

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

**COMPLAINT NO. R2-2003-0041
MANDATORY MINIMUM PENALTIES
IN THE MATTER OF
CITY OF BENICIA
SOLANO, COUNTY**

Pursuant to California Water Code Section 13385, this Complaint is issued to City of Benicia (hereafter Discharger) to assess mandatory minimum penalties, based on a finding of the Discharger's violations of Waste Discharge Requirements Order Nos. 94-094 and 01-096 (NPDES No. CA 003091) for the period between November 1, 2000 and January 1, 2003.

The Executive Officer finds the following:

1. On August 14, 1994, the Regional Water Quality Control Board, San Francisco Bay Region, (Regional Board) adopted Order No. 94-094 for the Discharger, to regulate discharges of waste from the Discharger's facility.
2. On August 15, 2001, the Regional Board adopted Order No. 01-096 for the Discharger, to regulate discharges of waste from its facility. Order No. 01-096 became effective on September 1, 2001. Order No. 94-094 was superceded upon effectiveness of Order No. 01-096.
3. Water Code Section 13385(h)(1) requires the Regional Board to assess a mandatory minimum penalty (MMP) of three thousand dollars (\$3,000) for each serious violation.
4. 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.
5. Water Code Section 13385(i) requires the Regional 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.
6. Water Code Section 13385(l) allows the Regional 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.

7. Effluent Limitations

Order Nos. 94-094 and 01-096 include the following applicable effluent limitations:

EFFLUENT LIMITATIONS (Order No. 01-096)

1. *The effluent shall not exceed the following limits:*

- a. *5-day Biochemical Oxygen Demand (BOD), 30 mg/l monthly average*
- b. *Total suspended solid (TSS), 60 mg/l daily maximum*
- c. *Total chlorine residual, 0.0 Instantaneous maximum*

3. *The arithmetic mean of the 5-day BOD and TSS concentrations, for effluent samples collected in each calendar month shall not exceed 15 percent of the arithmetic mean of the respective values, for influent samples collected at approximately the same times during the same period.*

5.a. *Acute Toxicity: an 11-sample 90th percentile value of not less than 70 survival*

EFFLUENT LIMITATIONS (Order No. 94-094)

1. *The effluent shall not exceed the following limits:*

Settleable matter 0.2 ml/l-hr l instantaneous maximum

8. Summary of Effluent Limit Violations

During the period between October 1, 2001 and January 1, 2003, the Discharger had eight violations of its effluent discharge limits limit. In addition, the Discharger had one violation on November 2, 2000 that has not been addressed by any prior Orders or Complaints. These are: one BOD monthly average limit violation, one BOD monthly removal limit violation, two TSS daily maximum limit violations, one TSS monthly percentage removal limit violation, two chlorine residual limit violations, one settleable matter instantaneous maximum limit violation, and one acute toxicity 11-sample 90th percentile limit violation. The details of these limit violations are summarized in Table 1. Because two different Board Orders regulated the effluent discharged from the wastewater treatment plant at different times during the period covered by this Complaint, violations were summarized under the applicable Board Orders and time periods.

9. BOD is a Group I pollutant

The one BOD monthly average and one BOD monthly percentage removal requirement effluent limit violations are non-serious violations, as these violations (items 4 and 5 in Table 1) are less than 40% of the corresponding effluent limitations. One violation (item 4) is exempted from a MMP because there have not been four or more violations in the six-month period. Therefore, the total penalty amount for these non-serious violations is \$3,000.

10. TSS is a Group I pollutant

The two TSS daily maximum and one TSS monthly percentage removal requirement effluent limit violations are non-serious violations, as these violations (items 2, 3 and 6 in Table 1) are less than 40% of the corresponding effluent limitations. Because these violations are the fourth or more violations in a six-month period, each is subject to a \$3,000 fine. The total penalty amount for these non-serious violations is \$9,000.

11. Chlorine residual is a Group II pollutant

The two chlorine residual instantaneous maximum effluent limit violations (items 7 and 9 in Table 1) are serious violations, as these violations are 20% or greater than the effluent limitation.

Each of the two chlorine residual limit violations is subject to a \$3,000 fine, for a total fine of \$6,000.

12. Total Settleable Matter is a Group I pollutant

The one settleable matter instantaneous maximum effluent limit violation (item 1 in Table 1) is a serious violation, as this violation is 40% or greater than effluent limitation. This violation is subject to a \$3,000 fine.

13. Acute toxicity is neither a Group I nor Group II pollutant

The one acute toxicity 90th percentile limit violation (item 8 in Table 1) is a non-serious violation. This violation is exempted from a MMP because there have not been four or more violations in the six-month period.

14. 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.

15. Assessment of MMPs

Seven of the nine violations are subject to MMP, as detailed in Table 1. The total MMP amount is \$21,000.

16. 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 \$18,000 on a SEP acceptable to the Executive Officer. Any such amount expended to satisfactorily complete an SEP will be permanently suspended.

17. SEP Categories

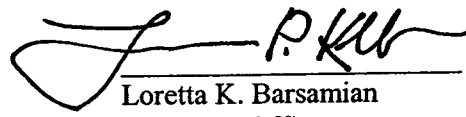
If the Discharger chooses to propose an SEP, the proposed SEP shall be in the following categories:

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

THE CITY OF BENICIA IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer proposes that the Discharger be assessed MMPs in the total amount of \$21,000.
2. The Regional Board will hold a hearing on this Complaint on August 20, 2003, 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 \$21,000 within 30 days after the signed waiver becomes effective, or

- b) Propose a SEP in an amount up to \$18,000. 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 \$21,000.
- 3. If the Discharger chooses to propose a SEP, it must submit a preliminary proposal by 5:00 p.m., August 4, 2003 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 \$18,000. 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 Regional 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.



Loretta K. Barsamian
Executive Officer

7/2/03
Date

Table 1 - Violations
Attachment A - Standard Criteria and Reporting Requirement for Supplemental Environmental Project

WAIVER

(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.)

- Waiver of the right to a hearing and agree to make payment in full.
By checking the box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. R2-2003-0041 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o State Water Resources Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the signed waiver becomes effective as indicated above. 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.
- Waiver of the right to a hearing and agree to make payment and undertake a SEP.
By checking the box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. R2-2003-0041, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$18,000. I also agree to remit payment of the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the signed waiver becomes effective. 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 for the SEP within 30 days of a letter from the Executive Officer denying the approval of the proposed 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. I further agree to satisfactorily complete the approved SEP within a time schedule set by the Executive Officer. I understand that 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 DESCRIPTION	EFFLUENT LIMIT	REPORTED VALUE	COMMENTS		Start of 180 days
					Non-Serious	Serious	
1	11/2/00	Settleable matter, Instant.	0.2	0.6		\$3,000	6-May-00
*	5/22/01	Settleable matter, Instant.	0.2	0.8			23-Nov-00
*	5/23/01	Settleable matter, Instant.	0.2	0.5			24-Nov-00
*	5/31/01	Settleable matter, Instant.	0.2	0.5			2-Dec-00
2	10/21/01	Total suspended solid, daily max.	60	72	\$3,000		24-Apr-01
3	10/22/01	Total suspended solid, daily max.	60	62	\$3,000		25-Apr-01
4	1/31/02	BOD, monthly ave	30	31	C		4-Aug-01
5	1/31/02	BOD, monthly removal%	min 85	84	\$3,000		4-Aug-01
6	1/31/02	Total suspended solid, monthly removal %	min 85	84	\$3,000		4-Aug-01
7	2/9/02	Chlorine residual, Instant	0.0	2		\$3,000	13-Aug-01
8	9/19/02	Acute bioassay, 90% survivor	min 90%	57.5	C		23-Mar-02
9	12/22/02	Chlorine residual, Instant	0.0	3		\$3,000	25-Jun-02
		Number of Non-Serious Violations	4		\$12,000		
		Number of Serious Violations	3			\$9,000	
		Total Penalty				\$21,000	
		Notations					
		C - Running chronic violation. Within a six month period, first three are not penalized. fourth and subsequent violations are penalized at \$3,000 per violation.					
		S - serious violation, penalized at \$3,000 per violation.					

* This violation was previously addressed by a separate Complaint.

ATTACHMENT A

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAM FRANCISCO BAY REGION
MARCH 2003**

**STANDARD CRITERIA AND REPORTING REQUIREMENT
FOR
SUPPLEMENTAL ENVIRONMENTAL PROJECT**

A. BASIS AND PURPOSE

The San Francisco Bay Regional Water Quality Control Board (Regional Board) accepts and encourages Supplemental Environmental Projects (SEP) in lieu of a portion of the ACL imposed on Dischargers in the Bay Area.

The Regional Board does not select projects for SEP; rather, the Discharger identifies a project it would like to fund and then obtains approval from the Board's Executive Officer. The Board facilitates the process by maintaining a list of possible projects, which is made available to Dischargers interested in pursuing the SEP option. This list is available on the Regional Board web site:

<http://www.swrcb.ca.gov/rwqcb2/>

Dischargers are not required to select a project from this list. Dischargers may contact local governments or public interest groups for potential projects in their area, or develop projects of their own.

B. GENERAL SEP QUALIFICATION CRITERIA

All SEPs approved by the RWQCB must satisfy the following general criteria:

- (a) An SEP shall only consist of measures that go above and beyond all legal obligations of the Discharger (including those from other agencies). For example, sewage pump stations should have appropriate reliability features to minimize the occurrence of sewage spills in that particular collection system. The installation of these reliability features following a pump station spill would not qualify as an SEP.
- (b) The SEP should benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the State. SEPs in the following categories have received approval from the Board's Executive Officer:
 - Pollution prevention. These are projects designed to reduce the amount of pollutants being discharged to either sewer systems or to storm drains. Examples include improved industrial processes that reduce production of pollutants or improved spill prevention programs.
 - Pollution reduction. These are projects that reduce the amounts of pollution being discharged to the environment from treatment facilities. An example is a program to recycle treated wastewaters.

- Environmental restoration. These projects either restore or create natural environments. Typical examples are wetland restoration or planting of stream bank vegetation.
- Environmental education. These projects involve funding environmental education programs in schools (or for teachers) or for the general public.

Further, an SEP should be located near the Discharger, in the same local watershed, unless the project is of region-wide importance.

C. APPROVAL PROCESS

The following information shall be submitted to the Executive Officer for approval of an SEP:

1. Name of the organization and contact person, with phone number.
2. Name and location of the project, including watershed (creek, river, bay) where it is located.
3. A detailed description of the proposed project, including proposed activities, time schedules, success criteria, other parties involved, monitoring program where applicable, and any other pertinent information.
4. General cost of the project.
5. Outline milestones and expected completion date.

Generally SEP proposals are submitted along with waivers of hearings. In such a case the approval of a proposal will not become effective until the waiver goes into effect, i.e. at the close of the public comment period. There will not be a public hearing on the SEP proposal unless new and significant information becomes available after the close of the public comment period that could not have been presented during the comment period.

If the Discharger needs additional time to prepare an SEP it may waive its right to a hearing within 30 days of the issuance of a Complaint (and retain its right to a hearing to contest the Complaint at a later date), and request additional time to prepare an SEP proposal. Any such time extension needs to be approved by Board staff.

D. REPORTING REQUIREMENT

On January 15 and July 15 of each year, progress reports shall be filed for the SEPs with expected completion date beyond 240 days after the issuance of the corresponding complaint.

E. FINAL NOTIFICATION

No later than 60 days after completion of the approved SEP, a final notification shall be filed. The final notification shall include the following information:

- Outline completed tasks and goals;
- Summary of all expenses with proof of payment; and

- Overall evaluation of the SEP.

F. THIRD PARTY PROJECT OVERSIGHT

For SEPs of more than \$10,000 the Board requires there to be third party oversight of the project. The Regional Board has made arrangements with the Association of Bay Area Governments (ABAG) to provide this oversight, or a Discharger may choose an alternative third party acceptable to the Executive Officer. If ABAG is chosen, six per cent of the SEP funds shall be directed to ABAG for oversight services (the remaining 94% of funds go directly to the SEP). If an alternative third party is chosen, the amount of funds directed to the SEP, as opposed to oversight, shall not be less than 94% of the total SEP funding. For projects greater than \$10,000 the Discharger shall indicate when submitting the information required under C. above whether ABAG or an alternative third party oversight entity will be used.