



California Regional Water Quality Control Board

San Francisco Bay Region



Terry Tamminen
Secretary for
Environmental
Protection

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
<http://www.swrcb.ca.gov/rwqcb2>

Arnold Schwarzenegger
Governor

Date: **AUG 03 2004**
File No. 2119.1107 (SKM)

Certified Mail No. 70032260000212621895
Return Receipt Requested

Mr. E. J. Shalaby, Manager
West County Agency
2910 Hilltop Drive
Richmond, CA 94806

Subject: Mandatory Minimum Penalty Assessed Under Water Code Section 13385(h) and (i)

Dear Mr. Shalaby:

Enclosed is Complaint No. R2-2004-0050. The Complaint alleges that there were a total of five violations of West County Agency's NPDES permit during the period between May 28 and June 10, 2003. They were all violations of the total coliform, 5-sample moving median, effluent limit. Two of the five violations are subject to mandatory penalties under Section 13385(h) and/or (i) of the California Water Code for a total mandatory minimum penalty (MMP) of \$6,000.

I plan to bring this matter to the Water Board at its September 15, 2004 meeting. You have three options:

1. You can appear before the Board at the meeting to contest the matter. Written comments are due by 9:00 a.m., August 20, 2004. At the meeting, the Board may impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability; or refer the case to the Attorney General to have a Superior court consider imposition of a penalty.
2. You can waive the right to a hearing by signing the last page of the Complaint and checking the first box. There will be no hearing on this matter, provided no significant public comment is received by Board staff prior to close of the comment period. By checking the first box and signing the waiver, you agree to pay the liability within 30 days after the signed waiver becomes effective.

Preserving, enhancing, and restoring the San Francisco Bay Area's waters for over 50 years

3. You can waive the right to a hearing and agree to undertake a Supplemental Environmental Project (SEP) by signing the Waiver and checking the second box. There will be no hearing on this matter, provided no significant public comment is received by Board staff upon closure of the comment period. By checking the second box and signing the waiver, you agree to complete an SEP in lieu of paying a suspended amount of up to \$6,000 for the penalty and remit the balance of the fine to the State Water Pollution Cleanup and Abatement Account within thirty (30) days after the signed waiver becomes effective. Note that the SEP must be acceptable to the Executive Officer of the Board. If the Executive Officer determines that either, the SEP proposal is not acceptable, or the SEP is not adequately completed within the approved time schedule, you will be required to pay the suspended liability within 30 days of notification by the Executive Officer.

For options 2 or 3 above, you are requested to mail and fax a copy of the signed waiver to the attention of Greg Walker at (510) 622-2460, no later than 9:00 a.m., August 20, 2004, and if you intend to complete an SEP, a preliminary proposal must accompany the waiver for approval of concept. If you have any questions regarding this matter, please contact Greg Walker of my staff at (510) 622-2437.

Sincerely,


Bruce H. Wolfe
Executive Officer

Enclosure: Complaint No. R2-2004-0050

cc: Mr. Brian E. Hill
Water Pollution Control Plant Superintendent
West County Wastewater District
2910 Hilltop Drive
Richmond, CA 94806-1974

Mr. Chris McAuliffe
Veolia Water, Plant Manager
City of Richmond Treatment Plant
601 Canal Street
Richmond, CA 94804

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

COMPLAINT NO. R2-2004-0050
MANDATORY MINIMUM PENALTIES
IN THE MATTER OF
WEST COUNTY AGENCY
WEST COUNTY WASTEWATER DISTRICT, AND
CITY OF RICHMOND MUNICIPAL SEWER DISTRICT
RICHMOND, CONTRA COSTA COUNTY

Pursuant to California Water Code Section 13385, this Complaint is issued to West County Agency, West County Wastewater District, and City of Richmond Municipal Sewer District (hereafter Discharger) to assess mandatory minimum penalties (MMPs), based on a finding of the Discharger's violations of Waste Discharge Requirements Order No. 01-144 (NPDES No. CA0038539) for the period between May 28 and June 10, 2003.

The Executive Officer finds the following:

1. On November 28, 2001, the Water Board adopted Order No. 01-144 for the Discharger, to regulate discharges of waste from its facilities. Order No. 01-144 became effective on December 1, 2001.
2. Water Code Section 13385(h)(1) requires the Water Board to assess an MMP 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 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 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. Effluent Limitations
Order No. 01-144 includes the following applicable effluent limitations:

B. EFFLUENT LIMITATIONS (Order No. 01-144)

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

d. Total Coliform Bacteria: The treated wastewater at some point in the treatment process prior to discharge, shall meet the following limits of bacteriological quality:

i. The moving median value for the Most Probable Number (MPN) of total coliform bacteria in five (5) consecutive samples shall not exceed 240 MPN/100 ml.

6. Summary of Effluent Limit Violations

During the period between May 28 and June 10, 2003, the Discharger had five violations of its total coliform bacteria, 5-sample moving median, effluent limit. The details of these limit violations are summarized in the attached Table 1, which is incorporated herein by reference.

7. Total Coliform is neither a Group I nor Group II pollutant

The five total coliform bacteria, 5-sample moving median, effluent limit violations are non-serious violations. Two of these violations are subject to a \$3,000 fine for each violation because they are the fourth or more violation in a six-month period. The total MMP amount for these non-serious violations is \$6,000.

11. Water Code Exception

Water Code Section 13385(j) provides 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

Two of the five violations are subject to an MMP, as detailed in Table 1. The total MMP amount is \$6,000.

13. Suspended MMP Amounts

Water Code Section 13385(l) allows the Water Board, with the concurrence of the discharger, to direct a portion of the MMP 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 MMP amount that may be expended on an SEP may not exceed \$15,000, plus 50% of the MMP amount that exceeds \$15,000. Thus, the entire amount of the \$6,000 MMP in this complaint is eligible for SEP substitution. Any such amount expended to satisfactorily complete an SEP will be permanently suspended.

14. SEP Categories

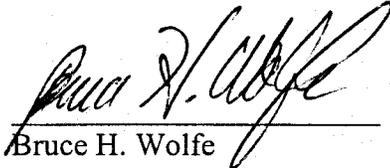
If the Discharger chooses to propose an SEP, the proposed SEP shall be in the following categories:

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

THE WEST COUNTY AGENCY IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer proposes that the Discharger be assessed an MMP in the total amount of \$6,000.
2. The Water Board will hold a hearing on this Complaint on September 15, 2004, 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 \$6,000 within 30 days after the signed waiver becomes effective, or
 - b) Propose an SEP in an amount up to \$6,000. 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 \$6,000.
3. If the Discharger chooses to propose an SEP, it must submit a preliminary proposal by 5:00 p.m., August 20, 2004, 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. 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 \$6,000. 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 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 a penalty.



Bruce H. Wolfe
Executive Officer

July 29, 2004
Date

Attachments: Waiver
Violations – Table 1

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 Water Board with regard to the violations alleged in Complaint No. R2-2004-0050 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 the 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 Water Board with regard to the violations alleged in Complaint No. R2-2004-0050, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$6,000. 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

