

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2006-0522

MANDATORY PENALTY
IN THE MATTER OF

SACRAMENTO COGENERATION AUTHORITY
SACRAMENTO COGENERATION AUTHORITY PROJECT
SACRAMENTO COUNTY

This Complaint is issued to Sacramento Cogeneration Authority (hereafter Discharger) based on a finding of violations of Waste Discharge Requirements Order No. R5-2002-0090 (NPDES No. CA0083569), pursuant to California Water Code (CWC) section 13385, subdivision (h), and (i), which authorize the imposition of Administrative Civil Liability, and CWC Section 13323, which authorizes the Executive Officer to issue this Complaint.

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

1. The Discharger discharges heat recovery steam generator blowdown, cooling tower blowdown, neutralization facility effluent, and plant equipment drains and discharges into Morrison Creek.
2. On 28 October 1994, the Regional Water Board adopted WDRs Order No. 94-289 (NPDES No. CA0083569) to regulate discharge of waste from the facility.
3. On 6 June 2002, the Regional Water Board rescinded Order No. 94-289 and adopted WDRs Order No. R5-2002-0090 (NPDES No. CA0083569) to regulate discharges of waste from the facility. The Regional Water Board subsequently amended Order No. R5-2002-0090 on 4 June 2004 by adopting Resolution No. R5-2004-0075.
4. On 6 June 2002, the Regional Water Board adopted Cease and Desist Order No. R5-2002-0091 (CDO) requiring the Discharger to cease and desist from discharging contrary to requirements. The CDO required full compliance with effluent limitations for chlorine by 1 June 2004.
5. CWC section 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.”*

6. CWC section 13385(j) states, in part, the following:

Subdivisions (h) and (i) do not apply to any of the following:

(3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or Section 13308, if all of the following requirements are met:

- (A) The cease and desist order or time schedule order is issued on or after July 1, 2000, and specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i).*
- (B) The regional board finds that, for one of the following reasons, the discharger is not able to consistently comply with one or more of the effluent limitations established in the waste discharge requirements applicable to the waste discharge:*

(i) The effluent limitation is a new, more stringent, or modified regulatory requirement that has become applicable to the waste discharge after the effective date of the waste discharge requirements and after July 1, 2000, new or modified control measures are necessary in order to comply with the effluent limitation, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

7. 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.

8. WDRs Order No. 94-289 includes Effluent Limitations B.1. which states, in part, the following:

The effluent shall not exceed the following limits:

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>
COD	mg/L	20	40

9. WDRs Order No. R5-2002-0090 includes Effluent Limitations B.1. which states, in part, the following:

The effluent shall not exceed the following limits:

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>
COD	mg/L	30	40
Chlorine Residual	mg/L	0.01	0.02

10. WDR Order No R5-2002-0090 includes Effluent Limitations B.2. which states:

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

11. According to monitoring reports submitted by the Discharger, the Discharger committed one (1) serious Group I violation during the period beginning 1 January 2000 and ending on 31 March 2006. The mandatory penalty for this serious violation is **three thousand dollars (\$3,000)**.
12. According to monitoring reports submitted by the Discharger, the Discharger committed seven serious Group II violations during the period beginning 1 January 2000 and ending on 31 March 2006. Only one of the seven violations is subject to mandatory penalties because the six Group II violations that occurred from 10 February 2003 through 29 October 2003 are exempt from mandatory penalties in accordance with CWC 13385(j). The mandatory penalty for the one remaining Group II serious violation is **three thousand dollars (\$3,000)**.
13. The total mandatory penalty for Group I and Group II serious violations is **six thousand dollars (\$6,000)**. A detailed list of all violations is included in Attachment A, a part of this Order.
14. 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, Enforcement Actions by Regulatory Agencies, Section 15321(a)(2).

SACRAMENTO COGENERATION AUTHORITY IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Water Board proposes that the Discharger be assessed a mandatory penalty in the amount of **six thousand dollars (\$6,000)**.

2. A hearing shall be held by the Regional Water Board on 7/8 December 2006, unless the Discharger agrees to:
 - a. Waive the hearing and pay the mandatory penalty of **six thousand dollars (\$6,000)** in full; or
 - b. Waive the right to a hearing in 90 days, and submit a settlement proposal **within 30 days** of this Complaint that includes an agreement to conduct a supplemental environmental project (SEP) and also includes payment of monetary liability. The Discharger may preserve its right to a hearing pending approval of the settlement proposal.
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 liability.

PAMELA C. CREEDON, Executive Officer

29 September 2006

**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 Sacramento Cogeneration Authority (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2006-0522 (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; and
4. I certify that the Discharger will remit payment for the civil liability imposed in the amount of \$6,000 by check, which contains a reference to "ACL Complaint No. R5-2006-0522" 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 that will not become final until after a public comment period.
6. I understand that the Executive Officer has complete discretion to modify or terminate this settlement.
7. 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

Sacramento Cogeneration Authority

RECORD OF VIOLATIONS (1 January 2000 – 31 March 2006) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program No. R5-2002-0090)

	<u>Date Occurred</u>	<u>Violation Type</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
1	01/31/2000	COD	20 mg/l	24 mg/l	Monthly	1
2	04/29/2002	COD	40 mg/l	62 mg/l	Daily	2
3	08/21/2002	pH	8.5 pH Units	8.6 pH Units	Instantaneous	1
4	02/10/2003	Total Chlorine	0.02 mg/l	0.86 mg/l	Daily	3
5	02/12/2003	Total Chlorine	0.02 mg/l	1.08 mg/l	Daily	3
6	02/14/2003	Total Chlorine	0.02 mg/l	1.08 mg/l	Daily	3
7	08/27/2003	Total Chlorine	0.02 mg/l	0.1 mg/l	Daily	3
8	10/8/2003	Total Chlorine	0.02 mg/l	0.14 mg/l	Daily	3
9	10/29/2003	Total Chlorine	0.02 mg/l	0.11 mg/l	Daily	3
10	11/20/2003	COD	40 mg/l	48 mg/l	Daily	1
11	08/3/2005	Total Chlorine	0.02 mg/l	0.15 mg/l	Daily	4

Remarks:

1. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
2. Serious Violation: For Group 1 pollutants that exceed the effluent limitation by 40 percent or more.
3. Violation is exempt from mandatory penalties pursuant to Cease and Desist Order No.R5-2002-0091.
4. Serious Violation: For Group 2 pollutants that exceed the effluent limitation by 20 percent or more.

<u>VIOLATIONS AS OF:</u>	<u>3/31/2006</u>
Group 1 Serious Violations:	1
Group 2 Serious Violations:	1
Non-serious Violations Subject to MPs:	0
Non-serious Violations Exempt from MPs:	3
Serious violations Exempt from MPs:	6
<u>Total Violations Subject to MPs:</u>	<u>2</u>

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