CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

COMPLAINT NO. R2-2003-0069

MANDATORY MINIMUM PENALTIES
IN THE MATTER OF
EAST BAY MUNICIPAL UTILITY DISTRICT
LAFAYETTE WATER TREATMENT PLANT
CITY OF LAFAYETTE
CONTRA COSTA COUNTY

Pursuant to California Water Code Section 13385, this Complaint is issued to the Lafayette Water Treatment Plant of the East Bay Municipal Utility District (the Discharger) to assess mandatory minimum penalties, based on a finding of the Discharger's violations of the Waste Discharge Requirements contained in Order No. 97-020 (NPDES No. CA0038245).

The Executive Officer finds the following:

1. On February 19, 1997, the Regional Water Quality Control Board, San Francisco Bay Region (the Regional Board) adopted Order No. 97-020 for the Discharger, to regulate discharges of waste from this 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 each serious violation.

3. Water Code Section 13385(h)(2) defines a "serious violation" as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant by 20% or more.

4. Effluent Limitations: Order No. 97-020 includes the following applicable effluent limitation:

   Effluent discharged shall not exceed the following limits:

   Total chlorine residual instantaneous maximum of 0.0 mg/l.

5. Summary of Effluent Limitation Violations:
   On April 11, 2001 and September 11, 2002, the Discharger had two violations of its total chlorine residual instantaneous maximum effluent limitation. The details of these limit violations are summarized in the attached Table 1.

6. Total Chlorine Residual is a Group II pollutant
   The two total chlorine residual instantaneous maximum violations are serious violations, as chlorine is a Group II pollutant and any detection exceeds the zero effluent limitation by more than 20%. Each serious violations is subject to a mandatory minimum $3000 penalty under Section 13385(h)(1), for a total penalty of $6,000 for the two chlorine residual effluent limit violations.

7. Water Code Exception
Water Code Section 13385(j) provides for 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.

8. Suspended MMP Amounts
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% of the penalty amount that exceeds $15,000. Thus, $6,000 of the $6,000 penalty in this complaint is eligible for SEP substitution. Any such amount expended to satisfactorily complete an SEP will be permanently suspended.

9. 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.

EAST BAY MUNICIPAL UTILITY DISTRICT, LAFAYETTE WATER TREATMENT PLANT, IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer proposes that the Discharger be assessed mandatory minimum penalties in the total amount of $6,000.

2. The Regional Board will hold a hearing on this Complaint on October 15, 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 $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 a SEP, it must submit a preliminary proposal by 5:00 P.M., September 24, 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 Requirements 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 to 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 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

Loretta K. Barsamian
Executive Officer

August 27, 2003
Date

Table 1 – Violations
Attachment A – Standard Criteria and Reporting Requirements for Supplemental Environmental Projects

EBMUD MMP R2-2003-0069

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 this box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. R2-2003-0069 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o the 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 complete a SEP.
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. R2-2003-0069 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 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 Requirements for Supplemental Environmental Projects, and be subject to the 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 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 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.

Dennis M. Diemer
Name (print)

Dennis M. Diemer
Signature

9/18/03
Date

General Manager, EBMUD
Title/Organization

VIOLATIONS – TABLE 1

Item #	Date of Violation	Effluent Limitation Description	Effluent Limit	Reported Value	Type of Violation	Penalty Amount
					Serious	
1	4/11/01	Total chlorine residual instantaneous maximum	0.0 mg/l	> 0.0 mg/l	Yes	$3,000
2	9/11/02	Total chlorine residual instantaneous maximum	0.0 mg/l	0.25 mg/l	Yes	$3,000

Total Penalty **$6,000**