

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

**COMPLAINT NO. R2-2005-0052
MANDATORY MINIMUM PENALTIES
IN THE MATTER OF
CONOCOPHILLIPS, SAN FRANCISCO REFINERY
RODEO, CONTRA COSTA COUNTY**

Pursuant to California Water Code Section 13385, this Complaint is issued to ConocoPhillips (hereafter Discharger) to assess mandatory minimum penalties, based on a finding of the Discharger's violations of Waste Discharge Requirements Order No. 00-015 (NPDES No. CA0005053) for the period between July 1, 2003 and August 31, 2005.

The Executive Officer finds the following:

1. On March 15, 2000, the Regional Water Quality Control Board, San Francisco Bay Region, (Water Board) adopted Order No. 00-015 to regulate discharges of waste from the Discharger's facility.
2. Water Code Section 13385(h)(1) requires the Water Board to assess a mandatory minimum penalty (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 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 Water 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. The discharger may undertake an SEP up to the full amount of the penalty for liabilities less than or equal to \$15,000. 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. 00-015 includes the following applicable effluent limitations:

EFFLUENT LIMITATIONS

3. The discharge of Waste 002 shall not have residual chlorine greater than 0.0 mg/l.
4. The discharge of Waste 002 shall meet the following toxicity limitations.
 - a. Acute Toxicity
 The survival of test fishes in parallel 96-hour flow-through bioassays of Waste 002 as discharged shall be an eleven-sample¹ median value of not less than 90-percent survival, and an eleven-sample 90-percentile² value of not less than 70-percent survival. Test fishes shall be specified by in the Self-Monitoring Program. Parallel tests with two species of fish are considered two separate tests.
5. The discharge of Waste 002 containing constituents in excess of the following limitations is prohibited (plus stormwater runoff allocation).

	<u>Units</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>
TSS	lb/day	664	1,041
	kg/day	302	473

8. The discharge of Waste 002 containing constituents in excess of the following interim limitations is prohibited.

<u>Constituent</u>	<u>Unit</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>
Copper	µg/l	--	37

STORMWATER LIMITATIONS

1. The discharge of Waste 004 containing constituents in excess of the following limits is prohibited:

<u>Constituent</u>	<u>Units</u>	<u>Limitation</u>
TOC	mg/l	daily maximum of 110

7. Summary of Effluent Limit Violations

During the period between July 1, 2003, and August 31, 2005, the Discharger had 41 violations of its discharge limits. These violations include: 28 copper daily maximum limit violations, three acute toxicity violations (two 90th percentile, and one median), seven TSS violations (six daily maximum, and one monthly average), one chlorine residual instantaneous maximum limit violation, and two total organic carbon daily maximum limit violations.

8. Copper is a Group II Pollutant

Seven of the copper violations (items 8-9, and 16-20 in Table 1) are serious violations since these violations are at least 20% greater than the effluent limitation. For these violations, the Discharger is subject to a penalty of \$21,000. The remaining 21 copper violations (items 21-23 in Table 1) are chronic violations. For these violations, the Discharger is subject to a penalty of

¹ A bioassay test showing survival of less than 90 percent represents a violation of this effluent limitation, if five or more of the past ten or less bioassay tests show less than 90 percent survival.

² A bioassay test showing survival of less than 70 percent represents a violation of this effluent limit, if one or more of the past ten or less tests shows less than 70 percent survival.

\$63,000 since there are at least four violations in the previous six months (see Table 1). The copper limit violations are, in total, subject to an \$84,000 penalty.

9. TSS is a Group I pollutant

Four of the TSS violations (three daily maximum, and one monthly average) are serious violations since these violations (items 5, 10, 12 and 14 in Table 1) are at least 40% greater than the corresponding effluent limitations. For these violations, the Discharger is subject to a penalty of \$12,000. The remaining three TSS violations (daily maximum) are chronic violations (items 4, 13, and 15 in Table 1). In each of these cases, there are four or more violations in the previous six-month period, and therefore, each chronic TSS violation is subject to a \$3,000 penalty. As such, TSS limit violations are, in total, subject to a \$21,000 penalty.

10. Chlorine residual is a Group II pollutant

The one chlorine residual violation (item 11 in Table 1) is a serious violation since this violation is at least 20% greater than the effluent limitation. The chlorine residual violation is subject to a \$3,000 penalty.

12. Total Organic Carbon is a Group I pollutant

One TOC violation (item 6 in Table 1) is a serious violation since this violation is at least 40% greater than the limitation. This violation is subject to a \$3,000 penalty. The remaining TOC violation (item 7 in Table 1) is a chronic violation. For this violation, the Discharger is not subject to a penalty since it represents the second violation in the previous six months (there must be at least four violations in the previous six-month period). As such, TOC limit violations are, in total, subject to a \$3,000 penalty.

13. Acute toxicity is neither a Group I nor Group II pollutant

The two acute toxicity 90th percentile limit violations and one acute toxicity median violation (items 1-3 in Table 1) are chronic violations. However, since waste discharge requirements contain pollutant-specific effluent limitations for toxic pollutants, these violations are not subject to penalties under Water Code Section 13385.

14. Water Code Exception

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

15. Assessment of MMPs

Thirty-seven of the forty-one violations are subject to MMP, as detailed in Table 1. The total MMP amount is \$111,000.

16. Suspended MMP Amount

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 \$63,000 on a SEP acceptable to the Executive Officer. Any such amount expended to satisfactorily complete an SEP will be permanently suspended.

17. 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; and
4. Environmental education.

CONOCOPHILLIPS IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer proposes that the Discharger be assessed MMPs in the total amount of \$111,000.
2. The Water Board will hold a hearing on this Complaint on **January 11, 2006**, unless the Discharger waives the right to a hearing by signing the included waiver and checks the appropriate box. By doing so, the Discharger agrees to:
 - a) Pay the full penalty of \$111,000 within 30 days after the signed waiver becomes effective, or
 - b) Propose a SEP in an amount up to \$63,000. 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 \$111,000.
3. If the Discharger chooses to propose a SEP, it must submit a preliminary proposal by 5:00 p.m., **December 15, 2005**, 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 \$63,000. 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 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

Date

Attachment: Table 1 - Violations

WAIVER

(The signed waiver will become effective on the 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. R2-2005-0052 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 Water Board with regard to the violations alleged in Complaint No. R2-2005-0052, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$63,000. 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

VIOLATIONS-TABLE 1

Item	Date of Violation	Effluent Limitation Described	Effluent Limit	Reported Value		Comments	Start of
		E-002 except where noted			Chronic	Serious	180 days
1	7/7/03	Acute Toxicity, 11-sample 90 th Percentile	70% survival	60% survival	C4		1/8/03 ¹
2	7/21/03	Acute Toxicity, 11-sample median	90% survival	80% survival	C4		1/22/03
3	11/10/03	Acute Toxicity, 11-sample 90 th Percentile	70% survival	40% survival	C4		5/14/03
4	12/30/03	TSS Loading – Daily Maximum (lbs/day)	2419	2442	\$3,000		7/3/03
5	2/18/04	TSS Loading – Daily Maximum (lbs/day)	1638	3034	C3 (also S)	\$3,000	8/22/03
6	9/18/04	E-004, TOC (mg/L)	110	332	C1	\$3,000	3/22/04
7	10/17/04	E-004, TOC (mg/L)	110	113	C2		4/20/04
8	12/2/04	Copper - Daily Maximum (mg/L)	37	45	C3 (also S)	\$3,000	6/5/04
9	12/3/04	Copper – Daily Maximum (mg/L)	37	46	C4 (also S)	\$3,000	6/6/04
10	12/28/04	TSS Loading – Daily Maximum (lbs/day)	2407	12249	C4 (also S)	\$3,000	7/1/04
11	12/28/04	Chlorine Residual (mg/L)	0.0	0.22	C4 (also S)	\$3,000	7/1/04
12	12/30/04	TSS Loading (lbs/day)	2668	6909	C4 (also S)	\$3,000	7/3/04
13	12/31/04	TSS Loading (lbs/day)	1955	2038	\$3,000		7/4/04
14	12/31/04	TSS Loading – monthly average (lbs/day)	664	2453	C4 (also S)	\$3,000	7/4/04
15	1/1/05	TSS Loading – Daily Maximum (lbs/day)	1837	2534	\$3,000		7/5/04
16	1/4/05	Copper – Daily Maximum (mg/L)	37	70	C4 (also S)	\$3,000	7/8/04
17	1/5/05	Copper – Daily Maximum (mg/L)	37	60	C4 (also S)	\$3,000	7/9/04
18	1/6/05	Copper – Daily Maximum (mg/L)	37	67	C4 (also S)	\$3,000	7/10/04
19	1/7/05	Copper – Daily Maximum (mg/L)	37	62	C4 (also S)	\$3,000	7/11/04
20	1/8/05	Copper – Daily Maximum (mg/L)	37	60	C4 (also S)	\$3,000	7/12/04
21	1/9-28/05	Copper – Daily Maximum (mg/L)	37	> 37 ²	\$57,000 ²		7/13-8/1/04
22	1/29/05	Copper – Daily Maximum (mg/L)	37	41	\$3,000		8/2/04
23	1/30/05	Copper – Daily Maximum (mg/L)	37	42	\$3,000		8/3/04

¹ As indicated in Complaint Nos. R2-2002-0044 and R2-2003-0103 the Discharger had three violations from March 3, 2003 through July 1, 2003 – one pH instantaneous maximum limit violation on March 30, 2003, and two chlorine residual instantaneous maximum limits on March 3, 2003, and June 29, 2003. Therefore, the acute toxicity violation on 7/7/03 is the fourth chronic violation in the last six months.

² From 1/9 to 1/28/05, the Discharger collected copper samples, but did not analyze them since it was in the process of implementing corrective measures, in order to bring the facility back into compliance. Therefore, it is appropriate to count these days as violations.