



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 **OCT 08 2004**
File No. 2119.1048 (MTC)

CERTIFIED MAIL NO. 70032260000212595431
RETURN RECEIPT REQUESTED

Ultramar Inc.
Golden Eagle Refinery
150 Solano Way, Martinez, CA 94553

c/o
Patrick Covert
Regional Environmental Director
Valero
P.O. Box 696000
San Antonio, TX 78269

Subject: Mandatory Minimum Penalty (MMP) assessed under Water Code Section 13385
(h) and (i)

Dear Mr. Covert,

Enclosed is Complaint No. R2-2004-0068. The Complaint alleges that during the period between April 1, 2001, and January 31, 2002, Ultramar Inc. had several violations of its effluent discharge limits. The violations are subject to a \$24,000 MMP.

I plan to bring this matter to the Water Board at its November 17, 2004, meeting. You have three options:

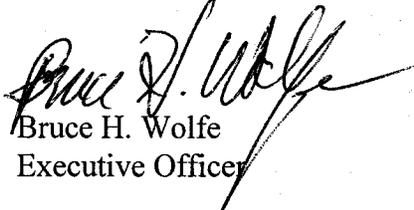
1. You can appear before the Water Board at the meeting to contest the matter. Written comments are due by October 22, 2004. At the meeting the Water Board may: impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability; or, refer the case 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 attached waiver form and checking the first box. There will be no hearing on this matter, provided Water Board staff receives no

significant public comment during 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.

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 Water Board staff receives no significant public comment during 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 \$19,500 of 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 Water 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 Michael Chee at (510) 622-2460 no later than October 22, 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 Michael Chee of my staff at (510) 622-2333 or email address mtc@rb2.swrcb.ca.gov.

Sincerely,



Bruce H. Wolfe
Executive Officer

Enclosure: Complaint No. R2-2004-0068

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

COMPLAINT NO. R2-2004-0068
MANDATORY MINIMUM PENALTIES
IN THE MATTER OF
ULTRAMAR INC.'S FORMER GOLDEN EAGLE REFINERY
MARTINEZ, CONTRA COSTA COUNTY

Pursuant to California Water Code Section 13385, this Complaint is issued to Ultramar Inc. (hereinafter, called the Discharger), the former owner and operator of the Golden Eagle Refinery, to assess mandatory minimum penalties (MMP), based on a finding of Waste Discharge Requirements contained in Order No. 00-011 for the period between April 1, 2001, and January 31, 2002.

The Executive Officer finds the following:

1. On February 16, 2000, the Regional Water Quality Control Board, San Francisco Bay Region, (the Water Board) adopted Order No. 00-011 for Tosco Corporation to regulate discharges of waste from the Avon refinery (now called the Golden Eagle Refinery).
2. On August 31, 2000, Ultramar Diamond Shamrock Corporation, through its subsidiary, Ultramar Inc., acquired the Avon Refinery from Tosco Corporation.
3. On December 31, 2001, Ultramar Diamond Shamrock Corporation and Valero Energy Corporation merged. The Golden Eagle Refinery was operated under Ultramar Inc.
4. On May 17, 2002, Tesoro Refining and Marketing Company acquired Ultramar Inc.
5. Order No. 00-011 was transferred to the respective owner upon acquirement of the refinery.
6. Water Code Section 13385(h)(1) requires the Water Board to assess an MMP of three thousand dollars (\$3,000) for each serious violation.
7. 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 of more, or any waste discharge of a Group II pollutant that exceeds the effluent limitation by 20 percent of more.
8. 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 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.
9. Water Code Section 13385(l) allows the Water Board, with the concurrence of the discharger, to direct a portion of the MMP to be expended on a supplemental environmental project (SEP) in accordance with the enforcement policy of the State Water Resources Control Board. The Discharger may undertake an SEP for up to the full amount of the MMP for liabilities less than or equal to \$15,000. If the MMP exceeds \$15,000, the maximum MMP amount that may be expended on an SEP may not exceed \$15,000 plus 50 percent of the MMP amount that exceeds \$15,000.

10. Effluent Limitations

Order No. 00-011 includes the following applicable effluent limitations:

EFFLUENT LIMITATIONS

Total Coliform Bacteria. The median of 5 consecutive samples collected from the discharge of Waste 001 at locations E-001-D1 and E-001-D2 shall not have total coliform bacteria exceeding 240 MPN/100 mL. Any single sample shall not exceed 10,000 MPN/100 mL.

The discharge of Waste 001 containing constituents in excess of the following limit is prohibited:

<i>Sulfide</i>	<i>27 lb/day daily maximum</i>
<i>Total Suspended Solids (TSS)</i>	<i>2900 lb/day daily maximum</i>
<i>Cyanide</i>	<i>25 µg/l daily maximum</i>
<i>Nickel</i>	<i>53 µg/l interim daily maximum</i>

11. Summary of Effluent Limit Violations

During the period between April 1, 2001, and January 31, 2002, the Discharger had thirteen violations of its effluent discharge limits. These violations are: seven total coliform 5-day moving median limit violations, two total coliform daily limit violations, one sulfide daily maximum limit violation, one TSS daily maximum limit violation, one cyanide daily maximum limit violation, and one nickel daily maximum limit violation. The details of these limit violations are summarized in the attached Table 1, which is incorporated herein by reference, and described in the ensuing findings.

12. Total coliform 5-day moving median

Three violations (items 1 through 3 in Table 1) are non-serious violations and count as the three chronic violations in the 180-day period counting back from April 6, 2001, and are exempt from an MMP. The four remaining violations (items 4, and 11-13 in Table 1) are chronic violations and subject to an MMP since there have been four or more violations in a six-month period. Therefore, the total MMP for these violations is \$12,000.

13. Total coliform daily maximum

The first total coliform daily violation (item 7 in Table 1) is a non-serious violation and counts as the third chronic violation in the 180-day period counting back from November 12, 2001, and is not subject to an MMP. The second total coliform daily violation (item 10 in Table 1) is a chronic violation and subject to an MMP since there have been four or more violations in a six-month period. Therefore, there is a \$3,000 MMP assessed for these violations.

14. Sulfide daily maximum

The sulfide violation (item 5 in Table 1) is a chronic violation. This violation is subject to a \$3,000 MMP since there have been four or more violations in a six-month period.

15. TSS daily maximum

The TSS violation (item 6 in Table 1) is a non-serious violation and counts as the second chronic violation in the 180-day period counting back from November 5, 2001, and is not subject to an MMP. Therefore, there is no MMP assessed for this violation.

16. Cyanide daily maximum

The cyanide violation (item 8 in Table 1) is a chronic violation. This violation is subject to a \$3,000 MMP since there have been four or more violations in a six-month period.

17. Nickel daily maximum

The nickel violation (item 9 in Table 1) is a serious violation. Therefore, this violation is subject to a \$3,000 MMP.

18. 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.

19. MMP Assessment

Eight of the thirteen items listed in Table 1 are subject to an MMP. The total MMP amount is \$24,000.

20. Partial 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 up to \$19,500 on an SEP acceptable to the Executive Officer. Any such amount expended to satisfactorily complete an SEP will be permanently suspended.

21. SEP Categories

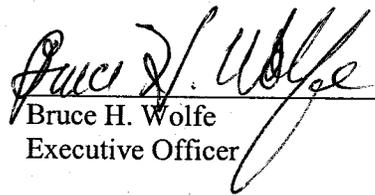
If the Discharger chooses to propose an SEP, the proposed SEP shall be in the following categories:

- a. Pollution prevention;
- b. Pollution reduction;
- c. Environmental clean-up or restoration; and
- d. Environmental education.

THE ULTRAMAR INC. IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer proposes that the Discharger be assessed MMP in the total amount of \$24,000.
2. The Water Board will hold a hearing on this Complaint on November 17, 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 MMP of \$24,000 within 30 days after the signed waiver becomes effective, or

- b. Propose an SEP in an amount up to \$19,500. 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 \$24,000.
3. If the Discharger chooses to propose an SEP, it must submit a preliminary proposal by October 22, 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, and the attached Standard Criteria and Reporting Requirement for Supplemental Environmental Projects. 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 \$19,500. All payments, including 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 penalty.


Bruce H. Wolfe
Executive Officer

OCT 08 2004

Date

Table 1 – Violations Summary
Attachment A- Standard Criteria and Reporting Requirement for Supplemental Environmental Projects

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 Complaint No. R2-2004-0068 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 Complaint No. R2-2004-0068, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$19,500. 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 the date of the letter from the Executive Officer denying the approval of the proposed/revised 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 failure to adequately complete the approved SEP will require immediate payment of the suspended liability to the CAA.

Name (print)

Signature

Date

Title/Organization

Table 1: Violations – Ultramar Inc. / Golden Eagle Refinery (April 2001 – January 2002)

Item No.	DATE	POLLUTANT	EFFLUENT LIMIT	DAILY VALUE	Penalty / Comment	start of 180 days
1	4/4/2001	Total coliform (E-001-D2), 5-day moving median, MPN/100mL	240	700	C1	
2	4/5/2001	Total coliform (E-001-D2), 5-day moving median, MPN/100mL	240	1100	C2	
3	4/6/2001	Total coliform (E-001-D2), 5-day moving median, MPN/100mL	240	1100	C3	
4	4/16/2001	Total coliform (E-001-D2), 5-day moving median, MPN/100mL	240	1100	\$3,000	
5	10/2/2001	Sulfides, daily maximum, lb/day	27	31.8	\$3,000	4/5/2001
6	11/5/2001	TSS, daily maximum, lb/day	2900	3278.6	C2	
7	11/12/2001	Total coliform, daily max, MPN/100mL	10000	16000	C3	5/8/2001
8	12/27/2001	Cyanide, daily maximum, µg/l	25	28	\$3,000	
9	1/16/2002	Nickel, daily maximum, µg/l	53	170	\$3,000	
10	1/17/2002	Total coliform, daily max, MPN/100mL	10000	16000	\$3,000	
11	1/17/2002	Total coliform (E-001-D1), 5-day moving median, MPN/100mL	240	1300	\$3,000	
12	1/18/2002	Total coliform (E-001-D1), 5-day moving median, MPN/100mL	240	1300	\$3,000	
13	1/21/2002	Total coliform (E-001-D1), 5-day moving median, MPN/100mL	240	700	\$3,000	
Number of Fineable Chronic Violations			7		\$21,000	
Number of Serious Violations			1		\$3,000	
				Total Penalty	\$24,000	
Notations						
C(X) - Running chronic violation. First three are not penalized, fourth and subsequent violations are penalized at \$3,000 per violation.						
S - serious violation, penalized at \$3,000 per violation.						
ORDER NO. 00-011 WDID 2071048001 File No. 2119.1048 NPDES PERMIT NO. CA 0004961 Previous Enforcement: Complaint No. 00-070						