

California Regional Water Quality Control Board
North Coast Region

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R1-2006-0005

FOR

MANDATORY MINIMUM PENALTIES

IN THE MATTER OF
CITY OF FORTUNA WASTEWATER TREATMENT FACILITY

FOR

VIOLATIONS OF WASTE DISCHARGE REQUIREMENTS
ORDER NOS. 94-24 AND R1-2001-41
WDID NO. 1B83135OHUM

Humboldt County

This complaint to assess Mandatory Minimum Penalties (MMPs) pursuant to California Water Code (CWC) section 13385(h) and /or (i) is issued to the City of Fortuna (hereinafter Discharger), for violations of Waste Discharge Requirements Order No. 94-24 and Waste Discharge Requirements Order No. R1-2001-41 (NPDES No. CA0022730) for the period January 1, 2000 through June 30, 2005.

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

1. On September 22, 1994, the Regional Water Quality Control Board, North Coast Region, (hereinafter Regional Water Board) adopted Waste Discharge Requirements Order No. 94-24 (Order No. 94-24) for the City of Fortuna Wastewater Treatment Facility (WWTF), to regulate discharges of waste from it's wastewater collection, treatment and disposal facility. Order 94-24 was rescinded and replaced with Waste Discharge Requirements Order No. R1-2001-41 (Order No. R1-2001-41) on April 26, 2001. Both of these WDRs serve as National Pollutant Discharge Elimination System (NPDES) permits under the federal Clean Water Act. Additionally, both Orders require the Discharger to implement a discharge monitoring program and to prepare and submit monthly NPDES self-monitoring reports to the Regional Water Board.
2. The Discharger owns and operates a publicly owned treatment works, the City of Fortuna Wastewater Treatment Facility (WWTF), which serves the City of Fortuna. The WWTF discharges secondary treated domestic wastewater into the lower Eel River during the wet season (October 1 to May 14) only.
3. This complaint covers violations of effluent limitations (contained in Order No. 94-24 and Order No. R1-2001-41) that occurred during the period of January 1, 2000, through June 30, 2005. The details of these violations are summarized in Findings 10 through 14 of this complaint. These violations are subject to the mandatory minimum penalties provision contained in Section 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 (MMP) 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 minimum 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-month period:
 - 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. 94-24 includes the following effluent limitations and toxicity discharge limitations:

B. EFFLUENT LIMITATIONS

1. Waste discharged to the Eel River (Discharge Serial No. 001) shall not contain constituents in excess of the following limits shown in Table A:

Table A. 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	300	450	600
Suspended Solids	mg/l	30	45	60
	lb/day	300	450	600
Settleable Solids	ml/l	0.1	---	0.2
Total Coliform Organisms	MPN/100ml	23 ¹	---	230
Chlorine Residual	mg/l	---	---	0.1
pH	Standard Units	Within limits of 6.0 and 8.5 at all times		
Grease and Oil	mg/l	15	---	20

¹ Median

11. Order No. R1-2001-41 includes the following effluent limitations and toxicity discharge limitations:

B. EFFLUENT LIMITATIONS

1. Waste discharged to the Eel River (Discharge Serial No. 001) shall not contain constituents in excess of the following limits shown in Table B:

Table B. 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	375	563	751
Suspended Solids	mg/l	30	45	60
	lb/day	375	563	751
Settleable Solids	ml/l	0.1	---	0.2
Total Coliform Organisms	MPN/100ml	23 ²	---	230
Chlorine Residual	mg/l	---	---	0.1
pH (to the Eel River)	Standard Units	Within limits of 6.5 and 8.5 at all times		
pH (to percolation pond)	Standard Units	Within limits of 6.0 and 9.0 at all times		

12. The Enforcement Policy states that for the purpose of determining serious violations, BOD, suspended solids, settleable solids, Grease and Oil, 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.
13. According to monitoring reports submitted by the Discharger, the discharge exceeded effluent limitations sixteen times between January 1, 2000, and June 30, 2005. Of those sixteen exceedances, ten were serious violations in accordance with CWC Section 13385 (h) and six were chronic violations in accordance with CWC Section 13385 (i)(1). The mandatory minimum penalty (MMP) amount for those violations is \$42,000 as shown in the following table:

² Median

**Table 1. Effluent Limitation Exceedances
 January 1, 2000, through June 30, 2005**

<u>Violation Date</u>	<u>Description of Violation (Reported Value)</u>	<u>Reported Value</u>	<u>Violation Type</u>	<u>Mandatory Penalty</u>
28-Jan-00	Settleable Solids, Daily Max	2.0 ml/l	Serious	\$3,000
31-Jan-00	Chlorine Residual, Daily Max	0.2 mg/l	Serious	\$3,000
1-Feb-00	Chlorine Residual, Daily Max	0.2 mg/l	Serious	\$3,000
5-Feb-00	Settleable Solids, Daily Max	0.3 ml/l	Serious	\$3,000
14-Feb-00	Settleable Solids, Daily Max	3.5 ml/l	Serious	\$3,000
21-Feb-00	Chlorine Residual, Daily Max	1.0 mg/l	Serious	\$3,000
22-Feb-00	Chlorine Residual, Daily Max	0.7 mg/l	Serious	\$3,000
27-Feb-00	pH, Daily Min	5.8	Chronic	\$3,000
28-Feb-00	pH, Daily Min	5.9	Chronic	\$3,000
29-Feb-00	Settleable Solids, Monthly Average	0.13 ml/L	Chronic	\$3,000
18-Dec-02	pH, Daily Min	6.4	Chronic	\$0
26-Dec-02	Chlorine Residual, Daily Max	0.5 mg/l	Serious	\$3,000
28-Mar-03	Chlorine Residual, Daily Max	1.0 mg/l	Serious	\$3,000
31-Mar-03	Coliform, 30-day Median	34 MPN	Chronic	\$3,000
28-Oct-03	Coliform, Daily Max	300 MPN	Chronic	\$0
24-Feb-04	Chlorine Residual, Daily Max	0.5 mg/l	Serious	\$3,000
			Total Penalties	\$42,000

14. The total amount of the mandatory minimum penalties for serious and chronic violations occurring during the period January 1, 2000, through June 30, 2005, is \$42,000.
15. 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 FORTUNA IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Water Board proposes that the Permittee be assessed a **mandatory minimum penalty in the amount of \$42,000** for violations that occurred from January 1, 2000, through June 30, 2005.
2. A hearing shall be conducted on this Complaint by the Regional 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 within 30 days of the date of this Complaint. By doing so, the Discharger agrees to:
 - a. Pay the **mandatory minimum penalty of \$42,000** in full to the State Water Pollution Cleanup and Abatement Account within 30 days of the date of this Complaint, or
 - b. Propose a SEP in an amount up to \$28,500 and pay the balance of the penalty (\$13,500) 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 \$28,500. 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 E. Kuhlman
Executive Officer

January 4, 2006