

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

**COMPLAINT NO. R2-2003-0025
MANDATORY MINIMUM PENALTIES
IN THE MATTER OF
CITY OF SUNNYVALE
SANTA CLARA COUNTY**

Pursuant to California Water Code Section 13385, this Complaint is issued to City of Sunnyvale (hereafter Discharger) to assess mandatory minimum penalties, based on a finding of the Discharger's violations of Waste Discharge Requirements Order No. 98-053 (NPDES No. CA 0037621) for the period between August 1, 2001 and November 30, 2002.

The Executive Officer finds the following:

1. On June 17, 1998, the Regional Water Quality Control Board, San Francisco Bay Region, (Regional Board) adopted Order No. 98-053 for the Discharger, to regulate discharges of waste from the Discharger's facilities.
2. Water Code Section 13385(h)(1) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation.
3. Water Code Section 13385(h)(2) defines a "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.
4. Water Code Section 13385(i) requires the Regional Board to assess a mandatory penalty 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 discharge limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
5. Water Code Section 13385(l) allows the Regional Board, with the concurrence of the discharger, to direct a portion of the penalty amount to be expended on a supplemental environmental project (SEP) in accordance with the enforcement policy of the State Water Resources Control Board. If the penalty amount exceeds \$15,000, the maximum penalty amount that may be expended on a SEP may not exceed \$15,000 plus 50 percent of the penalty amount that exceeds \$15,000.
6. Effluent Limitations
Order No. 98-053 include the following applicable effluent limitations:

EFFLUENT LIMITATIONS

4. *The effluent from each treatment facility shall not exceed the following limits:*

*Tributyl Tin 0.005 µg/l Monthly Average
Cyanide 7.7 µg/l 1-day Average*

7. Summary of Effluent Limit Violations

During the period between August 1, 2001 and November 30, 2002, the Discharger had seven violations of its effluent discharge limits. These are: six cyanide 1-day average limit violations and one tributyl tin monthly average limit violation. The details of these violations are summarized in the attached Table 1, which is incorporated herein by reference.

8. Cyanide is a Group II pollutant

The six cyanide daily maximum effluent limit violations (items 1, 3, 4, 5, 6, and 7 in Table 1) are serious violations, as the exceedances are 20% or greater than the corresponding limit. Each of these six serious violations is subject to a \$3,000 fine, with the total penalty amount for these violations being \$18,000.

11. Tributyl Tin is a Group II pollutant

The one tributyl tin monthly average effluent limit violation (item 2 in Table 1) is a serious violation, as this violation is 20% or greater than effluent limitation. This violation is subject to a \$3,000 fine.

12. Water Code Exception

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

13. MMP Assessment

The seven violations are subject to mandatory minimum penalty, as detailed in Table 1. The total MMP amount is \$21,000.

14. Suspended MMP Amounts

Instead of paying the full penalty amount to the State Water Pollution Cleanup and Abatement Account, the Discharger may spend an amount of up to \$18,000 on a SEP acceptable to the Executive Officer. Any such amount expended to satisfactorily complete an SEP will be permanently suspended.

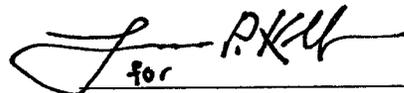
15. SEP Categories

If the Discharger chooses to propose an SEP, the proposed SEP shall be in one of the following categories:

1. Pollution prevention;
2. Pollution reduction;
3. Environmental clean-up or restoration; and
4. Environmental education.

THE CITY OF SUNNYVALE IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer proposes that the Discharger be assessed mandatory minimum penalties in the total amount of \$21,000.
2. The Regional Board will hold a hearing on this Complaint on August 20, 2003, 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 \$21,000 within 30 days after the signed waiver becomes effective, or
 - b) Propose a SEP in an amount up to \$18,000. Pay the balance of the penalty within 30 days after the signed waiver becomes effective. The sum of the SEP amount and the amount of the fine to be paid to the State Water Pollution Cleanup and Abatement Account shall equal the full penalty of \$21,000.
3. If the Discharger chooses to propose a SEP, it must submit a preliminary proposal by 5:00 p.m., August 4, 2003 to the Executive Officer for conceptual approval. Any SEP proposal shall also conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002 and the attached Standard Criteria and Reporting Requirement for Supplemental Environmental Project. If the proposed SEP is not acceptable to the Executive Officer, the Discharger has 30 days from receipt of notice of an unacceptable SEP to either submit a new or revised proposal, or make a payment for the suspended penalty of \$18,000. All payments, including any money not used for the SEP, must be payable to the State Water Pollution Cleanup and Abatement Account. Regular reports on the SEP implementation shall be provided to the Executive Officer according to a schedule to be determined. The completion report for the SEP shall be submitted to the Executive Officer within 60 days of project completion.
4. 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.
5. If a hearing is held, the Regional 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 a penalty.



Loretta K. Barsamian
Executive Officer

7/2/03
Date

Table 1 - Violations

Attachment A - Standard Criteria and Reporting Requirement for Supplemental Environmental 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 Regional Board with regard to the violations alleged in Complaint No. R2-2003-0025 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o State Water Resources 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 the right to a hearing and agree to make payment and undertake a SEP.
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. R2-2003-0025, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$18,000. I also agree to remit payment of the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the signed waiver becomes effective. I understand that the SEP proposal shall conform to the requirements specified in Section IX 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 SEP proposal, or its revised version, is not acceptable to the Executive Officer, I agree to pay the suspended penalty amount for the SEP within 30 days of a letter from the Executive Officer denying the approval of the proposed SEP. I also understand that I am giving up my right to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed. I further agree to satisfactorily complete the approved SEP within a time schedule set by the Executive Officer. I understand that failure to adequately complete the approved SEP will require immediate payment of the suspended liability to the CAA.

Name (print)

Signature

Date

Title/Organization

