

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF May 29, 2015
Prepared May 14, 2015

ITEM NUMBER: 22

**SUBJECT: Carpinteria Sanitation District, Administrative Civil
Liability Complaint No. R3-2015-0011**

CONTACT:

KEY INFORMATION

Discharger:	Carpinteria Sanitary District
Facility Name:	Wastewater Treatment Facility
Facility Address:	5351 Sixth Street Carpinteria, CA 93013 Santa Barbara County
Type of Waste:	Municipal wastewater
Treatment:	Effluent is treated to secondary treatment standards
Disposal:	Treated wastewater is discharged to the Pacific Ocean at a depth of approximately 25 feet through a 1,000 foot outfall/diffuser system
Facility Design Flow:	2.5 million gallons per day (MGD) (dry weather monthly average)
Existing Orders:	Waste Discharge Requirements Order No. R3-2011-0003, National Pollutant Discharge Elimination System Permit No. CA0047364 (NPDES Permit); Sanitary Sewer Collection System Order 2006-0003-DWQ, (Sanitary Sewer Collection System Permit)
Requested Action:	Modify/Adopt Complaint No. R3-2015-0011.

SUMMARY

The attached administrative civil liability complaint (ACLC) alleges the Carpinteria Sanitation District (Discharger) committed six (6) violations of their NPDES permit, Order No. R3-2011-0003 (Attachment 1). On December 17, 2011 the Discharger exceeded three effluent limitations for Settleable solids; the daily maximum, the 7-day average and the 30-day average. On October 3, 2012, the Discharger had a self-reported discharge of 281,250 gallons of non-chlorinated (i.e. non-disinfected) effluent to the Pacific Ocean when its disinfection system failed. On January 2, 2013, and again on January 7, 2013, the Discharger exceeded the permitted chlorine total residual instantaneous maximum effluent limitation. Violations of NPDES permit effluent limits are subject to mandatory minimum penalties (MMP's), and along with non-effluent limit violations, are potentially subject to discretionary penalties calculated pursuant to the State Water Resources Control Board's Enforcement Policy. The Prosecution Teams draft Order (Attachment 2) recommends \$96,775 in administrative civil liability from the Discharger, which includes \$15,000 in MMP's and \$81,775 in discretionary liability and staff costs.

Both the Prosecution Team and the Discharger prepared Cases in Chief for the hearing, including briefs (Attachments 3 and 4, respectively). The Prosecution Team also prepared a rebuttal brief (Attachment 5). The Prosecution Team and the Discharger have stipulated (agreed) that the alleged violations did in fact occur, and that the Prosecution Team is correct in their calculation of 297,896 gallons of un-disinfected effluent discharged

to the ocean. The sole issue remaining in dispute is the appropriateness and size of the discretionary penalty proposed by the Prosecution Team. The Discharger contends that it is a good actor with an excellent compliance history, and that the Prosecution Team should not have imposed any discretionary penalty. The Prosecution Team contends that it would set an inappropriate precedent if a violation consisting of a large volume of partially treated effluent discharged into the ocean was resolved solely through payment of an MMP, without discretionary penalty. The Prosecution Team disagrees with the Discharger's evaluation for the reasons listed in their brief and attachments, and thus recommends that the Central Coast Water Board enter an order consistent with the complaint.

Because both the Prosecution Team and the Defense Team have agreed that the alleged violations occurred, and that five (5) of the violations are subject to MMP's, the only disagreement involves the proposed discretionary penalty levied for the October 2012 discharge of partially treated wastewater to the ocean. The remainder of this staff report will focus on the remaining issue in dispute.

DISCUSSION

Background:

The Discharger owns and operates a wastewater treatment plant (WWTP), providing wastewater treatment and disposal services for the Carpinteria Sanitation District. The Discharger is required to operate the WWTP in accordance with Central Coast Water Board's NPDES permit.

On the morning of October 3, 2012 at approximately 4:00 AM, the WWTP's primary hypochlorite feed pump failed. The Discharger's staff discovered the failure during routine rounds at 9:30 AM that same morning, and the hypochlorite feed was restored by 9:40 AM. This failure resulted in a discharge of un-disinfected wastewater via the WWTP's Pacific Ocean outfall over an approximately five and one half hour period, during which the discharge flow varied between 400 and 1,700 gallons per minute. The discharger did not collect post event monitoring data. The Discharger did not have an alarm or backup system for the disinfection system.

Summary of Prosecution Brief

The Prosecution Team states that the Discharger violated NPDES Permit No. CA 0047364, Waste Discharge Requirements Order no. R3-2011-0003 by discharging partially treated effluent into the Pacific Ocean.

The Prosecution Team further contends that the proposed \$81,775 discretionary penalty is fair and was properly arrived at using the State Water Board's Enforcement Policy methodology. The Enforcement Policy methodology uses factors that describe the discharge and the Discharger's conduct. Some of the factors used in the Enforcement Policy methodology are not in dispute, and the Prosecution Team describes their reasoning for using specific values for the disputed factors in their brief (Attachment 3).

The Prosecution Team also argues that it is industry standard practice to have an alarm system for a chlorination system such as the Discharger's system.

The Enforcement Policy requires that the total liability be at least 10% higher than the economic benefit obtained by delaying or avoiding compliance with environmental regulations. The Prosecution Team argues that the Discharger received economic benefit by:

1. not installing the industry standard failure alarm on their chlorination system; and

2. by failing to conduct 7 days of water quality monitoring following the discharge as expected by the permit.

A fundamental issue, the Prosecution Team contends, is that it is inappropriate to merely assess a MMP of \$3,000 for a high volume discharge of partially treated wastewater, especially in a case such as this where the Discharger failed to have an alarm or backup system to minimize the discharge when a key pump failed. They argue that characterizing this violation as a "minimum" penalty discharge is not consistent with the Enforcement Policy.

The recommended administrative civil liability of \$96,775 includes recovery of Prosecution Team oversight costs through the issuance of the complaint and such costs have continued. Any Order entered by the Board can be adjusted to account for continuing costs. These costs are proper under the Enforcement Policy.

Summary of Carpinteria Sanitation District Brief

The Discharger argues that no discretionary penalty should be assessed for the un-disinfected discharge for the following reasons:

1. The penalty would set a precedent for this type of discharge i.e., a short-duration unforeseeable mechanical failure event or other minor permit excursion having no water quality impacts, particularly at a facility with an outstanding compliance history and documented operational excellence.
2. The Prosecution Team's recommended penalty is inconsistent with, and not supported by, the State's Enforcement Policy. The Dischargers brief (Attachment 4) details why they contend the proposed discretionary penalty is contrary to the Enforcement Policy.
3. The Discharger has earned many awards and commendations, and operates a generally well-run facility. They contend that their past exemplary performance warrants a minimum penalty for this violation based upon the principles of fair, consistent, progressive levels of enforcement outlined in the Enforcement Policy.

The Discharger further argues that the Prosecution Teams estimate of \$25,534 for the costs of avoided compliance is highly-inflated, and urges the Regional Water Board to only apply a \$300 cost associated with the installation of the low dose alarm.

The Discharger argues that different values in the penalty calculator are proper, and based on those values the proper minimum liability ranges between \$1,698 and \$3,056. This is due to the Discharger's opinion that the prosecution team selected factors that overestimate the amount of harm or impact the discharge created, and underestimates the cooperation and good compliance record the Discharger has demonstrated.

The Discharger questions the time and calculation of staff costs and asserts that Water Board staff should have or did spend less time.

And finally, the Discharger requests that \$18,000 in MMP's be the total amount of the sanction imposed by the Board in this matter. Alternatively, the Discharger requests that if the Board decides to assess and impose a discretionary penalty for the October 2012 incident, that the appropriate amount is \$1,698, but in no case more than \$3,056, plus reasonable staff costs.

Summary of Prosecution Team's Rebuttal to Discharger's Brief

The Prosecution Team argues that because no water quality data was collected during the October 3, 2012 discharge of un-disinfected effluent, no effluent limit violation can be proven and therefore an MMP cannot be

properly assessed (Attachment 5). A discretionary penalty calculated consistent with the Enforcement Policy methodology is the appropriate liability for the October 3, 2012 discharge.

The Prosecution team contends that both the NPDES permit and the industry standard requires a low dosage chlorine alarm. The Prosecution Teams expert witness will testify to that affect, as well as to how other permittees comply with similar requirements in their permits.

The Prosecution team contends that staff costs are appropriate and have continued. Any Order entered by the Board can be adjusted to account for continuing costs, and these costs are proper under the Enforcement Policy.

The Prosecution team defends its reasoning and counters the Dischargers interpretations of the various penalty calculation factors employed in using the Enforcement Policy methodology for determining the appropriate amount of discretionary liability. The rebuttal brief addresses each factor and argument, point by point. They also point out that the Discharger's reliance on ACLO R5-2010-0505 (City of Chico) as a comparison is misplaced because that matter was concluded before the current Enforcement Policy went into effect.

CONCLUSION

The Prosecution Team and the Defense Team have agreed on several aspects of the violations and the original complaint. Therefore, the disagreement involves focused factors that resulted in the proposed discretionary penalty levied for the October 2012 discharge of partially treated wastewater to the ocean. The draft Order attached is included as a starting point in advance of the forthcoming additional testimony as part of the May 29, 2015 hearing.

ATTACHMENTS

1. ACL Complaint No. R3-2015-0011, which includes transmittal cover letter, and a Notice of Public Hearing
2. Draft Order No. R3-2015-00XX
3. Prosecution Team Case In Chief, which includes a brief, an Evidence List, and a Witness List,
4. Carpinteria Sanitation Districts Case in Chief, which includes a brief, a Witness List, and an Evidence List
5. Prosecution Team Rebuttal to Carpinteria District Case in Chief
6. Comment letter(s)