

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

COMPLAINT NO. 01-085

**MANDATORY MINIMUM PENALTY
IN THE MATTER OF
CITY OF SUNNYVALE
SANTA CLARA COUNTY**

This Complaint to assess mandatory minimum penalties pursuant to California Water Code section 13385 is issued to the City of Sunnyvale (hereinafter the discharger) based on a finding of violations of Waste Discharger Requirements Order No. 98-053 (NPDES No. CA0037621).

The Executive Officer finds the following:

1. On October 18, 1995, the Regional Water Quality Control Board, San Francisco Bay Region, (Regional Board) adopted Waste Discharge Requirements Order No. 98-053 for the discharger to regulate discharges of waste from their treatment plant.
2. Water Code Section 13385(h)(1) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for the first serious violation in any six-month period or in lieu of the penalty require the discharger to spend an equal amount for a supplemental environmental project or to develop a pollution prevention plan.
3. Water Code Section 13385(h)(2)(A) defines a serious violation as any waste discharge of a Group I pollutant that exceeds the effluent limitation by 40 percent or more, or any waste discharge of a Group II pollutant that exceeds the effluent limitation by 20 percent or more.
4. Water Code Section 13385(i)(1) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation, not counting the first violation, if the discharger commits two or more serious violations in any six month period.
5. Water Code Section 13385(i)(2) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for any of the following four or more times in any six-month period:
 - a. Exceeds 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. Exceeds a toxicity discharge limitation where the waste discharge requirements do not contain pollutant-specific limitations for toxic pollutants.

6. Order No. 98-053 includes the following effluent limitation:

B. Effluent Limitations

4. **Concentration Criteria for Toxic Pollutants**

The effluent shall not exceed the following concentration limits:

<i>Constituent</i>	<i>1-day Avg. (ug/l)</i>	<i>Monthly Avg. (ug/l)</i>
<i>Tributyl Tin</i>	<i>0.04</i>	<i>0.005</i>
<i>Cyanide</i>	<i>7.7</i>	

7. According to monitoring reports received, during the period between January 1, 2000 and January 1, 2001 there were: three violations of the one day average limit for cyanide on June 14, August 15, and September 18, 2000; one violation of a one day average limit for tributyltin on July 18, 2000; and, one violation of a monthly average limit for tributyltin on July 2000.
8. The first cyanide violation, and the two tributyltin violations, are each serious violations, because they are Group II pollutants and exceed the effluent limitation by more than 20 percent, and each subject to a \$3,000 penalty. The remaining two cyanide violations are chronic. The two chronic violations are preceded by three effluent limit exceedances, therefore are subject to a \$3,000 penalty each. These violations are subject to a mandatory penalty under Sections 13385(h), (i)(1), and (i)(2) of the California Water Code for a total mandatory penalty of \$15,000.

THE CITY OF SUNNYVALE IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that the discharger be assessed a mandatory minimum penalty in the amount of \$15,000.
2. The Regional Board shall hold a hearing on September 19, 2001, unless the discharger agrees to waive the hearing and pay the mandatory minimum penalty of \$15,000 in full.
3. In lieu of the \$3,000 penalty for the first serious violation the Executive Officer may allow the discharger to complete a pollution prevention plan or conduct a supplemental environmental project approved by the Executive Officer. The discharger must make such a request no later than August 31, 2001.

4. The discharger may waive the right to a hearing. If you wish to waive the hearing, please check and sign the attached waiver and return it and a check made payable to the State Water Resources Control Board for the full amount, or the reduced amount as described above, of the mandatory minimum penalty to the Regional Board's office at 1515 Clay Street, Suite 1400, Oakland, CA 94612.

Loretta K. Barsamian

Loretta K. Barsamian
Executive Officer

August 20, 2001
Date

WAIVER

- By checking this box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. 01-085, and to remit payment for the civil liability imposed. 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. I further agree to remit payment for the mandatory minimum penalty imposed within 30 days after this Complaint is signed by the Executive Officer.
- By checking the box I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. 01-085 and to complete a pollution prevention plan or conduct a supplemental environmental project in lieu of the civil liability imposed for the first serious violation, subject to approval by the Executive Officer. If the pollution prevention plan or supplemental environmental project is not acceptable to the Executive Officer, I agree to pay the civil liability within 30 days after this Complaint is signed by the Executive Officer. I understand that I am giving up my right 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. I further agree to complete a pollution prevention plan or conduct a supplemental environmental project approved by the Executive Officer within a time schedule set by the Executive Officer.

Name (print)

Signature

Date

Title/Organization