

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

COMPLAINT NO. R2-2008-0025

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
UNITED TECHNOLOGIES CORPORATION
VIOLATIONS OF CALIFORNIA WATER CODE
SECTIONS 13350A(2)
AT 600 METCALF ROAD
SAN JOSE, SANTA CLARA COUNTY

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the "Water Board"), hereby gives notice that:

1. United Technologies Corporation (hereinafter "Discharger") has violated provisions of law for which the Water Board may impose civil liability pursuant to California Water Code ("CWC") Sections 13350(a)(2) and Section 13323.
2. The Discharger violated CWC Section(s) 13350(a)(2) by an unauthorized discharge of waste into waters of the State in violation of Water Board Order No. R2-2004-0032.
3. Unless waived, a hearing on this complaint will be held before the Water Board on September 10, 2008 at the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California. The Discharger or its representative will have an opportunity to be heard and contest the allegations in this complaint and the imposition of the civil liability. An agenda for the meeting will be mailed to the Discharger not less than 10 days before the hearing date. The deadline to submit any written evidence concerning this complaint is August 10, 2008. Any written evidence not so submitted will not be considered by the Water Board.
4. At the hearing, the Water Board will consider whether to affirm, reject, or modify the proposed civil liability, to refer the matter to the Attorney General for recovery of judicial liability, or take other enforcement actions.

ALLEGATIONS

5. This complaint is based on the following facts:
 - a. The Discharger owns a 5,113-acre site where it formerly developed, manufactured, and tested space and missile propulsion systems.
 - b. Site Cleanup Requirements were issued to the Discharger in Water Board Order No. R2-2004-0032, adopted by the Board on May 19, 2004. The Order was issued pursuant to Water Code Section 13304. There are several major groundwater plumes

contaminated with volatile organic compounds (VOCs) and perchlorate in various portions of the site that originated from numerous industrial process and waste storage sources. There are also some minor fuel hydrocarbon plumes. The Discharger has been cleaning up environmental contamination at the site for almost 20 years. Groundwater extracted from Upper and Middle Shingle Valley is treated for VOCs and perchlorate at groundwater treatment station (GTS) 2405, and then is routed to holding ponds for on-site reuse as reclaimed water.

- c. Provision A.4. of Order R2-2004-0032 prohibits the discharge of contaminated groundwater into creeks and surface water. Provision E.2. of the Order requires the discharger to operate and maintain in good working order, and operate efficiently as possible, any facility or control system installed to achieve compliance with the requirements of this Order.
- d. On January 29, 2008, the Discharger discovered the release of untreated GW from GTS 2405. The release was reported to Water Board staff by telephone the same day, and in writing in a letter dated 2/3/08. The water had been extracted at Well 20M-04E and was to have been piped to GTS 2405 for treatment. Instead, about 2,000 gallons of untreated water was released to a swale draining into Shingle Creek. Shingle Creek flows through the site and discharges into Las Animas Creek, and this combined flow empties into Anderson Reservoir, which is used as a source of drinking water for several hundred thousand Santa Clara County residents. The Reservoir's existing and potential beneficial uses include:

- Municipal supply
- Groundwater recharge
- Non - contact water recreation
- Warm and cold water habitat
- Wildlife habitat
- Fish spawning

- e. The extracted groundwater at GTS2405 was sampled on 1/29/08, and the results were reported to Water Board staff in letters dated February 3 and February 27, 2008. The groundwater was found to contain 457.4 µg/l total VOCs; 1.7 µg/l 1,4-Dioxane; and 6.0 µg/l perchlorate. The Discharger stated that the water quality objectives for municipal water supply of 5 µg/l for trichloroethene (TCE) and 6- µg/l for cis-1,2-dichlorochloroethene (DCE) were exceeded. Order R2-2004-0032 also sets water reclamation specifications of 5.0 µg/l for both TCE and DCE, which are also exceeded by the reported release.

PROPOSED CIVIL LIABILITY

- 6. For violating CWC Section 13350(a)(2), the Water Board may impose civil liability administratively pursuant to CWC, Chapter 5, Article 2.5 (commencing at Section 13323) either on a daily basis or a per gallon basis, but not both. Under CWC Section 13350(e), the civil liability on a daily basis may not exceed \$5,000 for each day in

which a violation of CWC Section 13350 occurs. The civil liability on a per gallon basis may not exceed \$10 for each gallon of waste discharged.

7. In determining the amount of civil liability to be assessed to the Discharger, the Water Board must take into consideration the factors described in CWC Section 13327. The factors described include:

- the nature, circumstances, extent, and gravity of the violation,
- whether the discharge is susceptible to cleanup or abatement,
- the degree of toxicity of the discharge,
- with respect to the discharger, the ability to pay and the effect on ability to continue in business,
- any voluntary cleanup efforts undertaken,
- any prior history of violations,
- the degree of culpability,
- the economic benefit or savings, if any, resulting from the violation, and
- other such matters as justice may require.

Nature, Circumstance, Extent and Gravity of the Violation

The prohibited discharge resulted from the failure of a compression fitting on an untreated groundwater line. The untreated extraction well water flowed down piping to an access vault. Water then filled this vault and overflowed down an adjacent road, into a drainage swale that discharged to Shingle Creek. The Discharger estimated about 2,000 gallons of untreated water overflowed from the vault, and discharged over a 4 -5 hour period. The release was due to a mechanical failure. While not sampled, the impacts to Las Animas Creek and Andersen Reservoir likely to be short term and minor given the volume of the discharge and dilution by reservoir waters.

Susceptibility of Discharge to Cleanup or Abatement

Capture of the untreated water following discharge was not possible, but the Discharger appears to have quickly abated the discharge by replacing the failed compression fitting.

Degree of Toxicity of Discharge

The release of 2,000 gallons of untreated groundwater was likely diluted such that impact to beneficial uses of Shingle Creek and Anderson Reservoir were short term and minor.

Ability to Pay and Ability to Continue Business

The Discharger is a major publicly held company that should have no problems in paying the proposed liability. The Discharger's First quarter 2008 net income was \$1 billion, per its Form 10-Q.

Voluntary Cleanup Efforts Undertaken

The release was abated immediately upon discovery, as the Discharger shut down GTS 2405 and the associated extraction wells. The failed compression fitting was replaced later the same day.

Prior History of Violations

The Discharger has not had prior discharge violations from the groundwater treatment system.

Degree of Culpability

While not intentional, the Discharger is fully responsible for any releases from its treatment system due to mechanical failures.

Economic Savings

There were probably minor or no economic savings relative to this event. We have no evidence that suggests that the discharger failed to implement proper maintenance practices.

8. The maximum civil liability that could be imposed for this matter is \$20,000. Given the swiftness of the Discharger's response, and the minor amount of water quality impacts, the Assistant Executive Officer proposes civil liability be imposed on the Discharger in the amount of \$5,000 for the violations cited above, which is due as provided below.
9. This action is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321.
10. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by paying the civil liability in full in accordance with the procedures and limitations set forth in the attached waiver.

June 11, 2008

Date

Dyan Whyte
Assistant Executive Officer

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 August 10, 2008.

- 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. R2-2008-0025 and to remit the full penalty payment to the Waste Discharge Permit Fund, 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 Assistant 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.

Name (print)

Signature

Date

Title/Organization