

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2017-0529

MANDATORY PENALTY  
IN THE MATTER OF

SPX CORPORATION AND SPX COOLING TECHNOLOGIES, INC.  
GROUNDWATER EXTRACTION AND TREATMENT SYSTEM  
SAN JOAQUIN COUNTY

This Complaint is issued to the SPX Corporation and SPX Cooling Technologies, Inc. (hereafter Discharger) pursuant to California Water Code section 13385, which authorizes the imposition of Administrative Civil Liability, and Water Code section 13323, which authorizes the Executive Officer to issue this Complaint and Water Code 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 allegations that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Orders R5-2008-0170 and R5-2014-0013 (NPDES CA0081787).

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

1. The Discharger owns and previously operated a cooling tower fabrication plant at 200 North Wagner Avenue in the East Stockton Area in San Joaquin County (Site). As part of the fabrication operations, the Discharger operated a wood preservation process utilizing solutions containing copper, chromium, and arsenic. Wood processing was discontinued at the Site in January 1991; however, past operational practices left waste constituents in soils and groundwater underlying the Site.
2. The Discharger owns and operates a Groundwater Extraction and Treatment System (GETS) at the Site, which was installed in October 1987. The GETS historically consisted of a treatment plant with an electrochemical unit operating in parallel to an ion exchange unit that removes chromium from the extracted water. Treated water is discharged to the Stockton Diverting Canal, a water of the United States and tributary to the Calaveras River.
3. In order to regulate discharges from the GETS, on 24 October 2008, the Central Valley Water Board issued WDRs Order R5-2008-0170, which became effective on 13 December 2008, and rescinded WDRs Order R5-2003-0030, except for enforcement purposes.
4. On 7 February 2014, the Central Valley Water Board issued WDRs Order R5-2014-0013, which became effective on 29 March 2014 and rescinded WDRs Order R5-2008-0170, except for enforcement purposes.
5. On 10 March 2014, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2014-0505 for mandatory minimum penalties (MMPs) for effluent violations (identified in Attachment A to ACLC R5-2014-0505) that occurred from 1 January 2011 through 31 December 2013. The Discharger paid the civil liability and the Board considers the effluent violations specifically listed in Attachment A to ACLC R5-2014-0505 to be resolved.

6. On 15 March 2017, Central Valley Water Board staff issued a draft Record of Violations (ROV) for effluent limitation violations which occurred between 1 January 2014 and 31 December 2016. On 13 October 2017, Central Valley Water Board staff issued a revised ROV which extended the review period and contains additional effluent limitation violations which occurred at the Facility from 1 January 2014 through 30 June 2017. As of the date of this Complaint issuance, the Discharger has not responded to the revised 13 October 2017 ROV.

The Discharger responded to the 15 March 2017 ROV in a letter dated 29 March 2017 stating that the 27 July 2016 alleged violation was mis-characterized and should be a non-serious violation not subject to MMPs, the 19 March 2014 alleged violation should not be considered a violation as the WDR in question was eliminated in the new Order R5-2014-0013, and that the 31 October 2016 alleged chromium VI violation should not be considered as a violation in light of it being causally connected to the concurrent toxicity reduction evaluation (TRE). The Discharger argues that because the 31 October 2016 violation occurred as a result of adjusting a polymer dosage while troubleshooting an intermittent, low-level, chronic *Ceriodaphnia dubia* reproductive toxicity issue, Regional Board staff should consider the event as a Facility “upset” and the chromium VI violation should not be subject to MMPs. While the Regional Board agreed that the 19 March 2014 and 27 July 2016 are not subject to MMPs, Regional Board staff does not agree that the polymer addition meets the definition of a “single operational upset” and that the violation is not subject to MMPs. U.S. EPA defines “single operational upset” as:

*“an exceptional incident which causes simultaneous, unintentional, unknowing (not the result of a knowing act or omission), temporary noncompliance with more than one [Clean Water Act] effluent discharge pollutant parameter.”*

U.S. EPA further defines an “exceptional” incident to include such things as an upset caused by a sudden violent storm, some other exceptional event, or a bursting tank. Because only one parameter violated effluent limitations and the violation was not caused by an exceptional event, Regional Board staff concludes that the chromium VI effluent violation is subject to MMPs. In addition, the Discharger allegedly violated the effluent limitations for chromium VI on five more occasions during the period cited in the Complaint, which, as these alleged violations were not listed in the 15 March 2017 ROV, were not addressed by the Discharger in relation to a potential casual connection to TREs and adjustments to the polymer dosage.

7. This Complaint addresses administrative civil liability for effluent violations that occurred during the period from 1 January 2014 through 30 June 2017. These violations are 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.
8. Water Code section 13385, subdivisions (h) and (i), require assessment of mandatory penalties and state, in part, the following:

Water Code section 13385, subdivision (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.

Water Code section 13385, subdivision (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.

Water Code section 13385, subdivision (i)(1) states, in part:

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.

9. Water Code 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.

10. WDRs Order R5-2008-0170, Effluent Limitations and Discharge Specifications IV.A.1. Table 6, include, in part, the following effluent limitation:

Constituents	Units	Effluent Limitations	
		Maximum Daily	Average Monthly
Total Dissolved Solids	mg/L	--	500

9. WDRs Order R5-2014-0013, Effluent Limitations and Discharge Specifications IV.A.1. Table 4, include in part, the following effluent limitations:

Constituents	Units	Effluent Limitations	
		Maximum Daily	Average Monthly
Copper (total)	µg/L	17	6.6
Chromium (VI)	µg/L	15	4.3

10. According to the Discharger's self-monitoring reports, the Discharger committed eight (8) serious Group II violations of the above effluent limitations contained in WDRs Order R5-2014-0013, as shown in Attachment A. The violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2014-0013 by

20 percent or more. The mandatory minimum penalty for these serious Group II violations is **twenty four thousand dollars (\$24,000)**.

11. According to the Discharger's self-monitoring reports, the Discharger committed one (1) non-serious violation of the above effluent limitations contained in WDRs Order R5-2008-0170 and one (1) non-serious violation of the above effluent limitations contained in WDRs Order R5-2014-0013, as shown in Attachment A. One (1) of these non-serious violations is not subject to mandatory penalties because the violation falls within the first three violations in a 180-day period, thus is not subject to mandatory penalties. One (1) of the non-serious violations is subject to mandatory penalties under Water Code section 13385 subdivision (i)(1) because the violation was preceded by three or more effluent limitation violations within a 180-day period. The mandatory minimum penalty for the non-serious violation is **three thousand (\$3,000)**.
12. The total amount of the mandatory penalties assessed for the alleged effluent violations is **twenty seven thousand dollars (\$27,000)**. As stated herein, a detailed list of the cited effluent violations is included in Attachment A. This Complaint addresses administrative civil liability for violations that are specifically identified as subject to mandatory minimum penalties in Attachment A.
13. On 21 December 2015, the Executive Officer designated Andrew Altevogt, Assistant Executive Officer, as the Lead Prosecution Officer for all enforcement matters originating in the Central Valley Region. The 21 December 2015 Delegation of Authority also authorizes Andrew Altevogt to issue Administrative Civil Liability Complaints.
14. Issuance of this Administrative Civil Liability Complaint to enforce Water Code, 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 SPX CORPORATION AND SPX COOLING TECHNOLOGIES, INC., IS HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **twenty seven thousand dollars (\$27,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **1/2 February 2018**, unless one of the following occurs by **4 December 2017**:
  - a) The Discharger 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 **twenty seven thousand dollars (\$27,000)** to the State Water Board with a copy of the check to the Central Valley water Board; 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*

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ANDREW ALTEVOGT, Assistant Executive Officer

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6 November 2017

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 the SPX Corporation and SPX Cooling Technologies, Inc. (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2017-0529 (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 **twenty thousand dollars (\$27,000)** by check that references "ACL Complaint R5-2017-0529" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the State Water Resources Control Board, Division of Administrative Services, ATTN: Accounting, P.O. Box 100, 18<sup>th</sup> Floor, Sacramento, CA 95812, by **4 December 2017**. The waiver and a copy of the check must be submitted to the Central Valley Water Board at 11020 Sun Center Drive #200, Attn: Howard Hold, Rancho Cordova, California, 95670 by **4 December 2017**.
- 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.

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(Print Name and Title)

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(Signature)

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(Date)

