

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

**COMPLAINT NO. R2-2007-0014
MANDATORY MINIMUM PENALTIES
IN THE MATTER OF
GWF POWER SYSTEMS COMPANY, INC
EAST THIRD STREET (SITE I) POWER PLANT
PITTSBURG, CONTA COSTA COUNTY**

Pursuant to California Water Code Section 13385, this Complaint is issued to GWF Power Systems Company, Inc. East Third Street (Site I) Power Plant (hereafter Discharger) to assess \$3,000 mandatory minimum penalties, based on a finding of the Discharger's violations of Waste Discharge Requirements Order No. 99-056 and Order No. R2-2005-0018 (NPDES No. CA0029106) for the period between April 30, 2005, and May 1, 2006.

The Executive Officer finds the following:

1. On March 16, 1999, the California Regional Water Quality Control Board, San Francisco Bay Region (Water Board) adopted Order No. 99-056 to regulate discharges of waste from the Discharger's wastewater treatment plant. The Water Board reissued the permit for this facility on May 19, 2005, by adopting Order No. R2-2005-0018.
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. 99-056 includes the following applicable effluent limitations:

1. The discharge of Waste 001 containing in excess of the following limits is prohibited:

<u>Constituent</u>	<u>Units</u>	<u>30-Day Avg.</u>	<u>Daily Maximum</u>
Total Suspended Solids	lbs/day	23.52	35.28
	kg/day	10.69	16.04
	mg/l	30	45

Order No. R2-2005-0018 includes the following applicable effluent limitations:

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

Effluent Limitations for Toxic Pollutants

CONSTITUENTS	NOTES	WQBELs µg/L		Interim Limitations µg/L
		Daily Maximum	Monthly Average	Daily Maximum
Cyanide	[1][2] [3][4]	--	--	7

- [1] a. All analyses shall be performed using current U.S. EPA methods, or equivalent methods approved in writing by the Executive Officer. The Discharger is in violation of the limitation if the discharge concentration exceeds the effluent limitation and the reported ML for the analysis for that constituent.
 b. Limitations apply to the average concentration of all samples collected during the averaging period (daily = 24-hour period; monthly = calendar month).
- [2] A daily maximum or average monthly value for a given constituent shall be considered noncompliant with the effluent limitations only if it exceeds the effluent limitation and the reported ML for that constituent. The table below indicates the lowest ML that the Discharger's laboratory must achieve for compliance determination purposes.

Constituent	ML (µg/L)
Cyanide	5

[3] This interim limitation shall remain in effect until April 27, 2010 or until the Board amends the limitation based on additional data, SSO, or the WLAs in respective TMDLs.

[4] Compliance may be demonstrated by measurement of weak acid dissociable cyanide.

7. Summary of Effluent Limit Violations

During the period between April 30, 2005, and May 1, 2006, the Discharger had 2 violations of its discharge limits as summarized in Table 1 of this complaint. These violations are:

- One total suspended solids monthly average limit; and
- One cyanide daily maximum limit.

a. Consideration of Total Suspended Solids Violation

The Discharger violated the total suspended solids limit once in the last three years. In response to the violation, the Discharger accelerated monitoring to determine whether the violation was ongoing, or an isolated incident. The Discharger concluded that the violation was likely caused by intermittent periods of high solids in the plant's primary water supply, the Contra Costa Canal, and temporary closure of the facility's blowdown, which caused the water in the cooling tower to concentrate. To avoid future violations, the Discharger installed turbidity, pH, and conductivity meters on the cooling tower's water supply line. The Discharger has updated its operating procedures to prevent tower water concentration when the blowdown is closed. Because the Discharger investigated and determined the cause of the violation, and updated its water quality testing equipment and operational procedures to prevent future violations, the minimum penalty is appropriate.

b. Consideration of Cyanide Violation

The Discharger violated the limit for cyanide once in the last three years. In response, the Discharger accelerated monitoring, and the results for samples collected May 2, the day immediately following the violation, and on May 23, 2006, were in compliance with the effluent limitations. Further testing in June also showed compliance. The Discharger investigated the source of the cyanide; no discoveries were reported. The minimum penalty is appropriate for this exceedance because it was an isolated incident, the magnitude of the exceedance was very small (7.5 vs. the limit of 7), and the Discharger took appropriate follow-up actions.

8. Serious Violations

Total suspended solids is a Group I pollutant. Serious violations for Group I pollutants are those that exceed the limits by more than 40%. Cyanide is a Group II pollutant. Serious violations for Group II pollutants are those that exceed the limits by more than 20%. Of the exceedances addressed by this MMP, there was one serious violation:

- Total Suspended Solids—(item 1 in Table 1).

9. Chronic Violations

All of the violations addressed by this Complaint are of the same category—effluent limitation violations, as defined by CWC Section 13385 (i). Monetary penalties were not assessed for chronic violations in this MMP, because there were fewer than 4 violations within running 180-day periods.

10. 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.

11. Assessment of MMPs

One of the two violations is subject to a MMP, as detailed in Table 1. The total MMP amount is \$3,000.

12. 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 \$3,000 on a 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 a SEP, the proposed SEP shall be in the following categories:

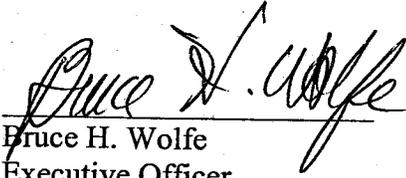
1. Pollution prevention;
2. Pollution reduction;
3. Environmental clean-up or restoration; and/or
4. Environmental education.

GWF POWER SYSTEMS COMPANY, INC. EAST THIRD STREET (SITE I) POWER PLANT IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer proposes that the Discharger be assessed an MMP in the amount of \$3,000.
2. The Water Board will hold a hearing on this Complaint on May 9, 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 \$3,000 within 30 days after the signed waiver becomes effective, or
 - (b) Propose a SEP in an amount up to \$3,000. 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 \$3,000.

3. If the Discharger chooses to propose an SEP, it must submit a preliminary proposal by 5:00 p.m., April 27, 2007, 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 \$3,000. 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

Date
APR 2 2007

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 April 27, 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. R2-2007-0014 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. R2-2007-0014, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$3,000 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 April 27, 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

Item	Date of Violation	Effluent Limitation Described	Effluent Limit	Reported Value	Type of Violations ²	Penalty	Start of 180 Days ¹
1	30-Apr-05	E-001 Total Suspended Solids Eff Monthly Average mg/l	30	45	S, C1	\$3,000	27-Oct-05
2	01-May-06	E-001 Cyanide Eff Daily Maximum ug/l	7	7.5	C2		28-Oct-06

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



California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Secretary for
Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger
Governor

Date: APR 2 2007
File No. 2119.1170 (RJ/CEB)

CERTIFIED: 7005 1820 0005 8828 4431

To Be Sent By Email

(Email address sf_publicnotice@alm.com)

The Recorder
P.O. Box 421378
San Francisco, CA 94142-1378

Attn: Robert - Legal Department
Tel: (415) 749-5438
Fax: (415) 749-5435

Re: Legal Notice

The attached notice is submitted for legal publication for one day, to be published no later than March 28, 2007. We request you notify Christine Boschen immediately if this cannot be done.

Please bill us as follows:

California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Attn: Ms. Anita Jones

A copy of the advertisement and two affidavits of its publication must be attached to your bill. If you have any questions, please contact Christine Boschen at (510) 622-2346 or e-mail address cboschen@waterboards.ca.gov.

Sincerely,

Lila Tang, Chief
NPDES Division

Attachment: Notice of Public Hearing

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

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

Complaint No. R2-2007-0014 against GWF Power Systems Company, Inc. East Third Street (Site I) Power Plant (Discharger) for \$3,000 in penalties covering violations of effluent limitations in Water Board Order No. 99-056 and Order No. R2-2005-0018 for the period beginning on April 30, 2005, and ending on May 1, 2006.

Written comments on these matters are due no later than **5:00 p.m. April 27, 2007**. 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 all or a portion of the penalties. The Water Board meeting will commence at a time and place as follows:

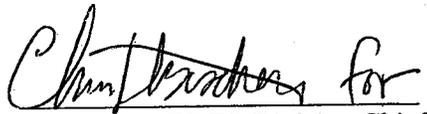
Date and Time: May 9, 2007, 9:00 a.m.
Place: Auditorium, 1515 Clay Street, Oakland

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 Water 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.

March 23, 2007
Date


Lila Tang, NPDES Division Chief