

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

Complaint No. R2-2007-0064

**Mandatory Minimum Penalty
In the Matter of
City of Benicia Wastewater Treatment Plant
Solano County**

Overview

This complaint assesses \$30,000 in Mandatory Minimum Penalties (MMPs) to the City of Benicia Wastewater Treatment Plant (hereafter Discharger). The complaint is based on a finding of the Discharger's violations of Waste Discharge Requirements Order No. 2001-096 (NPDES No. CA0038091) for the period between October 1, 2006, and July 31, 2007.

This MMP complaint is issued pursuant to Water Code Sections 13385(h)(1-2), 13385(i) and 13385.l. For a description of how MMPs are assessed, please see General Overview of MMP Calculations, attached.

A. Permit at the time of violations

On August 15, 2001, the California Regional Water Quality Control Board, San Francisco Bay Region (Water Board) adopted Order No. 2001-096, to regulate discharges of waste from its facility.

B. Effluent Limitation

Order No. 2001-096 specified the following effluent limitation:

Parameter	Effluent Limit
Copper interim daily maximum	32 µg/L

C. Summary of Effluent Limit Violations

During the period between October 1, 2006, and July 31, 2007, the Discharger had eleven violations of its copper effluent limitations, as summarized in Table 1 of this complaint. All eleven violations occurred during January 2007.

D. Water Board Staff's Consideration of Violations

A single event caused the Discharger's January 2007 copper violations, and the Discharger responded to the event as best as could be expected. The following is a recount of what happened, and why the minimum penalty is sufficient:

On December 15, 2006, the corrosion control system at the Discharger's drinking water plant (also owned and operated by the Discharger) broke down. The Discharger began repairs immediately, but realized that repairs would take a while to complete, and, in the meanwhile, metals could leach from the distribution pipes into the City's water supply. The Discharger was concerned that metals in the drinking water could be making it through the wastewater

treatment plant and potentially cause effluent violations. So, the Discharger sampled for metals on January 3, 2007, a week before its originally scheduled sampling date.

While waiting for results of the January 3, 2007, sample, the Discharger proceeded with its regular monitoring. On January 10, 2007, the Discharger tested for metals and started a toxicity bioassay test. Two days into the bioassay test, the fish in the control sample (dechlorinated drinking water) died. In contrast, the effluent fish had a 93% survival rate after five days. At that time, the Discharger was not sure what had killed the fish, and thought unusually cold weather may have been the cause. On January 17, 2007, results from the January 3, 2007, sample came back, indicating elevated copper levels in violation of permit limits.

Because the copper and bioassay test results were unusual, appropriately, the Discharger investigated the QA/QC for both. The Discharger ordered new fish, and started a new bioassay. The Discharger confirmed with its lab that the copper sampling and analysis had indeed been done correctly. Then, two days into the second bioassay, the control fish died again.

Faced with evidence that elevated metals were in the water supply, the Discharger immediately implemented both short and long-term corrective measures. Although the drinking water plant repairs were completed on January 18, 2007, the Discharger knew that there could be copper flushing into the wastewater treatment plant for some days more. So, for the next couple of weeks, the Discharger added chemicals to the wastewater that would enhance copper removal and thereby minimize the effluent copper levels. To prevent future similar problems, the Discharger installed inline monitoring equipment at the drinking water and wastewater treatment plants, and updated its inter-departmental communication procedures.

As required by its permit, the Discharger accelerated copper monitoring to daily, until two consecutive samples indicated its discharge met the permit's effluent limits. The accelerated sampling accounts for the violations from January 17 to January 25, 2007.

In sum, by sampling proactively, minimizing effluent copper levels, changing procedures to prevent reoccurrences, and accelerating monitoring, the Discharger responded as well as it could have to this problem. Therefore, the minimum penalty is sufficient in this case.

E. Assessment of penalties

- **Serious Violations**

Copper is a Group II pollutant. Serious violations for Group II pollutants are those that exceed the limitations by more than 20%. Nine of the violations are serious, and therefore each is subject to a \$3,000 MMP.

- **Fourth or greater within running 180-day period**

MMPs also apply to violations that are the fourth or greater consecutive violation within a running 180-day period. Eight of the violations fit into this category, and therefore each is subject to a \$3,000 MMP.

- **Total assessment**

Violations that meet both the conditions listed above are only subject to one \$3,000 penalty, under MMP regulations. Therefore, the total MMP assessment for these violations is \$30,000.

- **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 \$22,500 on an SEP acceptable to the Executive Officer. Any such amount expended to satisfactorily complete an SEP will be permanently suspended.

THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer proposes that the Discharger be assessed MMPs in the total amount of \$30,000.
2. The Water Board will hold a hearing on this Complaint on December 12, 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 as stated above within 30 days after the signed waiver becomes effective, or
 - b) Propose an SEP in an amount up to \$22,500. 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 as stated above.
3. If the Discharger chooses to propose an SEP, it must submit a preliminary proposal by the close of the public comment period, as stated in the attached public notice, 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 portion of the penalty. 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

October 4, 2007

- Attachments:
- 1 - Waiver
 - 2 - Table 1, Violations
 - 3 - Standard Criteria and Reporting Requirement for Supplemental Environmental Project
 - 4 - General Overview of MMP Calculations

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 November 12, 2007.

- 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. R2-2007-0064 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. R2-2007-0064, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$22,500 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 November 12, 2007. 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

Table 1 - VIOLATIONS

Item	Date of Violation	Effluent Limitation Described	Effluent Limit	Reported Value	Type of Violations¹	Penalty	Start of 180 Days²
1	1/3/2007	Copper daily maximum (ug/L)	32	33	C1	0	7/7/06
2	1/10/2007	Copper daily maximum (ug/L)	32	41	C2, S	\$3,000	7/14/06
3	1/17/2007	Copper daily maximum (ug/L)	32	48	C3, S	\$3,000	7/21/06
4	1/18/2007	Copper daily maximum (ug/L)	32	44	C4, S	\$3,000	7/22/06
5	1/19/2007	Copper daily maximum (ug/L)	32	49	C5, S	\$3,000	7/23/06
6	1/20/2007	Copper daily maximum (ug/L)	32	68	C6, S	\$3,000	7/24/06
7	1/21/2007	Copper daily maximum (ug/L)	32	41	C7, S	\$3,000	7/25/06
8	1/22/2007	Copper daily maximum (ug/L)	32	40	C8, S	\$3,000	7/26/06
9	1/23/2007	Copper daily maximum (ug/L)	32	37	C9	\$3,000	7/27/06
10	1/24/2007	Copper daily maximum (ug/L)	32	40	C10, S	\$3,000	7/28/06
11	1/25/2007	Copper daily maximum (ug/L)	32	48	C11, S	\$3,000	7/29/06
	TOTAL					\$30,000	

¹ C = Count – The number that follows represents the number of violations the Discharger has had in the past 180 days, including this violation. C4 or higher means that a penalty under Water Code Section 13385(i) applies.

S = Serious, which means that a penalty under Water Code Section 13385(h) applies.

² This column documents the start date for counting violations that have occurred within the past 180 days, for the purpose of determining whether a penalty under Water Code Section 13385(i) applies.

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.waterboards.ca.gov/sanfranciscobay/>

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, wastewater pump stations should have appropriate reliability features to minimize the occurrence of wastewater 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.

General Overview of Mandatory Minimum Penalty (MMP) Calculations

The Water Board is required by State law to assess MMPs for certain types of permit violations from point-source facilities. These complaints are issued by the Water Board Executive Officer, and the MMPs are finalized in a public hearing before the Water Board, unless the Discharger decides to waive their right to the hearing. This is an overview of the general process for determining which violations are subject to MMPs, the amount of penalty the complaint will assess, and the portion of the penalty the Discharger may apply towards an environmental project. This procedure is the same for all facilities to which the MMP laws apply.

I. State law requires a \$3,000 minimum penalty for all serious violations, and requires a \$3,000 penalty for any sort of violation, if it is the 4th or greater violation within a running 6-month period.

Even though a specific violation may fit into both of the above categories, under the MMP laws, any one violation may only be assessed \$3,000.

A. State law requires a penalty for serious violations.

The Water Board must assess an MMP of \$3,000 for each serious violation, per Water Code Section 13385(h)(1). A “serious violation” is defined 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, per Water Code Section 13385(h)(2). Pollutants are assigned to Group I or Group II by federal regulations, and the MMP complaint specifies to which group each violation belongs. The full lists of Group I and Group II violations are defined in Section 123.45 of Title 40 of the Code of Federal Regulations. Additionally, the late submittal (by 30 days or more) of monitoring reports is also considered a serious violation, per Water Code Section 13385.1. Each full 30-day increment a report is late counts as a violation.

B. State law requires a penalty for 4th or higher violation within last six months.

The Water Board must assess an MMP of \$3,000 for each violation, in a running six-month period, per Water Code Section 13385(i), if the Discharger does any of the following **four or more times**:

1. Violates a waste discharge requirement effluent limitation.
2. Fails to file a report pursuant to Section 13260.
3. Files an incomplete report pursuant to Section 13260.
4. 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.

The first three violations (meeting any of 1-4 above) occurring within a six month period do not trigger the \$3,000 penalty. Also, the running six-month period is counted backwards from each individual violation considered. For example, to determine whether a violation that occurred on August 1st was subject to a penalty, you would count how many other violations had occurred since February 1st of the same year. If there had been at least three other

violations in that period, the August 1st violation would be subject to a \$3,000 penalty.

C. State law limits the amount of the penalty that may be applied toward an environmental project (or to multiple projects).

If the Water Board agrees, the Discharger may choose to direct a portion of the penalty amount to fund a supplemental environmental project (SEP) in accordance with the enforcement policy of the State Water Resources Control Board, per Water Code Section 13385(l). 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 an SEP may not exceed \$15,000 plus 50 percent of the penalty amount that exceeds \$15,000.

D. A supplemental environmental project (SEP) must be within certain 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
4. Environmental education