

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

| | | |
|------------------------------------|---|---|
| In the matter of: |) | Complaint No. SWB-2008-4-0016 |
| |) | Mandatory Minimum Penalty |
| |) | for |
| BP West Coast Products, LLC |) | Violation of California Water Code § 13376 |
| |) | and |
| Signal Hill, CA 90806 |) | Order Nos. 97-018 and R4-2004-0070 (NPDES No. CA0058343) |

This Complaint to assess the mandatory minimum penalty pursuant to California Water Code (CWC) § 13385 (h) is issued to BP West Coast Product, LLC (hereinafter Permittee) based on a finding of violation of waste discharge requirements prescribed in Order Nos. 97-018 and R4-2004-0070 (NPDES No. CA0058343, CI No. 6297).

The Assistant Executive Officer of the Regional Water Quality Control Board, Los Angeles Region (Regional Water Board) finds the following:

1. The Permittee operates the Hathaway Terminal Tank Farm (facility) located at 2350 Obispo Ave, Signal Hill, CA. The Permittee discharges up to 50,000 gallons per day (gpd) of stormwater runoff through Discharge Serial No. 001 (Latitude 33° 47' 33" North, Longitude 118° 07' 38" West) to Los Cerritos Channel. The storm water runoff is susceptible to containing pollutants, including Suspended Solids and pH which can degrade water quality and impact beneficial uses of water, and which are defined as wastes under the Porter-Cologne Water Quality Control Act (CWC § 13000 et seq.). The storm water flows through the drainage pipe system into Los Cerritos Channel, a navigable water of the United States.
2. On March 3, 1997, the Regional Water Board adopted Order No. 97-018 (NPDES No. CA0058343) NPDES Permit and Waste Discharge Requirements for BP West Coast Products, LLC, Hathaway Tank Farm.
3. Order No. 97-018 (Part I., page 2) includes the following effluent limitations for Suspended Solids:

October 30, 2009

| Constituent | Unit of Measure | Discharge Limitations (Daily Maximum) | Discharge Limitations (Monthly Average) |
|------------------|----------------------|---------------------------------------|---|
| Suspended Solids | mg/L | 150 | -- |
| Suspended Solids | lbs/day ¹ | 63 | -- |

4. On May 6, 2004, the Regional Water Board adopted Order No. R4-2004-0070 (NPDES No. CA0058343) NPDES Permit and Waste Discharge Requirements for BP West Coast Products, LLC, Hathaway Tank Farm.
5. Order No. R4-2004-0070 (Part I.B., page 7) includes the following effluent limitations for pH:

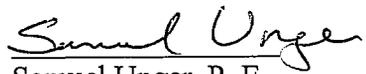
| Constituent | Unit of Measure | Discharge Limitations (Daily Maximum) | Discharge Limitations (Monthly Average) |
|-------------|-----------------|---------------------------------------|---|
| pH | SU | 6.5 – 8.5 | -- |

6. Violations of Order Nos. 97-018 and R4-2004-0070 were noted in the Permittee's self-monitoring report for the 1st quarter of 2000, the 4th quarter of 2003, and the 1st quarter of 2009. The violations are identified in Exhibit "A" attached hereto and incorporated herein by reference.
7. On December 9, 2008, the Executive Director of the State Water Resources Control Board (State Water Board) issued the Permittee Offer to Participate in Expedited Payment Program (EPP) No. SWB-2008-4-0016, which included a Notice of Violation notifying the Permittee of the effluent limitation violation subject to mandatory minimum penalties.
8. Any discharge containing pollutants violating the effluent limitations set in the waste discharge requirements is prohibited by CWC § 13376.
9. CWC § 13385(h) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation. Pursuant to CWC § 13385(h)(2) "a serious violation is defined as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant by 20 percent or more, or for a Group I pollutant by 40 percent or more. Appendix A of Part 123.45 of Title 40 of the Code of Federal Regulations specifies the Group I and II pollutants."
10. The maximum amount of discretionary administrative civil liability assessable pursuant to CWC § 13385 for each day of violation is \$10,000 per day of violation plus \$10 times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

¹ Based on a maximum flow rate of 50,000 gallons per day

YOU ARE HEREBY GIVEN NOTICE THAT:

11. The Assistant Executive Officer proposes that the Permittee be assessed a mandatory minimum penalty in the amount of \$3,000 for the violation which occurred November 13, 2003. Refer to Exhibit "A" for the calculation of the amount of mandatory minimum penalty.
12. The Permittee may waive the right to a hearing and pay the recommended administrative civil liability. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return it to the Regional Board by 5:00 pm on November 20, 2009. If the hearing is waived, a check in the amount of \$3,000 (payable to the State Water Pollution Cleanup and Abatement Account) must be received by the Regional Board by 5:00 pm on November 20, 2009.
13. If the Regional Board does not receive a waiver and full payment of the recommended penalty by November 20, 2009, the Complaint will be heard before the Regional Board or Regional Board Hearing Panel pursuant to California Water Code §§ 13228.14 and 13323. The Notice of Public Hearing contains that date, time, location, and specific procedures of the scheduled hearing of this matter.
14. If a hearing on this matter is held, the Regional Water Board will consider whether to affirm, reject, or modify (i.e. increase the proposed civil liability above the mandatory minimum) the proposed civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.
15. There are no statutes of limitation that apply to administrative proceedings. The statutes of limitation that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)
16. Notwithstanding the issuance of this Complaint, the Regional Board shall retain the authority to assess additional penalties for violations of the requirements of the Permittee's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
17. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code § 21000 et seq., in accordance with California Code of Regulations, title 14, § 15321.
18. Regulations of the US Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.



Samuel Unger, P. E.
Assistant Executive Officer
Los Angeles Regional Water Quality Control Board

October 30, 2009

WAIVER FORM

FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. SWB-2008-4-0016

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent BP West Coast Products, LLC (hereinafter "Permittee") in connection with Administrative Civil Liability Complaint No. SWB-2008-4-0016 (hereinafter the "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 [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

(Check here if the Permittee waives the hearing requirement and will pay the recommended liability.)

- a. I hereby waive any right the Permittee may have to a hearing before the Regional Water Board.
- b. I certify that the Permittee will remit payment for the civil liability imposed in the amount of **\$3,000** by check that references "ACL Complaint No. SWB-2008-4-0016" made payable to the "*Cleanup and Abatement Account*". Payment must be received by the Regional Water Board by November 20, 2009 or this matter will be placed on the Regional Board's agenda for a hearing as initially proposed in the Complaint.
- 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 the 30-day public notice and comment period expires. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Permittee 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 Permittee to further enforcement, including additional civil liability.

(Print Name and Title)

(Signature)

(Date)

