

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

STAFF SUMMARY REPORT (CS)
MEETING DATE: September 12, 2007

ITEM: 9

SUBJECT: **City and County of San Francisco, San Francisco International Airport, Water Quality Control Plant, San Mateo County** - Hearing to Consider Mandatory Minimum Penalty for Discharge in Violation of Effluent Limitations

CHRONOLOGY: Mandatory Minimum Penalty (MMP) Complaint issued March 2002

DISCUSSION: The City violated the effluent limits for its airport sanitary waste water treatment plant six times from August 1, 2005, to February 12, 2007. Four of these violations are subject to an MMP. We issued a complaint to the City assessing \$12,000 in mandatory minimum penalties.

The violations covered by this complaint are minor in nature. In the case of the two cyanide violations, the City believes that problems with its laboratory analysis procedure may have caused false positives. City staff updated the procedure to avoid having the same issue in the future.

One of the toxicity violations occurred as a result of fire fighting foam, which was leaking from storage tanks, entering the sanitary system on the day the toxicity test began. In the case of the Airport's firehouses second toxicity violation, the City reviewed its test procedures and plant operations, but was unable to identify a cause. City staff re-ran a toxicity test fourteen days later, and that test complied with effluent limits.

The minimum penalty is appropriate for these violations, because in each event, the City investigated the causes, modified its procedures accordingly, and trained its staff on the new procedures.

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.

RECOMMEND-
ATION: No action is necessary

File Number: 2179.7032 (CS)

Appendices: A. Complaint No. R2-2007-0036
B. Signed Waiver

APPENDIX A

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

Complaint No. R2-2007-0036

**Mandatory Minimum Penalty
In the Matter of
City and County of San Francisco
San Francisco International Airport,
Water Quality Control Plant,
San Mateo County**

Overview

This complaint assesses \$12,000 in Mandatory Minimum Penalties (MMPs) to the City and County of San Francisco San Francisco International Airport (hereafter Discharger). The complaint is based on a finding of the Discharger's violations of Waste Discharge Requirements Order No. 01-145 (NPDES No. CA 0038318) from April 2004 to March 2007.

This MMP complaint is issued pursuant to Water Code Sections 13385(h)(1-2), 13385(i) and 13385(l). For a general overview of how MMPs are calculated, please see Attachment 4.

A. Permit at the time of violations

On November 28, 2001, the California Regional Water Quality Control Board (Water Board) adopted Order No. 01-145 for the Discharger, to regulate discharges of waste from its facility.

B. Effluent Limitations

Order No. 01-145 specified the following effluent limitations:

Parameter	Effluent Limit
Cyanide daily maximum	10 µg/L
11-sample 90th percentile value of not less than 70 percent survival	≥70

C. Summary of Effluent Limit Violations

During the period between April 1, 2004, and March 31, 2007, the Discharger had six violations of its effluent discharge limits, detailed on Table 1. These violations were:

- 4 cyanide effluent limit violations
- 2 whole effluent acute toxicity violations

D. Water Board Staff's Consideration of Violations

The Discharger reported four cyanide violations from August 2006 to March 2007. Upon investigation, the Discharger discovered that conducting the cyanide test on chlorinated effluent caused false positives. The investigation involved tests on chlorinated and de-chlorinated split samples. All analysis performed on de-chlorinated samples were within the permit limit.

The minimum penalty is appropriate for the cyanide violations because the Discharger responded in a timely fashion to investigate the cause of the violations. Furthermore, though the original violations cannot be invalidated, circumstantial evidence suggests that they may be due to analytical interference.

The whole effluent acute toxicity violations were caused by two separate events. The whole effluent acute toxicity violation on September 27, 2005, was caused by a plant operational upset, triggered by a foam that entered the plant the day before the test started. The Discharger inspected the airport firehouses and found that fire fighting foam storage tanks drains were feeding into the sanitary system. In response, signs were posted, and the fire staff was educated on the proper disposal of the product. Additional whole effluent acute toxicity tests were run in the month of October, and both were in compliance. The minimum penalty is appropriate because this violation was an isolated incident, and the staff was counseled to prevent a recurrence.

For the whole effluent acute toxicity violation on February 12, 2007, the Discharger reviewed its test procedure and plant operations. However, the Discharger could not find an explanation for the violation. A follow-up whole effluent toxicity test was conducted 14 days after the violation was in compliance. For this reason, the minimum penalty is appropriate.

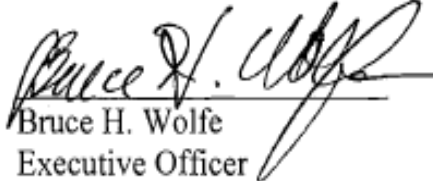
E. Assessment of penalties

- All of the four cyanide violations are defined as serious violations because cyanide is a Group II pollutant and the violations exceed the effluent limitation by 20 percent or more. These four violations are each subject to a \$3,000 MMP under Section 13385(h), for a total of \$12,000.
- The two whole effluent acute toxicity violations are not subject to mandatory penalties pursuant to CWC Section 13385(i)(1)(D), because the permit specifies effluent limits for toxic pollutants. Additionally, monetary penalties are assessed on the 4th and higher consecutive violations within running 180-day periods. None of the exceedances cited in this complaint were chronic violations.
- 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 \$12,000 on an SEP acceptable to the Executive Officer. Any such amount expended to satisfactorily complete an SEP will be permanently suspended.

THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer proposes that the Discharger be assessed MMPs in the total amount of \$12,000.
2. The Water Board will hold a hearing on this Complaint on September 12, 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 as stated above within 30 days after the signed waiver becomes effective, or
 - b) Propose an SEP in an amount up to \$12,000. 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 as stated above.
3. If the Discharger chooses to propose an SEP, it must submit a preliminary proposal by the close of the public comment period, as stated in the attached public notice, 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 portion of the penalty. 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 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

JUN 18 2007

Date

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 July 23, 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. R2-2007-0036 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. R2-2007-0036, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$12,000 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 July 23, 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

Table 1 - VIOLATIONS

Item Number	Date of Violation	Effluent Limitation Described - E001	Permit Limit	Reported Value	Type of Violation ¹	Penalty	Start of 180 days ²
1	1-Aug-05	E-001 Cyanide eff daily maximum µg/L	Max 10	15.8	C1 (also S)	\$3,000	2-Feb-05
2	27-Sep-05	E-001 Test1 specie eff 11samp 90 th percentile, %survival	Min 70	30	C2		31-Mar-05
3	15-Aug-06	E-001 Cyanide eff daily maximum µg/L	Max 10	43	C1 (also S)	\$3,000	16-Feb-06
4	30-Aug-06	E-001 Cyanide eff daily maximum µg/L	Max 10	17.4	C2 (also S)	\$3,000	3-Mar-06
5	4-Jan-07	E-001 Cyanide eff daily maximum µg/L	Max 10	20	C3 (also S)	\$3,000	8-Jul-06
6	12-Feb-07	E-001 Test1 specie eff 11samp 90 th percentile, %survival	Min 70	20	C3		16-Aug-06
Total Penalty Amount						\$12,000	

¹ C = Chronic – The number that follows represents the number of chronic violations in the past 180 days; S = Serious.

² 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.

APPENDIX B

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 July 23, 2007.

MPC
8/7/07

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. R2-2007-0036 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.

MPC
8/7/07

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. R2-2007-0036, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$12,000 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 July 23, 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.

MARK COSTANZO

Name (print)



Signature

7/20/2007

Date

SFIA UTILITIES MGR

Title/Organization