CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

COMPLAINT NO. R2-2003-0116
MANDATORY MINIMUM PENALTY
IN THE MATTER OF
THE FORMER WESTERN MICROWAVE SITE
1271 REAMWOOD AVE.
SUNNYVALE, SANTA CLARA COUNTY

This Complaint assessing Mandatory Minimum Penalty (MMP) pursuant to Water Code Section 13385(h) is issued to Sobrato Development Company (hereinafter Discharger) based on a finding of two serious effluent violations of Order No. 99-051, as amended by Order No. R2-2002-0062, NPDES Permit No. CAG912003, general waste discharge requirements for discharge or reuse of extracted and treated groundwater resulting from the cleanup of groundwater polluted by volatile organic compounds (VOC General NPDES Permit).

The Executive Officer finds the following:

1. The Regional Water Quality Control Board (Water Board) adopted the VOC General NPDES Permit on July 21, 1999 and amended this Permit on June 19, 2002. The Discharger applied for and received a letter dated October 6, 1999, authorizing the discharge of treated groundwater under the VOC General NPDES Permit.

2. The VOC General NPDES Permit prohibits the discharge of effluent containing trichloroethylene (TCE) with concentrations exceeding the 5.0 microgram per liter (µg/l) effluent limit and vinyl chloride (VC) exceeding the 0.5 µg/l effluent limit.

3. The Discharger submitted a report dated October 17, 2003 showing that effluent samples collected from the treatment facility on the date listed in the table below contained TCE and VC at concentrations that exceeded the corresponding instantaneous maximum limit. The Discharger reported no other exceedances of effluent limitations during the six-month periods before and after the dates of these violations.

Sample No.	Test Date	Regulated Compound	Test Result (µg/L)	NPDES Limit (µg/L)	Limit Exceedance	MMP
1	9/29/03	TCE	10	5	100%	$ 3,000
2	9/29/03	VC	2.5	0.5	400%	$ 3,000
Definitions: TCE = trichloroethylene, VC = vinyl chloride					Total:	$ 6,000

4. Water Code Section 13385(h)(1) requires the Water Board to assess an MMP of $3,000 for serious NPDES violations. A serious violation includes discharge of effluent containing any Group II pollutant in a concentration that exceeds the established maximum limits by 20 percent or more. TCE and VC are considered Group II pollutants. The test results indicate serious violations.

5. The Discharger committed two serious violations on September 29, 2003. The total amount of the MMP for these serious violations is $6,000. Section 13385 allows the Discharger to spend up to the $6,000 of this MMP on a Supplemental Environmental Project (SEP).

6. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.), in accordance with Section 15321(a)(2), Title 14, California Code of Regulations.

SOBRATO DEVELOPMENT COMPANIES IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Water Board proposes that the Discharger be assessed an MMP in the amount of $6,000 that will be suspended if the Discharger funds an acceptable SEP in the amount of $6,000.

2. The Water Board will hold a hearing on this Complaint on February 18, 2004 unless the Discharger waives the right to a hearing by signing the last page of this Complaint and checking the appropriate box. By doing so, the Discharger must either pay the full penalty of $6,000 or submit an acceptable SEP proposal in an amount of $6,000 by January 30, 2004. Any 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. 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 amount. All payment, including any money not expended 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.

3. The signed waiver becomes effective 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.

4. If a hearing is held, the Water Board will consider whether to affirm, reject, or modify the proposed penalty, or whether to refer the matter to the Attorney General for recovery of the civil liability.

Bruce H. Wolfe

Bruce H. Wolfe
Executive Officer

January 7, 2004

Date

WAIVER OF HEARING FORM

(The signed waiver becomes effective 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 Water Board with regard to the violations alleged in Complaint No. R2-2003-0116 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, by January 30, 2004. 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 mandatory minimum penalty proposed.

[ ] Waiver of the right to a hearing and agree to undertake a SEP.
By checking the box I agree to waive my right to a hearing before the Regional Water Board with regard to the violations alleged in Complaint No R2-2003-0116 and to complete a supplemental environmental project (SEP) in lieu of the suspended penalty in an amount of $6,000. I also agree to submit the SEP proposal by January 30, 2004. 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 within thirty 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 mandatory minimum penalty proposed. I further agree to complete the approved SEP within a time schedule set by the Executive Officer.

Name (print)	Date
Signature	Title/Organization