

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

COMPLAINT NO R2-2004-0070
MANDATORY MINIMUM PENALTIES
IN THE MATTER OF
CITY OF PALO ALTO
PALO ALTO REGIONAL WATER QUALITY CONTROL PLANT
SANTA CLARA COUNTY

Pursuant to California Water Code Section 13385, this Complaint is issued to the City of Palo Alto (hereinafter called the Discharger) to assess mandatory minimum penalties (MMP), based on a finding of the Discharger's violations of Waste Discharge Requirements contained in Order No. 98-054 (NPDES No. CA0037834) for the period between January 1, 2000, and August 31, 2000.

The Executive Officer finds the following:

1. On June 17, 1998, the Regional Water Quality Control Board, San Francisco Bay Region, (the Water Board) adopted Order No. 98-054 for the Discharger, to regulate discharges of waste from the Discharger's facility.
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 "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.
4. 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.

5. Effluent Limitations

Order No. 98-054 includes the following applicable effluent limitations:

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

Chlorine residual 0.0 mg/l instantaneous maximum

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

- a) *The moving median value for the Most Probable Number (MPN) of total coliform bacteria in any five(5) consecutive samples shall not exceed 23 MPN/100 mL; and*
- b) *Any single sample shall not exceed 240 MPN/100 mL*

6. Summary of Effluent Limit Violations

During the period between January 1, 2000, and August 31, 2000, the Discharger had five violations of its effluent discharge limits in which an MMP has not been assessed. These violations are one chlorine residual violation and four total coliform 5-sample moving median violations. The details of these limit violations are summarized in the attached Table 1, which is incorporated herein by reference, and described in the following findings.

7. The effluent violations noted in Finding 6 occurred over three years ago. A previous complaint (Complaint No. 01-056) was issued to the Discharger for effluent violations during the same time period as the violations noted in this complaint. However, only until recently, Water Board staff determined that some violations were inadvertently omitted from Complaint No. 01-056. This complaint will assess an MMP for the inadvertently omitted violations.

8. Chlorine residual

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

9. Total coliform 5-sample moving median

The total coliform violations listed as items 2-4 in Table 1 have already been assessed an MMP through Complaint No. 01-056. The remaining violations (items 5-8 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, these violations are subject to a \$12,000 MMP.

10. 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.

11. MMP Assessment

The total MMP amount is \$15,000.

12. 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 \$15,000 on a supplemental environmental project (SEP) acceptable to the Executive Officer. Any such amount expended to satisfactorily complete an SEP will be permanently suspended.

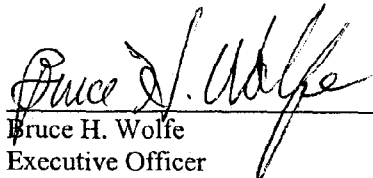
13. SEP Categories

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 CITY OF PALO ALTO IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer proposes that the Discharger be assessed an MMP in the total amount of \$15,000.
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 penalty of \$15,000 within 30 days after the signed waiver becomes effective, or
 - b. Propose an SEP in an amount up to \$15,000. 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 \$15,000.
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 \$15,000. 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

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. R2-2004-0070, 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. R2-2004-0070, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$15,000. 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 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-City of Palo Alto (January 2000 and August 2000)

Item No.	DATE	POLLUTANT	EFFLUENT LIMIT	DAILY VALUE	Penalty / Comment	
					Chronic	Serious
1	1/29/2000	Chlorine residual, mg/l	0.0	0.35		\$3,000
2	8/1/2000	Total coliform, 5 sample moving median, MPN/100mL	23	29	C1	
3	8/2/2000	Total coliform, 5 sample moving median, MPN/100mL	23	29	C2	
4	8/3/2000	Total coliform, 5 sample moving median, MPN/100mL	23	50	C3	
5	8/4/2000	Total coliform, 5 sample moving median, MPN/100mL	23	29		\$3,000
6	8/5/2000	Total coliform, 5 sample moving median, MPN/100mL	23	27		\$3,000
7	8/24/2000	Total coliform, 5 sample moving median, MPN/100mL	23	50		\$3,000
8	8/26/2000	Total coliform, 5 sample moving median, MPN/100mL	23	50		\$3,000
Number of Fineable Chronic Violations			4			\$12,000
Number of Serious Violations			1			\$3,000
				Total Penalty		\$15,000
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.						
MMP assessed for items #2-4 in Complaint No. 01-056						
ORDER NO. 98-054 WDID 2 438011001 File No. 2189.8011 NPDES PERMIT NO. CA 0037834 Previous Enforcement: Complaint Nos. 00-069, 01-056, R2-2002-0021, R2-2003-0105						

City of Palo Alto
MMP R2-2004-0070

ATTACHMENT A

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION
JANUARY 2004

STANDARD CRITERIA AND REPORTING REQUIREMENT
FOR
SUPPLEMENTAL ENVIRONMENTAL PROJECT

A. BASIS AND PURPOSE

The San Francisco Bay Regional Water Quality Control Board (Water Board) accepts and encourages Supplemental Environmental Projects (SEP) in lieu of a portion of the ACL imposed on Dischargers in the Bay Area.

The Water Board does not select projects for SEP; rather, the Discharger identifies a project it would like to fund and then obtains approval from the Water Board's Executive Officer. The Water Board facilitates the process by maintaining a list of possible projects, which is made available to Dischargers interested in pursuing the SEP option. This list is available on the Water Board web site:

<http://www.swrcb.ca.gov/rwqcb2/>

Dischargers are not required to select a project from this list. Dischargers may contact local governments or public interest groups for potential projects in their area, or develop projects of their own.

B. GENERAL SEP QUALIFICATION CRITERIA

All SEPs approved by the Water Board must satisfy the following general criteria:

- (a) An SEP shall only consist of measures that go above and beyond all legal obligations of the Discharger (including those from other agencies). For example, sewage pump stations should have appropriate reliability features to minimize the occurrence of sewage spills in that particular collection system. The installation of these reliability features following a pump station spill would not qualify as an SEP.
- (b) The SEP should benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the State. SEPs in the following categories have received approval from the Water Board's Executive Officer:
 - Pollution prevention. These are projects designed to reduce the amount of pollutants being discharged to either sewer systems or to storm drains. Examples include improved industrial processes that reduce production of pollutants or improved spill prevention programs.
 - Pollution reduction. These are projects that reduce the amounts of pollution being discharged to the environment from treatment facilities. An example is a program to recycle treated wastewaters.
 - Environmental restoration. These projects either restore or create natural environments. Typical examples are wetland restoration or planting of stream bank vegetation.

- Environmental education. These projects involve funding environmental education programs in schools (or for teachers) or for the general public.

Further, an SEP should be located near the Discharger, in the same local watershed, unless the project is of region-wide importance.

C. APPROVAL PROCESS

The following information shall be submitted to the Executive Officer for approval of an SEP:

1. Name of the organization and contact person, with phone number.
2. Name and location of the project, including watershed (creek, river, bay) where it is located.
3. A detailed description of the proposed project, including proposed activities, time schedules, success criteria, other parties involved, monitoring program where applicable, and any other pertinent information.
4. General cost of the project.
5. Outline milestones and expected completion date.

Generally SEP proposals are submitted along with waivers of hearings. In such a case the approval of a proposal will not become effective until the waiver goes into effect, i.e. at the close of the public comment period. There will not be a public hearing on the SEP proposal unless new and significant information becomes available after the close of the public comment period that could not have been presented during the comment period.

If the Discharger needs additional time to prepare an SEP it may waive its right to a hearing within 30 days of the issuance of a Complaint (and retain its right to a hearing to contest the Complaint at a later date), and request additional time to prepare an SEP proposal. Any such time extension needs to be approved by Water Board staff.

D. REPORTING REQUIREMENT

On January 15 and July 15 of each year, progress reports shall be filed for the SEPs with expected completion date beyond 240 days after the issuance of the corresponding complaint.

E. FINAL NOTIFICATION

No later than 60 days after completion of the approved SEP, a final notification shall be filed. The final notification shall include the following information:

- Outline completed tasks and goals;
- Summary of all expenses with proof of payment; and
- Overall evaluation of the SEP.

F. THIRD PARTY PROJECT OVERSIGHT

For SEPs of more than \$10,000 the Water Board requires there to be third party oversight of the project. The Water Board has made arrangements with the Association of Bay Area Governments (ABAG) to provide this oversight, or a Discharger may choose an alternative third party acceptable to the Executive Officer. If ABAG is chosen, six per cent of the SEP funds shall be directed to ABAG for oversight services (the remaining 94% of funds go directly to the SEP). If an alternative third party is chosen, the amount of funds directed to the SEP, as opposed to oversight, shall not be less than 94% of the total SEP funding. For projects greater than \$10,000 the Discharger shall indicate when submitting the information required under C. above whether ABAG or an alternative third party oversight entity will be used.