

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

COMPLAINT NO. R2-2008-0033

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
SAN FRANCISCO PUBLIC UTILITIES COMMISSION
SUNOL VALLEY WATER TREATMENT PLANT
CITY OF SUNOL
ALAMEDA COUNTY

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

1. The San Francisco Public Utilities Commission (hereinafter "Discharger") has discharged from its Sunol Valley Water Treatment Plant in violation of provisions of law for which the Water Board may impose civil liability pursuant to California Water Code (CWC) Section 13385(a)(2) and Section 13323. This Complaint proposes to assess \$64,000 in penalties for the violations cited. The deadline for comments on this Complaint is October 16, 2008, at 5 p.m.
2. On June 18, 2003, the Water Board adopted Order No. R2-2003-0062 (NPDES Permit No. CA G382001). This is a General Permit to regulate discharges from sources within surface water treatment facilities for potable supply.
3. The Discharger received coverage under this General Permit on December 22, 2003.
4. The Sunol Valley Water Treatment Plant serves drinking water to communities in Alameda, Santa Clara, San Mateo, and San Francisco counties.
5. Order No. R2-2003-0062 includes the following requirements:

B. EFFLUENT LIMITATIONS

The effluent from each discharge outfall(s) as defined in the NOI shall not exceed the following limits:

1. *Conventional Pollutants*
- b. *Total Chlorine Residual: 0.0 mg/L*

C. RECEIVING WATER LIMITATIONS

3. *The discharge shall not increase turbidity above background levels by more than the following:*

*Receiving Water Background
<50 units (NTU)*

*Incremental Increase
5 units, maximum*

6. On November 8, 2007, the Discharger discharged approximately two million gallons of drinking water to Alameda Creek (hereinafter "Creek"). The sudden increase in flow increased turbidity in the Creek by greater than 5 NTUs in violation of Receiving Water Limitation C.3 of Order No. R2-2003-0062. Of the two million gallons, an estimated 483,000 gallons of the discharge was chlorinated thus violating Effluent Limitation B.1 of the Order.
7. Unless waived, the Water Board will hold a hearing on this Complaint at its November 12, 2008, meeting at the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland. 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 no less than 10 days before the hearing date. The deadline to submit all written comments and evidence concerning this Complaint is specified in Finding 1.
8. 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 to take other enforcement actions.

ALLEGATIONS

9. This Complaint is based on the following facts:
 - a. On November 8, 2007, from 10:00 a.m. to 1:30 p.m., the Discharger discharged approximately two million gallons of drinking water to Alameda Creek.
 - b. A malfunction of a newly installed valve caused the discharge to Alameda Creek. There was a backup valve; however, it was not in operation on the date of the discharge due to ongoing maintenance.
 - c. Of the approximately two million gallons discharged, the Discharger calculated that approximately 483,000 gallons had a chlorine residual of approximately 0.32 mg/L.
 - d. Because the sudden inflow disturbed sediments in the Creek, the discharge caused an increase in turbidity in the Creek at the point of discharge with a measured value of 494 NTUs. During the peak of the discharge, the receiving water turbidity measured just upstream of the discharge was 0.37 NTUs.
 - e. During the peak of the discharge, the downstream receiving water measured at the US Geological Survey (USGS) Welch Creek gauge, located approximately 0.25 miles downstream from the point of discharge, had a chlorine residual of 0.15 mg/L and a turbidity of 23 NTUs.
 - f. The Discharger reported that schools of California roach were observed in the Creek upstream and downstream of the point of discharge at approximately 2 p.m. and that no dead fish were observed between the point of discharge and the USGS gauge.
 - g. By releasing water with 0.32 mg/L chlorine, the Discharger violated Effluent Limitation B.1.b of Order No. R2-2003-0062. Effluent Limitation B.1.b states that the effluent shall not exceed a Total Chlorine Residual of 0.0 mg/L.
 - h. By causing a receiving water turbidity of 494 NTUs at the discharge point when the background receiving water turbidity was 0.37 NTUs, the Discharger violated Receiving Water Limitation C.3 of Order No. R2-2003-0062. Receiving Water Limitation C.3 states that the receiving water

limitation for turbidity is a maximum increase of 5 NTUs when the background turbidity is below 50 NTUs.

PROPOSED CIVIL LIABILITY

10. For violating CWC Section 13385(a)(2), the Water Board may impose civil liability administratively pursuant to CWC, Chapter 5, Article 2.5 (commencing at Section 13323), in an amount not to exceed the sum of both of the following:
- a. \$10,000 for each day in which a violation occurred, and
 - b. \$10 for each gallon of discharge that is not susceptible to cleanup or is not cleaned up in excess of 1,000 gallons.

If this matter is referred to the Attorney General for judicial enforcement, a higher liability of \$25,000 per day of violation and \$25 per each gallon of discharge that is not susceptible to cleanup or is not cleaned up in excess of 1,000 gallons may be imposed.

The maximum administrative civil liability (ACL) the Water Board may impose for the violations is \$20,010,000 ($[\$10,000 \times 1 \text{ day} \times 2 \text{ violations}] + [\$10 \times 2,000,000 \text{ gal} - 1,000 \text{ gal}]$).

11. In determining the amount of civil liability to be assessed against the Discharger, the Water Board consider the factors described in CWC Section 13385(e). The factors include:

- The nature, circumstances, extent, and gravity of the violation or violations;
- 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 savings, if any, resulting from the violation; and
- Other such matters as justice may require.

Nature, Circumstance, Extent and Gravity of the Violations

Because of the large volume of the release (2 million gallons) over a short period of time (3.5 hours), the violation is significant. The discharge increased base flow greater than fivefold over the course of the entire day. Approximately 483,000 gallons of the discharge were untreated and had a chlorine residual of 0.32 mg/L, which is seventeen times the USEPA National Ambient Water Quality Criterion for chlorine residual. The discharge raised the turbidity in the Creek over a thousand-fold and impacted the creek for at least 0.25 miles.

The discharge is likely to have impacted beneficial uses of the Creek, in particular, freshwater habitat and fish spawning.

Susceptibility of the Discharge to Cleanup or Abatement

The discharge was not susceptible to cleanup. However, the Discharger took immediate steps to dechlorinate the discharge with sodium sulfite pellets, thereby reducing the impact of the discharge.

Degree of Toxicity of Discharge

The large volume of chlorinated water entering the Creek was significant. However, the degree of toxicity of the discharge cannot be quantified precisely. Adverse effects on water quality and beneficial uses include the creation of a localized toxic environment in the water column as a result of the increased chlorine residual.

Free available chlorine in water is toxic to some fish and other aquatic life at low concentrations. The USEPA National Ambient Water Quality Criterion of 0.019 mg/L for chlorine residual to prevent acute (lethal) effects to aquatic life is the level below which no toxic effects should occur. The Discharger reported observing schools of California roach in the Creek both above and below the point of discharge. However, California roach is the most abundant species of fish in the Creek, and California roach are known to be heartier than other fish species documented in the Creek. The Creek and its tributaries historically supported anadromous fish runs of steelhead trout, coho salmon, Pacific lamprey, and river lamprey, and stream habitat conditions in the affected reach (upper Alameda Creek – Sunol Park) potentially support steelhead/rainbow trout spawning and rearing. The California Department of Fish and Game has documented a number of native fish species in the Creek in recent years, and the affected reach currently supports populations of native warm water fish, such Sacramento pikeminnow (squawfish) and Sacramento sucker.

Ability to Pay and Ability to Stay in Business

The proposed ACL is a small fraction of the Discharger's planned expenses. Therefore, the recommended ACL is not expected not jeopardize the Discharger's ability to continue operations. The Discharger's annual operating budget for collection, treatment, and distribution of drinking water is \$5.88 million. The Discharger is undertaking a Water Supply and Improvement Program at the cost of \$4.3 billion to be completed by the end of 2015. The Sunol Valley Water Treatment Plant will undergo an extensive seismically upgrade. The Water Supply and Improvement Program is funded by a bond measure approved by San Francisco voters in November 2002.

Voluntary Cleanup Efforts Undertaken

The Discharger responded swiftly and appropriately to stop the discharge. The valve failed at approximately 10:00 a.m. Operations staff arrived within minutes of the valve failure and acted quickly to limit the negative effects of the discharge to the Creek by adding sodium sulfite pellets to the discharge at 10:15 am. The mode of dechlorination was appropriate. By 10:45 a.m., the discharge to the Creek was fully dechlorinated. The influent to the plant was shut off, and the discharge was stopped completely by 1:30 p.m.

Prior History of Violations

The Discharger has had no discharges of this type in the last three years.

Degree of Culpability

The Discharger is culpable because the discharge occurred while it was in charge of the operation of its plant and it is responsible for the integrity of its facilities.

Economic Savings

The Discharger had no apparent economic savings resulting from the violation. The plant underwent a major renovation project in 2002. In addition to large scale capital projects, the Discharger addresses maintenance needs through yearly budgeting. The discharge was not a result of deferred maintenance, as the new valve simply failed to seat properly.

Other Matters as Justice May Require

The Discharger reported the discharge according to its permit requirements and, in doing so, chose to disclose circumstances fully, thereby following all its reporting requirements.

Furthermore, the Discharger has been cooperative and responsive to concerns raised by Water Board staff about the discharge and the investigation.

Water Board staff time to investigate and prepare the Complaint and supporting evidence is estimated to be 140 hours. Based on an average cost to the State of \$125 per hour, the total staff cost is \$17,500.

Based on the above factors, the Assistant Executive Officer proposes a civil liability be imposed on the Discharger in the amount indicated in Finding 1 for the violations cited above, which includes staff costs.

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.

The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by (a) paying the civil liability in full or (b) undertaking an approved supplemental environmental project in an amount not to exceed \$32,000 and paying the remainder of the civil liability, all in accordance with the procedures and limitations set forth in the attached waiver.

September 16, 2008
Date



Thomas E. Mumley
Assistant Executive Officer

Attachment: Waiver of Hearing Form

WAIVER

If you waive your right to a hearing, 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 October 16, 2008, 5 p.m.**

- 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 this Complaint 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. 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.

- 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 this Complaint, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to the amount identified in this Complaint and paying the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA). The SEP proposal shall be submitted no later than October 31, 2008. 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 Assistant Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Assistant Executive Officer, I agree to pay the suspended penalty amount within 30 days of the date of the letter from the Assistant 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 Assistant 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 Assistant 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