

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

COMPLAINT NO. R2-2008-0092

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
RODEO SANITARY DISTRICT
CONTRA COSTA 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. Rodeo Sanitary District (hereinafter "Discharger") has discharged from its Water Pollution Control Facility 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 \$51,000 in penalties for the violations cited. The deadline for comments on this Complaint is January 8, 2009, 5 p.m.
2. The Discharger owns and operates the Rodeo Sanitary District Water Pollution Control Facility (hereafter Facility) and its conveyance system. The Discharger provides secondary treatment for domestic and commercial wastewater from the Cities of Rodeo and Tormey. The Facility has an average dry weather design capacity of 1.14 million gallons per day (mgd) and a peak wet weather capacity of approximately 3.34 mgd.
3. This Complaint is issued to address seven violations that occurred between December 1, 2007, and August 31, 2008. During this period, the Discharger has been covered by Order No. R2-2006-0062, NPDES Permit CA 0037826. The Water Board adopted Order No. R2-2006-0062 on September 13, 2006. The requirements of Order No. R2-2006-0062 became effective on December 1, 2006.
4. Order No. R2-2006-0062 includes the following requirements:

- a. Proper Operation and Maintenance Attachment D, I.D.

"The Discharger shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of this Order. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems that are installed by a Discharger only when necessary to achieve compliance with the conditions of this Order [40 CFR §122.41(e)]."

- b. Effluent Limitations and Discharge Specifications IV.A.1

"The discharge of treated wastewater shall maintain compliance with the following effluent limitations at Discharge Point 001, with compliance measured at Monitoring

Location M-001 as described in the attached Monitoring and Reporting Program (Attachment E)...

Chlorine Residual 0.0 mg/L, Instantaneous Maximum”

5. As shown in Table 1, the Discharger violated its chlorine residual effluent limitation six times. The Discharger also did not properly operate and maintain its disinfection system, which resulted in the discharge of about 130,000 gallons of treated wastewater that was not subject to disinfection.
6. Unless waived, the Regional Water Board will hold a hearing on this Complaint at its February 11, 2009 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 not 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.
7. 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

8. This Complaint is based on the following facts:
 - a. From December 1, 2007, through August 31, 2008, the Discharger reported six effluent limitation violations for chlorine residual and one discharge of undisinfected secondary treated wastewater to San Pablo Bay. The following provides a description of the circumstances under which each of these violations occurred.
 - b. On December 13, 2007, and January 14, 2008, the Discharger violated its chlorine limitation because of sample line failures. The District has two sample lines that connect to its chlorine contact basin. The first sample line reads chlorine residual levels to set the amount of chlorine that will be added to the chlorine contact basin from the sodium hypochlorite feed tank. The second sample line reads chlorine residual levels exiting the chlorine contact basin to set the amount of dechlorinating agent that will be added from the sodium bisulfite feed tank. On December 13, 2007, the first sample line became clogged with debris so water from the chlorine contact basin was not transmitted through the sample line. As such, the District's first analyzer read a steadily decreasing chlorine residual, which resulted in the addition of too much sodium hypochlorite. This resulted in the discharge of about 16,700 gallons that had a chlorine residual of 4.0 mg/L. Similarly, the January 14, 2008, chlorine violation occurred because both sample lines failed at the same time. This resulted in a discharge of about 46,900 gallons that had a chlorine residual of 7.0 mg/L.

- c. On June 29, 2008, and July 17, 2008, the Discharger exceeded its chlorine limitation because of equipment failures. The Discharger's chlorine residual exceedance on June 29, 2008, occurred because the peristaltic pump on the analyzer that determines the sodium bisulfite feed rate failed. Because of this pump failure, there was not enough sodium bisulfite added to achieve adequate dechlorination. This resulted in a discharge of about 4,500 gallons that had a chlorine residual of 0.78 mg/L. The July 17, 2008, violation occurred because of a conduit failure that allowed water to enter and corrupt the Discharger's flow meter that controls the sodium bisulfite feed pump. As the Discharger sets its sodium bisulfite dosage based on the flow and chlorine residual level, the failure of this flow meter resulted in too small a dosage of sodium bisulfite to achieve adequate dechlorination. This resulted in a discharge of about 2,300 gallons that had a chlorine residual of 2.3 mg/L.
- d. On June 3, 2008, and August 28, 2008, the Discharger exceeded its chlorine limitation because of operator error. The June 3 violation was because, after the operator tested the sodium bisulfite pump, he left the valve closed. This resulted in a discharge of about 17,600 gallons that had a chlorine residual of 2.92 mg/L. Similarly, the August 28, 2008, violation occurred because, after conducting preventative maintenance, the operator left the isolation valve for its sodium bisulfite pump closed. This resulted in a discharge of about 13,600 gallons that had a chlorine residual of 4.1 mg/L.
- e. On May 21, 2008, at 7:30 p.m. until May 22, 2008, at 5:30 a.m., the Discharger discharged approximately 130,000 gallons of undisinfected secondary treated wastewater to San Pablo Bay because it did not properly ensure adequate supply of sodium hypochlorite for disinfection. This occurred because the Discharger relies solely upon an electronic measuring device to track its supply of sodium hypochlorite in a storage tank. At the time of the violation, this device was providing erroneous readings. Specifically, the electronic measuring device on the sodium hypochlorite tank read 1,050 gallons when, in reality, the tank was nearly empty. On May 23, 2008, between 10:00 a.m. and 1:00 p.m., the Discharger collected eight samples of the receiving water at four different locations along the shoreline of its treatment plant. These samples show that total coliform levels were within water quality objectives for water contact recreation.

PROPOSED CIVIL LIABILITY

9. Pursuant to CWC Section 13385(a), a discharger is subject to civil liability for violating any waste discharge requirement. The Regional Water Board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:
 - a. \$10,000 for each day in which the violation occurs
 - 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 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 the Water Board may impose for the violations is \$2,326,000 (see Table 1 for calculations).

10. California Water Code Section 13385(i) requires the Water Board to assess a mandatory penalty of at least \$3,000 for each serious violation. For the violations addressed in this Order, the mandatory minimum penalty is \$18,000 (see Table 1 for calculations).
11. In determining the amount of civil liability to be assessed against the Discharger, the Regional Water Board has taken into consideration the factors described in CWC Section 13385(e). The factors described 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 benefit or savings, if any, resulting from the violation, and
 - Other such matters as justice may require.

The nature, circumstances, extent, and gravity of the violation or violations

There were seven violations that resulted in approximately 231,600 gallons of wastewater discharged to San Pablo Bay that did not comply with permit conditions. The most common causes of the Discharger's violations were equipment malfunction, inadequate contingencies, and operator error.

The most severe violation relates to the Discharger running out of sodium hypochlorite. This resulted in a discharge to San Pablo Bay of about 130,000 gallons of treated wastewater that was extremely high in pathogens and viruses. This likely resulted in impairment to water contact recreation as a result of elevated bacteria levels including pathogens. Though the Discharger's sampling showed no affects near shore, that sampling effort began more than 24 hours after the incident was stopped. Therefore, the Discharger's sampling did not fully capture the effect of this discharge on receiving waters because it was already diluted by two tidal cycles.

The remaining violations relate to chlorine residual. Chlorine is extremely toxic to aquatic life at low concentrations; however, the impact from the Discharger's chlorine violations was reduced because of the nature of its discharge. This is because the Discharger combines treated wastewater from its Facility with treated wastewater from the City of Pinole (4:1

dilution) from which the combined discharge is transported to San Pablo Bay via a deepwater diffuser.

Whether the discharge is susceptible to cleanup or abatement

The discharge was not susceptible to cleanup. However, once the Discharger became aware of the above violations it took immediate steps to minimize the duration, thereby reducing the impact of these discharges.

The degree of toxicity of the discharge

While chlorine is extremely toxic at low concentrations, the degree of toxicity of the discharge from chlorine residual violations was probably low. This is because the Discharger combines its treated wastewater with that from the City of Pinole (4:1 dilution) before it is discharged via a deepwater diffuser to San Pablo Bay. As such, it is likely that excess sodium bisulfite in the City of Pinole's treated wastewater significantly reduced the chlorine residual levels in the Discharger's treated wastewater before it reached San Pablo Bay. The degree of toxicity of the undisinfected discharge is also low because it was fully treated wastewater. However, it was problematic from the standpoint of pathogens as discussed above.

The ability to pay and the effect on ability to continue in business

The Discharger had an annual operating budget of about \$2 Million for fiscal year 2007/2008. The Discharger can pay the proposed penalty because it has the authority to adjust its rate scale to provide for financial needs.

Any voluntary cleanup efforts undertaken

The Discharger was not able to recover treated wastewater that did not meet effluent limit violations..

Any prior history of violations

The Discharger has a history of violating its effluent limits, in particular, for chlorine residual. The Water Board issued Complaint No. 2007-0083, Mandatory Minimum Penalty for 18 effluent limit violations (11 were for chlorine residual) between December 2002 and December 2006. The Discharger attributed these violations to operational errors and equipment failure.

The degree of culpability

The Discharger's degree of culpability for the violations is high. This is because it is responsible for the proper operation and maintenance of its treatment plant and for ensuring that employees implement standard operating procedures in maintaining and operating equipment. As noted earlier, the most common causes of the Discharger's violations were equipment malfunction, inadequate contingency planning, and operator error. These violations could have been prevented with more aggressive maintenance, redundancies, and employee training.

The Discharger indicates that its disinfection system failed because the electronic measuring device for controlling the inventory of sodium hypochlorite was providing erroneous

readings. This resulted in the discharge of about 130,000 gallons of undisinfected secondary treated wastewater to San Pablo Bay. While failure of the electronic measuring device caused this violation, the Discharger did not have adequate measures in place to identify that this measuring device was unfunctional. For example, if the Discharger manually recorded the quantity of sodium hypochlorite in its tank every day, it would have noticed that the chemical inventory was not changing, and therefore, the meter was providing erroneous readings. In other words, the cause of the above violation is more attributable to the Discharger implementing inadequate standard operating procedures than equipment failure.

The remaining violations covered by this Complaint are for chlorine residual. The violations relating to sample lines clogging, the peristaltic pump failure, and flow meter failure could have been prevented if the Discharger had implemented appropriate contingencies. The two chlorine violations relating to sample lines clogging and the one chlorine violation relating to flow meter failure occurred because the Discharger did not have a backup system in place. In other words, if the Discharger's sample lines clogged or its flow meter failed, it would be in violation of its chlorine residual limit because, at the time of these violations, its system was not setup to automatically adjust chemical feed rates of sodium hypochlorite or sodium bisulfite. The chlorine violation relating to the peristaltic pump failure could have been prevented if the Discharger had a backup analyzer, which is a common practice at other treatment facilities. This would have allowed the Discharger to ensure disinfected effluent received an adequate amount of sodium bisulfite. Finally, the two chlorine residual violations relating to operator error could have been prevented by a more robust employee training program.

The economic benefit of savings

The economic benefit or savings from these violations is minimal. This is because most of the violations could have been prevented through better contingency planning or more aggressive employee training. The one exception is the chlorine residual violation that occurred because of the peristaltic pump failure. In this case, this violation could have been prevented if the Discharger had installed a backup chlorine analyzer, which typically cost around \$3,000.

Other such matters as justice may require

The Discharger reported the above violations according to its permit requirements. Additionally, the Discharger has been responsive in implementing corrective measures to address these violations.

12. The Assistant Executive Officer therefore proposes a civil liability in the amount of \$51,000, which includes the required mandatory minimum penalty and staff costs. Water Board Staff time to prepare the Complaint and supporting evidence is 70 hours. Based on an average cost to the State of \$135 per hour, the total staff cost is \$9,450.
13. 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 \$25,500 and paying the

remainder of the civil liability, all in accordance with the procedures and limitations set forth in the attached waiver.

14. This issuance of this Complaint is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321.

December 3, 2008

Date

Thomas E. Mumley
Assistant Executive Officer

Attachments: Waiver of Hearing
Table 1

WAIVER FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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 January 8, 2009.**

- 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. R2-2008-0092 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 scheduled Hearing date. 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 agreement 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. R2-2008-0092, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$25,500 and paying the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the scheduled Hearing date. **The SEP proposal shall be submitted no later than January 22, 2009.** 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.

- Waiver of right to a hearing within the 90-day hearing requirement in order to extend the hearing date.

By checking this box, I hereby waive my right to have a hearing before the Regional Water Board within 90 days after service of the Complaint, but I reserve the right to have a hearing in the future. I agree to promptly engage the Regional Water Board prosecution staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Water Board delay the hearing so that the Discharger and the prosecution team can discuss settlements. It remains within the discretion of the Regional Water Board to agree to delay the hearing.

Name (print)

Signature

Date

Title/Organization

ATTACHMENT Table 1: NPDES Permit Violations from December 1, 2007 through August 31, 2008

Date	Violation	Gallons Discharged	Cause	Minimum Penalty	Maximum Penalty¹
12/13/2007	Chlorine Residual	16,700	Sample Flow Failure	\$3,000	\$167,000
01/14/2008	Chlorine Residual	46,900	Sample Flow Failure	\$3,000	\$469,000
05/21/2008 and 05/22/2008	Failure of proper O&M leading to discharge of undisinfectated wastewater	130,000	Ran out of Chlorine	0	\$1,310,000
06/03/2008	Chlorine Residual	17,600	Operator Error	\$3,000	\$176,000
06/29/2008	Chlorine Residual	4,500	Analyzer Failure	\$3,000	\$45,000
07/17/2008	Chlorine Residual	2,300	Effluent Flow Meter Failure	\$3,000	\$23,000
08/28/2008	Chlorine Residual	13,600	Operator Error	\$3,000	\$136,000
	Total Gallons	231,600	Total Amount	\$18,000	\$2,326,000

Note (1) The Maximum Penalty for each violation is \$10,000 per day per violation plus an additional liability of \$10 per gallon over 1,000 gallons.