

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2007-0514

MANDATORY PENALTY
IN THE MATTER OF

HERMAN AND HELEN'S MARINA
SAN JOAQUIN COUNTY

This Complaint is issued to Herman and Helen's Marina (hereafter Discharger) based on a finding of a violation of Waste Discharge Requirements Order No. 5-00-11938 (NPDES No. CAG915001), 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 owned and operated Herman and Helen's Marina at the time of the violation. The Discharger discharged effluent from a groundwater treatment system into an unnamed agricultural drainage ditch, then into the San Joaquin River.
2. On 10 June 2004, the Regional Water Board Executive Officer issued a Notice of Applicability for Order No. 5-00-119, General Order for Discharge to Surface Water of Groundwater from Cleanup of Petroleum Fuel Pollution, and assigned the project General Order No. 5-00-11938 to regulate discharges of waste from the facility.
3. CWC section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1): 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): 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): 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. WDR Order No. 5-00-11938 includes Effluent Limitations C.1., which states, in part, the following:

The discharge of an effluent in excess of the following limits is prohibited:

<u>Constituents</u>	<u>Units</u>	<u>30-Day Median</u>	<u>Daily Maximum</u>
<i>Tertiary Butyl Alcohol</i>	<i>ug/L</i>	<i><20</i>	<i><20</i>

- 6. According to monitoring reports submitted by the Discharger, the Discharger committed one (1) serious violation during November 2006. The mandatory penalty for this serious violation is **three thousand dollars (\$3,000)**. A detailed list of all violations is included in Attachment A, a part of this Order.
- 7. 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).

HERMAN AND HELEN'S MARINA 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 **three thousand dollars (\$3,000)**.
- 2. A hearing shall be held by the Regional Water Board on **2/3 August 2007**, unless the Discharger agrees to:
 - a. Waive the hearing and pay the mandatory penalty of **three thousand dollars (\$3,000)** 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

23 May 2007

**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 Herman and Helen's Marina (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2007-0514 (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 \$3,000 by check, which contains a reference to "ACL Complaint No. R5-2007-0514" 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

Herman & Helen's Marina

Groundwater Extraction & Treatment System

RECORD OF VIOLATIONS (November 2006) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program No. 5-00-11938)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
1	1-Nov-2006	Tertiary Butyl Alcohol	µm/L	20	1200	Daily	2

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:	11/30/2006
Group 1 Serious Violations:	0
Group 2 Serious Violations:	1
Non-Serious Exempt from MPs:	0
Non-serious Violations Subject to MPs:	0
Total Violations Subject to MPs:	1

Mandatory Minimum Penalty = 1 Serious Violation x \$3,000 = \$3,000