

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

**COMPLAINT NO. R2-2006-0080
MANDATORY MINIMUM PENALTIES
IN THE MATTER OF
CITY OF AMERICAN CANYON
WASTEWATER TREATMENT PLANT
AMERICAN CANYON, NAPA COUNTY**

Pursuant to California Water Code Section 13385, this Complaint is issued to the City of American Canyon (hereafter Discharger) to assess \$66,000 mandatory minimum penalties, based on a finding of the Discharger's violations of Waste Discharge Requirements Order No. R2-2003-0114 (NPDES No. CA0038547) for the period between October 1, 2003, and June 14, 2006.

The Executive Officer finds the following:

1. On January 19, 2000, the California Regional Water Quality Control Board, San Francisco Bay Region (Water Board) adopted Order No. 00-003 to regulate discharges of waste from the Discharger's wastewater treatment plant. This order was amended on October 17, 2001, by Order No. 01-113, which allowed the discharge of tertiary effluent to constructed freshwater wetlands. Order No. 00-003 was amended again on September 18, 2002, by Order No. R2-2002-0096, which removed the mass limits for copper and nickel contained in Order No. 00-003. The Water Board reissued the permit for this facility on June 14, 2006, by adopting Order No. R2-2006-0036.
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. 00-003 includes the following applicable effluent limitations:

A. Coliform Bacteria

1. 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 seven consecutive samples shall not exceed 2.2 MPN/100 mL; and
 - b. Any single sample shall not exceed 23 MPN/100 mL.
2. The Discharger may use alternate limits of bacteriological quality instead of meeting 1.a and 1.b above (total coliform limits) if the Discharger can establish to the satisfaction of the Water Board that the use of the fecal coliform limits will not result in unacceptable adverse impacts on the beneficial uses of the receiving water.

B. Conventional Substances

Constituent	Unit	Monthly Average	Weekly Average	Daily Maximum
Ammonia Nitrogen	mg/L	2.0	3.0	4.0

C. Toxic Substances

<u>Constituent</u>	<u>Daily Average</u> (µg/L) (b)	<u>Mass Limits</u> (kg/month)
Copper (a, c, d)	4.9	0.56 kg/month
Nickel (b, c, d)	7.1	0.81 kg/month
Zinc (b, c)	58	
Cyanide	5	

- (a) A corrosion control, source control, and Plant optimization study shall be performed to evaluate the feasibility of further reducing copper loading to and from the treatment plant according to the tasks and schedule identified in the provisions of this Order.

- (b) Effluent limitation may be met as a four-day average. If compliance is to be determined based on a four-day average, then four separate 24-hour composite samples shall be obtained over four consecutive days, and the concentration results for each composite sample shall be reported, as well as the average of the four.
- (c) Metal limits are expressed as total recoverable metals.
- (d) Compliance with the mass emission limit shall be based upon calculations in Provision 13 of Order No. 00-003. The Discharger shall demonstrate compliance with the mass-based limit using the discharge flow after diversion for reclamation. The mass and concentration limits may be revised upon completion of a Total Maximum Daily Load and Waste Load Allocation process. The permit may be modified to include a different requirement following completion of a TMDL and Waste Load Allocation, if consistent with the antibacksliding rule in the Clean Water Act Section 402(o). Compliance with the mercury concentration limit of 0.012 µg/L may be based on a 3-month running average.

7. Summary of Effluent Limit Violations

During the period between October 1, 2003, and June 14, 2006, the Discharger had 28 violations of its discharge limits. These violations are:

- Six copper daily maximum limits;
- Twelve zinc daily maximum limits;
- Two nickel daily maximum limits;
- Four ammonia limits (two as daily maximums, one as weekly average, one as monthly average);
- Two cyanide daily maximum limits; and
- Two coliform limits (one as daily maximum, one as moving median maximum).

Consideration of Copper, Zinc, and Nickel Violations

The permit limits in Order No. 00-003 were imposed without consideration of the Discharger's ability to comply because the facility was classified as a new source. After the facility was put into operation, it was discovered that its major treatment unit, the microfilter, is not as efficient at removing metals from the wastewater as compared to activated sludge processes used at most other wastewater treatment plants. As a result, the Discharger violated some of the metals limits. In response, the Discharger investigated sources of copper and zinc within its treatment plant and service area.

For copper, the Discharger discovered a treatment plant source (rusty tanks) and has corrected that problem. For zinc, the Discharger has identified two industries as contributing sources in addition to general domestic sewage. Additional work on zinc is underway (see below).

The nickel exceedances in June and August of 2005 were caused by high influent nickel concentrations. The Discharger investigated the source of nickel at the same time it investigated the source of zinc. No source was identified, and nickel returned to normal levels both in the influent and effluent.

The Discharger is conducting additional source control and reduction work on copper, zinc, and nickel as required by Order No. R2-2006-0036. This order reissued the NPDES permit for the Discharger and contains new limits for copper, zinc, and nickel that are more stringent than in Order No. 00-003. These new limits are based on updated objectives. In recognition of these more stringent limits, the Water Board required in R2-2006-0036 that the Discharger increase its efforts to identify and reduce its sources of copper, nickel, and zinc. As part of this, the Discharger has committed to increasing its aeration basin cleaning, exploring alternative treatment for metals reduction, increasing its source identification efforts through daily monitoring, and evaluating if the local limits it imposes on its industries need to be adjusted.

In summary, because the Discharger has put forth reasonable efforts in identifying sources and is required by the current permit to increase its efforts in reducing these metals to the sanitary sewer, the minimum penalty that is mandated is appropriate for these violations.

Consideration of Ammonia Violations

Immediately after the first instance of ammonia exceedance, the Discharger reviewed operating parameters and lab data, and identified possible root causes. It determined that the treatment train had been in a condition of upset, due to maintenance activities a few weeks prior, in which sludge had been transferred between treatment trains. It determined the corrective actions needed, which included rebalancing the wasting rate and permeating rate of one of the treatment trains. This action successfully brought the treatment process back to normal within two days. The Discharger then updated its sludge transfer procedures to maintain proper balancing of the mixed liquor hydraulic levels and concentrations, thus avoiding a similar problem in the future. Because the Discharger took immediate steps to identify and correct the cause of ammonia exceedances, the minimum penalty is appropriate.

Consideration of Cyanide Violations

The Discharger violated its cyanide limit twice in the past 3 years. As indicated in Order No. 00-003, cyanide may be an analytical artifact from matrix interferences and/or generated as part of disinfection or other treatment processes. The Discharger's data show that cyanide is generally lower in the influent as compared to the effluent from the treatment plant. Regional and national research into these and other cyanide related issues continue. At the same time, the Water Board is considering a site specific objective for cyanide in December 2006. This site specific objective would be protective of water quality for the Bay and will result in a different cyanide limit for the Discharger, which will solve the compliance problem. As such, the minimum penalty that is mandated is appropriate for these cyanide violations.

Consideration of Coliform Violations

The Discharger reported that the cause of the coliform violations in June of 2005 was due to the malfunctioning of the facility's UV disinfection units. Upon investigation, the Discharger discovered an electrical problem on one unit, and that a few lights were out on another unit, due to a power overload. The Discharger took immediate corrective actions, including a manual servicing of the UV disinfection units and repair to the electrical system. It also updated its Operations and Maintenance Manual to prevent similar malfunctions from occurring in the future. Because the Discharger immediately identified the cause of this isolated incident, and followed up with appropriate corrective actions, Water Board staff finds that the mandatory minimum penalty in this case is sufficient.

8. Coliform is neither a Group I or a Group II pollutant. The two total coliform bacteria violations (items 19 and 20 in Table 1) count as chronic violations (see discussion, below, pursuant to CWC 13385 (i)).

9. Serious Violations

Ammonia is a Group I pollutant. Serious violations for Group I pollutants are those that exceed the limits by more than 40%. Copper, zinc, nickel, and cyanide are Group II pollutants. Serious violations for Group II pollutants are those that exceed the limits by more than 20%. The serious violations addressed by this MMP are as follows:

- Ammonia—one serious violation (item 18 in Table 1);
- Copper—two serious violations (item 1 and 6 in Table 1);
- Zinc—six serious violations (items 10, 12, 17, 23, 24, and 25 in Table 1);
- Nickel—two serious violations (items 11 and 15 in Table 1); and,
- Cyanide—two serious violations (items 7 and 27 in Table 1).

10. Chronic Violations

Since all of the violations addressed by this MMP are of the same category—effluent limitation violations, as defined by CWC Section 13385(i)—monetary penalties were assessed on the 4th and higher consecutive chronic violations within running 180-day periods. Monetary penalties were assessed for a total of nine chronic violations (items 8, 13, 14, 16, 19, 20, 21, 22, and 28 in Table 1).

11. 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.

12. Assessment of MMPs

Twenty-two of the twenty-eight violations are subject to a MMP, as detailed in Table 1. The total MMP amount is \$66,000.

13. 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 \$40,500 on a SEP acceptable to the Executive Officer. Any such amount expended to satisfactorily complete an SEP will be permanently suspended.

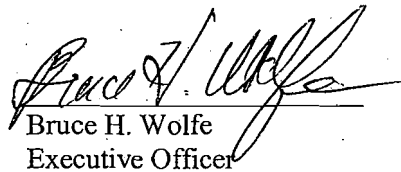
14. SEP Categories

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

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

THE CITY OF AMERICAN CANYON IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer proposes that the Discharger be assessed an MMP in the amount of \$66,000.
2. The Water Board will hold a hearing on this Complaint on January 23, 2007, 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 \$66,000 within 30 days after the signed waiver becomes effective, or
 - (b) Propose a SEP in an amount up to \$40,500. 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 \$66,000.
3. If the Discharger chooses to propose an SEP, it must submit a preliminary proposal by 5:00 p.m., December 26, 2006, 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 \$66,000. 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

11/22/06
 Date

Attachments: Waiver
 Table 1 - Violations

WAIVER

If you waive your right to a hearing, the matter will be included on the agenda of a Water Board meeting but there will be no hearing on the matter, unless a) the Water Board staff receives significant public comment during the comment period, or b) the Water Board determines it will hold a hearing because it finds that new and significant information has been presented at the meeting that could not have been submitted during the public comment period. If you waive your right to a hearing but the Water Board holds a hearing under either of the above circumstances, you will have a right to testify at the hearing notwithstanding your waiver. Your waiver is due no later than December 26, 2006.

- Waiver of the right to a hearing and agreement 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. R2-2006-0080 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 Water Board meeting for which this matter is placed on the agenda. 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 unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability.

- 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 Water Board with regard to the violations alleged in Complaint No. R2-2006-0080, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$40,500 and paying the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the Water Board meeting for which this matter is placed on the agenda. The SEP proposal shall be submitted no later than December 26, 2006. 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 within 30 days of the date of the letter from the Executive Officer rejecting 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 unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability. 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

Item	Date of Violation	Effluent Limitation Described	Effluent Limit	Reported Value	Type of Violations ²	Penalty	Start of 180 Days ¹
1	1-Oct-03	E-003-R Copper Eff Daily Maximum (ug/L)	4.9	7.5	S, C1	\$3,000	5-Apr-03
2	10-Nov-03	E-003-R Copper Eff Daily Maximum (ug/L)	4.9	5.1	C2		15-May-03
3	4-Jan-04	E-001-S Copper Eff Maximum (ug/L)	4.9	5.4	C3		9-Jul-03
4	8-Apr-04	E-001-S Copper Eff Maximum (ug/L)	4.9	5.2	C3		12-Oct-03
5	6-Jul-04	E-003-R Copper Eff Maximum (ug/L)	4.9	5.7	C2		9-Jan-04
6	16-Aug-04	E-001-R Copper Eff Maximum (ug/L)	4.9	7.4	S, C3	\$3,000	19-Feb-04
7	4-Oct-04	E-003-R Cyanide Eff Maximum (ug/L)	5	8	S, C4	\$3,000	8-Apr-04
8	4,5,6,7-Nov-04	E-001-S Wet Weather Four Day Average Zinc Eff Daily Maximum (ug/L)	58	70	C4	\$3,000	9-May-04
9	6,7,8,9-Apr-05	E-003 Four Day Average Zinc Eff Daily Maximum (ug/L)	58	68	C2		9-Oct-04
10	2,3,4,5-May-05	E-003 Four Day Average Zinc Eff Daily (ug/L)	58	71	S, C3	\$3,000	4-Nov-04
11	1,2,3,4-Jun-05	E-003 Four Day Average Nickel Eff Daily Maximum (ug/L)	7.1	14	S, C3	\$3,000	4-Dec-04
12	1,2,3,4-Jun-05	E-003 Four Day Average Zinc Eff Daily Maximum (ug/L)	58	103	S, C4	\$3,000	4-Dec-04
13	22-Jun-05	E-003 Coliform Daily Eff. Max. (MPN/100 mL)	23	92	C5	\$3,000	25-Dec-04
14	28-Jun-05	E-003 Coliform Moving Median Eff. Max. (MPN/100 mL)	2	3	C6	\$3,000	31-Dec-04
15	1, 2, 3, 4-Aug-05	E-003 Four Day Average Nickel Eff Daily Maximum (ug/L)	7.1	12	S, C7	\$3,000	3-Feb-05

Item	Date of Violation	Effluent Limitation Described	Effluent Limit	Reported Value	Type of Violations ²	Penalty	Start of 180 Days ¹
16	1, 2, 3, 4-Aug-05	E-003 Four Day Average Zinc Eff Daily Maximum (ug/L)	58	63	C8	\$3,000	3-Feb-05
17	12, 13, 14, 15-Sep-05	E-003 Four Day Average Zinc Eff Daily Maximum (ug/L)	58	97	S, C9	\$3,000	17-Mar-2005
18	26-Sep-05	E-003 Ammonia Daily Maximum (mg/L)	4.0	6.8	S, C10	\$3,000	31-Mar-05
19	27-Sep-05	E-003 Ammonia Daily Maximum (mg/L)	4.0	4.7	C11	\$3,000	1-Apr-05
20	Sep-05	E-003 Ammonia Monthly Average (mg/L)	2.0	2.4	C12	\$3,000	6-Mar-05
21	26-30-Sep-05	E-003 Ammonia Weekly Average (mg/L)	3.0	3.7	C13	\$3,000	31-Mar-05
22	3, 4, 5, 6-Oct-05	E-003 Four Day Average Zinc Eff Daily Maximum (ug/L)	58	65	C14	\$3,000	7-Apr-05
23	5, 6, 7, 8-Dec-05	E-003 Four Day Average Zinc Eff Daily Maximum (ug/L)	58	93	S, C11	\$3,000	9-Jun-05
24	8, 9, 10, 11-Jan-06	E-003 Four Day Average Zinc Eff Daily Maximum (ug/L)	58	81	S, C8	\$3,000	6-Jul-05
25	6, 7, 8, 9-Feb-06	E-003 Four Day Average Zinc Eff Daily Maximum(ug/L)	58	98	S, C7	\$3,000	6-Aug-05
26	8,9,10,11-May-06	E-003 Four Day Average Zinc Eff Daily Maximum (ug/L)	58	63	C3		10-Nov-05
27	14-Jun-06	E-003 Cyanide Eff Daily (ug/L)	5	7	S, C4	\$3,000	17-Dec-05
28	11,12,13,14-Jun-06	E-003 Four Day Average Zinc Eff Daily Maximum (ug/L)	58	72	C5	\$3,000	14-Dec-05

¹ This column documents the start date for assessing chronic violations. As indicated in Finding No. 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 violates an effluent limit four or more times in any six consecutive months.

² C = Chronic – The number that follows represents the number of chronic violations in the past 180 days; S = Serious.

**NOTICE OF PUBLIC HEARING FOR ASSESSMENT OF ADMINISTRATIVE CIVIL
LIABILITY**

The Water Board Executive Officer has issued the following administrative complaint:

Complaint No. R2-2006-0080 against the City of American Canyon (Discharger) for \$66,000 in penalties covering violations of effluent limitations in Water Board Order No. 00-003 for the period beginning on October 1, 2003, and ending on June 14, 2006.

Written comments on these matters are due no later than **5:00 p.m. December 26, 2006**. No written comments will be accepted or responded to in writing after that date.

If the Discharger agrees to pay the proposed penalty, there will be no hearing on this matter, provided no significant public comment is received by Water Board staff prior to close of the comment period. If the Discharger contests the complaint, the Water Board will consider adopting an order imposing the penalty in a public meeting. The Water Board may affirm, reject, or modify the proposed penalties, or refer the matter to the Attorney General for recovery of civil liabilities. The Water Board may also accept a supplemental environmental project in lieu of a portion of the penalties. The Water Board meeting will commence at a time and place as follows:

Date and Time: January 23, 2007 9:00 a.m.
Place: Auditorium, 1515 Clay Street, Oakland, California

Interested persons are invited to attend and express their views at the public hearing on this matter. The Water Board will hear oral testimony, but will not accept written comments after the deadline noted above.

Pursuant to section 2050(c) of Title 23 of the California Code of Regulations, any party that challenges the Water Board's action on this matter through a petition to the State Water Resources Control Board under Water Code section 13320 will be limited to raising only those substantive issues or objections that were raised before the Water Board at the public hearing or in timely submitted written correspondence delivered to the Water Board.

The complaint and related documents (including any proposed supplemental environmental projects) are on file, and may be inspected or copied at the Water Board Office during weekdays between 8:00 a.m. and 5:00 p.m. The complaint is also available on the Board's website at www.waterboards.ca.gov/sanfranciscobay. For further information, please contact Christine Boschen at 510-622-2346 or e-mail address cboschen@waterboards.ca.gov. Please bring the foregoing to the attention of any persons known to you who would be interested in this matter.

11/20/2006
Date


Lila Tang, NPDES Division Chief

