

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0588

MANDATORY PENALTY
IN THE MATTER OF

CHEVRON USA INCORPORATED
PURITY OIL SALES SUPERFUND SITE
FRESNO COUNTY

This Complaint is issued to ChevronTexaco Incorporated (hereafter Discharger), formerly doing business as Chevron USA Incorporated, pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and 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 No. 5-00-0008 (NPDES No. CA0083429).

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

1. The Discharger owns and operates a Groundwater Treatment System (System) at the Purity Oil Sales Superfund Site, a former oil recycling facility in Malaga, Fresno County. Treated groundwater is discharged to Fresno Irrigation District (FID) North Central Canal and FID Central Canal. The canals discharge to Fresno Slough and during periods of heavy rain Fresno Slough drains to San Joaquin River, both of which are waters of the United States.
2. On 28 January 2000, the Central Valley Water Board adopted WDRs Order No. 5-00-0008 for Chevron USA Incorporated to regulate discharges of treated groundwater from the System.
3. On 25 August 2003, when the Central Valley Water Board adopted Order No. R5-2003-074 that, in part, transferred WDRs Order No. 5-00-0008 to SECOR International, Inc. At that time, SECOR International was responsible for the operation and maintenance of the System, which Chevron USA Incorporated still owned. Chevron USA Incorporated is now doing business as ChevronTexaco Incorporated.
4. On 3 August 2006, the Central Valley Water Board adopted WDRs Order No. R5-2006-0080 for Chevron Environmental Management Company, ChevronTexaco Incorporated, and SECOR International Incorporated, to regulate discharges of treated groundwater from the System. WDRs Order No. R5-2006-0080 prescribed new requirements for the discharge and rescinded WDRs Order No. 5-00-0008.
5. CWC sections 13385(h) and (i) require the 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.

6. CWC section 13323 states, in relevant 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.

7. WDRs Order No. 5-00-0008 Effluent Limitation B.2 includes, in part, the following effluent limitations:

<u>Constituent</u>	<u>Units</u>	<u>Maximum Daily</u>
Iron	µg/L	300
Manganese	µg/L	50

8. On 22 August 2008, Central Valley Water Board staff issued the Discharger a Notice of Violation (NOV) identifying violations of WDR Order No. 5-00-0008 that are subject to MMPs. The NOV covers the period from 28 January 2000 through 25 August 2003, when the Central Valley Water Board adopted Order No. R5-2003-074 which transferred WDRs Order No. 5-00-008 to SECOR International, Inc. According to the Discharger's self-monitoring reports, the Discharger committed two (2) serious effluent limitations. On 31 July 2001, the discharge contained 15,000 µg/L iron, a Group I Pollutant. On 24 September 2001, the discharge contained 220 µg/L manganese, a Group I Pollutant. Both of these results exceed the prescribed effluent limitations by more than 40 percent.
9. On 11 September 2008, the Discharger responded to the 22 August 2007 Notice of Violation and acknowledged that the cited effluent violations did occur and requested that the violations, both of which occurred in 2001, be dismissed pursuant to California Code of Civil Procedure section 338. However, this code section does not apply to the issuance of this ACL Complaint.

10. The Final MMP Violation Summary included in the staff memorandum, included as Attachment A, a part of this Complaint, identifies two serious effluent limitation violations subject to MMP during the period from 28 January 2000 through 25 August 2003.
11. The total amount of the mandatory penalties assessed for the cited effluent violations is **six thousand dollars (\$6,000)**.
12. 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 California Code of Regulations, title 14, section 15321(a)(2).

CHEVRONTEXACO INCORPORATED, FORMERLY CHEVRON USA INCORPORATED, IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **six thousand dollars (\$6,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled **on 5/6 February 2009**, unless the Discharger does either of the following by **17 December 2008**:
 - a) Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **six thousand dollars (\$6,000)**; or
 - b) Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board Board.
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.

LOREN J. HARLOW, Assistant Executive Officer

Attachment A: Technical Staff Memorandum dated 5 November 2008

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Chevron USA Incorporated (aka ChevronTexaco Incorporated) (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0588 (hereinafter the "Complaint");
2. 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" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) within ninety (90) days of service of the Complaint; and
4. **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
 - a. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **six thousand dollars (\$6,000)** by check that references "ACL Complaint No. R5-2008-0588." made payable to the "State Water Pollution Cleanup and Abatement Account". Payment must be received by the Central Valley Water Board by **17 December 2008** or this matter will be placed on the Central Valley Water Board's agenda for adoption as initially proposed in the Complaint.
 - b. 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 Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Central Valley Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. 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.

-or-

5. **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)



California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair

1685 E Street, Fresno, California 93706
(559) 445-5116 • Fax (559) 445-5910
<http://www.waterboards.ca.gov/centralvalley>



Arnold
Schwarzenegger
Governor

Linda S. Adams
Secretary for
Environmental Protection

TO: Jo Anne Kipps
Senior Engineer
Enforcement Unit

FROM: Jeff Hannel
Engineering Geologist
Enforcement Unit

DATE: 5 November 2008

SIGNATURE: _____

**SUBJECT: CHEVRON USA INCORPORATED, NOW DOING BUSINESS AS CHEVRON
TEXACO INCORPORATED, PURITY OIL SALES SUPERFUND SITE,
FRESNO COUNTY**

Chevron USA Incorporated, now doing business as ChevronTexaco Incorporated, hereinafter known as Discharger, owns and operates a Groundwater Treatment System (GWTS) at a former oil recycling facility in Malaga, Fresno County. The United States Environmental Protection Agency is the lead agency for the groundwater cleanup. Treated groundwater is discharged to Fresno Irrigation District (FID) North Central Canal and FID Central Canal. The canals discharge to Fresno Slough and during periods of heavy rain Fresno Slough drains to San Joaquin River, both of which are waters of the United States. The discharge is permitted under NPDES Permit No. CA0083429. Between 28 January 2000 and 23 April 2003 the discharge was permitted under Waste Discharge Requirements (WDRs) Order No. 5-00-0008.

WDR Order No. 5-00-0008 prescribes, in part, the following effluent limitations:

	<u>Constituent</u>	<u>Units</u>	<u>Maximum Daily</u>
	Iron	µg/L	300
	Manganese	µg/L	50

On 22 August 2008, Central Valley Water Board staff issued the Discharger a Notice of Violation and a draft Record of Violations for the period of 1 January 2000 through 25 August 2003 for violations of Order No. 5-00-0008. Category 1 Pollutant Iron was discharged at a concentration of 15,000 µg/L (greater than 40% over the limitation of 300 µg/L) on 31 July 2001 and Category 1 Pollutant Manganese was discharged at a concentration of 220 µg/L (greater than 40% over the limitation of 50 µg/L) on 24 September 2001.

The Discharger responded by letter dated 11 September 2008. The following discusses the Discharger's comments and Staff's response.

Discussion

The Discharger acknowledges that Group 1 pollutant iron was discharged at a concentration of 15,000 µg/L on 31 July 2001 and Group 1 pollutant manganese was discharged at a

concentration 220 µg/L on 24 September 2001. These values exceed by greater than 40% the daily maximum effluent limitation of 300 µg/L and 50 µg/L for each of these constituents. The Discharger requested that the penalties be dismissed because the violations occurred beyond the three-year statute of limitations contained in the California Code of Civil Procedure section 338(i). However, the three-year statute contained in the California Code of Civil Procedure section 338 does not apply to this type of administrative proceeding. The Code section of which section 338 is a part makes it clear that this section applies only to time limits on the commencement of civil suits in the courts. Section 338 is a part of Chapter 1 of Title 2 of the Code of Civil Procedure, entitled "Of the Time of Commencing Civil Actions." The first section in Chapter 1 of Title 2 reads, in pertinent part, as follows:

§312. General Limitations; Special Cases: Civil actions, without exception, can only be commenced within the periods prescribed in this title...

It is clear from a mere reading of this language that Title 2 is intended to prescribe time periods for the bringing of civil law suits. This administrative complaint falls outside the scope of this section. (See also *Bernd v. Eu* (1979) 100 Cal.App.3d 511, 161 Cal.Rptr. 58; *Rudolph v. Athletic Commission* (1960) 177 Cal.App.2d 1, 22, 1 Cal.Rptr. 898).

MMP Summary

The Discharger acknowledges that the effluent violations occurred. Although the SWRCB policy states that enforcement should be initiated as soon as possible it does not preclude issuance of an ACL several years after the violation, and the statute of limitations cited by the Discharger does not apply to ACLs. Since the Discharger has not provided a valid argument for not issuing the ACL, Central Valley Water Board staff has little choice than to issue the ACL. This results in two MMPs for a total ACL of \$6,000.

Final MMP Violation Summary	
<u>MMP VIOLATION TYPE</u>	<u>VIOLATION PERIOD</u> <u>1/28/2000 TO 4/25/2003</u>
Serious Group 1 Effluent Limitation Violations Subject to MMPs:	2
Total Violations Subject to MMPs:	2
Mandatory Minimum Penalty = 2 x \$3,000 = \$6,000	