

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0574

MANDATORY PENALTY
IN THE MATTER OF

ROCKWELL INTERNATIONAL, INC.
GROUNDWATER CLEANUP SYSTEM
TULARE COUNTY

This Complaint is issued to Rockwell International, Inc., (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, and the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order No. R5-2005-0092 (NPDES No. CA0082708).

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

1. The Discharger owns and operates a Groundwater Cleanup System (GWCS) at a former Rockwell Manufacturing Company gas and water meter manufacturing facility in Porterville, Tulare County. Treated groundwater is discharged to Pioneer Ditch Pipeline. About 1/3 mile from its terminus, surplus water from Pioneer Ditch Pipeline flows into an unlined canal for about a mile long until it discharges to Canal No. 4, which conveys water from Porterville to Corcoran. As part of the conveyance, water flows through an eight-mile reach of the North Fork of the Tule River. It is therefore likely that pollutants in the treated groundwater are discharged to the North Fork of the Tule River, a water of the United States.
2. On 3 May 1996, the Regional Water Board adopted WDRs Order No. 96-106 to regulate discharges of treated groundwater from the GWCS. On 24 June 2005, the Regional Water Board adopted WDRs Order No. R5-2005-0092, which prescribed new requirements for the discharge and rescinded WDRs Order No. 96-106.
3. 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.

4. CWC section 13385.1(a)(1) states:

For purposes of subdivision (h) of Section 13385, a 'serious violation' also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.

5. 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.

6. WDRs Order No. R5-2005-0092 Effluent Limitation B.2 includes, in part, the following effluent limitations:

<u>Parameter</u>	<u>Units</u>	<u>Average Monthly</u>	<u>Maximum Daily</u>
1,1-Dichloroethane (1,1-DCA)	µg/L	--	< 0.5
1,1-Dichloroethylene (1,1-DCE)	µg/L	0.057 ¹	< 0.5
Tetrachloroethylene (PCE)	µg/L	--	< 0.5

¹ If approved Minimum Level (ML) is greater than Monthly Average Limit, then compliance is met if a concentration is below the ML

7. Monitoring and Reporting Program No. R5-2005-0092 states, in part, that: "Bi-monthly monitoring results may be submitted with semi-annual monitoring results unless the results show an apparent violation. If results show an apparent violation, results must be submitted monthly to the Regional Board by the **1st day of the second month** following sample collection until the apparent violation is resolved."

8. On 1 August 2008, Regional Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations identifying violations of WDRs Order Nos. 96-106 and R5-2005-0092 that are subject to MMPs. The draft Record of Violations covers the period from 1 January 2000 through 31 December 2007. On 13 August 2008, the Discharger responded and stated several violations should either be dismissed or exempted from MMPs. Staff reviewed the Discharger's comments and, where appropriate, revised the draft Record of Violations. Staff provided the Discharger a technical staff memorandum documenting staff's analysis of the Discharger's response to the 1 August 2008 Notice of

Violation. Attachment A to this Complaint is the final Record of Violations that identifies two serious effluent limitation violations and one serious late reporting violation subject to MMP during the period from 1 January 2000 through 31 December 2007.

9. The MMPs for the two serious effluent limitation violations is **six thousand dollars (\$6,000)**. The MMP for the one serious late reporting violation is **three thousand dollars (\$3,000)**. The total MMP for these violations is **nine thousand dollars (\$9,000)**.
10. 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 Title 14, California Code of Regulations, section 15321(a)(2).

ROCKWELL INTERNATIONAL, INC., IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **nine thousand dollars (\$9,000)**.
2. A hearing on this matter will be held at the Regional Water Board meeting scheduled on **4/5 December 2008**, unless the Discharger does either of the following by **20 October 2008**:
 - a) Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Regional Water Board, along with payment for the proposed civil liability of **nine thousand dollars (\$9,000)**; or
 - b) Agrees to enter into settlement discussions with the Regional Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Regional Water Board.
3. If a hearing on this matter is held, the Regional 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.

LOREN J. HARLOW, Assistant Executive Officer

25 September 2008

Attachment A: Record of Violations

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent Rockwell International, Inc. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0574 (hereinafter the "Complaint");
2. 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;
3. I hereby waive any right the Discharger may have to a hearing before the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) within ninety (90) days of service of the Complaint; and
4. **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
 - a. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **nine thousand dollars (\$9,000)** by **two** checks that both contain a reference to "ACL Complaint No. R5-2008-0574." One check is to be in the amount of **six thousand dollars (\$6,000)** made payable to the "State Water Pollution Cleanup and Abatement Account", and one check is to be in the amount of **three thousand dollars (\$3,000)** and made payable to the "Waste Discharge Permit Fund." Payment must be received by the Regional Water Board by **## October 2008** or this matter will be placed on the Regional Water Board's agenda for adoption as initially proposed in the Complaint.
 - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Regional Water Board receive new information or comments during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Regional Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. 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.

-or-

5. **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time)** I certify that the Discharger will promptly engage the Regional Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is not waiving its right to a hearing on this matter. I understand that this waiver is a request to delay the hearing so the Discharger and Regional Water Board staff can discuss settlement. It does not constitute the Regional Water Board's agreement to delay the hearing. A hearing on the matter may be held before the Regional Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Regional Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

(Print Name and Title)

(Signature)

(Date)

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0574**

ROCKWELL INTERNATIONAL, INC.
GROUNDWATER CLEANUP SYSTEM
RECORD OF VIOLATIONS (1 January 2000 – 31 December 2007) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program Nos. 96-106 and R5-2005-0092)

<u>Violation ID¹</u>	<u>Violation Date</u>	<u>Violation Type²</u>	<u>Violation Description³</u>	<u>MMP Type</u>
777002	4/12/2007	CAT2	1SA; 1,1-DCE; 0.5; ug/l; D; 1.7	Serious ⁴
777114	6/2/2007	LREP	4M SMR due 6/1/07 (because of 1,1-DCE detected on 4/12/07) ⁵ , received 7/31/07 (59 days late)	Serious
777082	6/22/2007	CAT2	1SA; PCE; 0.5; ug/L; D; 0.76	Serious
777025	6/22/2007	CAT2	1SA; 1,1-DCA; 0.5; ug/l; D; 0.63	Dismissed ⁶
777073	6/22/2007	CAT2	1SA; 1,1-DCE; 0.5; ug/L; D; 7.1	Dismissed ⁶

¹ Violation ID in CIWQS

² Table of Abbreviations below defines abbreviations used in this table.

³ Violation Descriptions are coded as follows: Reporting period (e.g., 4M = April); constituent or parameter (e.g., pH, Flow); effluent limitation; units; limitation period; and reported result.

⁴ Serious Violations are subject to MMPs.

⁵ Reporting frequency increases from semi-annually to monthly whenever pollutants appear to exceed effluent limitations.

⁶ The Discharger provided technical information indicating a single operational upset on 22 June 2007 led to simultaneous violations of daily maximum effluent limitations for PCE (Violation ID 777082), 1,1-DCA (Violation ID 888025), and 1,1-DCE (Violation ID 777073). In accordance with CWC section 13385(f)1(1), the Complaint treats these three violations as a single violation subject to MMP, and only enforces Violation ID 777082 as subject to MMP.

<u>Abbreviation</u>	<u>Definition</u>
CAT2	Violation of Group II effluent limitation as defined in Enforcement Policy
CIWQS	California Integrated Water Quality System database
D	Daily
LREP	Late Report
M	Monthly
MMP	Mandatory Minimum Penalty
SA	Semi-Annual
SMR	Self-Monitoring Report

<u>MMP VIOLATION TYPE</u>	<u>VIOLATION PERIOD 1/1/2000 TO 12/31/2007</u>
Serious Group II Effluent Limitation Violations Subject to MMPs:	2
Serious Late Reporting Violations Subject to MMPs:	1
Total Violations Subject to MMPs:	3
Mandatory Minimum Penalty = 3 x \$ 3,000 = \$ 9,000	



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair

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<http://www.waterboards.ca.gov/centralvalley>



Arnold Schwarzenegger
Governor

TO: Jo Anne Kipps
Senior Engineer
Enforcement Unit

FROM: Jeff Hannel
Engineering Geologist
Enforcement Unit

DATE: 19 September 2008

SIGNATURE: _____

SUBJECT: ROCKWELL INTERNATIONAL, INC., RESPONSE TO NOV AND DRAFT RECORD OF VIOLATIONS

Rockwell International, Inc. (Discharger) owns and operates a Groundwater Cleanup System (GWCS) at a former Rockwell Manufacturing Company gas and water meter manufacturing facility near Porterville, Tulare County. The Porterville Unified School District currently owns the property containing the GWCS. Treated groundwater is discharged to Pioneer Ditch Pipeline. About 1/3 mile from its terminus, surplus water conveyed in the Pioneer Ditch Pipeline discharges to an unlined canal that flows for about one mile until it discharges to Canal No. 4, which conveys water from Porterville to Corcoran. As part of the conveyance, water flows through an eight-mile reach of the North Fork of the Tule River. It is therefore likely that pollutants in treated groundwater are discharged to the North Fork of the Tule River, a water of the United States. The discharge is permitted under NPDES Permit No. CA0082708, specifically, Waste Discharge Requirements (WDRs) Order Nos. 96-106 and WDRs Order No. R5-2005-0092.

WDR Order Nos. 96-106 and R5-2005-0092 prescribe, in part, the following effluent limitations:

<u>Constituent</u>	<u>Units</u>	WDRs Order No.: 96-106	R5-2005-0092	
		WDRs Effective Dates: (5/3/96-6/23/05)	Maximum Daily	Average Monthly
		<u>Maximum Monthly</u>	<u>Daily</u>	<u>Monthly</u>
1,1-Dichloroethane (1,1-DCA)	µg/L	< 3.0	< 0.5	--
1,1-Dichloroethene (1,1-DCE)	µg/L	< 0.5	< 0.5	0.057 ¹
Tetrachloroethene (PCE)	µg/L	< 0.5	< 0.5	--

¹ If approved Minimum Level (ML) is greater than Monthly Average Limit, then compliance is met if concentrations are below the ML

On 1 August 2008, Regional Water Board staff issued the Discharger a Notice of Violation and a draft Record of Violations for the period of 1 January 2000 through 31 December 2007 for violations of Waste Discharge Requirements Order Nos. 96-106 and R5-2005-0092. The Discharger responded by letter dated 13 August 2008. The following discusses the comments and any changes made to the draft Record of Violations based on the Discharger's comments.

1,1-DCE and 1,1-DCA Violations on 27 April 2004

The Discharger claims that there was a transcription error on a summary table in the self-monitoring report (SMR) dated 8 November 2004 that covers the period of April 2004 through September 2004 and these violations did not occur. Staff reviewed the lab report and confirmed that discharges of these pollutants in excess of effluent limitations did not occur. Staff dismissed the violations.

Late Reports, Five Violations for same SMR in 2004

These late reporting violations were for the SMR covering the period from October 2003 through March 2004. One copy of the SMR displays a receipt date stamp of 8 November 2008. Staff investigated this matter and determined the Fresno Office mail log database indicates the subject SMR was received on 19 April 2004, before the 20 May 2004 due date. Staff dismissed the late reporting violations.

1,1-DCE Violation on 12 April 2007

Group II pollutant, 1,1-DCE, was discharged at 1.7 µg/L on 12 April 2007. The daily maximum effluent limitation is 0.5 µg/L. The Discharger acknowledges this violation occurred.

Late Report, 1 June 2007

An SMR containing the results of the 1,1-DCE effluent limitation exceedance on 12 April 2007 was due by 1 June 2007. The Discharger submitted the SMR on 31 July 2007 (59 days late). The Discharger acknowledges that the SMR should have been submitted in a timelier manner.

1,1-DCE, 1,1-DCA, and PCE violations on 22 June 2007

The Discharger acknowledges that Group II pollutants, 1,1-DCE, 1,1-DCA, and PCE, were discharged at concentrations of 7.1 µg/L, 0.63 µg/L, and 0.76 µg/L, respectively. These values exceed by greater than 20% the daily maximum effluent limitation of 0.5 µg/L for each constituent. The Discharger claims the defense of a single operational upset for these violations. The Water Quality Enforcement Policy (19 February 2002) provides guidance on how to evaluate and enforce violations resulting from a single operational upset:

A single operational upset which leads to simultaneous violations of one or more pollutant parameters shall be treated as a single violation. EPA defines 'single operational upset' as 'an exceptional incident which causes simultaneous, unintentional, unknowing... temporary noncompliance with more than one CWA effluent discharge pollutant parameter'...The EPA Guidance further defines an 'exceptional' incident as a 'non-routine malfunctioning of an otherwise generally compliant facility.' (page 29)

The Discharger provided sufficient technical information for staff to evaluate its claim that a single operational upset (i.e., scaling in one of the GWCS treatment units) was the likely cause of the effluent limitation exceedances. Staff concurs that the exceedances were due to a single operational upset and, in accordance with the Water Quality Enforcement Policy, only one violation will result in an MMP. Staff dismissed two of the three effluent limitation violations associated with this single operational upset.

Follow-up. On 27 August 2008, I telephoned the Discharger's consultant, David Bean with Geomatrix. He indicated that the Discharger would not challenge the Complaint following staff's revision of the Record of Violations in accordance with its comments, intends to pay the \$9,000 penalty, and prefers staff not issue the Complaint. However, there is not a mechanism in place that allows the Discharger to pay the penalty without issuing the MMP.

MMP Summary

A revised draft *Record of Violations*, which identifies the dismissed violations, is below.

Rockwell International, Inc.**Groundwater Cleanup System, Tulare County**

RECORD OF VIOLATIONS (1 January 2000 – 31 December 2007) MANDATORY PENALTIES

(Data reported under Monitoring and Reporting Program Nos. 96-106 and R5-2005-0092)

<u>Violation ID¹</u>	<u>Violation Date</u>	<u>Violation Type²</u>	<u>Violation Description³</u>	<u>MMP Type⁴</u>	<u>Status</u>
261021	4/27/2004	CAT2	2SA; 1,1-DCE; 3; ug/l; D; 20.5	Serious	Dismissed
261022	4/27/2004	CAT2	2SA; 1,1-DCA; 0.5; ug/L; D; 2.0	Serious	Dismissed
777118	5/21/2004	LREP	1SA SMR, due 5/20/2004, received 11/08/2004 (171 days late), 1st 30-day period	Serious ⁵	Dismissed
777125	5/21/2004	LREP	1SA SMR, due 5/20/2004, received 11/08/2004 (171 days late), 2nd 30-day period	Serious	Dismissed
777127	5/21/2004	LREP	1SA SMR, due 5/20/2004, received 11/08/2004 (171 days late), 3rd 30-day period	Serious	Dismissed
777128	5/21/2004	LREP	1SA SMR, due 5/20/2004, received 11/08/2004 (171 days late), 4th 30-day period	Serious	Dismissed
777130	5/21/2004	LREP	1SA SMR, due 5/20/2004, received 11/08/2004 (171 days late), 5th 30-day period	Serious	Dismissed
777002	4/12/2007	CAT2	1SA; 1,1-DCE; 0.5; ug/l; D; 1.7	Serious	Violation
777114	6/2/2007	LREP	4M SMR due 6/1/07 (because of 1,1-DCE detected on 4/12/07) ⁶ , received 7/31/07 (59 days late)	Serious	Violation
777025	6/22/2007	CAT2	1SA; 1,1-DCA; 0.5; ug/l; D; 0.63	Serious	Dismissed ⁷
777073	6/22/2007	CAT2	1SA; 1,1-DCE; 0.5; ug/L; D; 7.1	Serious	Dismissed ⁷
777082	6/22/2007	CAT2	1SA; PCE; 0.5; ug/L; D; 0.76	Serious	Violation

¹ Violation ID in CIWQS

² Table of Abbreviations below defines abbreviations used in this table.

³ Violation Descriptions are coded as follows: Reporting period (e.g., 4M = April); constituent or parameter (e.g., pH, Flow); effluent limitation; units; limitation period; and reported result.

⁴ Serious Violations are subject to MMPs.

⁵ Pursuant to California Water Code Section 13385.1(a)(1).

⁶ Reporting frequency increases from semi-annually to monthly whenever pollutants appear to exceed effluent limitations.

<u>Abbreviation</u>	<u>Definition</u>
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SMR	Self-Monitoring Report

Final MMP Violation Summary	
<u>MMP VIOLATION TYPE</u>	<u>VIOLATION PERIOD</u> <u>1/1/2000 TO 12/31/2007</u>
Serious Group II Effluent Limitation Violations Subject to MMPs:	2
Serious Late Reporting Violations Subject to MMPs:	1
Total Violations Subject to MMPs:	3
Mandatory Minimum Penalty = 3 x \$3,000 = \$9,000	