CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

REVISED COMPLAINT NO. R2-2003-0100

MANDATORY MINIMUM PENALTIES
IN THE MATTER OF
CONTRA COSTA COUNTY SANITARY DISTRICT NO. 5
PORT COSTA WASTEWATER TREATMENT PLANT
CONTRA COSTA COUNTY

Pursuant to California Water Code Section 13385, this Complaint is issued to Contra Costa County Sanitary District No. 5, the Port Costa Wastewater Treatment Plant (hereinafter called the Discharger) to assess mandatory minimum penalties (MMP), based on a finding of the Discharger's violations of the Waste Discharge Requirements contained in Order Nos. 95-127 and R2-2003-0009 (NPDES No. CA0037885).

The Executive Officer finds the following:

1. On June 21, 1995, the Regional Water Quality Control Board, San Francisco Bay Region (Water Board) adopted a National Pollutant Discharge Elimination System (NPDES) Permit in Order No. 95-127 for the Discharger, to regulate discharges of treated wastewater from the Discharger's facility.

2. On February 1, 2003, the Water Board adopted Order No. R2-2003-0009 for the Discharger, which reissued the NPDES Permit and rescinded the requirements in Order No. 95-127.

3. Water Code Section 13385(h)(1) requires the Water Board to assess an MMP of three thousand dollars ($3,000) for each serious violation.

4. Water Code Section 13385(h)(2) defines "serious violation" as any waste discharge of a Group I pollutant that exceeds the effluent limitation contained in the applicable waste discharge requirements by 40 percent or more, or any waste discharge of a Group II pollutant that exceeds the effluent limitation by 20 percent or more.

5. Water Code Section 13385(i)(1) requires the Water Board to assess an MMP of three thousand dollars ($3,000) for each violation, not counting the first three violations, if the discharger does any of the following four or more times in any six consecutive months:

    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.

6. <u>Effluent Limitations</u>: Orders No. 95-127 and R2-2003-0009 include the following applicable effluent limitations:

EFFLUENT LIMITATIONS

Effluent discharge shall not exceed the following limits:

Chlorine Residual: 0.0 mg/l
3-sample median acute toxicity: 90% survival
Daily maximum total coliform limit: 10,000 MPN/100ml
5-day median total coliform limit: 240 MPN/100ml

7. Summary of Effluent Limitation Violations:
Between January 29, 2001 and June 9, 2003, the Discharger had 23 violations of its effluent limitations. These violations are: four chlorine residual violations, one 3-sample median acute toxicity violation, seven daily maximum total coliform violations, and eleven 5-day median total coliform violations. The details of these limit violations are summarized in the attached Table 1, which is incorporated herein by reference, and the following findings.

8. Chlorine Residual (Group II pollutant)
The four chlorine residual violations (listed as Items 19, 20, 22 and 23 in Table 1) are serious violations. Therefore, the total MMP for these violations is $12,000.

9. Acute Toxicity (Group II pollutant)
The acute toxicity violation (listed as Item 21) is not subject to an MMP nor is it used to determine MMP for other effluent limit violations.

10. Total Coliform is neither a Group I nor a Group II Pollutant
The seven daily maximum total coliform violations (listed as Items 1-5, 12 and 14 in Table 1), and eleven 5-day median total coliform violations (listed as Items 6-11, 13 and 15-18) are non-serious violations. However, fifteen of the 22 violations are chronic violations since there have been four or more violations within the preceding 180 days. Therefore, the total MMP for these violations is $45,000.

11. Water Code Exception
Water Code Section 13385(j) provides for some exceptions related to the assessment of an MMP for effluent limit violations. None of the exceptions apply to the violations cited in this Complaint.

12. MMP Assessment
The total MMP amount is $57,000.

13. Compliance Project
In lieu of assessing all or a portion of the MMP, Water Code Section 13385(k) allows the Water Board to require the discharger to spend an equivalent amount towards the completion of a compliance project (CP) proposed by the discharger. This option is available for a publicly owned sewage treatment plant serving a “small community.”

14. Small Community
The Discharger qualifies as a small community because it serves a small population of 232 based on the 2000 census, and the MMP for $57,000 would pose a significant financial hardship for this small treatment facility. Water Code section 79084 defines small community as one with less than 10,000, and with a financial hardship as determined by the State Water Resources Control Board (State Water Board). The population of Port Costa clearly meets the first criterion. The State Water Board defined financial hardship originally

for allocating grants and loans. The State Water Board has defined financial hardship to mean that the median annual household income for the community is less than 80% of the California median annual household income. While the Discharger's community does not technically meet this criterion, the MMP for $57,000 would be a major financial hardship in that it amounts to almost the annual operating budget for this small treatment facility, prior to their assessment increase in 2004. For these reasons, the Discharger is eligible to use the MMP for a CP.

15. The Discharger proposed the implementation of a CP in a letter dated August 9, 2005, (see Attachment A), which is made a part of this Complaint by reference. The Water Board finds that the proposed CP is designed to correct the violations within five years, is in accordance with the State Water Board's Water Quality Enforcement Policy (dated February 19, 2002) and the Discharger has demonstrated that it will have sufficient funding to complete the CP.

16. The amount of the penalty suspended does not exceed the cost to return to and/or maintain future compliance, and the CP proposed by the Discharger complies with the general conditions set forth in the Enforcement Policy (Section X.C.) for a CP.

17. To ensure that the Discharger takes timely action to fund and complete other necessary facility upgrades to the facility, some of which include measures described in the CP, the Water Board is issuing a concurrent Time Schedule Order (TSO).

18. The Water Board has notified the Discharger and the general public of its intent to hold a hearing on this matter.

19. The Water Board, in a public meeting, heard and considered all comments pertaining to this matter.

20. Issuance of this Order is exempt from the provision of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.), in accordance with Section 15321(a)(2), Title 14, California Code of Regulations.

IT IS HEREBY ORDERED, pursuant to Section 13385 of the California Water Code, that the Discharger is assessed $57,000 in MMPs for the violations set forth in Table 1. In lieu of paying the MMPs in the amount of $57,000, the Discharger may implement the proposed CP described in Attachment A in accordance with the following:

1. The Discharger shall comply with the State Board Enforcement Policy relating to implementation of a CP (Section X). The CP shall be implemented in accordance with the time schedule stipulated in Attachment B, and as specified in the corresponding TSO adopted in the October 2005 Water Board meeting.

2. If the Discharger fails to complete any stipulated phase of the CP to the satisfaction of the Executive Officer by the approved date, the corresponding portion of the MMP shall become due and payable by the Discharger within 30 days of being so informed in writing.

3. Previously suspended amounts do not relieve the discharger of the independent obligation to take necessary actions to achieve compliance.

4. Completion of each stipulated phase and the whole CP shall be certified in writing by the Executive Officer. No portion of the MMP amounts from this Complaint shall be suspended without a written certification issued by the Executive Officer.

5. The Discharger shall submit all unspent MMP amounts from this Complaint to the State Cleanup and Abatement Account or other fund or account as authorized by statute.

6. The Water Board will hold a hearing on this Complaint on October 19, 2005, unless the Discharger waives the right to a hearing by signing the last page of this Complaint and checks the appropriate box. By doing so, the Discharger agrees to:

   a. Pay the full penalty of $57,000 within 30 days after the signed waiver becomes effective, or
   b. Complete the proposed CP and spend $57,000 towards the completion of the CP.

7. The signed waiver will become effective on the next day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and reissue it as appropriate.

8. If a hearing is held, the Water Board may impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability; or refer the matter to the Attorney General to have a Superior Court consider imposition of penalty.

Bruce H. Wolfe
Executive Officer

SEP 0 6 2005
Date

Table 1 – Violations
Attachment A – Compliance Project Proposal
Attachment B – Stipulated Time Schedule for Compliance Project

WAIVER

(The signed waiver will become effective on the next day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and reissue it as appropriate.)

☐ Waiver of the right to a hearing and agree to make payment in full.
By checking the box, I agree to waive my right to a hearing before the Board with regard to the violations alleged in revised Complaint No. R2-2003-0100 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the signed waiver becomes effective as indicated above. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed.

☑ Waiver of right to a hearing and agree to make payment and undertake an SEP.
By checking the box, I agree to waive my right to a hearing before the Board with regard to the violations alleged in revised Complaint No. R2-2003-0100, and to complete a compliance project (CP) and spend $57,000 towards the completion of the CP. I understand that the CP proposal shall conform to the requirements specified in Section X of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, and be subject to approval by the Executive Officer. If the CP proposal, or its revised version, is not acceptable to the Executive Officer, I agree to pay the suspended penalty amount for the CP within 30 days of the date of the letter from the Executive Officer denying the approval of the proposed/revised CP. I also understand that I am giving up my right to argue against the allegations made by the Executive Officer in the revised Complaint, and against the imposition of, or the amount of, the civil liability proposed. I further agree to satisfactorily complete the approved CP within a time schedule set by the Executive Officer. I understand failure to adequately complete the approved CP will require immediate payment of the suspended liability to the CAA.

R. Mitch Avalon
Name (print)

Signature

Sept 20 2005
Date

Deputy PW Director
Title/Organization
Contra Costa Co. Public Works

PORT COSTA VIOLATIONS – TABLE 1

Item #	Date of Violation	Effluent Limitation Description	Effluent Limit	Reported Value	Penalty /	Comment	Start of 180 days
					Serious	Chronic	
1	1/29/01	Daily max total coliform, MPN	10,000	16,000			
2	2/5/01	Daily max total coliform, MPN	10,000	16,000			
3	3/7/01	Daily max total coliform, MPN	10,000	16,000			
4	5/25/01	Daily max total coliform, MPN	10,000	16,000		$3,000	11/26/00
5	5/30/01	Daily max total coliform, MPN	10,000	16,000		$3,000	12/1/00
6	6/4/01	5-day median total coliform, MPN	240	500		$3,000	12/6/00
7	6/15/01	5-day median total coliform, MPN	240	500		$3,000	12/17/00
8	6/22/01	5-day median total coliform, MPN	240	500		$3,000	12/24/00
9	9/7/01	5-day median total coliform, MPN	240	300		$3,000	3/11/01
10	9/10/01	5-day median total coliform, MPN	240	1600		$3,000	3/14/01
11	9/21/01	5-day median total coliform, MPN	240	1600		$3,000	3/25/01
12	9/21/01	Daily max total coliform, MPN	10000	16,000		$3,000	3/25/01
13	9/28/01	5-day median total coliform, MPN	240	1600		$3,000	4/1/01
14	9/28/01	Daily max total coliform, MPN	10000	16000		$3,000	4/1/01
15	10/8/01	5-day median total coliform, MPN	240	1600		$3,000	4/11/01
16	10/18/01	5-day median total coliform, MPN	240	1600		$3,000	4/21/01
17	12/5/01	5-day median total coliform, MPN	240	500		$3,000	6/8/01

Item #	Date of Violation	Effluent Limitation Description	Effluent Limit	Reported Value	Penalty /	Comment	Start of 180 days
					Serious	Chronic	
18	12/10/01	5-day median total coliform, MPN	240	500		$3,000	6/13/01
19	12/26/01	Chlorine residual, mg/l	0.0	0.19	$3,000		
20	1/1/02	Chlorine residual, mg/l	0.0	0.2	$3,000		
21	3/18/03	3-sample median acute toxicity	90% survival	85% survival			
22	4/30/03	Chlorine residual, mg/l	0.0	1.0	$3,000		
23	6/9/03	Chlorine residual, mg/l	0.0	2.6	$3,000		

Number of Serious Violations	4	$12,000
Number of Fineable Chronic Violations	15	$45,000
Total Penalty		**$57,000**

Notations

Running chronic violations: First three are not penalized. Fourth and subsequent violations are penalized at $3,000 per violation within a 180 day period.

Serious violations are penalized at $3,000 per violation.

Order Nos. 95-127 and R2-2003-009
WDID 2 071034001
File No. 2119.1034
NPDES PERMIT NO. CA0037885
No previous enforcement

ATTACHMENT B
REVISED COMPLAINT NO. R2-2003-0100

STIPULATED TIME SCHEDULE FOR THE IMPLEMENTATION OF THE COMPLIANCE PROJECT

PHASE NO.	Description Of CP Phase	Completion Date	Estimated Cost	Corresponding Portions of MMP That May Be Suspended
1	**Removal and replacement of sand in 3 of the beds as described in Attachment "A"**	**11/30/07**	**$70,000**	**$17,000**
2	**Repair of filter bed number 4**	**same as above**	**$85,000**	**$21,000**
3	**Remove and replace liner in filter bed number 2**	**same as above**	**$75,000**	**$19,000**