

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT (Carolina Silva)
MEETING DATE: July 11, 2007

ITEM: 7

SUBJECT: **City and County of San Francisco, San Francisco International Airport, Industrial Wastewater Treatment Plant, San Mateo County** - Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

CHRONOLOGY: Mandatory Minimum Penalty assessed 2006

DISCUSSION: The City violated its NPDES permit's effluent limits three times from December 6, 2005, to February 28, 2007. Two of these violations are subject to a Mandatory Minimum Penalty. In April 2007, we issued a complaint to the City assessing \$6,000 in mandatory minimum penalties.

All of the violations covered by the complaint were caused by a one-time plant upset: an airline discharged 11,000 gallons of fire-fighting foam to the treatment plant causing the violations. Because airline and City staff acted immediately to contain the foam, the minimum penalty is appropriate.

The City has signed a waiver to a hearing (see Appendix B), and has paid the full penalty to the State Board's Cleanup and Abatement Account.

RECOMMENDATION: No action is necessary

File Number: 2179.7033 (CS)

Appendices: A. Complaint No. R2-2007-0035
B. Signed Waiver

APPENDIX A

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

**COMPLAINT NO. R2-2007-0035
MANDATORY MINIMUM PENALTIES
IN THE MATTER OF
CITY AND COUNTY OF SAN FRANCISCO
SAN FRANCISCO INTERNATIONAL AIRPORT,
INDUSTRIAL WASTEWATER TREATMENT PLANT,
SAN MATEO COUNTY**

Pursuant to California Water Code Section 13385, this Complaint is issued to City and County of San Francisco San Francisco International Airport Industrial Wastewater Treatment Plant (hereafter Discharger), to assess \$6,000 mandatory minimum penalties, based on a finding of the Discharger's violations of Waste Discharge Requirements Order No. R2 2002-0045 (NPDES No. CA0028070) for the period between December 6, 2005, and February 28, 2007.

The Executive Officer finds the following:

1. April 1, 2002, the California Regional Water Quality Control Board, San Francisco Bay Region (Water Board) adopted Order No. R2 2002-0045.
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. R2 2002-0045 includes the following applicable effluent limitations:

A. Conventional Substances

Constituent	Unit	Monthly Average	Weekly Average
Biochemical Oxygen Demand(BOD)	mg/L	30	45

B. Toxic Substances

Constituent	Units	Daily Maximum
Copper	ug/L	17

7. Summary of Effluent Limit Violations

During the period between December 6, 2005, and February 28, 2007, the Discharger had 3 violations of its discharge limits as summarized in Table 1. These violations are:

- One BOD effluent weekly average limit;
- One BOD effluent monthly average limit;
- One copper effluent daily maximum limit.

Consideration of Violations

During the month of August 2006, the Discharger reported three violations caused by one event: United Airlines (UAL) discharged 11,000 gallons of protein foam liquid concentrate (fire-fighting foam) to the treatment plant. This disrupted the plant's operations, causing the following violations: BOD effluent (both weekly and monthly limits), and the copper daily effluent limit.

When the discharge happened, UAL contacted the Discharger, and immediately acted to contain and pre-treat the foam before sending it to the plant. While the Discharger was not able to completely avoid effluent limit excursions, due to the magnitude of this event, it is likely that its mitigation efforts reduced the number of exceedances that the foam spill could have caused.

The minimum penalty is appropriate for the excursions because all three of the exceedances were caused by an isolated, unanticipated event, and the Discharger acted immediately to contain and control the problem.

8. Serious Violations

Biochemical Oxygen Demand (BOD) is a Group I pollutant. Serious violations for Group I pollutants are those that exceed the limits by more than 40%. Copper is a Group II pollutant. Serious violations for Group II pollutants are those that exceed the limits by more than 20%. The serious violations addressed by this MMP are as follows:

- Biochemical Oxygen Demand (BOD) effluent weekly—one serious violation (item 1, in Table 1);
- Copper effluent daily maximum—one serious violation (item 2 in Table 1).

9. Chronic Violations

Effluent limitation violations, as defined by CWC Section 13385(i)—monetary penalties are assessed on the 4th and higher consecutive chronic violations within running 180-day periods. None of the exceedances cited in this Complaint were chronic violations.

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

Two of the three violations are subject to a MMP, as detailed in Table 1. The total MMP amount is \$6,000.

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 \$6,000 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.

THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer proposes that the Discharger be assessed an MMP in the amount of \$6,000.
2. The Water Board will hold a hearing on this Complaint on July 11, 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 \$6,000 within 30 days after the signed waiver becomes effective,
or
 - (b) Propose a SEP in an amount up to \$6,000. 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 \$6,000.
3. If the Discharger chooses to propose an SEP, it must submit a preliminary proposal by 5:00 p.m., June 4, 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 \$6,000. 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, or 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 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

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 June 4, 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. R2-2007-0035 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. R2-2007-0035, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$6,000 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 June 4, 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	12-Aug-06	E-001 BOD Eff Weekly Avg.	Max 45	83.40	S, C1	\$3,000	13-Feb-06
2	15-Aug-06	E-001 Copper Eff Daily Maximum	Max 17	41.30	S, C2	\$3,000	16-Feb-06
3	31-Aug-06	E-001 BOD Eff Monthly Avg.	Max 30	33.83	C3		4-Mar-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.

APPENDIX B

WAIVER

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Waiver of right to a hearing and agree to make payment and undertake an SEP.

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MARK COSTANZO

Name (print)

Signature

MAY 15, 2007

Date

UTILITIES MANAGER, FACILITIES

Title/Organization SFO

