

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2006-0523

MANDATORY PENALTY
IN THE MATTER OF

PROCTER & GAMBLE MANUFACTURING COMPANY
SACRAMENTO COUNTY

This Complaint is issued to the Procter & Gamble Manufacturing Company (hereafter Discharger) based on a finding of violations of Waste Discharge Requirements Order No. 5-01-064 (NPDES No. CA0004316), 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 owns and operates the Procter & Gamble Manufacturing Company. Commingled cooling water and storm water is discharged from the facility at Fruitridge and Power Inn Roads, to a City of Sacramento owned pumping station which discharges to a drainage ditch into Morrison Creek.
2. On 16 March 2001, the Regional Water Board adopted WDRs Order No. 5-01-064 (NPDES No. CA0004316) to regulate discharges of waste from the facility. The Regional Water Board subsequently amended Order No. 5-01-064 on 17 March 2005 by adopting Resolution No. R5-2005-0041.
3. On 24 June 2006, the Regional Water Board rescinded WDRs order No. 5-01-064 (NPDES No. CA0004316) except for enforcement purposes.
4. 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.”*

5. 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.

6. WDR Order No. 5-01-064 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>	<u>Annual Average</u>
COD	mg/L	20	40	
Chlorine Residual	mg/L	0.01	0.02	

7. WDR Order No 5-01-064 includes Effluent Limitations B.2., states:

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

8. According to monitoring reports submitted by the Discharger, the Discharger committed five (5) serious violations during the period beginning 1 November 2001 and ending on 31 March 2006. The mandatory penalty for these serious violations is **fifteen thousand dollars (\$15,000)**.

9. According to monitoring reports submitted by the Discharger through 31 March 2006, the Discharger also committed five (5) violations of effluent limitations that were not considered serious violations. One (1) non-serious violation is subject to mandatory penalties under CWC section 13385(i)(2). The mandatory penalty for this non-serious violation is **three thousand dollars (\$3,000)**.

10. The total mandatory penalty for serious and non-serious violations is **eighteen thousand dollars**. A detailed list of all violations is included in Attachment A, a part of this Order.

11. 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).

PROCTER & GAMBLE MANUFACTURING COMPANY 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 **eighteen thousand dollars (\$18,000)**.
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 **eighteen thousand dollars (\$18,000)** 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 Procter & Gamble Manufacturing Company (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2006-0523 (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 \$18,000 by check, which contains a reference to "ACL Complaint No. R5-2006-0523" 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

Procter & Gamble Manufacturing Company

Wastewater Treatment Plant

RECORD OF VIOLATIONS (1 Nov 2001 – 31 March 2006) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program No. 5-01-064)

	<u>Date Occurred</u>	<u>Violation Type</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
1	11/10/2001	COD	40 mg/l	74 mg/l	Daily	1
2	3/11/2002	pH	8.5 pH units	8.7 pH units	Instantaneous	3
3	6/14/2002	Chlorine Residual	0.02 mg/l	0.33 mg/l	Daily	2
4	6/21/2002	Chlorine Residual	0.02 mg/l	0.38 mg/l	Daily	2
5	7/19/2002	Chlorine Residual	0.02 mg/l	0.89 mg/l	Daily	2
6	8/30/2002	pH	8.5 pH units	8.8 pH units	Instantaneous	4
7	8/29/2003	pH	8.5 pH units	8.6 pH units	Instantaneous	3
8	10/31/2003	Chlorine Residual	0.02 mg/l	0.11 mg/l	Daily	2
9	11/21/2003	pH	8.5 pH units	8.9 pH units	Instantaneous	3
10	8/17/2005	pH	8.5 pH units	10.2 pH units	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.
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

VIOLATIONS AS OF: 03/31/2006

Group 1 Serious Violations:	1
Group 2 Serious Violations:	4
Non-serious Violations Exempt from MPs:	4
Non-serious Violations Subject to MPs:	1
<u>Total Violations Subject to MPs:</u>	<u>6</u>

Mandatory Minimum Penalty = (5 Serious Violations + 1 Non-Serious Violations) x \$3,000 = \$18,000