

FILED

2011 NOV 18 P 2:18

K. TORRES, CLERK OF THE SUPERIOR COURT  
COUNTY OF CONTRA COSTA, CALIF.  
BY: \_\_\_\_\_ Deputy Clerk

1 MARK A. PETERSON, District Attorney  
County of Contra Costa  
2 Stacey N. Grassini, Deputy District Attorney  
State Bar # 154937  
3 900 Ward Street 4<sup>th</sup> Floor  
Martinez, CA 94553  
4 Telephone: 925.957-8604  
Facsimile: 925.646.4683  
5 Attorneys for Plaintiff

6  
7  
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF CONTRA COSTA

MARTINEZ

10  
11 People of the State of California,  
12 Plaintiff,

13 vs.

14 VEOLIA WATER NORTH AMERICA  
OPERATING SERVICES, LLC; VEOLIA  
15 WATER NORTH AMERICA-WEST, LLC, and  
16 VEOLIA WATER WEST OPERATING  
SERVICES, Inc.  
17 Defendants.

) Case No.: C 11-02622

) COMPLAINT FOR CIVIL PENALTIES  
) AND INJUNCTIVE RELIEF

18  
19 THE PEOPLE OF THE STATE OF CALIFORNIA, by and through Mark A. Peterson,  
20 District Attorney of the County of Contra Costa, allege as follows:

21 1. Mark A. Peterson, District Attorney of Contra Costa County, acting to protect the  
22 environment, brings this action in the public interest, in the name of the State of  
23 California.

24 2. The authority of the District Attorney of Contra Costa County is derived from the  
25 statutory law of the State of California, specifically and Business and Professions Code sections  
26 17203, 17204 and 17206.

27 \\\

28 \\\

1           3. Defendants VEOLIA WATER NORTH AMERICA OPERATING SERVICES, LLC;  
2 and VEOLIA WATER NORTH AMERICA-WEST, LLC. are Delaware limited liability  
3 companies, and VEOLIA WATER WEST OPERATING SERVICES, Inc. is a Delaware  
4 corporation (hereinafter all three referred to as "VEOLIA"), and all three are doing business in  
5 the County of Contra Costa and elsewhere throughout the State of California.

6           4. Defendant, VEOLIA is the operator of the Richmond Wastewater Treatment Facility  
7 (hereinafter referred to as the "Facility") located at 601 Canal Blvd., Richmond, California. The  
8 violations of law alleged in this complaint have been carried out within the County of Contra  
9 Costa, State of California.

10           5. Whenever an allegation regarding any act of the Defendant, VEOLIA is made herein,  
11 such allegation shall be deemed to mean that Defendant, or the officers, directors, agents or  
12 employees of said Defendant, did or authorized such acts while actively engaged in the affairs of  
13 the Defendant and while acting within the scope and course of their employment.

14           6. Plaintiff is informed and believes and thereupon alleges that within the last four years  
15 and to the present, Defendant, VEOLIA is responsible for the operation, maintenance and  
16 management of the Richmond Wastewater Treatment Facility located at 601 Canal Blvd.,  
17 Richmond, California.

18           7. Plaintiff is informed and believes and thereupon alleges that on or about October 8,  
19 2010 through October 12, 2010, the Defendant, VEOLIA violated a permit condition by allowing  
20 the discharge of air pollutants from the Facility into the atmosphere. This release was caused by  
21 tears in the "Dystor" digester dome cover. As a result, the discharge of these air pollutants  
22 caused a public nuisance in Point Richmond, California.

23           8. Plaintiff is informed and believes and thereupon alleges that on or about January 15,  
24 2010, the Defendant, VEOLIA violated a permit condition by operating a diesel powered  
25 generator without a permit at the Facility to provide power for influent pumps and construction  
26 work.

27           9. Plaintiff is informed and believes and thereupon alleges that on or about January 29,  
28 2011 through January 30, 2011, high winds caused the air hoses to break on the anaerobic

1 digester at the Facility. The broken hoses allowed raw digester gas to escape into the atmosphere  
2 in violation of a permit condition.

3 10. Plaintiff is informed and believes and thereupon alleges that on or about August 30,  
4 2011, the Defendant, VEOLIA operated a diesel powered generator causing excessive visible  
5 emissions.

6 11. Plaintiff is informed and believes and thereupon alleges that on or about May 19,  
7 2011, the Defendant, VEOLIA violated a permit condition by using the elutriation basins at the  
8 Facility for holding raw sludge, instead of treating the sludge with lime.

9 12. Plaintiff is informed and believes and thereupon alleges that on or about May 19,  
10 2011, lime treated sludge from Defendant, VEOLIA's operation of the Facility caused a release  
11 of odors from the West County Wastewater District drying lagoons. The release of these odors  
12 caused a public nuisance.

13 FIRST CAUSE OF ACTION

14 (Business and Professions Code section 17206)

15 13. Plaintiff is informed and believes and thereupon alleges that the acts of Defendant,  
16 VEOLIA as set forth in paragraphs 1 through 12 are violations of Health and Safety Code  
17 sections 41700, 42402(a) (b), and 42402.1(a), and that such violations constitute unlawful  
18 business practices within the meaning of Business and Professions Code section 17200, and that  
19 Defendant, VEOLIA is therefore liable to pay a civil penalty in accordance with section 17206 of  
20 the Business and Professions Code.

21  
22 SECOND CAUSE OF ACTION

23 (Business and Professions Code section 17203)

24 14. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 13.

25 15. Plaintiff is informed and believes and thereupon alleges that the acts of Defendant,  
26 VEOLIA as set forth in preceding paragraphs are violations of the California Health and Safety  
27 Code sections 41700, 42402(a) (b), and 42402.1(a), and that such violations constitute unlawful  
28 business practices within the meaning of Business and Professions Code section 17200, and that

1 Defendant, VEOLIA therefore should be ordered, pursuant to section 17203 of the Business and  
2 Professions Code, to create and implement an air pollution prevention plan, including an  
3 employee training program, and to adopt best management practices to prevent unlawful air  
4 pollutant discharges into the atmosphere.


5  
6 WHEREFORE, Plaintiff prays judgment against Defendant as follows:

7 A. That Defendant pay civil penalties according to law;

8 B. That Plaintiff have such other further relief as to the court may seem just and proper.

9  
10 DATED: 11/18/11  
11 At Martinez, California.

Respectfully submitted,  
MARK A. PETERSON  
District Attorney

12  
13 

14 Stacey N. Grassini  
15 Deputy District Attorney

FILED

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COUNTY OF CONTRA COSTA, CALIF.

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10 People of the State of California,

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13 VEOLIA WATER NORTH AMERICA  
14 OPERATING SERVICES, LLC; VEOLIA  
WATER NORTH AMERICA-WEST, LLC, and  
15 VEOLIA WATER WEST OPERATING  
SERVICES, Inc.

16 Defendants.

) Case No.:

) CONSENT DECREE AND STIPULATED  
) FINAL JUDGMENT

17 Plaintiff, the PEOPLE OF THE STATE OF CALIFORNIA, having filed its Complaint  
18 herein, and Defendants, VEOLIA WATER NORTH AMERICA OPERATING SERVICES,  
19 LLC; VEOLIA WATER NORTH AMERICA-WEST, LLC, and VEOLIA WATER WEST  
20 OPERATING SERVICES, Inc. (hereinafter all three referred to as "VEOLIA"), having  
21 stipulated and consented to this Final Judgment prior to taking proof, and without trial or  
22 adjudication of any facts or issues of law herein, and without this Judgment constituting any  
23 evidence of or admission by VEOLIA regarding any issue of fact or law alleged in said  
24 Complaint, and the Court having considered the pleadings and the stipulations of the parties:

25 ///

26 ///

27 ///

1           **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

2           1. This Court has jurisdiction of the subject matter of this action and of the parties hereto.

3           2. VEOLIA acknowledges that nothing in this Consent Decree and Stipulated Final  
4 Judgment may in any way be construed to lessen its obligation to conform to California state  
5 law.

6           3. VEOLIA's entry into this Consent Decree and Stipulated Final Judgment is not and  
7 shall not be construed as an admission of any alleged underlying fact or claim of liability  
8 associated with or relating to the air emissions and odor complaints arising out of or relating to  
9 any matter resolved hereby.

10          4. VEOLIA acknowledges that the Richmond Wastewater Treatment Facility (hereinafter  
11 referred to as the "Facility") is located at 601 Canal Blvd., Richmond, California.

12          5. This Consent Decree and Stipulated Final Judgment is a resolution of all *known*  
13 alleged violations of Air District regulations, permits and statutes as of September 20, 2011  
14 whether or not set forth in a Notice of Violation or alleged in the Complaint. In addition, this  
15 Consent Decree and Stipulated Final Judgment precludes and bars the Contra Costa County  
16 District Attorney's Office and Bay Area Air Quality Management District from seeking any  
17 further criminal or civil enforcement action based on any matters resolved by this Consent  
18 Decree and Stipulated Final Judgment.

19          6. Nothing in this Consent Decree and Stipulated Final Judgment shall be construed as  
20 limiting the ability of the Contra Costa County District Attorney's Office, the Air District, or  
21 other appropriate enforcement entity, to take future enforcement action arising out of violations  
22 not covered by this Consent Decree and Stipulated Final Judgment. Moreover, nothing in this  
23 Consent Decree and Stipulated Final Judgment shall be construed as limiting the ability of  
24 Contra Costa County District Attorney's Office, the Air District, or other appropriate  
25 enforcement entity to offer proof of the frequency of past violations, pursuant to applicable  
26 provisions of law, or the rights of VEOLIA to oppose, rebut or otherwise contest such offer of  
27 proof, in any subsequent administrative or judicial proceeding in which liability is unrelated to  
28 any matters resolved by this Consent Decree and Stipulated Final Judgment.

1 7. VEOLIA's obligations set forth under the Mandatory Provision, except for installation  
2 of an air monitoring device in Point Richmond, will terminate in the event of termination of  
3 VEOLIA's contract with the City of Richmond.

4 8. This Consent Decree and Stipulated Final Judgment shall terminate by its own terms  
5 five years after its entry, if VEOLIA has substantially complied with all of the Mandatory  
6 Provisions set forth in this Consent Decree and Stipulated Final Judgment. Furthermore, any  
7 termination of this Consent Decree and Stipulated Final Judgment shall not act in any way to  
8 lessen VEOLIA's obligation to conform to California state law.

9 9. Should circumstances arise that would render performance of any provision of this  
10 Consent Decree and Stipulated Final Judgment impossible, impracticable or futile, VEOLIA  
11 with proper notice to the parties, may request the Court to make appropriate modifications, or  
12 terminate, its provisions. However, any modification or termination of any provision shall be  
13 subject to a full noticed hearing before the Court, unless the parties jointly stipulate to the  
14 modification or termination of any provision of this Consent Decree and Stipulated Final  
15 Judgment.

16  
17 **MANDATORY PROVISION**

18 A. VEOLIA shall:

19 (1) Purchase and install an air monitoring device to detect hydrogen sulfide ("H<sub>2</sub>S") at a  
20 location in Point Richmond to be determined in consultation with the City and citizens of Point  
21 Richmond. Reasonable good faith efforts shall be made to have purchase and installation  
22 completed within sixty (60) days of the entry of this Agreement. Failure to comply with this  
23 provision shall result in an additional civil penalty of \$70,000.00 to be paid to the Contra Costa  
24 County District Attorney's Office, "DA EVIRON/OSHA" fund, whereupon VEOLIA's  
25 obligations under this paragraph shall be deem satisfied.

26 (2) Develop and implement an investigative and information gathering protocol to be  
27 followed by VEOLIA in the event of a documented hydrogen sulfide release at the Facility, or  
28 report of an odor complaint allegedly caused by the Facility. The purpose of collecting this data

1 is to correlate the Facility's operational process conditions with hydrogen sulfide releases, if  
2 reasonably possible. Exhibit A is a Facility hydrogen sulfide release response protocol. This  
3 protocol, or one substantially similar, shall be implemented by VEOLIA in the operational  
4 information gathering process. This protocol shall be implemented within sixty (60) days of the  
5 entry of this Agreement.

6 (3) Perform an internal performance audit to evaluate VEOLIA's management, operation  
7 and maintenance of both the Facility and the wastewater collection system in Point Richmond to  
8 determine if there are any additional management, operation and maintenance improvements that  
9 can be reasonably implemented to mitigate releases of air pollutants and odors on the citizens of  
10 the City of Richmond. This evaluation shall begin within sixty (60) days of the entry of this  
11 Agreement.

12 (4) Until termination of this Consent Decree, or termination of, or relevant modification  
13 of the contract between VEOLIA and Richmond, whichever occurs first, VEOLIA shall use  
14 good faith efforts to implement the "Implementation Actions" identified in the "Performance  
15 Objectives and Actions for Reducing Odors and Odor Complaints at the Richmond Waste Water  
16 Treatment Plant" attached as Exhibit B.

17 **PROHIBITORY PROVISIONS**

18 B. VEOLIA is hereby prohibited from failing to:

19 (1) Comply with the rules and regulations set forth in California state law and specifically  
20 Health and Safety Code sections 41700 and all applicable Air District regulations as they apply  
21 to the operation, maintenance, and management of the Facility.

22 **CIVIL PENALTIES AND COSTS**

23 C. Defendants shall pay, as costs and civil penalties pursuant to Business and Professions  
24 Code section 17206, the sum of one hundred and fifty thousand dollars (\$150,000.00) as follows:

25 (1) Twenty five thousand dollars (\$25,000.00) is to be paid to the Contra Costa County  
26 District Attorney's Office as partial reimbursement for their costs;

27 (2) Twenty five thousand dollars (\$25,000.00) is to be paid to the Bay Area Air Quality  
28 Management District as partial reimbursement of its costs.



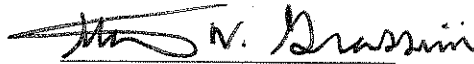
1 (3) One hundred thousand dollars (\$100,000.00) is to be paid as civil penalties to the  
2 Contra Costa County District Attorney's Office for deposit into the "DA EVIRON/OSHA" fund,  
3 to be used for environmental enforcement activities in Contra Costa County.

4 D. The sums set forth in paragraph C shall be delivered to the District Attorney of Contra  
5 Costa County, 900 Ward Street, Martinez, California 94553 prior to the filing of this Consent  
6 Decree and Stipulated Final Judgment.

7 E. The parties signing below do hereby stipulate to the entry of this Consent Decree and  
8 Stipulated Final Judgment recited above.

9  
10 Dated : 11/18/11

Respectfully submitted,  
MARK A. PETERSON  
District Attorney

11  
12  
13 

Stacey N. Grassini  
Deputy District Attorney


14  
15  
16 Dated: 11/16/11

  
VEOLIA WATER NORTH AMERICA  
OPERATING SERVICES, LLC

17  
18  
19 Dated: 11/16/11

20 VEOLIA WATER NORTH AMERICA-WEST, LLC

21  
22 Dated: 11/16/11

  
VEOLIA WATER WEST OPERATING  
SERVICES, Inc.

23  
24 Approved as to Form:

25 Dated: November 15, 2011

26 ARCHER NORRIS

  
Peter W. McGaw  
Attorney for Defendants

1           WHEREAS GOOD CAUSE HAVING BEEN SHOWN, THE ABOVE-ENTITLED  
2   CONSENT DECREE, AND STIPULATED FINAL JUDGMENT IS HEREBY ORDERED  
3   ENTERED.

4   Dated: 11/18, 2011  
5   Martinez, California

*Mary E. O'Malley*  
6   Judge of the Superior Court

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**Exhibit A**  
**Richmond Waste Water Treatment Plant**  
**H2S Alarm Response and Protocol**

**Introduction**

This protocol outlines procedures for timely investigation of any H2S reading 30 ppb or greater from the City's SmartCover System Jerome 651 meters located at the North and South Fence Lines. This protocol for response to H2S alerts is in addition to any response to community odor complaints. It requires:

- Immediate notification to Assistant Project Manager
- Prompt investigation and recording of observations by completion of a Fence Line H2S Alarm Investigation Check Sheet (Checklist)
- Implementation of timely mitigation and corrective action(s) (Table 1)

**Investigation and Data Collection Process**

1. When alarm is received, implement this Investigation Protocol
2. Check the City of Richmond Web Site for H2S readings and record readings and weather data
3. Check the facility odor control units for operation and document
4. Conduct the investigation utilizing the attached data tracking sheet
5. Implement timely mitigation and corrective actions
6. Forward findings to plant management staff for further evaluation and response
7. Upon request, provide written findings to BAAQMD and the City of Richmond

**Potential Sources and Corrective Measures**

Table 1 Facility Location	Potential Odor Source	Potential Corrective Measure(s)
Wetwell	Anaerobic Decomposition	Structure Cleaning Increased Ventilation Air Scrubbing Chemical Addition
Screenings Areas	Anaerobic Decomposition	Increase in screenings removal and disposal, Housekeeping
Grit Channels	Evaporation/Aerosols, Decomposition	Increased in frequency of grit removal and disposal.
Primary Clarifiers	Anaerobic Decomposition	Increase in sludge withdrawal rates and scum removal. Chlorination.
Anaerobic Digesters	Methane, digesting sludge or H2S	Check digester system functionality (gas system, alarms, solids recirculation)
Aeration Basins	Activated sludge	Odor Mister
Baker Tanks – Sludge Handling	Primary and WAS sludge	Housekeeping and odor mister
DAF Unit	TWAS	Housekeeping, check for leaks, sludge hopper and pumps for operation.

**Exhibit B**  
**Performance Objectives and Actions for Reducing Odors and Odor Complaints at the Richmond Waste Water Treatment Plant**

**Performance Objective**

**Implementation Actions**

- |                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1. Increase accountability related to operation and maintenance.</p>                                             | <ul style="list-style-type: none"> <li>▪ Complete all preventive maintenance work within industry standards and manufacturers' requirements.</li> <li>▪ Complete necessary corrective work in a manner that meets industry standards; Examples: identify and respond to safety issues, water leaks, equipment on brink of failure, etc.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>2. Improve odor complaint response.</p>                                                                          | <ul style="list-style-type: none"> <li>▪ Maintain compliance with contract provisions related to odor and investigation complaint, response and investigation.</li> <li>▪ Enhance interaction with residents and opportunities to obtain additional odor information (distribution of air sampling canisters, etc.)</li> <li>▪ Evaluate association between measured increases of hydrogen sulfide and related odors with plant-related processes and operations.</li> <li>▪ Develop a check sheet or odor log for Point Richmond residents experiencing odors.</li> <li>▪ Engage Point Richmond residents to assist Veolia and the City in identifying and understanding the odor problem in order to resolve.</li> <li>▪ Provide 24 hour toll free hotline (operator on-call) published and readily available to all citizens.</li> </ul> |
| <p>3. Reduce odors from WWTP and collection system.</p>                                                             | <ul style="list-style-type: none"> <li>▪ Develop performance metrics (Ex. reduce odor complaints to a baseline number)</li> <li>▪ Develop criteria to determine whether the current operation of the facility is optimal based on plant age and design.</li> <li>▪ Conduct a Point Richmond collection system odor modeling study</li> <li>▪ Develop a Point Richmond Collection System Odor Reduction Plan</li> <li>▪ Prioritize odor-control-related capital improvements to the WWTP and to the Point Richmond collection system, including improvements identified by WWTP Master Plan, the 2007 Odor Study and the Point Richmond Collection System Odor Reduction Plan, and present the recommendations to the City.</li> </ul>                                                                                                       |
| <p>4. Increase knowledge and understanding of pertinent regulations related to plant operations. (e.g. BAAQMD).</p> | <ul style="list-style-type: none"> <li>▪ Determine and define qualifications for Veolia staff related to regulatory permit experience and credentials.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |