

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2006-0006

Mandatory Minimum penalties

For
Violations of Waste Discharge Requirements
Order No. 98-13

In The Matter
Of
City of Arcata, Arcata Wastewater Treatment Facility
WDID No. 1B82114OHUM

Humboldt County

This complaint to assess mandatory minimum penalties and administrative civil liability pursuant to Water Code Section 13385 (Complaint) is issued to the City of Arcata (hereinafter Discharger), for violations of Waste Discharge Requirements Order No. 98-13 (NPDES No. CA0022713) for the period January 1, 2000, through June 21, 2004.

The Executive Officer of the Regional Water Board finds the following:

1. The Discharger owns and operates the Arcata Wastewater Treatment Facility (WWTF). The WWTF serves both the City of Arcata and the Glendale area, which is administered by the Fieldbrook Community Services District. The WWTF discharges secondary-treated domestic wastewater into Humboldt Bay.
2. The Regional Water Board adopted Waste Discharge Requirements Order No. 98-13 for the Discharger on February 26, 1998. The Discharger currently is regulated by Waste Discharge Requirements Order No. R1-2004-0036, adopted by the Regional Water Board on June 22, 2004. Both of these Waste Discharge Requirements serve as National Pollutant Discharge Elimination System (NPDES) permits under the federal Clean Water Act. Order No. 98-13 was rescinded on June 22, 2004.
3. This Complaint covers violations of effluent limitations (contained in Order No. 98-13) that occurred during periods of discharge to receiving waters for the period of January 1, 2000, through June 21, 2004. The details of these violations are summarized in Findings 10 through 13 of this Complaint. These violations are subject to the mandatory minimum penalties provision contained in Sections 13385(h) and (i) of the California Water Code.
4. California Water Code Section 13385(h)(1) requires the Regional Water Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation of NPDES permit effluent limitations.

5. California Water Code Section 13385(h)(2) states that a serious violation occurs if the discharge from a facility regulated by an NPDES permit exceeds the effluent limitation for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 Code of Federal Regulations, by 40 percent or more, or for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 Code of Federal Regulations, by 20 percent or more.
6. California Water Code Section 13385(i)(1) requires the Regional 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 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 where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

Violations under Section 13385(i)(1) of the California Water Code are referred to as chronic violations in this Complaint.

7. CWC Section 13385(l)(1) provides that a portion of mandatory minimum penalties imposed under CWC 13385(h) or (i) may be directed to a supplemental environmental project (SEP) in accordance with the State Water Resources Control Board's Water Quality Enforcement Policy. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).
8. For the purpose of compliance determinations, the 30-day average is equivalent to the monthly average, which is defined as the arithmetic mean of all daily determinations made during a calendar month. Where less than daily sampling is required, the average shall be determined by the sum of all the measured daily discharges divided by the number of days during the calendar month when the measurements were made. If only one sample is collected during that period of time, the value of the single sample shall constitute the monthly average.
9. For the purpose of compliance determinations, the 7-day average is equivalent to the weekly average, which is defined as the arithmetic mean of all daily determinations made during a calendar week, Sunday to Saturday. Where less than daily sampling is required, the average shall be determined by the sum of all the measured daily discharges divided by the number of days during the calendar week when the measurements were made. If only one sample is collected during that period of time, the value of the single sample shall constitute the weekly average.
10. Order No. 98-13 includes the following effluent limitations and toxicity discharge limitation:

B. EFFLUENT LIMITATIONS

1. Waste discharged to Humboldt Bay (Discharge Serial No. 001) shall not contain constituents in excess of the following limits:

Major Wastewater Constituents

Constituent	Unit	30-Day Average	7-Day Average	Daily Maximum
BOD (20°C, 5-day)	mg/l	30	45	60
	lb/day	575	863	1151
Suspended Solids	mg/l	30	45	60
	lb/day	575	863	1151
Settleable Solids	mg/l	0.1		0.2
pH	Standard Units	Within limits of 6.0 and 9.0 at all times		
Total Coliform Organisms	MPN/100ml	14 ¹	---	43 ²

11. The Enforcement Policy states that for the purpose of determining serious violations, BOD, suspended solids, settleable solids, and pH are identified as Group I pollutants in Title 40 Code of Federal Regulations, Section 123.45, Appendix A. Total coliform is neither a Group I nor a Group II pollutant; therefore, exceedances of effluent limitations for total coliform bacteria do not count as serious violations.

¹ Median

² Not more than 10 percent of samples collected in a 30 day period shall exceed 43 MPN/100 ml (fecal)

12. According to monitoring reports submitted by the Discharger, the discharge exceeded discharge and effluent limitations one hundred fourteen times during the period from January 1, 2000, to June 21, 2004. Of those one hundred fourteen exceedances, forty-one were serious violations in accordance with CWC Section 13385 (h) and seventy-three were chronic effluent violations in accordance with CWC Section 13385 (i)(1). The mandatory penalty amount for those violations is \$306,000 as shown in the following table:

**Table 1. Effluent Limitation Exceedances
January 1, 2000, through June 21, 2004**

Sample Date	Violation Date	Description of Violation (Reported Value)	Violation Type	Mandatory Penalty
	01/15/00	Exceeded 7-Day Avg. BOD Limit of 863 lbs/day (946 lbs/day)	1 st Chronic	NO MMP
	01/15/00	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (1082 lbs/day)	2 nd Chronic	NO MMP
	01/19/00	Exceeded Daily Max BOD Limit of 1151 lbs/day (1288 lbs/day)	3 rd Chronic	NO MMP
	01/19/00	Exceeded Daily Max TSS Limit of 1151 lbs/day (1580 lbs/day)	Chronic	\$3,000
	01/22/00	Exceeded 7-Day Avg. BOD Limit of 863 lbs/day (1288 lbs/day)	Serious	\$3,000
	01/22/00	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (1580 lbs/day)	Serious	\$3,000
	01/31/00	Failed to achieve 85% Removal of BOD (71%)	Serious	\$3,000
	01/31/00	Exceeded 30-Day Avg. BOD Limit of 575 lbs/day (756 lbs/day)	Serious	\$3,000
	01/31/00	Failed to achieve 85% Removal of TSS (72%)	Serious	\$3,000
	01/31/00	Exceeded 30-Day Avg. TSS Limit of 575 lbs/day (895 lbs/day)	Serious	\$3,000
	02/16/00	Exceeded Daily Max TSS Limit of 1151 lbs/day (1392 lbs/day)	Chronic	\$3,000
	02/19/00	Exceeded 7-Day Avg. BOD Limit of 863 lbs/day (1134 lbs/day)	Chronic	\$3,000
	02/19/00	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (1192 lbs/day)	Serious	\$3,000
	02/26/00	Exceeded 7-Day Avg. BOD Limit of 863 lbs/day (930 lbs/day)	Chronic	\$3,000
	02/26/00	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (1151 lbs/day)	Chronic	\$3,000
	02/29/00	Failed to achieve 85% Removal of BOD (79%)	Serious	\$3,000
	02/29/00	Exceeded 30-Day Avg. BOD Limit of 575 lbs/day (693 lbs/day)	Chronic	\$3,000
	02/29/00	Failed to achieve 85% Removal of TSS (84%)	Chronic	\$3,000
	02/29/00	Exceeded 30-Day Avg. TSS Limit of 575 lbs/day (795 lbs/day)	Chronic	\$3,000
	03/04/00	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (908 lbs/day)	Chronic	\$3,000

Sample Date	Violation Date	Description of Violation (Reported Value)	Violation Type	Mandatory Penalty
	03/11/00	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (864 lbs/day)	Chronic	\$3,000
	11/18/00	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (868 lbs/day)	1 st Chronic	NO MMP
	11/30/00	Failed to achieve 85% Removal of BOD (83%)	2 nd Chronic	NO MMP
	11/30/00	Exceeded 30-Day Avg. TSS Limit of 30 mg/l (32 mg/l)	3 rd Chronic	NO MMP
	11/30/00	Failed to achieve 85% Removal of TSS (81%)	Chronic	\$3,000
	11/30/00	Exceeded 30-Day Avg. TSS Limit of 575 lbs/day (640 lbs/day)	Chronic	\$3,000
	12/16/00	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (948 lbs/day)	Chronic	\$3,000
	12/31/00	Failed to achieve 85% Removal of BOD (84%)	Chronic	\$3,000
	12/31/00	Failed to achieve 85% Removal of TSS (82%)	Chronic	\$3,000
	12/31/00	Exceeded 30-Day Avg. TSS Limit of 575 lbs/day (629 lbs/day)	Chronic	\$3,000
	02/22/01	Exceeded Daily Max TSS Limit of 1151 lbs/day (1273 lbs/day)	Chronic	\$3,000
	02/24/01	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (1273 lbs/day)	Serious	\$3,000
	02/28/01	Failed to achieve 85% Removal of TSS (74%)	Serious	\$3,000
	02/28/01	Exceeded 30-Day Avg. TSS Limit of 575 lbs/day (664 lbs/day)	Chronic	\$3,000
	03/03/01	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (1141 lbs/day)	Chronic	\$3,000
	03/31/01	Exceeded 7-Day Avg. TSS Limit of 45 mg/l (30 mg/l)	Chronic	\$3,000
	03/31/01	Failed to achieve 85% Removal of TSS (81%)	Chronic	\$3,000
	03/31/01	Exceeded 30-Day Avg. TSS Limit of 575 lbs/day (643 lbs/day)	Chronic	\$3,000
	11/20/01	Exceeded Daily Max BOD Limit of 1151 lbs/day (1205 lbs/day)	1 st Chronic	NO MMP
	11/20/01	Exceeded Daily Max TSS Limit of 1151 lbs/day (1928 lbs/day)	Serious 2 nd Chronic	\$3,000
	11/24/01	Exceeded 7-Day Avg. BOD Limit of 863 lbs/day (1205 lbs/day)	3 rd Chronic	NO MMP
	11/24/01	Exceeded 7-Day Avg. TSS Limit of 45 mg/l (48 mg/l)	Chronic	\$3,000
	11/24/01	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (1928 lbs/day)	Serious	\$3,000
	11/29/01	Exceeded Daily Max TSS Limit of 1151 lbs/day (1725 lbs/day)	Serious	\$3,000
	11/30/01	Failed to achieve 85% Removal of BOD (83%)	Chronic	\$3,000
	11/30/01	Exceeded 30-Day Avg. BOD Limit of 575 lbs/day (630 lbs/day)	Chronic	\$3,000

Sample Date	Violation Date	Description of Violation (Reported Value)	Violation Type	Mandatory Penalty
	11/30/01	Exceeded 30-Day Avg. TSS Limit of 30 mg/l (30 mg/l)	Chronic	\$3,000
	11/30/01	Failed to achieve 85% Removal of TSS (78%)	Serious	\$3,000
	11/30/01	Exceeded 30-Day Avg. TSS Limit of 575 lbs/day (1076 lbs/day)	Serious	\$3,000
	12/01/01	Exceeded 7-Day Avg. TSS Limit of 45 mg/l (48 mg/l)	Chronic	\$3,000
	12/01/01	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (1725 lbs/day)	Serious	\$3,000
	12/06/01	Exceeded Daily Max BOD Limit of 1151 lbs/day (2164 lbs/day)	Serious	\$3,000
	12/06/01	Exceeded Daily Max TSS Limit of 1151 lbs/day (3345 lbs/day)	Serious	\$3,000
	12/08/01	Exceeded 7-Day Avg. BOD Limit of 863 lbs/day (2164 lbs/day)	Serious	\$3,000
	12/08/01	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (3345 lbs/day)	Serious	\$3,000
	12/22/01	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (1034 lbs/day)	Chronic	\$3,000
	12/31/01	Failed to achieve 85% Removal of BOD (76%)	Serious	\$3,000
	12/31/01	Exceeded 30-Day Avg. BOD Limit of 575 lbs/day (892 lbs/day)	Serious	\$3,000
	12/31/01	Failed to achieve 85% Removal of TSS (71%)	Serious	\$3,000
	12/31/01	Exceeded 30-Day Avg. TSS Limit of 575 lbs/day (1345 lbs/day)	Serious	\$3,000
	09/30/02	Exceeded 30-Day Avg. TSS Limit of 30 mg/l (32 mg/l)	1 st Chronic	NO MMP
	11/09/02	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (981 lbs/day)	2 nd Chronic	NO MMP
	11/30/02	Exceeded 30-Day Avg. TSS Limit of 30 mg/l (34 mg/l)	3 rd Chronic	NO MMP
	11/30/02	Failed to achieve 85% Removal of TSS (81%)	Chronic	\$3,000
	11/30/02	Exceeded 30-Day Avg. TSS Limit of 575 lbs/day (693 lbs/day)	Chronic	\$3,000
	12/19/02	Exceeded Daily Max BOD Limit of 1151 lbs/day (1502 lbs/day)	Chronic	\$3,000
	12/19/02	Exceeded Daily Max TSS Limit of 1151 lbs/day (3858 lbs/day)	Serious	\$3,000
	12/21/02	Exceeded 7-Day Avg. BOD Limit of 863 lbs/day (1502 lbs/day)	Serious	\$3,000
	12/21/02	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (3558 lbs/day)	Serious	\$3,000
	12/31/02	Failed to achieve 85% Removal of BOD (84%)	Chronic	\$3,000
	12/31/02	Exceeded 30-Day Avg. BOD Limit of 575 lbs/day (640 lbs/day)	Chronic	\$3,000
	12/31/02	Exceeded 7-Day Avg. TSS Limit of 30 mg/l (33 mg/l)	Chronic	\$3,000

Sample Date	Violation Date	Description of Violation (Reported Value)	Violation Type	Mandatory Penalty
	12/31/02	Failed to achieve 85% Removal of TSS (60%)	Serious	\$3,000
	12/31/02	Exceeded 30-Day Avg. TSS Limit of 575 lbs/day (1329 lbs/day)	Chronic	\$3,000
	01/18/03	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (906 lbs/day)	Chronic	\$3,000
	1/31/03	Exceeded 30-Day Avg. TSS Limit of 575 lbs/day (612 lbs/day)	Chronic	\$3,000
	1/31/03	Failed to achieve 85% Removal of TSS (82%)	Chronic	\$3,000
	02/01/03	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (982 lbs/day)	Chronic	\$3,000
	2/22/03	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (1064 lbs/day)	Chronic	\$3,000
	03/15/03	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (1072 lbs/day)	Chronic	\$3,000
	03/31/03	Exceeded 30-Day Avg. TSS Limit of 575 lbs/day (602 lbs/day)	Chronic	\$3,000
	03/31/03	Failed to achieve 85% Removal of TSS (84%)	Chronic	\$3,000
	04/03/03	Exceeded Daily Max TSS Limit of 1151 lbs/day (1576 lbs/day)	Chronic	\$3,000
	04/05/03	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (1576 lbs/day)	Serious	\$3,000
	04/12/03	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (871 lbs/day)	Chronic	\$3,000
	04/17/03	Exceeded Daily Max TSS Limit of 1151 lbs/day (1227 lbs/day)	Chronic	\$3,000
	04/19/03	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (1227 lbs/day)	Serious	\$3,000
	4/24/03	Exceeded Daily Max TSS Limit of 1151 lbs/day (1231 lbs/day)	Chronic	\$3,000
	04/26/03	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (1231 lbs/day)	Serious	\$3,000
	04/30/03	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (1226 lbs/day)	Serious	\$3,000
	04/30/03	Exceeded 30-Day Avg. TSS Limit of 30 mg/l (34 mg/l)	Chronic	\$3,000
	04/30/03	Failed to achieve 85% Removal of TSS (69%)	Serious	\$3,000
	06/30/03	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (786 lbs/day)	Chronic	\$3,000
	06/30/03	Failed to achieve 85% Removal of TSS (70%)	Serious	\$3,000
	11/06/03	Exceeded Daily Max TSS Limit of 1151 lbs/day (1300 lbs/day)	Chronic	NO MMP
	11/08/03	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (1300 lbs/day)	Serious	\$3,000
	11/22/03	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (912 lbs/day)	Chronic	\$3,000
	11/30/03	Exceeded 30-Day Avg. TSS Limit of 575 lbs/day (880 lbs/day)	Serious	\$3,000

Sample Date	Violation Date	Description of Violation (Reported Value)	Violation Type	Mandatory Penalty
	11/30/03	Exceeded 30-Day Avg. TSS Limit of 30 mg/l (41 mg/l)	Chronic	\$3,000
	11/30/03	Failed to achieve 85% Removal of TSS (80%)	Chronic	\$3,000
	12/05/03	Exceeded Daily Total Coliform Limit of 100MPN/100 ml (60 MPN/100ml)	Chronic	\$3,000
	12/31/03	Exceeded 30-Day Avg. TSS Limit of 575 lbs/day (688 lbs/day)	Chronic	\$3,000
	12/31/01	Failed to achieve 85% Removal of TSS (80%)	Chronic	\$3,000
	01/29/04	Exceeded Daily Max TSS Limit of 1151 lbs/day (1196 lbs/day)	Chronic	\$3,000
	1/31/04	Exceeded 30-Day Avg. TSS Limit of 575 lbs/day (673 lbs/day)	Chronic	\$3,000
	01/31/04	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (1196 lbs/day)	Chronic	\$3,000
	02/19/04	Exceeded Daily Max TSS Limit of 1151 lbs/day (1833 lbs/day)	Serious	\$3,000
	02/21/04	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (1833 lbs/day)	Chronic	\$3,000
	02/26/04	Exceeded Daily Max TSS Limit of 1151 lbs/day (1808 lbs/day)	Serious	\$3,000
	02/28/04	Exceeded 7-Day Avg. TSS Limit of 863 lbs/day (1808 lbs/day)	Serious	\$3,000
	02/28/04	Exceeded 7-Day Avg. TSS Limit of 45 mg/l (47 mg/l)	Chronic	\$3,000
	02/29/04	Exceeded 30-Day Avg. TSS Limit of 575 lbs/day (1168 lbs/day)	Serious	\$3,000
	02/29/04	Exceeded 30-Day Avg. TSS Limit of 30 mg/l (35 mg/l)	Chronic	\$3,000
	02/29/04	Failed to achieve 85% Removal of TSS (74%)	Serious	\$3,000
Total				\$306,000

13. The total amount of the mandatory minimum penalties for serious and chronic violations occurring during the period January 1, 2000, through June 21, 2004 is \$306,000.
14. The issuance of this Complaint is an enforcement action to protect the environment, and is therefore exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) pursuant to Title 14, California Code of Regulations Sections 15308 and 1532 (a)(2).

THE CITY OF ARCATA IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Water Board proposes that the Discharger be assessed a **mandatory minimum penalty in the amount of \$306,000** for the violations that occurred from January 1, 2000, through June 21, 2004.

2. A hearing shall be conducted on this Complaint by the Regional Water Board on March 8, 2006, unless the Discharger waives the right to a hearing by signing and returning the waiver form attached to this Complaint. By doing so, the Discharger agrees to:
 - a. Pay the **mandatory minimum penalty of \$306,000** in full to the State Water Pollution Cleanup and Abatement Account within 30 days of the date of this Complaint, or
 - b. Propose a Supplemental Environmental Projects (SEP) in an amount up to \$160,500 and pay the balance of the penalty (\$145,500) within 30 days of the date of this Complaint to the State Water Pollution cleanup and Abatement Account.
3. If the Discharger chooses to propose a SEP, it must submit a proposal within 30 days of the date of this Complaint to the Executive Officer for conceptual approval. Any SEP proposal shall conform to the requirements specified in Section IX of the Enforcement Policy and the attached Standard Criteria and Requirements for Supplemental Environmental Projects. If the proposed SEP is not acceptable, the Executive Officer may allow the Discharger 30 days to submit a new or revised proposal, or may demand that, during the same 30-day period, the Discharger pay the suspended penalty of \$160,500. All payments, including money not used for the SEP, must be payable to the State Water Pollution Cleanup and Abatement Account.
4. The settlement will become effective on the next 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 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 enforcement.
6. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act, including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.
7. In the event that the Discharger is required to pay a previously suspended penalty amount, payment of the previously suspended penalty amount does not relieve the Discharger of the independent obligation to take necessary actions to achieve compliance.

8. Notwithstanding the issuance of the Complaint, the Regional Water Board shall retain the authority to assess additional penalties for violations of the Discharger's waste discharge requirements.

Catherine Kuhlman

Catherine E. Kuhlman
Executive Officer

January 4, 2006

(010406_City of Arcata ACLC)