

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0526

MANDATORY PENALTY
IN THE MATTER OF

FREEMPORT REGIONAL WATER AUTHORITY
WATER PIPELINE INTAKE FACILITIES PROJECT
SACRAMENTO COUNTY

This Complaint is issued to Freeport Regional Water Authority (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements Order R5-2008-0081 (NPDES No. CAG995001).

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

1. On 1 June 2000, the Central Valley Water Board adopted Waste Discharge Requirements Order 5-00-175 to regulate dewatering and other low threat discharges to surface waters. The Discharger was granted coverage under Order 5-00-175 on 24 August 2007 for discharges from its Water Pipeline Intake Facilities Project (Project).
2. On 12 June 2008, the Central Valley Water Board adopted Waste Discharge Requirements Order R5-2008-0081 (Low Threat General Order) to regulate dewatering and other low threat discharges to surface waters. The Low Threat General Order rescinded and replaced Order 5-00-175.
3. As allowed by the Low Threat General Order, the Discharger was automatically granted coverage until 9 December 2008 (180 days following adoption) because the Discharger had been enrolled under Order 5-00-175. The Discharger notified Central Valley Water Board staff that the final discharge from the Project occurred on 7 November 2008. On 23 September 2009, a Notice of Termination was issued to the Discharger terminating its coverage for the Project.
4. This Complaint addresses administrative civil liability for effluent violations that occurred during the period from 12 June 2008 through 7 November 2008. 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.
5. On 26 January 2011, Central Valley Water Board staff issued the Discharger a draft Record of Violations (ROV). On 17 February 2010, in a meeting with CVRWB staff, the Discharger, its contractor, and consultant acknowledge the validity of the violations.

6. CWC sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC 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.

CWC 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 II 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) 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 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.

7. 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.

8. WDRs Order R5-2008-0081, Paragraph V.A.1.a states:

- a. The discharge of pollutants from dewatering and other low threat discharges shall not exceed the following effluent limitations:

Table 3. Effluent Limitations

Parameter	Units	Effluent Limitations		
		Average Monthly	Weekly Average	Maximum Daily
Total Suspended Solids	mg/L	10	15	30

9. According to the Discharger's self-monitoring reports, the Discharger committed two (2) serious Group I violations of the above effluent limitations contained in the Low Threat General Order during the period from 12 June 2008 through 7 November 2008 as identified in Attachment A. These violations are defined as serious because measured concentrations of the Group I constituent exceeded maximum prescribed levels by more than 40 percent. The mandatory minimum penalty for these serious violations is **six thousand dollars (\$6,000)**.
10. According to the Discharger's self-monitoring reports, the Discharger committed one (1) non-serious violation of the above effluent limitations contained in the Low Threat General Order during the period from 12 June 2008 through 7 November 2008 as identified in Attachment A. This violation is not subject to mandatory penalties under CWC section 13385(i)(1) because it was not preceded by three effluent violations within six consecutive months.
11. The total amount of the mandatory penalties assessed for the cited violations is **six thousand dollars (\$6,000)**. As stated herein, a detailed list of the violations is included in Attachment A. This Complaint addresses administrative civil liability for violations that are specifically identified in Attachment A as subject to mandatory minimum penalties.
12. 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 California Code of Regulations, title 14, section 15321(a)(2).

FREEPORT REGIONAL WATER AUTHORITY IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **six thousand dollars (\$6,000)**.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **8/9/1 June 2011**, unless the Discharger does one of the following by **13 April 2011**:
 - 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, along with payment for the proposed civil liability of **six thousand dollars (\$6,000)**; 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 Frederick Moss for

PAMELA C.CREEDON, Executive Officer

14 March 2011

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 Freeport Regional Water Authority (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2011-0526 (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 **six thousand dollars (\$6,000)** by check that references "ACL Complaint R5-2011-0526." made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **13 April 2011**.
- 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.

(Print Name and Title)

(Signature)

(Date)

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0526**

**Freeport Regional Water Authority
Water Pipeline Intake Facilities Project
RECORD OF VIOLATIONS (12 June 2008 – 7 November 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2008-0081)**

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>	<u>CIWQS</u>
1	7-Oct-2008	Suspended Solids	mg/L	30	37	Daily	3	846112
2	11-Oct-2008	Suspended Solids	mg/L	15	37	Weekly	1	846113
3	31 Oct-2008	Suspended Solids	mg/L	10	37	Monthly	1	846114

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 six-month period, thus is not subject to mandatory minimum penalties.
4. Non-serious violation subject to mandatory minimum penalties.

<u>VIOLATIONS AS OF:</u>	<u>11/7/2008</u>
Group I Serious Violations:	2
Group II Serious Violations:	0
Non-Serious Violations Not Subject to MMPs:	1
Non-serious Violations Subject to MMPs:	0
Total Violations Subject to MMPs:	<u>2</u>

Mandatory Minimum Penalty = (2 serious Violations + 0 Non-Serious Violations) x \$3,000 = \$6,000