

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0574

MANDATORY PENALTY
IN THE MATTER OF

PENNY-NEWMAN GRAIN COMPANY
HYDROSTATIC TEST PROJECT
SAN JOAQUIN COUNTY

This Complaint is issued to Penny-Newman Grain Company (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements Order R5-2008-0081-01 (NPDES No. CAG995001).

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

1. The Discharger conducted a Hydrostatic Testing Project (Project) located at the Turning Basin in Stockton's Deep Water Ship Channel. The Project consisted of pumping surface waters from the Deep Water ship Channel for use in the hydrostatic testing of two above-ground tanks, each with a capacity of one million gallons, and directly discharging the test water back into the Turning Basin via a pipeline. The approximate flow rate was one million gallons per day.
2. On 16 June 2000, the Central Valley Water Board adopted Waste Discharge Requirements Order 5-00-175 200 ("2000 Low Threat General Order") to regulate dewatering and other low threat discharges to surface waters.
3. On 12 June 2008, the Central Valley Water Board adopted Waste Discharge Requirements Order R5-2008-0081 ("2008 Low Threat General Order") to regulate dewatering and other low threat discharges to surface waters. The Low Threat General Order rescinded and replaced Order 5-00-175.
4. On 6 June 2008, the Discharger submitted a Notice of Intent for coverage under Low Threat Order 5-00-175. On 30 June 2008, Board staff issued a Notice of Applicability (NOA) granting coverage under the "2008 Low Threat General Order" and assigned the project General Order No. R5-2008-0081-001. The NOA stated that it was issued because the NOI met the requirements of Low Threat Order 5-00-175 and on the basis that discharges from the project were only expected for the period 30 June 2008 through 4 July 2008. The NOA specified that a new NOI must be submitted by 1 August 2008 if discharges from the project were to continue beyond the discharge period indicated in the NOI.

5. On 15 June 2009, Central Valley Water Board staff issued the Discharger a Notice of Violation for failure to submit the required self-monitoring reports for the third and fourth quarter 2008 and first quarter 2009. On 2 July 2009, the Discharger provided a final monitoring report showing that discharges only occurred from 30 June 2008 through 2 July 2008 and there were no effluent limitation violations. Since a new NOI was not submitted by 1 August 2008, the Discharger was not required to submit monitoring reports for the fourth quarter 2008 and first quarter 2009.
6. This Complaint addresses administrative civil liability for failure to submit a discharge monitoring report required by the 2008 Low Threat General Order during the period from 30 June 2008 through 2 July 2009. Specifically, the Discharger failed to submit its third quarter 2008 monitoring report by the required deadline of 1 November 2008. Each 30-day period following the report submittal due date is a serious violation subject to a mandatory minimum penalty. However, as discussed below in Findings 10 and 11, a mandatory minimum penalty shall continue to apply but only for each required report that is not timely filed and shall not be separately assessed for each 30-day period following the deadline for submitting the report if certain conditions are met. This violation is specifically identified in Attachment A to this Complaint as subject to mandatory minimum penalties. Attachment A to this Complaint is attached hereto and incorporated herein by this reference.
7. On 1 April 2011, Central Valley Water Board staff issued the Discharger a draft Record of Violations (ROV). On 20 April 2011, the Discharger's consultants responded by e-mail and indicated willingness by the Discharger to pay the mandatory penalty.
8. CWC section 13385(h)(1) requires 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.

9. CWC sections 13385.1(a)(1) states, in part, the following:

For the 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.

10. CWC section 13385.1(b) states, in part:

(1) Notwithstanding paragraph (1) of subdivision (a), a mandatory minimum penalty shall continue to apply and shall be assessed pursuant to subdivision (h) of Section 13385, but only for each required report that is not timely filed, and shall not be separately assessed for each 30-day period following the deadline for submitting the report, if both of the following conditions are met:

(A) The discharger did not on any occasion previously receive, from the state board or a regional board, a complaint to impose liability pursuant to subdivision (b) or (c) of Section 13385 arising from a failure to timely file a discharge monitoring report, a notice of violation for failure to timely file a discharge monitoring report, or a notice of the obligation to file a discharge monitoring report required pursuant to Section 13383, in connection with its corresponding waste discharge requirements.

(B) The discharges during the period or periods covered by the report do not violate effluent limitations, as defined in subdivision (d), contained in waste discharge requirements.

(2) Paragraph (1) shall only apply to a discharger who does both of the following:

(A) Files a discharge monitoring report that had not previously been timely filed within 30 days after the discharger receives written notice, including notice transmitted by electronic mail, from the state board or regional board concerning the failure to timely file the report.

(B) Pays all penalties assessed by the state board or regional board in accordance with paragraph (1) within 30 days after an order is issued to pay these penalties pursuant to Section 13385.

11. The Discharger is subject to a mandatory minimum penalty for the thir quarter 2008 monitoring report because (a) the monitoring report was submitted on 2 July 2009 within 30 days of receiving written notice that it was overdue and (b) the monitoring report did not show any effluent limit violations during the period covered by the third quarter 2008 monitoring report.

12. 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.

13. WDRs Order R5-2008-0081, Self Monitoring Reports Attachment E.X.B.3, states, in part:

3. Monitoring periods and reporting for all required monitoring shall be completed according to the following schedule:

Sampling Frequency	Monitoring Period Begins On...	Monitoring Period	SMR Due Date
1/Quarter	Closest of 1 January, 1 April, 1 July, or 1 October following (or on) Notice of Applicability effective date	1 January through 1 March 1 April through 30 June 1 July through 30 September 1 October through 31 December	1 May 1 August 1 November 1 February

14. According to the Discharger's self-monitoring report submitted 2 July 2009, the Discharger did not violate any effluent limitations for the discharge which occurred from 30 June 2008 through 2 July 2008. However, the Discharger committed one (1) serious violation for failure to timely submit the self-monitoring report required by the 2008 Low Threat General Order, as identified in Attachment A. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
15. The total amount of the mandatory penalties assessed for the cited violation is **three thousand dollars (\$3,000)**. As stated herein, the violation is included in Attachment A. This Complaint addresses administrative civil liability for the violation that is specifically identified in Attachment A as subject to mandatory minimum penalties.
16. 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).

PENNY-NEWMAN GRAIN COMPANY IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **three thousand dollars (\$3,000)**.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **3/4/5 August 2011**, unless the Discharger does one of the following by **6 June 2011**:
 - a) Waives the hearing by completing the attached form (checking off the box next to Option 1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **three thousand dollars (\$3,000)**; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
 - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.

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.
4. If this matter proceeds to hearing, the Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

Original signed by Frederick Moss for

PAMELA C.CREEDON, Executive Officer

6 May 2011

Date

Attachment A: Record of Violations

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent Penny-Newman Grain Company (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2011-0574 (hereafter Complaint). 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. The person who has been issued a complaint may waive the right to a hearing."

(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **three thousand dollars (\$3,000)** by check that references "ACL Complaint R5-2011-0574." made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **6 June 2011**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. 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.

(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0574

Penny-Newman Grain Co.
Hydrostatic Test Project

RECORD OF VIOLATIONS (30 June 2008 – 2 July 2009) MANDATORY PENALTIES
(Reports submitted under Monitoring and Reporting Program R5-2008-0081-001)

<u>Report</u>	<u>Due</u>	<u>Date</u> <u>Received</u>	<u>Late Report</u> <u>Mandatory Minimum Penalties</u>	<u>CIWQS</u>
3 rd Quarter 2008	1-Nov-08	2-July-09	3-Nov-08 through 3-Dec-08	823234

Mandatory Minimum Penalty = (1 late report) x \$3,000 = \$3,000