

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

In the matter of:) **Complaint No. SWB-2008-4-0082**
) **Mandatory Minimum Penalty**
) **for**
Southern California Marine) **Violation of California Water Code § 13376**
Institute) **and**
Terminal Island, CA 90731) **Order Nos. R4-2001-0152 and R4-2008-0024**
) **(NPDES No. CA0058556)**

This Complaint to assess the mandatory minimum penalty pursuant to California Water Code (CWC) § 13385 (h) and (i) is issued to Southern California Marine Institute (hereinafter Permittee) based on a finding of violation of waste discharge requirements prescribed in Order Nos. R4-2001-0152 and R4-2008-0024 (NPDES No. CA0058556, CI No. 6362).

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 Southern California Marine Institute facility (facility) located at 820 South Seaside Avenue, Terminal Island, CA. The Permittee discharges up to 150,000 gallons per day (gpd) of filter backwash and seawater circulated through holding tanks and aquaria to the Los Angeles Inner Harbor (Latitude 33° 44' 14", Longitude 118° 15' 10"). The wastewater is susceptible to containing pollutants, and which can degrade water quality and impact beneficial uses of water, which are defined as wastes under the Porter-Cologne Water Quality Control Act (CWC § 13000 et seq.). The Los Angeles Inner Harbor is a navigable water of the United States.
2. On October 25, 2001, the Regional Water Board adopted Order No. R4-2001-0152 (NPDES No. CA0058556) NPDES Permit and Waste Discharge Requirements for Southern California Marine Institute facility.
3. Order No. R4-2001-0152 (Part I.B., page 6) includes the following effluent limitations for Suspended Solids:

Constituent	Unit of Measure	Discharge Limitations (Daily Maximum)	Discharge Limitations (Monthly Average)
Suspended Solids	mg/L	150	50

4. Additionally, Order No. R4-2001-0152 includes the following numerically expressed narrative effluent limitation for Dissolved Oxygen, "a mean annual dissolved oxygen concentration of at least 7 mg/L, with no single determination of less than 5.0 mg/L."
5. On January 7, 2008, the Regional Water Board adopted Order No. R4-2008-0024 (NPDES No. CA0058556) NPDES Permit and Waste Discharger Requirements for Southern California Marine Institute facility.
6. Order No. R4-2008-0024 (Part IV. A., page 13) includes the following effluent limitations for copper and mercury:

Constituent	Unit of Measure	Discharge Limitations (Daily Maximum)	Discharge Limitations (Monthly Average)
Copper	µg/L	9.4	--
	lbs/day ¹	18	
Mercury	µg/L	0.10	0.05
	lbs/day ¹	0.0002	0.0001

7. A Violation of Order No. R4-2001-0152 was noted in the Permittee's self-monitoring report for the 1st quarter of 2006, dated February 28, 2006.
8. 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-2008-4-0082, which included a Notice of Violation notifying the Permittee of this effluent limitation violation that occurred February 28, 2006 that was subject to a mandatory minimum penalty.
9. Subsequent to issuance of the EPP, one (1) additional violation of Order No. R4-2001-0152 and two (2) violations of Order No. R4-2008-0024 were discovered in the Permittee's self-monitoring reports during the 1st and 4th quarters of 2008.
10. Two (2) violations of Order No. R4-2001-0152 and two (2) violations of Order No. R4-2008-0024, for a total of four (4) violations, are identified in Exhibit "A" attached hereto and incorporated by reference.
11. Any discharge containing pollutants violating the effluent limitations set in the waste discharge requirements is prohibited by CWC § 13376.
12. 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

¹ Based on flow of 0.230 MGD

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.”

13. CWC § 13385(i) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation whenever the permittee violates a waste discharge requirement effluent limitation 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 within that time period.
14. 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.

YOU ARE HEREBY GIVEN NOTICE THAT:

15. The Assistant Executive Officer proposes that the Permittee be assessed a mandatory minimum penalty in the amount of \$12,000 for the violation which occurred February 28, 2006. Refer to Exhibit “A” for the calculation of the amount of mandatory minimum penalty.
16. 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 \$12000 (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.
17. 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.
18. 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.
19. 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.)

20. 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.
21. 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.
22. 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-2008-4-0082

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

I am duly authorized to represent Southern California Marine Institute (hereinafter "Permittee") in connection with Administrative Civil Liability Complaint No. SWB-2008-4-0082 (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 **\$12,000** by check that references "ACL Complaint No. SWB-2008-4-0082" 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)

EXHIBIT "A"
Effluent Limit Violations

Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category*	% Exceeded	Serious/Chronic	Water Code Section 13385	Penalty
02/28/06	1st Quarter 2006	Average Monthly	Suspended Solids	92	50	mg/L	1	84	Serious	(h)(1)	\$3,000
01/17/08	1st Quarter 2008	no single sample <5 mg/L		3.72		mg/L	OEV		Chronic	(i)(1)	\$3,000
12/16/08	4th Quarter 2008	Daily Maximum	Dissolved Oxygen Copper	15	9.4	µg/L	2	60	Serious	(h)(1)	\$3,000
12/16/08	4th Quarter 2008	Average Monthly	Mercury	1	0.05	µg/L	2	1,900	Serious	(h)(1)	\$3,000
										Total	\$12,000

* See paragraph 12 for a definition of Pollutant Categories.

See paragraph 13 for a definition of "Chronic."