

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2011-0001

MANDATORY PENALTY
IN THE MATTER OF

DEPARTMENT OF PARKS AND RECREATION
EMPIRE MINE STATE HISTORIC PARK
NEVADA COUNTY

This Order is issued to the California Department of Parks and Recreation (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability. This Order is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2006-0058 (NPDES No. CA0085171).

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

1. The Discharger owns and operates the Empire Mine State Historic Park. Wastewater is discharged from a constructed mine drain to an unnamed tributary to the South Fork of Wolf Creek, which is tributary to the South Fork of Wolf Creek, which in turn is tributary to Wolf Creek and the Bear River.
2. On 23 June 2006, effective 1 August 2006, the Central Valley Water Board issued WDRs Order R5-2006-0058 and Time Schedule Order (TSO) R5-2006-0059. TSO R5-2006-0059 required full compliance with the effluent limitations in the WDRs by 18 May 2010.
3. This Complaint covers the period of 1 August 2006 through 31 July 2010, however, only the violations specifically identified in Attachment A as subject to a mandatory minimum penalty are addressed by this Order. On 1 October 2010, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations for effluent limitation violations. The Discharger has not submitted any comments regarding the violations.
4. CWC section 13385 subdivisions (h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385 subdivision (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 subdivision (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.

CWC 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.

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 R5-2006-0058 Final Effluent Limitations IV.A.1.a. states, in part:

- a. The discharge of mine drainage from the Magenta Drain portal shall maintain compliance with the following effluent limitations at Discharge Point EFF-001, with compliance measured at Monitoring Location EFF-001:

Parameter	Units	Effluent Limitations			
		Average Monthly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Total Suspended Solids	mg/L	20	30	--	--
Settleable Solids	mL/L-hr	0.1	0.2	--	--
pH	std units	--	--	6.5	8.5
Turbidity	NTU	5	--	--	--
Color	color	15	--	--	--
Arsenic*	µg/L	10	--	--	--
Iron*	µg/L	300	--	--	--
Manganese*	µg/L	50	--	--	--

* Total recoverable

7. WDRs Order R5-2006-0058 Final Effluent Limitations IV.A.1.c. states, in part:
 - c. Dissolved Oxygen: Dissolved oxygen in the discharge shall be no less than:
 - i. 85 percent of saturation as the monthly median of the mean daily dissolved oxygen concentration;
 - ii. 75 percent of saturation as the 95 percentile dissolved oxygen concentration; and
 - iii. 7.0 mg/L at any time.
8. According to the Discharger's self-monitoring reports, the Discharger committed nine (9) serious Group I violations of the above effluent limitations contained in WDRs Order R5-2006-0058. These violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels in WDRs Order R5-2006-0058 by 40 percent or more. The mandatory minimum penalty for these serious violations is **twenty-seven thousand dollars (\$27,000)**.
9. According to the Discharger's self-monitoring reports, the Discharger committed two (2) serious Group II violations of the above effluent limitations contained in WDRs Order R5-2006-0058. These violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2006-0058 by 20 percent or more. 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 twenty (20) non-serious violations of the above effluent limitations contained in Order R5-2006-0058. Seventeen (17) of these non-serious violations are subject to mandatory penalties under CWC section 13385 subdivision (i)(1) because these violations were preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for these non-serious violations is **fifty-one thousand dollars (\$51,000)**.
11. The total amount of the mandatory penalties assessed for the cited effluent violations is **eighty-four thousand dollars (\$84,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Order. This Order addresses administrative civil liability for violations that are specifically identified in Attachment A as subject to a mandatory minimum penalty.
12. On 4 November 2010, the Executive Officer issued ACLC R5-2010-0544, assessing \$84,000 in mandatory minimum penalties against the Discharger. The Discharger did not pay the penalty and waived its right to have a hearing conducted within 90 days after being served with the Complaint.
13. While CWC sections 13385 subdivisions (h) and (i) establish the mandatory minimum penalty that must be assessed by the Board for the violations cited herein, the Board, in its discretion, may increase the amount of the mandatory minimum penalty up to the

statutory maximum established by CWC section 13385 subdivision (c). CWC section 13385 subdivision (c) provides, in part:

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

- (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.
- (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons”

14. The maximum penalty which may be assessed in this case is \$6,530,000.
15. Issuance of this Administrative Civil Liability Order to enforce CWC 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 subdivision (a)(2).

IT IS HEREBY ORDERED, pursuant to CWC sections 13323 and 13385 that:

1. The California Department of Parks and Recreation shall be assessed an administrative civil liability in the amount of **eighty-four thousand dollars (\$84,000)** in mandatory minimum penalties.
2. Payment must be made no later than 30 days from the date on which this order is adopted. Payment shall be in the form of a check made payable to the *State Water Pollution Cleanup and Abatement Account*, and shall have the number of this order written upon it.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., within 30 days after this Order was adopted. If the thirtieth day following the date that this order was adopted falls on a Saturday, Sunday, or state holiday, then the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

I, Pamela C. Creedon, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 3 February 2011.

Original signed by Wendy Wyels for
PAMELA C. CREEDON, Executive Officer

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R5-2011-0001**

**California Department of Parks and Recreation
Empire Mine State Historic Park
RECORD OF VIOLATIONS SUBJECT TO MANDATORY PENALTIES
(Data self-reported under Monitoring and Reporting Programs R5-2006-0058)**

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
1	19-May-10	DO	mg/L	7.0	5.4	Instantaneous	3	875698
2	27-May-10	DO	mg/L	7.0	6.2	Instantaneous	3	875699
3	31-May-10	Color	color units	15	60	Monthly	3	875700
4	31-May-10	Iron	µg/L	300	3,500	Monthly	1	875701
5	31-May-10	Manganese	µg/L	50	2,000	Monthly	1	875702
6	31-May-10	Color	color units	15	58	Monthly	4	875703
7	31-May-10	Turbidity	NTU	5	19	Monthly	4	875704
8	31-May-10	DO	% saturation	85	57	Monthly median	4	875705
9	2-Jun-10	DO	mg/L	7.0	6.08	Instantaneous	4	881597
10	10-Jun-10	DO	mg/L	7.0	6.23	Instantaneous	4	881598
11	17-Jun-10	DO	mg/L	7.0	6.48	Instantaneous	4	881599
12	24-Jun-10	DO	mg/L	7.0	6.79	Instantaneous	4	881600
13	24-Jun-10	DO	% saturation	85	62.1	Monthly median	4	881601
14	30-Jun-10	Arsenic	µg/L	10	350	Monthly	2	881602
15	30-Jun-10	Iron	µg/L	300	27,000	Monthly	1	881603
16	30-Jun-10	Manganese	µg/L	50	3,300	Monthly	1	881604
17	30-Jun-10	Color	color units	15	61	Monthly	4	881953
18	30-Jun-10	Settleable Solids	mL/L	0.1	0.689	Monthly	1	881605
19	30-Jun-10	TSS	mg/L	30	40	Daily	4	881617
20	30-Jun-10	TSS	mg/L	20	40	Monthly	1	881618
21	30-Jun-10	Turbidity	NTU	5	26.4	Monthly	4	881621
22	2-Jul-10	DO	mg/L	7.0	6.9	Instantaneous	4	881622
23	15-Jul-10	pH	SU	6.5	6.4	Instantaneous	4	881624
24	31-Jul-10	Arsenic	µg/L	10	41	Monthly	2	881625
25	31-Jul-10	Iron	µg/L	300	3,700	Monthly	1	881626
26	31-Jul-10	Manganese	µg/L	50	2,500	Monthly	1	881627
27	31-Jul-10	Color	color units	15	41	Monthly	4	881954
28	31-Jul-10	TSS	mg/L	30	40	Daily	4	881628
29	31-Jul-10	TSS	mg/L	20	40	Monthly	1	881629
30	31-Jul-10	Turbidity	NTU	5	16	Monthly	4	881630
31	31-Jul-10	DO	% saturation	85	74	Monthly median	4	881631

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 penalty.
4. Non-serious violation subject to mandatory minimum penalties.

<u>VIOLATIONS AS OF:</u>	<u>7/31/2010</u>
Group I Serious Violations:	9
Group II Serious Violations:	2
Non-Serious Violations Not Subject to MMPs:	3
Non-serious Violations Subject to MMPs:	17
<u>Total Violations Subject to MMPs:</u>	<u>28</u>

Mandatory Minimum Penalty = (11 serious Violation + 17 Non-Serious Violations) x \$3,000 = \$84,000