

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0608

MANDATORY PENALTY
IN THE MATTER OF

CALMAT CO.
SANGER SAND AND GRAVEL PLANT
FRESNO COUNTY

This Complaint is issued to CalMat Co. (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, 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 5-00-007 (NPDES No. CA0078174).

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

1. The Discharger operates a Sanger Sand and Gravel Plant (Facility) near the City of Sanger in Fresno County. Process wastewater is discharged to a settling pond and then to a supply pond for reuse in processing. Impounded wastewater discharges through a porous supply pond levee at Discharge Point 001 to the Kings River, a water of the United States.
2. The Central Valley Water Board issued WDRs Order 79-188 (NPDES No. CA0078174), and subsequent WDRs Order Nos. 94-165, 5-00-007, and R5-2007-0065 for discharge of process water to the Kings River, a water of the United States, which adjoins the Facility.
3. In March 1989, an oil slick on the Kings River was reported downstream of the Facility. Sources of the petroleum hydrocarbons were identified at the Facility, with the primary source being an aboveground diesel storage tank. Groundwater was found to be impacted from the release and, starting in 1992, groundwater was extracted, treated and then blended with process wash water and discharged to settling ponds, which, in turn, discharge to the Kings River.
4. CWC section 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.

CWC section 13385(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.

5. 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.

6. WDRs Order 5-00-007 Effluent Limitation B.2 includes, in part, the following effluent limitations:

<u>Constituent</u>	<u>Units</u>	<u>Maximum Daily</u>	<u>30-Day Median</u>
Total Petroleum Hydrocarbons as diesel (TPHd)	µg/L	100	50
Manganese	µg/L	0.05	--

7. On 18 July 2008, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations identifying eight (8) violations of WDRs Order 5-00-007 that occurred at the Facility from 1 January 2000 through 31 December 2007 that are subject to minimum mandatory penalties (MMPs). On 27 August 2008, the Discharger responded to the 18 July 2008 Notice of Violation and provided technical information to support its request to dismiss several of the cited violations. Staff reviewed determined the Discharger had provided sufficient technical information to support dismissal of five of the eight cited violations. Attachment A to this Complaint is the final Record of Violation that identifies two (2) serious violations of effluent limitations subject to MMPs pursuant to CWC section 13385(h) and one non-serious violation of effluent

limitations not subject to MMP pursuant to CWC section 13385(i). Attachment B to this Complaint is a technical staff memorandum discussing the Discharger's response and changes made to the draft Record of Violation based on the Discharger's response.

8. The total amount of the MMPs assessed for the two cited serious effluent limitation violations in Attachment A is **six thousand dollars (\$6,000)**.
9. 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).

CALMAT CO. 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 for **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, along with a letter stating the issues to be discussed, 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: Record of Violations

Attachment B: Technical Staff Memorandum dated 17 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 CalMat Co. (hereafter referred to as "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0608 (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 R5-2008-0608." 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)

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0608

CALMAT COMPANY
SANGER SAND AND GRAVEL PLANT, FRESNO COUNTY
RECORD OF VIOLATIONS (1 January 2000 – 31 December 2007) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program Nos. 5-00-007)

<u>Violation ID¹</u>	<u>Violation Date</u>	<u>Violation Type²</u>	<u>Violation Description³</u>	<u>MMP Type⁴</u>
252973	5/24/04	CAT2	5M; TPHd; 100; ug/L; D; 140	Serious
252932	5/24/04	CAT2	5M; TPHd; 50; ug/L; M (30-day median); 140	Serious
762059	12/27/06	CAT1	12M; manganese; 0.05; mg/L; I; 0.066	Exempt

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., 4M = April); constituent or parameter (e.g., pH); 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 and chronic non-serious effluent limitation violations are subject to mandatory penalties.

Abbreviation Definition

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CAT1	Violation of Group I pollutant effluent limitation as defined in Enforcement Policy
CAT2	Violation of Group II pollutant effluent limitation as defined in Enforcement Policy
CIWQS	California Integrated Water Quality System database
D	Daily
LREP	Late Report
M	Monthly
MMP	Mandatory Minimum Penalty
SMR	Self-Monitoring Report
TPHd	Total Petroleum Hydrocarbons as diesel

<u>MMP VIOLATION TYPE</u>	<u>VIOLATION PERIOD</u> <u>1/1/2000 TO 12/31/2007</u>
Serious Violations of a Group II Pollutant Effluent Limitation Subject to MMPs:	2
Total Violations Subject to MMPs:	2
Non-Serious Violations of a Group I Pollutant Effluent Limitation Not Subject to MMPs	1
Mandatory Minimum Penalty = (2 Serious Violations) x \$3,000 = \$6,000	



California Regional Water Quality Control Board Central Valley Region

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

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<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: 17 November 2008

SIGNATURE: _____

**SUBJECT: CALMAT CO. SANGER SAND AND GRAVEL PLANT, RESPONSE TO NOV
AND DRAFT RECORD OF VIOLATIONS**

The CalMat Co. (Discharger), a Delaware Corporation, operates a Sanger Sand and Gravel Plant (Facility) near the City of Sanger, Fresno County. The Central Valley Region Water Quality Control Board (Central Valley Water Board or Board) adopted Waste Discharge Requirements (WDRs) Order 79-188 (NPDES No. CA0078174), and subsequent WDRs Orders 94-165, 5-00-007, and R5-2007-0065 to regulate the discharge of the Facility's process water to the Kings River, a water of the United States, which adjoins the Facility. In March 1989, an oil slick on the Kings River was reported downstream of the Facility. Sources of the petroleum hydrocarbons were identified at the Facility, with the primary source being an aboveground diesel storage tank. Groundwater was found to be impacted from the release. Starting in 1992, groundwater was extracted, treated, and then blended with process wash water and discharged to settling ponds, which in turn discharge to the Kings River.

WDR Order No. 5-00-007 prescribes, in part, the following effluent limitations:

<u>Constituent</u>	<u>Units</u>	<u>Maximum Daily</u>	<u>30-Day Median</u>
Total Petroleum Hydrocarbons as diesel (TPHd)	µg/L	100	50
Manganese	µg/L	0.05	--

On 1 August 2008, Regional Water Board staff issued the Discharger a Notice of Violation and a draft Record of Violations for the period of 1 January 2000 through 31 December 2007 for violations subject to mandatory minimum penalties (MMPs) of Waste Discharge Requirements Order 5-00-007. The effective date of Order 5-00-007 was 28 January 2000 through 10 August 2007. No violations subject to MMPs occurred after 10 August 2007. The Discharger responded by letter dated 27 August 2008. The following discusses the comments and any changes made to the draft Record of Violations based on the Discharger's comments.

TPHd Violation on 30 July 2003

The Discharger claims that the detection of TPHd, a Group II pollutant, in the discharge to the Kings River at a concentration of 220 µg/L is due to laboratory error. A surrogate, tetracosane, was analyzed by the laboratory at the time the effluent sample was analyzed for TPHd as a quality assurance /quality control measure. The surrogate was detected at 260% of its known

California Environmental Protection Agency

concentration. This is outside the range of acceptable laboratory criteria. The Discharger claims that the daily and 30-day median violations should be dismissed due to the high potential for the result to be caused by laboratory error. Staff reviewed the lab report and confirmed that the surrogate was detected at 260% of its known concentration, which presents a high potential for laboratory error. Staff dismissed the violations.

TPHd Violation 24 May 2004

Group II pollutant TPHd was discharged at 140 µg/L on 24 May 2004, which exceeds by greater than 20 percent the daily maximum and 30-day median effluent limitations for TPHd of 100 µg/L and 50 µg/L, respectively. The Discharger acknowledges this violation occurred, but notes the discharge typically has non-detectable TPHd concentrations, and questions whether the 24 May 2004 result should be determined subject to MMPs. In the absence of technical information indicating the 24 May 2004 TPHd result was due to laboratory error. These violations were retained.

TPHd Violation 31 May 2004

The Discharger claims that neither it nor its laboratory has any record of an effluent sample being obtained and analyzed on this date. A copy of the analysis is absent from Central Valley Water Board files. Staff dismissed this violation.

Late Report, 1 September 2006

The self-monitoring report (SMR) for July 2006 was due on 1 September 2006. The Discharger was notified by staff that a copy of the SMR was not in the file and a copy of the report was faxed on 13 November 2006. The Discharger claims the report was originally faxed on 28 August 2006, the date of the report. Staff reviewed the file and found that the report was dated 28 August 2006, and that all other SMRs for 2006 were faxed on the same date as the date of the corresponding SMR. The Discharger has a long history of submitting timely SMRs. Faxed reports are not commonly date stamped by Central Valley Water Board Fresno Office staff. It is likely the July 2006 SMR was faxed on the date of the SMR, 28 August 2006, and subsequently misfiled. Staff dismissed the late reporting violations.

Manganese Violation on 27 December 2006

Manganese, a Group I pollutant, was discharged on 29 November 2006 at 0.066 µg/L, which, when rounded to two significant digits (equivalent to the number of significant digits in the effluent limitation of 0.05 mg/L), is 40 percent greater than the daily effluent limitation. The Discharger claims the reported result of 0.066 mg/L is only 32 percent greater than the daily maximum effluent limitation and, therefore, should not be considered a serious effluent limitation violation subject to MMP. In this instance, staff determined it inappropriate to round up to the value equivalent to that which would trigger a serious effluent limitation violation and revised the violation to be a non-serious violation that is exempt from MMPs pursuant to CWC section 13385(i).

MMP Summary

Below is the draft Record of Violations that identifies in the column called "Status" the changes made as a result of the Discharger's response.

Calmat Company
Sanger Sand and Gravel Plant, Fresno County
 RECORD OF VIOLATIONS (1 January 2000 – 31 December 2007) MANDATORY PENALTIES
 (Data reported under Monitoring and Reporting Program Nos. 5-00-007)

<u>Violation ID¹</u>	<u>Violation Date</u>	<u>Violation Type²</u>	<u>Violation Description³</u>	<u>MMP Type⁴</u>	<u>Status</u>
248622	7/30/03	CAT2	7M; TPHd; 100; ug/L; D; 220	Serious	Dismissed
775342	7/30/03	CAT2	7M; TPHd; 50; ug/L; M (30-day median); 220	Serious	Dismissed
252973	5/24/04	CAT2	5M; TPHd; 100; ug/L; D; 140	Serious	Violation
252932	5/24/04	CAT2	5M; TPHd; 50; ug/L; M (30-day median); 140	Serious	Violation
762052	5/31/04	CAT2	5M; TPHd; 50; ug/L; M (30-day median); 70	Serious	Dismissed
762062	9/1/06	LREP	Report for July 2006, due 9/1/06, received 11/13/06 (73 days late) (1st 30-day period)	Serious	Dismissed
764468	9/1/06	LREP	Report for July 2006, due 9/1/06, received 11/13/06 (73 days late) (2nd 30-day period)	Serious	Dismissed
762059	12/27/06	CAT1	12M; manganese; 0.05; mg/L; I; 0.066	Serious	Violation – but Exempt

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., 4M = April); constituent or parameter (e.g., pH, Flow); effluent limitation; units; limitation period; and reported result.

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

<u>Abbreviation</u>	<u>Definition</u>
CAT1	Violation of Group I effluent limitation as defined in Enforcement Policy
CAT2	Violation of Group II effluent limitation as defined in Enforcement Policy
CIWQS	California Integrated Water Quality System database
D	Daily
LREP	Late Report
M	Monthly
MMP	Mandatory Minimum Penalty
SMR	Self-Monitoring Report

Final MMP Violation Summary	
<u>MMP VIOLATION TYPE</u>	<u>VIOLATION PERIOD</u> <u>1/1/2000 TO 12/31/2007</u>
Serious Group II Effluent Limitation Violations Subject to MMPs:	2
Total Violations Subject to MMPs:	2
Mandatory Minimum Penalty = 2 x \$3,000 = \$6,000	