

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

Complaint No. R2-2008-0068

**Mandatory Minimum Penalty
In the Matter of
Mr. Cuong Chon Huynh
Pete's Stop
290 Keyes Street, 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. This Mandatory Minimum Penalties (MMP) complaint is issued to Mr. Cuong Chon Huynh, owner and operator of Pete's Stop (hereinafter Discharger). This complaint is issued pursuant to Water Code Sections 13385(h), 13385(i), 13385.l, and 13323.
2. This complaint proposes \$48,000 in MMPs. The complaint is based on a finding of the Discharger's violations of Waste Discharge Requirements Order No. 01-100 (NPDES No. CAG912002) for the period between April 1, 2005, and September 30, 2006, as detailed below. For a description of how MMPs are assessed, please see General Overview of MMP Calculations, attached.

a. Permit at the time of violations

On September 19, 2001, the California Regional Water Quality Control Board, San Francisco Bay Region (Water Board) adopted Order No. 01-100 to regulate discharges of waste from facilities discharging extracted groundwater treated to remove fuels-related chemicals. This permit is known as the Fuels General Permit. The Discharger obtained coverage under the Fuels General Permit on April 28, 2003.

b. Effluent Limitations

Order No. 01-100 specifies the following effluent limitations:

Parameter	Effluent Limit	
Total Petroleum Hydrocarbons (TPHg)	daily maximum	50 ug/L
Benzene	daily maximum	1 ug/L
Toluene	daily maximum	5 ug/L
Ethylbenzene	daily maximum	5 ug/L
MTBE	daily maximum	5 ug/L
Xylene	daily maximum	5 ug/L

c. Water Board Staff's Consideration of Violations

This complaint addresses eleven effluent limits violations and five reporting violations for late submittal of the 2nd Quarter 2006 Self-Monitoring Report.

The Discharger violated the effluent limits of the above-named parameters between May 19, 2006, and August 14, 2006, as set forth in the Attachment A hereto, which is incorporated herein by this reference. Breakthrough in the granular activated carbon (GAC) vessel had caused the eleven effluent violations.

The \$48,000 minimum penalty is sufficient to address these violations for the following reasons:

- The Discharger is a small business owner.
- The Discharger has terminated its discharge to surface waters and has been discharging to the sanitary sewer since January 2008.

Concurrent with this MMP complaint, the Water Board issued on August 11, 2008, Administrative Civil Liability Complaint No. R2-2008-0052. Complaint No. R2-2008-0052 proposes a fine in the amount of \$25,000 for submitting late and incomplete quarterly groundwater and soil vapor extraction monitoring reports as required by Cleanup and Abatement Order No. R2-2005-0023.

d. Amount of MMPs

Benzene, toluene, xylene, MTBE, and TPHg are Group II pollutants. Serious violations for Group II pollutants are those that exceed the limitations by more than 20%. The eleven effluent violations are serious because they exceeded the effluent limitations of the Fuels General Permit by more than 20%; therefore, they are each subject to the statutory minimum \$3,000, for a total of \$33,000.

Late submittal (by 30 days or more) of monitoring reports is also considered a serious violation pursuant to Water Code Section 13385.1. Each full 30-day increment a report is late counts as a violation. The 2nd Quarter Self-Monitoring Report 2006 that was due on August 14, 2006, was submitted on February 7, 2007. Therefore, there were five full 30-day increments for which this report was late, for a total of \$15,000.

For these violations, the Discharger is subject to a total of \$48,000 in MMPs.

3. Based on the above, the Assistant Executive Officer proposes that the Discharger be assessed MMPs in the total amount of \$48,000.
4. The Water Board will hold a hearing on this complaint on October 8, 2008, 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 pay the full penalty as stated above within 30 days after the signed waiver becomes effective.

5. 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 Assistant Executive Officer may withdraw the Complaint and reissue it as appropriate.
6. 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.

Dyan C. Whyte
Assistant Executive Officer

August 11, 2008
Date

Attachments: Table 1, Violations
Waiver
General Overview of MMP Calculations

Table 1 – VIOLATIONS

Item	Date of Violation	Effluent Limitation Described	Effluent Limit	Reported Value	Type of Violations ¹	Penalty	Start of 180 Days ²
1	5/19/2006	TPHg effluent daily maximum (ug/L)	50	1400	C6, S	\$3,000	11/20/2005
2	5/19/2006	benzene effluent daily maximum (ug/L)	1	520	C6, S	\$3,000	11/20/2005
3	5/19/2006	toluene effluent daily maximum (ug/L)	5	68	C6, S	\$3,000	11/20/2005 ⁶
4	5/19/2006	Ethylbenzene effluent daily maximum (ug/L)	5	25	C6, S	\$3,000	11/20/2005
5	5/19/2006	MTBE effluent daily maximum (ug/L)	5	2100	C6, S	\$3,000	11/20/2005
6	5/19/2006	Xylene effluent daily maximum (ug/L)	5	180	C6, S	\$3,000	11/20/2005
7	6/21/2006	MTBE effluent daily maximum (ug/L)	5	25	C7, S	\$3,000	12/23/2005
8	7/19/2006	MTBE effluent daily maximum (ug/L)	5	110	C8, S	\$3,000	1/20/2006
9	7/19/2006	TPHg effluent daily maximum (ug/L)	50	62	C9, S	\$3,000	1/20/2006
10	8/14/2006	MTBE effluent daily maximum (ug/L)	5	470	C10, S	\$3,000	2/15/2006
11	8/14/2006	TPHg effluent daily maximum (ug/L)	50	150	C11, S	\$3,000	2/15/2006
12	8/14/2006	Late Report 2 nd Quarter 2006 Five full 30-day increment late			S	\$15,000	2/15/2006
		TOTAL				\$48,000	

¹ C = Count – The number that follows represents the number of violations the Discharger has had in the past 180 days, including this violation. C4 or higher means that a penalty under Water Code Section 13385(i) applies.

S = Serious, which means that a penalty under Water Code Section 13385(h) applies.

² This column documents the start date for counting violations that have occurred within the past 180 days, for the purpose of determining whether a penalty under Water Code Section 13385(i) applies.

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 September 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 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, 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

General Overview of Mandatory Minimum Penalty (MMP) Calculations

The Water Board is required by State law to assess MMPs for certain types of permit violations from point-source facilities. These complaints are issued by the Water Board Executive Officer, and the MMPs are finalized in a public hearing before the Water Board, unless the Discharger decides to waive their right to the hearing. This is an overview of the general process for determining which violations are subject to MMPs, the amount of penalty the complaint will assess, and the portion of the penalty the Discharger may apply towards an environmental project. This procedure is the same for all facilities to which the MMP laws apply.

A. State law requires a \$3,000 minimum penalty for all serious violations, and requires a \$3,000 penalty for any sort of violation, if it is the 4th or greater violation within a running 6-month period.

Even though a specific violation may fit into both of the above categories, under the MMP laws, any one violation may only be assessed \$3,000.

B. State law requires a penalty for serious violations.

The Water Board must assess an MMP of \$3,000 for each serious violation, per Water Code Section 13385(h)(1). A “serious violation” is defined 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, per Water Code Section 13385(h)(2).

Pollutants are assigned to Group I or Group II by federal regulations, and the MMP complaint specifies to which group each violation belongs. The full lists of Group I and Group II violations are defined in Section 123.45 of Title 40 of the Code of Federal Regulations. Additionally, the late submittal (by 30 days or more) of monitoring reports is also considered a serious violation, per Water Code Section 13385.1. Each full 30-day increment a report is late counts as a violation.

C. State law requires a penalty for 4th or higher violation within last six months.

The Water Board must assess an MMP of \$3,000 for each violation, in a running six-month period, per Water Code Section 13385(i), if the Discharger does any of the following four or more times:

1. Violates a waste discharge requirement effluent limitation.
2. Fails to file a report pursuant to Section 13260.
3. Files an incomplete report pursuant to Section 13260.
4. 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.

The first three violations (meeting any of 1-4 above) occurring within a six month period do not trigger the \$3,000 penalty. Also, the running six-month

period is counted backwards from each individual violation considered. For example, to determine whether a violation that occurred on August 1st was subject to a penalty, you would count how many other violations had occurred since February 1st of the same year. If there had been at least three other violations in that period, the August 1st violation would be subject to a \$3,000 penalty.