 percent of the eligible costs for corrective actions.
3. In 1997, six on-site soil borings showed maximum benzene and methyl tertiary butyl ether (MtBE) in soil at 160 and 840 milligrams/kilogram, respectively, at 10 feet below grade surface (bgs). In November 1998, the Discharger removed USTs and found underlying fresh, unweathered free phase gasoline product in soils to 10 feet bgs, largely below a tank turbine. Four on-site monitoring wells showed groundwater at 10 to 20 feet bgs had fresh free phase gasoline, with wellbore thicknesses up to three feet. Also in 1998, Regional Board staff discovered MtBE in two private water supply wells within 150 feet of the facility, to 95 and 230 feet bgs, at 39,000 and 940 micrograms/liter ($\mu\text{g/L}$). Both wells were subsequently destroyed under Butte County Department of Environmental Health permit.

Previous Enforcement

4. On 28 April 1999, the Regional Board Executive Officer issued Cleanup and Abatement Order (CAO) No. 99-709 pursuant to CWC Section 13304, requiring the Discharger to install a free product recovery trench and reimburse Regional Board staff oversight costs associated with corrective action at the site, and to submit pursuant to CWC Section 13267, a Registered Engineer's report on the AST system, a site investigation work plan, a sensitive receptor survey, a corrective action plan (CAP), and quarterly groundwater monitoring reports.
5. On 9 May 2001, the Discharger submitted a site investigation report based on 63 direct push borings. The report showed benzene and MtBE at concentrations greater than 1,000 and 10,000 µg/L, had migrated (in shallow groundwater) about 700 feet off-site. Monitoring wells at another facility, down gradient of the site, indicated MtBE had likely migrated about 1,000 feet off-site.
6. From December 2001 through April 2002, the Discharger removed the suspect AST system and around 1500 cubic yards of polluted soils, and installed a new UST system and free product recovery trench. In July 2002, the Discharger installed four extraction wells into the free product recovery trench. Analyses continued to showed fresh gasoline, with methanol concentrations to 7,400 µg/L. By September 2002, the extraction wells had removed about 1,500 gallons of product. The trench was capable of higher production rates; however, temporary on-site containment tanks limited the system.
7. On 27 November 2002, the Discharger submitted a CAP that recommended enhanced free product recovery, soil vapor extraction, vacuum enhanced groundwater pump-and-treat, deeper aquifer investigation, domestic well sampling, and pilot tests for in-situ chemical oxidation, bio-stimulation, and bio-augmentation.
8. On 7 February 2003, the Regional Board Executive Officer amended CAO No. 99-709 which approved the CAP, and required the Discharger to submit, pursuant to CWC Section 13267, work plans for completion of the recommended actions. CAO No. 99-709 also required, pursuant to CWC Section 13304, the Discharger implement the work plans within 90 days of staff concurrence, continue to reimburse for Regional Board staff oversight costs, and upon startup of any remediation system, operate the remediation system continuously and notify the Regional Board within 24 hours of any unscheduled system shutdown lasting longer than 48 hours. The CAO also required the Discharger to continue quarterly groundwater monitoring, and submit reports within 30 days after the end of each calendar quarter unless directed otherwise.
9. On 20 January 2003, the Discharger submitted a work plan to enhance free product recovery with further active free product skimmers and greater on-site temporary containment. Regional Board staff approved the plan on 29 January 2003.
10. On 30 April, and 16 June 2003, the Discharger submitted work plans for soil vapor extraction, vacuum enhanced groundwater pump-and-treat, in situ chemical oxidation, bio-augmentation pilot tests, and deeper aquifer investigation. On 8 July 2003, Regional Board staff approved

these plans, and requested progress reports on the pilot tests by 31 October 2003 and a report with recommendations for full-scale start-up by 30 January 2004.

11. In June 2003, the Discharger installed four monitoring wells across the street from the facility, on the west side of Midway the deepest of which showed MtBE, tertiary amyl methyl ether, and methanol concentrations up to 40,000, 530, and 7,500 µg/L, respectively, at 79 feet bgs.
12. Chapter 6.75 of the California Health and Safety Code authorized the State Water Resources Control Board to provide UST Cleanup Funds to Regional Boards and local UST agencies for emergency, abandoned or recalcitrant owner situations. For sites with a recalcitrant owner, the site must be placed on a state-wide list to be considered for cleanup funding. These funds allow the Regional Board or a local agency to hire a contractor to do investigations and remedial work at the site. On 29 April 2005, the Regional Board adopted Resolution R5-2005-0054, the Emergency, Abandoned, Recalcitrant Account Fiscal Year 2005/2006 Annual Site List. The Fiscal Year 2005-2006 annual list includes this site. The Discharger's Cleanup Fund claim has approximately one million dollars remaining for reimbursement.

Recent Violations of Amended Cleanup and Abatement Order No. 99-709

13. After a 20 January 2003 approval, the Discharger failed to implement the work plan for enhanced free product recovery, as required within 90 days of staff concurrence. (See Findings 8 and 9.)
14. After an 8 July 2003 approval, the Discharger failed to implement plans for soil vapor extraction and vacuum enhanced groundwater pump-and-treat pilot test, in-situ chemical oxidation and bio-augmentation pilot studies, as required within 90 days of staff concurrence. (See Findings 8 and 10.) Based on preliminary off-site investigation, the Discharger failed to implement the work plan for deeper aquifer investigation. (See Finding 10.)
15. On 11 September 2003, the Discharger's consultant notified staff they had stopped work due to the Discharger's failure to pay for their work. On 25 September 2003, the consultant removed free product skimmers. The Discharger failed to notify staff of proposed corrective action to restart the system, as required within 24 hours of an unscheduled shut-down. (See Finding 8.)
16. After the third quarter 2003, the consultant ceased groundwater monitoring. Since 30 January 2004, the Discharger has failed to submit quarterly groundwater monitoring reports, as required within 30 calendar days after each calendar quarter. (See Finding 8.)
17. On 11 November 2004, Regional Board staff inspected the site, and met with the Discharger's consultant. The Discharger was refueling vehicles, and selling lubricants and propane at the time of the inspection. The Discharger's consultant stated he would not resume corrective actions, either under current Cleanup Fund reimbursement conditions or a pay-for-performance contract.
18. The State Water Resources Control Board (SWRCB) invoices the Discharger quarterly for Regional Board staff oversight costs associated with corrective action. From 10 June 2002 through 16 March 2005, the SWRCB issued the Discharger ten invoices totaling \$16,324.01. To date, the Discharger has failed to remit payment to the SWRCB for these invoices.

REGULATORY CONSIDERATIONS

19. Amended Cleanup and Abatement Order No. 99-707 states:
“Failure to comply with this Order may result in the assessment of administrative civil liability (ACL) up to \$1,000 or up to \$10,000 per day of violation, depending on the violation, pursuant to the CWC, including sections 13268, 13271, 13350, and 13385. The Regional Board reserves its right to take any enforcement actions authorized by law.”
20. On 19 July 2003 (ninety days following staff concurrence of the corrective action plan) and in direct violation of CAO No. 99-709, the Discharger failed to implement a work plan for enhanced free product recovery. Initial start-up of a free product recovery system was in December 2000. The system was upgraded in August 2002.
21. On 25 September 2003, the Discharger’s consultant performed an unscheduled remediation system shut-down by removing all free product skimmers. The Discharger gave no reason for the shut-down, or any intent to re-start. As of 6 October 2003, ninety days following staff concurrence, the Discharger failed to implement work plans for vacuum enhanced groundwater pump-and-treat, soil vapor extraction, in situ chemical oxidation, bio-augmentation pilot tests, and deeper aquifer investigation.
22. Since 10 June 2002, the Discharger has failed to submit payment to the SWRCB for invoices totaling \$16,324.01.
23. In violation of (CAO) No. 99-709, as of 30 January 2004, thirty days following the fourth calendar quarter, 2003, the Discharger ceased submittal of all quarterly groundwater monitoring reports.
24. CWC Section 13304(a) states:
“Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharge where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up such waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.”

25. CWC Section 13304(c)(1) states:

“If the waste is cleaned up or the effect of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial actions. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the state board to the extent of the latter’s contribution to the cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds.”

26. CWC Section 13350 states, in part:

“(a) Any person who (1) violates any ... cleanup and abatement order hereafter issued, reissued, or amended by a regional board ...shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the discharge occurs.

(f) A regional board may not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.”

27. Since 11 June 2002, and quarterly thereafter, the Discharger has failed to remit payment to the State Water Resources Control Board for invoices totaling \$16,324.01 and; therefore, as of 17 May 2005, the Discharger has been in violation of the Order for 1,071 days. Based on 19 July 2003, the implementation date for enhanced free product recovery, as of 17 May 2005, the Discharger has been in violation of the Order for 668 days. Based on 25 September 2003, the free product skimmer removal date, as of 17 May 2005, the Discharger has been in violation of the Order for 600 days. Based on a beginning date of 6 October 2003, implementation date for vacuum enhanced groundwater pump-and-treat, soil vapor extraction, in situ chemical oxidation, bio-augmentation pilot tests, and deeper aquifer investigation, the Discharger has been in violation of the Order for 589 days. The maximum liability that can be imposed by the Regional Board under CWC Section 13350 is \$5,000 for each day and the minimum liability than can be imposed is \$100 for each day. Therefore, the maximum administrative liability is \$14,640,000

((1071 + 668 + 600 + 589) days times \$5,000 per day) and the minimum liability is \$292,800 ((1071 + 668 + 600 + 589) days times \$100 per day).

28. In violation of CWC Section 13267, on 30 January 2004, the Discharger failed to submit the fourth quarter 2003 monitoring report and has ceased submitting further monitoring program reports. CWC Section 13268 states:

“Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 of a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.”

29. As of 17 May 2005, the Discharger has failed to submit monitoring program reports for 473 days. The maximum liability that can be imposed by the Regional Board under CWC Section 13268 is \$1,000 for each day. Therefore, the maximum administrative liability is \$473,000 (473 days times \$1,000 per day).
30. As described in Findings 26 and 28, the maximum administrative civil liability allowed pursuant to CWC Section 13350 and 13267 is \$15,113,000 (\$14,640,000 + \$473,000). The minimum administrative liability allowed pursuant to CWC Section 13350 is \$292,800. CWC Section 13267 does not provide for a minimum liability. In addition, as described in Finding 18, the Discharger has delinquent invoices totaling \$16,324.01.
31. CWC Section 13327 states:
- “In determining the amount of civil liability, the regional board ... shall take into consideration the nature, circumstance, 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 ability to continue in 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 as justice may require.”*
32. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321 (a)(2), Title 14, of the California Code of Regulations.

JESSE M. LANGE DISTRIBUTING, INC. IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed Administrative Civil Liability in the amount of five hundred thousand dollars (\$500,000). The amount of the liability proposed is greater than the minimum allowed liability required under Section 13350 (e)(1)(B), and takes into account the factors set forth in CWC Section 13327 cited in Finding No. 31, and including consideration of the economic benefit or savings resulting from the violations.
2. A hearing shall be held on 4/5 August 2005 unless the Discharger agrees to waive the hearing and pay the proposed civil liability in full.
3. If a hearing 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. In lieu of a hearing, the Discharger may waive the right to a hearing. If you wish to waive the right to a hearing, sign the enclosed waiver and return it with the full amount of civil liability (in a check made payable to the *State Water Resources Control Board Cleanup and Abatement Account*), to the Regional Board's office at 11020 Sun Center Drive, #200, Rancho Cordova, California, 95670-6114, Attention Janice Tanaka **by 3 June 2005**.

Original signed by

THOMAS R. PINKOS, Executive Officer

17 May 2005

**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 Jesse M. Lange Distributing, Inc. (hereinafter “Discharger”) in connection with Administrative Civil Liability Complaint No. R5-2005-0513 (hereinafter the “Complaint”);
2. I am informed of the right provided by 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 agree to remit payment for the civil liability imposed in the amount of five hundred thousand dollars (\$500,000) by check, which contains a reference to “ACL Complaint No. R5-2005-0513” 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 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.

(Name)

(Title)

(Date)