

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2017-0552

MANDATORY PENALTY  
IN THE MATTER OF

CONSTELLATION BRANDS U.S. OPERATIONS, INC.  
dba WOODBRIDGE WINERY  
SAN JOAQUIN COUNTY

This Complaint is issued to the Constellation Brands U.S. Operations, Inc. (hereafter Discharger) dba Woodbridge Winery (hereafter Facility) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability, 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) Order R5-2013-0074-076 (NPDES CAG995001).

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

1. On 9 March 2011, the Discharger applied for coverage under the Waste Discharge Requirements for Dewatering and Other Low Threat Discharges to Surface Waters (Low Threat General Order) R5-2008-0081, and on 29 March 2011, the Executive Officer issued Notice of Applicability (NOA) R5-2008-0081-076 for coverage under the Low Threat General Order. On 31 May 2013, the Board issued WDRs Order R5-2013-0074, which contained new requirements and rescinded WDR R5-2008-0081, except for enforcement purposes. The Discharger was automatically enrolled under Low Threat General Order R5-2013-0074-076.
2. On 14 October 2016, effective 1 February 2017, the Central Valley Water Board issued WDRs Order R5-2016-0076 for *Limited Threat Discharges to Surface Water* (Limited Threat General Order). Existing enrollees will be enrolled under the Limited Threat General Order upon expiration, 1 May 2018, of the Low Threat General Order, which will be allowed to expire without renewal.
3. This Complaint addresses administrative civil liability for effluent limitation violations that occurred between 29 March 2011 and 30 June 2017. These violations are specifically identified as subject to mandatory minimum penalties in Attachment A to this Complaint, which is attached hereto and incorporated herein by reference.
4. On 7 August 2017, Central Valley Water Board staff issued a draft Record of Violations (ROV) to the Discharger for the period from 29 March 2011 through 30 June 2017. On 28 August 2017, the Discharger agreed with the ROV and alleged violations during a telephone conversation with Board staff.
5. According to the Discharger, in January and February 2017, the Facility experienced heavy storm events. In an effort to avoid a potential levee breach due to large amounts of storm water overflowing the Facility's pond that threatened the pond's structural integrity, the Discharger decided to discharge a mixture of treated and partially treated wastewater and stormwater from their pond to the Lower Mokelumne River. The decision to discharge this partially treated wastewater from the pond to the Lower Mokelumne River was in violation of the WDRs' requirements and prescribed final effluent limitations.

6. Regional Board staff acknowledges that the Facility received significant rainfall during the incident and concur with the Discharger's analysis that the January and February 2017 storm events reached the magnitude of a 100-year or greater storm event. However, according to the Notice of Applicability (NOA), the Discharger is only permitted to discharge from their pond system to the Lower Mokelumne River when a 100-year or greater flood event causes the Mokelumne River to overflow into the pond system at the south side where the berm ends. The Mokelumne River did not overflow into the pond system during the February 2017 storm events. Therefore, the WDRs remained in full effect.
7. Water Code section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

Water Code 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.

Water Code 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.

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.

8. 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.

9. WDRs Order R5-2013-0074 Effluent Limitations IV.A.1, Table 3, includes, in part, the following effluent limitations:

**Table 3. Effluent Limitations**

Parameter	Units	Effluent Limitation		
		Average Monthly	Average Weekly	Maximum Daily
Biochemical Oxygen Demand (5-day @ 20°C)	mg/L	10	15	30
Total Suspended Solids	mg/L	10	15	30

10. According to the Discharger's self-monitoring reports, the Discharger committed twelve (12) serious Group I violations of the above effluent limitations contained in WDRs Order R5-2013-0074. These violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels in WDRs Order R5-2013-0074 by 40 percent or more. The mandatory minimum penalties for these serious violations are **thirty six thousand dollars (\$36,000)**.
11. The total amount of the mandatory penalties assessed for the alleged effluent violations is **thirty six thousand dollars (\$36,000)**. As stated herein, a detailed list of the alleged 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.
12. 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.
13. 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).

**CONSTELLATION BRANDS U.S. OPERATIONS, INC. dba WOODBRIDGE WINERY 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 **thirty six thousand dollars (\$36,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **7/8 December 2017**, unless one of the following occurs by **5 October 2017**:
  - a) 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. In addition, submits payment for the proposed civil liability of **thirty six thousand dollars (\$36,000)** to the State Water Board with a copy of the check to the Central Valley Water Board; or
  - b) Requests to engage in settlement discussions by checking the box next to Option 2 on the attached form, and returning it to the Board along with a letter describing the issues to be discussed. The Central Valley Water Board must agree to the postponement; or

- c) Requests to delay the hearing by checking off the box next to Option 3 on the attached form, and returning it to the Board along with a letter describing the proposed length of delay and the issues to be discussed. The Central Valley Water Board must agree to the postponement.
- 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 Assistant 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  
\_\_\_\_\_  
ANDREW ALTEVOGT, Assistant Executive Officer  
  
3 October 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 Constellation Brands U.S. Operations, Inc., dba Woodbridge Winery (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2017-0552 (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 **thirty six thousand dollars (\$36,000)** by check that references "ACL Complaint R5-2017-0552" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the State Water Resources Control Board, Accounting Office, Attn: ACL Payment at PO Box 1888, Sacramento, California, 95812-1888 by **3 November 2017**. The waiver and a copy of the check must be submitted to the Central Valley Water Board, Attn: Howard Hold at 11020 Sun Center Drive #200, Rancho Cordova, California, 95670 by **3 November 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 Assistant 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)

## ATTACHMENT A TO ACLC R5-2017-0552

### Constellation Brands U.S. Operations, Inc. dba Woodbridge Winery

#### RECORD OF VIOLATIONS (29 March 2011 – 30 June 2017) MANDATORY PENALTIES (Data reported under Monitoring and Reporting Program R5-2013-0074-076)

	<u>Date</u>	<u>Parameter</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
1	8-Feb-17	Biological oxygen demand	mg/L	30	347	Maximum Daily	1	1025823
2	8-Feb-17	Total suspended solids	mg/L	30	134	Maximum Daily	1	1025824
3	8-Feb-17	Biological oxygen demand	mg/L	15	347	Weekly Average	1	1025825
4	8-Feb-17	Total suspended solids	mg/L	15	134	Weekly Average	1	1025826
5	8-Feb-17	Biological oxygen demand	mg/L	10	347	Average Monthly	1	1025827
6	8-Feb-17	Total suspended solids	mg/L	10	134	Average Monthly	1	1025828
7	14-Feb-17	Biological oxygen demand	mg/L	30	259	Maximum Daily	1	1025829
8	14-Feb-17	Total suspended solids	mg/L	30	141	Maximum Daily	1	1025830
9	14-Feb-17	Biological oxygen demand	mg/L	15	259	Weekly Average	1	1025831
10	14-Feb-17	Total suspended solids	mg/L	15	141	Weekly Average	1	1025832
11	14-Feb-17	Biological oxygen demand	mg/L	10	259	Average Monthly	1	1025833
12	14-Feb-17	Total suspended solids	mg/L	10	141	Average Monthly	1	1025834

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violation falls within the first three violations in a 180-day period, thus is not subject to mandatory minimum penalties. Penalties that may be assessed for this violation are discretionary. This violation is not addressed or resolved in this ROV.
4. Non-serious violation subject to mandatory minimum penalties.

<b><u>VIOLATIONS AS OF:</u></b>	<b><u>6/30/17</u></b>
Group I Serious Violations:	12
Group II Serious Violations:	0
Non-Serious Violations Not Subject to MMPs:	0
<u>Non-Serious Violations Subject to MMPs:</u>	<u>0</u>
<b>Total Violations Subject to MMPs:</b>	<b>12</b>

**Mandatory Minimum Penalty = (12 Group I Serious Violations) x \$3,000 = \$36,000**