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9 *Board, San Diego Region*

10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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13  
14 **PEOPLE OF THE STATE OF**  
15 **CALIFORNIA EX REL. THE REGIONAL**  
16 **WATER QUALITY CONTROL BOARD,**  
17 **SAN DIEGO REGION,**

18 Plaintiff,

19 v.

20 **EDWARD DRUSINA, an individual in his**  
21 **capacity as Commissioner of the**  
22 **INTERNATIONAL BOUNDARY AND**  
23 **WATER COMMISSION, UNITED**  
24 **STATES SECTION, et al.,,**

25 Defendants.

01CV0270 BTM (BLM)

**REGIONAL WATER QUALITY**  
**CONTROL BOARD, SAN DIEGO**  
**REGION, STATUS CONFERENCE**  
**REPORT**

Date: March 21, 2012  
Time: 2:00 p.m.  
Courtroom: 15  
Judge: The Honorable Barry T. Moskowitz

26 On February 17, 2009, this Court amended its December 6, 2004 Order Setting Compliance  
27 Schedule, extending the date from September 30, 2008 until January 5, 2011 for the International  
28 Boundary and Water Commission, United States Section ("USIBWC") to "achieve full  
compliance with the effluent standards and limitations based on secondary treatment and relating  
to acute and chronic toxicity contained in Order No. 96-50 ..." (Order Amending December 6,

1 2004 Final Judgment Setting Compliance Schedule, p. 3, paragraph 1.) Order No. 96-50, NPDES  
 2 No. CA0108928, established waste discharge requirements for USIBWC's International  
 3 Wastewater Treatment Plant (Treatment Plant) based on federal and state requirements.

4 USIBWC completed the secondary treatment component of the wastewater treatment plant  
 5 in January 2011 and commenced secondary treatment shortly thereafter. Monitoring reports  
 6 submitted since commencement of secondary treatment indicate, however, that USIBWC has not  
 7 been able to consistently meet effluent standards and limitations based on secondary treatment  
 8 and relating to acute and chronic toxicity as required by law and the Court's order. The table  
 9 below identifies the number of days that the discharge from the Treatment Plant exceeded  
 10 effluent limitations prescribed in Order No. 96-50 in 2011. The effluent limitations are divided  
 11 into those that pertain to the definition of secondary treatment (TSS and CBOD) and those that  
 12 are based upon the water quality objectives established in the Water Quality Control Plan for  
 13 Ocean Waters of California.

14 **International Wastewater Treatment Plant Performance Record for 2011**

15 <u>Effluent Limits Based on Secondary Treatment</u>	16 <u>Days not in compliance</u>	17 <u>% of year not in compliance</u>
18 CBOD 30-day monthly avg. (25 mg/L)	223	61.10%
19 CBOD 30-day monthly avg. (5,200 lbs/day)	210	57.53%
20 CBOD 7-day weekly avg. (40 mg/L)	86	23.56%
21 CBOD 7-day weekly avg. (8,300 lbs/day)	85	23.29%
22 CBOD maximum at any time (45 mg/L)	59	16.16%
23 CBOD maximum at any time (9,400 lbs/day)	63	17.26%
24 TSS 30-day monthly avg. (30 mg/L)	126	34.52%
25 TSS 30-day monthly avg. (6,300 lbs/day)	125	34.25%
26 TSS 7-day weekly avg. (45 mg/L)	77	21.10%
27 TSS 7-day weekly avg. (9,400 lbs/day)	72	19.73%
28 TSS maximum at any time (50 mg/L)	54	14.79%
TSS maximum at any time (10,000 lbs/day)	54	14.79%

<u>Effluent Limits Based on Ocean Plan Standards</u>	<u>Days not in compliance</u>	<u>% of year not in compliance</u>
Zinc six-month median (1.2 mg/L)	1	0.27%
Zinc daily maximum (7.3 mg/L)	1	0.27%
Zinc instantaneous maximum (19 mg/L)	3	0.82%
Copper six-month median (0.51 mg/L)	1	0.27%
Copper daily maximum (2.0 mg/L)	1	0.27%
Copper instantaneous maximum (5.1 mg/L)	4	1.10%

California Regional Water Quality Control Board, San Diego Region (Regional Board) staff have worked closely with staff from Veolia Water North America LLC., which operates the Treatment Plant on behalf of USIBWC, to review all issues that have arisen during the past year that contributed to the exceedances of the required effluent standards and limitations. The Regional Board notes the following issues have contributed to ongoing problems at the Treatment Plant.<sup>1</sup>

**1. Problems with Mixed Liquor Suspended Solids (MLSS) Concentrations:**

USIBWC is operating the treatment system with too much biomass in the aeration system. MLSS concentrations significantly exceed the design MLSS assumption. This, coupled with periodic lack of truck capacity to haul processed solids to Mexico, can create situations where solids are washed-out and directly impact the quality of the final effluent. If the Treatment Plant facility is storing and/or operating with excessive concentrations of solids, the secondary treatment permit limits may be exceeded.

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<sup>1</sup> The following list of potential issues is not exhaustive.

1           **2. Unreliable Sludge Removal by Mexico:** Unreliable sludge removal by Mexico has  
2 resulted in excessive solids being retained in the treatment process, escalating the threat of higher  
3 solids in the discharge to the Ocean and therefore leading to violations of the secondary treatment  
4 effluent limitations contained in Order No. 96-50.

5           **3. Improper Operation or Construction of Secondary Clarifiers:** USIBWC has not  
6 properly operated or maintained at least four of the ten secondary clarifiers. (Two of the four were  
7 apparently out of service for six months. These units were out of service for numerous months  
8 due to unique plant upgrade warranty issues.) The loss of 40% of the secondary clarifiers have  
9 created hydraulic "short-circuiting" and possible solids wash-out in the remaining secondary  
10 clarifiers, directly impacting the effluent quality. Construction warranty issues related to  
11 alignment of the sludge collector mechanisms are outstanding regarding at least two of the  
12 clarifiers.

13           **4. Potential Design Deficiency of Secondary Clarifiers.** USIBWC operation of the  
14 treatment plant at high Mixed Liquor Suspended Solids (MLSS) concentrations (see item 1  
15 above) creates a condition where the secondary clarifiers may be overloaded with respect to the  
16 solids loading per square foot design condition. If the design engineers for the treatment had  
17 known that the plant would be operated at the current elevated Mixed Liquor Suspended Solids  
18 concentrations, it is likely they would have included additional secondary clarifiers in the final  
19 design.

20           **5. Operational upsets due to Wide Fluctuations in the Quality of Wastewater**  
21 **Flowing into the Treatment Facility.** USIBWC is reporting that there are wide swings in Total  
22 Suspended Solids (TSS) and Carbonaceous Biochemical Oxygen Demand (CBOD)  
23 concentrations in the influent wastewater flow to the Treatment Plant originating from Tijuana,  
24 Baja California, Mexico. USIBWC maintains that periodic high loadings of these two  
25 constituents are contributing to plant upsets and secondary treatment effluent limitation  
26 violations. The influent quality fluctuations may be due to several factors, including industrial  
27 dumping in Mexico, and cleaning and maintenance activities possibly being conducted in the  
28

1 collection system and the pump stations in Mexico. USIBWC has failed to effectively act to  
2 identify and address the issues contributing to the violations.

3 **6. Lack of Source Identification.** USIBWC has not installed a 24 hour composite  
4 sampler to gather discrete samples of influent wastewater flow that could be used to identify  
5 sources of toxic chemicals in the influent or other constituents that could result in exceedances of  
6 effluent limitations. This information would allow USIBWC to present Mexican officials with  
7 documented information on quality problems with the influent wastewater flow and could be  
8 critical to efforts to identify causes and eliminate sources of contaminants in Mexico. This could  
9 also be used to isolate or divert problem flows to segregated process units to protect the majority  
10 of the Treatment Plant process treatment units.

11 **7. Failure to Meet Pretreatment Requirements in Order No. 96-50 and Treaty**  
12 **Minutes.** Language in Treaty Minutes 270 and 283 commit Mexico to preventing discharges to  
13 Mexico's wastewater collection system that would interfere with reliable operations of the  
14 International Wastewater Treatment Plant. It does not appear that USIBWC has implemented  
15 the necessary protocols and communications in order for Mexico to fulfill its obligations under  
16 Treaty Minutes 270 and 283 and for USIBWC to be in compliance with the provisions of Order  
17 No. 96-50 (Section G, Pretreatment Requirements dealing with plant upset, interference, and  
18 pass through incidents.) During past inspections of the Treatment Plant operations, staff have  
19 indicated that they believe toxic materials and high CBOD and TSS concentrations contained in  
20 the influent wastewater flow received from Mexico have led to occasional upsets of the biological  
21 secondary treatment processes (thereby leading to violations of CBOD, TSS and possibly other  
22 effluent limitations contained in Order No. 96-50). If industrial wastes from Mexico are  
23 determined by USIBWC to result in violations of Order No. 96-50 effluent limitations, USIBWC  
24 should act to identify and address the issues contributing to the violations.

25 **8. Lack of Standard Operating Protocols.** USIBWC's plant operations contractor,  
26 Veolia, has reported that it is still in the process of developing and finalizing the Standard  
27 Operating procedures (SOPs) based on the Operations & Management Manuals and on the actual  
28 operation of the secondary treatment processes. <sup>5</sup> The Treatment Plant is a large, complex

1 facility, and it must operate reliably even under unusual and difficult conditions such as highly  
2 variable influent quality and treatment process upsets due to possible industrial toxics. The lack  
3 of written procedures makes it difficult to review the adequacy of process operations and  
4 maintenance, resulting in uncertainty among Treatment Plant staff regarding proper procedures  
5 and response.

6 **9. Continued Addition of Polymer to Secondary Clarifier Influent.** USIBWC's  
7 plant operations contractor, Veolia, began adding an anionic polymer to the secondary clarifier  
8 influent on January 6, 2012, to enhance sedimentation in the secondary clarifiers. The polymer  
9 appears to be effective, but polymer addition is very expensive and the cost has not been  
10 budgeted. Although this measure has been shown to be effective, it is an unusual procedure and  
11 should not be considered a permanent solution. The use of polymer, therefore, does not alleviate  
12 the need for USIBWC to address the fundamental causes to ensure long term compliance with  
13 secondary treatment requirements of Order No. 96-50.

14 **10. Failure to Submit a Complete Certification Report.** USIBWC has failed to submit  
15 the required certification that it is meeting secondary treatment effluent standards and limitations,  
16 and it has admitted it cannot submit such certification at the present time. Such a certification by  
17 the design engineer is standard practice in the San Diego Region prior to a facility initiating a new  
18 discharge. By letter to the Regional Board dated December 20, 2011, USIBWC reported that it is  
19 unable to certify that the Treatment Plant can reliably treat the variable mass loading in the  
20 influent wastewater flow received from Mexico. USIBWC must certify the adequacy of the  
21 Treatment Plant's secondary treatment design, construction, and operations and maintenance so  
22 that the Regional Board can ascertain if the Treatment Plant is capable of reliable and consistent  
23 compliance with the secondary treatment requirements of Order No. 96-50.

24 The Regional Board also requests a status conference scheduled in six months to reassess  
25 USIBWC's compliance with the secondary treatment effluent standards and limitations. At this  
26 point, the Regional Board has serious concerns given the nature of the influent wastewater flow  
27 problem and USIBWC's failure to correct ongoing issues relating to non-compliance whether  
28

1 USIBWC will consistently comply with federal and state law relating to wastewater discharges  
2 from the treatment plant.

3 Dated: March 14, 2012

Respectfully submitted,

4 KAMALA D. HARRIS  
5 Attorney General of California  
6 CAROL A. SQUIRE  
7 Supervising Deputy Attorney General

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## CERTIFICATE OF SERVICE

Case Name: **People v. Edward Drusina,  
et al.**

No. **01CV0270 BTM (BLM)**

I hereby certify that on March 14, 2012, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION, STATUS CONFERENCE REPORT**

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are *not registered* CM/ECF users. On March 14, 2012, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

**Stephen L. Samuels, Esq.**  
**United States Department of Justice**  
**Environmental Defense Section**  
**601 D Street, NW, Suite 8000**  
**Washington, DC 20004**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 14, 2012, at San Diego, California.

\_\_\_\_\_  
P. Renteria  
Declarant

\_\_\_\_\_  
  
Signature