

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0520

MANDATORY PENALTY
IN THE MATTER OF

FORMICA CORPORATION
SIERRA PLANT
PLACER COUNTY

This complaint is issued to the Formica Corporation (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, 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 Nos. 97-112 and R5-2005-0055 (NPDES No. CA0004057).

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

1. The Discharger owns and operates a distribution and manufacturing facility that handles high pressure decorative plastic laminate. Non-contact cooling water is discharged to an unnamed tributary, tributary to Pleasant Grove Creek, waters of the United States.
2. On 20 June 1997, the Regional Water Board adopted WDRs Order No. 97-112 to regulate discharges of non-contact cooling water. On 29 April 2005, the Regional Water Board adopted WDRs Order No. R5-2005-0055, which contained new regulations and rescinded Order No. 97-112. The WDRs include effluent limitations and other requirements regarding the wastewater discharges.
3. CWC sections 13385(h) and (i) require 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, "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.”*

4. 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.”

5. WDRs Order No. 97-112 Effluent Limitations No. B.1. include, in part, the following effluent limitations:

<u>Constituent</u>	<u>Unit</u>	<u>30-Day Average</u>	<u>Daily Maximum</u>
COD	mg/L	10	35
Total Suspended Solids	mg/L	10	15

6. WDRs Order No. 97-112 Effluent Limitations No. B.2. states that:

“The discharge shall not have a pH less than 6.5 nor greater than 8.5.”

7. WDRs Order No. R5-2005-0055 Effluent Limitations No. B.1. include, in part, the following effluent limitations:

<u>Constituent</u>	<u>Unit</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>
<u>Chemical Oxygen Demand (COD)¹</u>	mg/L	10	35

¹ To be ascertained by a 8-hour composite sample

8. WDRs Order No. R5-2005-0055 Effluent Limitations No. B.3. states that:

“The discharge shall not have a pH less than 6.5 nor greater than 8.5.”

9. According to the Discharger’s self-monitoring reports, the Discharger committed six (6) serious Group I violations of the above effluent limitations contained in Order Nos. 97-112 and R5-2005-0055 during the period beginning 1 January 2000 and ending

31 December 2007. The violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels by more than 40 percent on these occasions. The mandatory minimum penalty for these serious violations is **eighteen thousand dollars (\$18,000)**.

10. According to the Discharger's self-monitoring reports, the Discharger committed twenty (20) non-serious violations of the above effluent limitations contained in Order Nos. 97-112 and R5-2005-0055 during the period beginning 1 January 2000 and ending 31 December 2007. Eight (8) of the non-serious violations are subject to mandatory penalties under CWC section 13385(i)(1) because these violations were preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for these non-serious violations is **twenty-four thousand dollars (\$24,000)**.
11. The total amount of the mandatory penalties for the cited effluent violations would be **forty-two thousand dollars (\$42,000)**. The Discharger claims protection from assessment of Mandatory Minimum Penalties for violations that accrued before the Discharger's Bankruptcy Confirmation Order was entered in the Federal Bankruptcy Court for the Southern District of New York on 10 June 2004. Without validating the Discharger's claim of protection, this Order limits the assessment of MMPs to violations that accrued subsequent to the Federal Bankruptcy Court's Confirmation Order. Therefore, the total amount of the mandatory penalties assessed for the cited effluent violations is **six thousand dollars (\$6,000)**. A detailed list of the cited effluent violations is included in Attachment A, which is made a part of this Order.
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 (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

THE FORMICA CORPORATION 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 **six thousand dollars (\$6,000)**.
2. A hearing on this matter will be held at the Regional Water Board meeting scheduled on **31 July/1 August 2008**, unless the Discharger agrees to complete the following by **4 June 2008**:
 - a) Waive the hearing by completing the attached form and returning it to the Regional Water Board; and
 - b) Pay the proposed civil liability of **six thousand dollars (\$6,000)** in full.

3. 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.

JACK E. DEL CONTE, Assistant Executive Officer

5 May 2008

Attachment A: Record of Violations
BLH: 05/05/08

**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 the Formica Corporation (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0520 (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 service 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 service of the Complaint; and
4. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **six thousand dollars (\$6,000)** by check, which contains a reference to "ACL Complaint No. R5-2008-0520" and is made payable to the "*State Water Pollution Cleanup and Abatement Account.*"
5. 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 Regional Board receive new information during this comment period, the Regional Board may withdraw the complaint, return payment, and issue a new complaint.
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.

(Print Name and Title)

(Signature)

(Date)

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0520**

Formica Corporation

RECORD OF VIOLATIONS (1 January 2000 – 31 December 2007) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program Nos. 97-112 and R5-2005-0055)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period Type</u>	<u>Remarks</u>
1	9-May-00	TSS	mg/L lbs/da	15	64	Daily	1,5
2	9-May-00	TSS	y	125	257	Daily	1,5
3	30-May-00	TSS	mg/L lbs/da	10	32	Monthly	1,5
4	30-May-00	TSS	y	83	129	Monthly	1,5
5	5-Feb-02	COD	mg/L	10	11	Monthly	3,5
6	6-Oct-02	pH		6.5	6.4	Instantaneous	3,5
7	7-Oct-02	pH		6.5	6.2	Instantaneous	3,5
8	14-Oct-02	pH		6.5	6	Instantaneous	3,5
9	17-Dec-02	COD	mg/L	10	12	Monthly	4,5
10	15-May-03	pH		8.5	8.8	Instantaneous	3,5
11	16-May-03	pH		8.5	8.7	Instantaneous	3,5
12	19-May-03	pH		8.5	8.6	Instantaneous	4,5
13	17-Nov-03	pH		6.5	6.3	Instantaneous	3,5
14	20-Nov-03	pH		6.5	6.2	Instantaneous	3,5
15	21-Nov-03	pH		6.5	6.4	Instantaneous	3,5
16	22-Nov-03	pH		6.5	6.2	Instantaneous	4,5
17	26-Nov-03	pH		6.5	6.4	Instantaneous	4,5
18	27-Nov-03	pH		6.5	5.6	Instantaneous	4,5
19	28-Nov-03	pH		6.5	5.6	Instantaneous	4,5
20	29-Nov-03	pH		6.5	5.6	Instantaneous	4,5
21	30-Nov-03	pH		6.5	6	Instantaneous	4,5
22	16-Apr-05	pH		8.5	8.6	Instantaneous	3
23	4-Aug-05	COD	mg/L	35	41	Daily	3
24	30-Aug-05	COD	mg/L	10	26	Monthly	1
25	30-Oct-05	COD	mg/L	10	15	Monthly	1
26	16-Feb-06	pH		6.5	6.4	Instantaneous	3

Remarks:

1. Serious Violation: For Group 1 pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group 2 pollutants that exceed the effluent limitation by 20 percent or more.

FACILITY

3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties
5. Enforcement of violations preempted by Federal Bankruptcy Court's Confirmation Order.

<u>VIOLATIONS AS OF:</u>	<u>12/31/2007</u>
Group 1 Serious Violations:	6
Group 2 Serious Violations:	0
Non-Serious Exempt from MPs:	12
Non-serious Violations Subject to MPs:	8
Violations Preempted by Bankruptcy:	12
<u>Total Violations Subject to MPs:</u>	<u>2</u>

Mandatory Minimum Penalty = (2 Serious Violations) x \$3,000 = \$6,000