

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2003-0125

Mandatory Minimum Penalties

For

Violations of Waste Discharge Requirements
Order No. 93-42
WDID No. 1B83001OSON

In the Matter
of
Occidental County Sanitation District
and
Sonoma County Water Agency

Sonoma County

This Complaint to assess Mandatory Minimum Penalties pursuant to Water Code Section 13385(h) and/or (i) is issued to the Occidental County Sanitation District and the Sonoma County Water Agency (hereafter referred to as the Dischargers) for violations of Waste Discharge Requirements Order No. 93-42 (NPDES No. CA0023051) during the period January 1, 2000, to April 16, 2003. This Complaint replaces Complaint No. R1-2003-0110.

The Executive Officer of the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) finds the following:

1. On May 27, 1993, the Regional Water Board adopted Waste Discharge Requirements Order No. 93-42 (Order No. 93-42), for the Occidental County Sanitation District (CSD), to regulate discharges of waste from the Occidental CSD wastewater collection, treatment and disposal facility (WWTF). Order No. 93-42 requires the Dischargers to implement a discharge monitoring program and to prepare and submit monthly NPDES self-monitoring reports to the Regional Water Board. The WWTF is owned by the Occidental CSD and currently operated by the Sonoma County Water Agency (SCWA).
2. This Complaint covers violations of effluent limitations that occurred during periods of discharge to receiving waters for the period of January 1, 2000 through April 16, 2003. During this time period, the Dischargers violated Effluent Limitations B.1 and B.5 of Order No. 93-42 a total of 83 times during the period of January 1, 2000 through April 16, 2003. The details of these 83 violations are summarized in Findings 12 through 15 of this Complaint. These violations are subject to the mandatory minimum penalties provisions contained in Sections 13385(h) through (l) of the California Water Code.
3. 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.

4. 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 limitations 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.
5. 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.

6. On February 19, 2002, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2002-0040 amending the Water Quality Enforcement Policy (Policy). The Policy was approved by the Office of Administrative Law and became effective on July 30, 2002. This Policy addresses, amongst other enforcement issues, issues related to assessing mandatory minimum penalties.
7. California Water Code Section 13385(k) allows the state or regional water board to elect to require a publicly owned treatment works (POTW) that serves a small community, as defined by subdivision (b) of Section 79084, to spend an amount equivalent to its mandatory penalties toward the completion of a compliance project proposed by the POTW, if the state or regional water board finds all of the following:
 - 1) The compliance project is designed to correct the violations within five years.
 - 2) The compliance project is in accordance with the enforcement policy of the State Water Board.
 - 3) The POTW has demonstrated that it has sufficient funding to complete the compliance project.
8. Section X of the Policy includes additional requirements for compliance projects, including: (1) the amount of the penalty suspended shall not exceed the cost to return to and/or maintain future compliance and; (2) Compliance Projects (CPs) shall also comply with the general conditions specified for CPs in subsection C of the Policy. In accordance with Section X.C. of the Policy, the following general conditions apply to CPs:

- a) CPs may include, but are not limited to: construction of new facilities; upgrade or repair of existing facilities; conducting water quality investigations or monitoring; operating a cleanup system; adding staff; training; studies; and the development of operation, maintenance and/or monitoring procedures.
 - b) CPs should be designed to bring the discharger back into compliance in a timely manner and/or prevent future noncompliance.
 - c) A CP is a project that the discharger is otherwise obligated to perform independent of the ACL itself.
 - d) CPs shall have clearly identified project goals, costs, milestones, and completion dates and these shall be specified in the ACL action.
 - e) CPs that will last longer than one year shall have at least annual reporting requirements.
 - f) If the discharger completes the CP to the satisfaction of the Regional Water Board or the Executive Officer on the specified date, the suspended amount is permanently suspended.
 - g) If the CP is not completed to the satisfaction of the Regional Water Board or the Executive Officer on the specified date, the amount suspended becomes due and payable to the State Cleanup and Abatement Account or other fund or account as authorized by statute.
 - h) The ACL Complaint or Order shall clearly state that payment of the previously suspended amount does not relieve the discharger of the independent obligation to take necessary actions to achieve compliance.
9. California Water Code Section 79084(b) defines "small community" to mean a municipality with a population of 10,000 persons or less, a rural county, or a reasonably isolated and divisible segment of a larger municipality where the population of the segment is 10,000 persons or less, with a financial hardship as determined by the Regional Water Board.

Section V.D. of the Policy defines "financial hardship" to mean that the median annual household income for the community is less than 80 percent of the California median annual household income and "median annual household income" to mean the median annual household income of the community based on the most recent census data or a local survey approved by the State Water Board.

10. The Occidental CSD is a POTW that serves a community of less than 10,000 persons. The Dischargers submitted an independent income survey that documents financial hardship in the community served by the Occidental CSD. The Dischargers elected to propose a compliance project to complete in lieu of paying the full mandatory penalty proposed in this Complaint.
11. Order No. 93-42 includes, among other things, the following discharge prohibition and effluent limitations:

- a. Effluent Limitation B.1.

Wastes discharged to Graham's Pond prior to the time the average annual dry weather flow equals or exceeds 0.034 mgd shall not contain constituents in excess of the following:

<u>30-day Constituent</u>	<u>7-day Units</u>	<u>Daily Average^a</u>	<u>Average^b</u>	<u>Maximum</u>
BOD (20°C,5-day)	mg/l	30	45	60
	lb/day ^c	12	18	24
Suspended Solids (TSS)	mg/l	50	65	80
	lb/day	20	27	33
Total Coliform Organisms	MPN/100ml	2.2 ^d		23
Chlorine Residual	mg/l	--	---	0.1
Hydrogen Ion Concentration	pH Units	not less than 6.5 nor greater than 8.5		

b. Effluent Limitation B.5.

The survival of test fish in 96-hour static or continuous flow bioassays in undiluted effluent samples shall equal or exceed 90 percent survival 67 percent of the time, and 70 percent survival 100 percent of the time for discharges from Graham's Pond to Dutch Bill Creek.

12. According to monitoring reports submitted by the Dischargers, during a 180-day period beginning January 5, 2000, the Dischargers exceeded effluent limitations 26 times. Of those 26 exceedances, 13 were serious violations in accordance with CWC Section 13385(h) and 13 were chronic effluent violations in accordance with CWC Section 13385(i)(1). The mandatory penalty amount for those violations is \$69,000 as shown in the following table:

^a The arithmetic mean of the values for effluent samples collected in a period of 30 consecutive days.

^b The arithmetic mean of the values for effluent samples collected in a period of seven consecutive days.

^c The daily discharge (lbs/day) is obtain from the following calculation for any calendar day:

$$\text{Daily Discharge (lb/day)} = \frac{8.34}{N} \sum_i^N Q_i C_i$$

In which N is the number of samples analyzed in any calendar day. Q_i and C_i are the flow rate (mgd) and the constituent concentration (mg/l), respectively, which are associated with each of the N grab samples which may be taken in any calendar day. If a composite sample is taken, C_i is the concentration measured in the composite sample; and Q_i is the average flow rate occurring during the period over which samples are composited.

^d median

Effluent Limitation Exceedances^{1, 2, 3}
January 5, 2000 through April 19, 2000

Date	Parameter	Reported Value	Violation Type	Mandatory Penalty
1/5/00	Fish Bioassay (Acute Toxicity)	0% survival	Chronic, 1 st	---
1/19/00	TSS, Daily Load	39 lb/day	Chronic, 2 nd	---
1/22/00	TSS, Weekly Avg. Load	31 lb/day	Chronic, 3 rd	---
2/5/00	Chlorine Residual	14.3 mg/l	Serious	\$3,000
2/6/00	Chlorine Residual	1 mg/l	Serious	\$3,000
2/7/00	Chlorine Residual	10 mg/l	Serious	\$3,000
2/8/00	Chlorine Residual	9.8 mg/l	Serious	\$3,000
2/8/00	pH	9.2	Chronic	\$3,000
2/9/00	pH	9.1	Chronic	\$3,000
2/9/00	Chlorine Residual	3.2 mg/l	Serious	\$3,000
2/11/00	Chlorine Residual	10.2 m/l	Serious	\$3,000
2/16/00	Total Coliform	50 MPN	Chronic	\$3,000
2/16/00	TSS, Daily Load	42 lb/day	Chronic	\$3,000
2/16/00	TSS, Weekly Concentration	67 mg/l	Chronic	\$3,000
2/17/00	Total Coliform	30 MPN	Chronic	\$3,000
2/19/00	TSS, Weekly Avg. Load	53 lb/day	Serious	\$3,000
2/21/00	Chlorine Residual	10.8 mg/l	Serious	\$3,000
2/22/00	Chlorine Residual	9.2 mg/l	Serious	\$3,000
2/23/00	Chlorine Residual	16.8 mg/l	Serious	\$3,000
2/24/00	Chlorine Residual	1.3 mg/l	Serious	\$3,000
2/29/00	Chlorine Residual	2.3 mg/l	Serious	\$3,000
2/29/00	TSS, Monthly Avg. Load	27 lb/day	Chronic	\$3,000
3/1/00	TSS, Daily Load	35 lb/day	Chronic	\$3,000
3/9/00	Chlorine Residual	4.6 mg/l	Serious	\$3,000
4/5/00	Total Coliform	>1600 MPN	Chronic	\$3,000
4/19/00	Total Coliform	> 1600 MPN	Chronic	\$3,000
Total				\$69,000

13. According to monitoring reports submitted by the Dischargers during a 180-day period beginning January 25, 2001, the Dischargers exceeded effluent limitations seven times. Of those seven exceedances, three were serious violations in accordance with CWC Section 13385(h) and four were chronic effluent violations in accordance with CWC Section 13385(i)(1). The mandatory penalty amount for those violations is \$12,000 as shown in the following table:

¹ See Finding 5 of this Complaint for the definition of a chronic violation.

² See Findings 3 and 4 of this Complaint for the definition of serious violation.

³ For the purpose of determining serious violations, BOD, and suspended solids are Group I pollutants and chlorine residual is a Group II pollutant, as defined in Title 40 Code of Federal Regulations, Section 123.45, Appendix A.

Effluent Limitation Exceedances^{1, 2, 3}
January 25, 2001 through March 14, 2001

Date	Parameter	Reported Value	Violation Type	Mandatory Penalty
1/10/01	TSS, Daily Load	38 lb/day	Chronic, 1 st	---
1/25/01	TSS, Daily Load	37 lb/day	Chronic, 2 nd	---
1/25/01	BOD, Daily Load	31 lb/day	Chronic, 3 rd	---
2/21/01	TSS, Daily Load	63 lb/day	Serious	\$3,000
2/21/01	BOD, Daily Load	27 lb/day	Chronic	\$3,000
2/24/01	BOD, Weekly Avg. Load	25 lb/day	Serious	\$3,000
2/24/01	TSS, Weekly Avg. Load	57 lb/day	Serious	\$3,000
Total				\$12,000

14. According to monitoring reports submitted by the Dischargers during a 180-day period beginning November 18, 2001, the Dischargers exceeded effluent limitations 38 times. Of those 38 exceedances, 13 were serious violations in accordance with CWC Section 13385(h) and 25 were chronic effluent violations in accordance with CWC Section 13385(i)(1). The mandatory penalty amount for those violations is \$105,000 as shown in the following table:

Effluent Limitation Exceedances^{1, 2, 3}
November 18, 2001 through May 1, 2002

Date	Parameter	Reported Value	Violation Type	Mandatory Penalty
11/17/01	BOD, Weekly Avg. Load	21 lb/day	Chronic, 1 st	---
11/24/01	BOD, Weekly Avg. Load	19 lb/day	Chronic, 2 nd	---
11/28/01	TSS, Daily Load	36 lb/day	Chronic, 3 rd	---
11/28/01	BOD, Daily Load	47 lb/day	Serious	\$3,000
11/30/01	BOD, Monthly Avg. Conc.	38 mg/l	Chronic	\$3,000
11/30/01	BOD, Monthly Avg. Load	17 lb/day	Serious	\$3,000
12/1/01	BOD, Weekly Avg. Load	29 lb/day	Serious	\$3,000
12/5/01	BOD, Daily Load	42 lb/day	Serious	\$3,000
12/8/01	BOD, Weekly Avg. Load	24 lb/day	Chronic	\$3,000
12/18/01	BOD, Weekly Avg. Conc.	60 mg/l	Serious	\$3,000
12/18/01	BOD, Daily Load	38 lb/day	Serious	\$3,000
12/22/01	BOD, Weekly Avg. Load	43 lb/day	Serious	\$3,000
12/22/01	TSS, Weekly Avg. Load	31 lb/day	Chronic	\$3,000
12/26/01	BOD, Weekly Avg. Conc.	46 mg/l	Chronic	\$3,000
12/29/01	BOD, Weekly Avg. Load	28 lb/day	Serious	\$3,000
12/31/01	BOD, Monthly Avg. Conc.	44 mg/l	Chronic	\$3,000
12/31/01	BOD, Monthly Avg. Load	29 lb/day	Serious	\$3,000
12/31/01	TSS, Monthly Avg. Load	21 lb/day	Chronic	\$3,000
1/3/02	BOD, Daily Load	40 lb/day	Serious	\$3,000
1/3/02	BOD, Weekly Avg. Conc.	49 mg/l	Chronic	\$3,000
1/5/02	BOD, Weekly Avg. Load	53 lb/day	Serious	\$3,000
1/5/02	TSS, Weekly Avg. Load	29 lb/day	Chronic	\$3,000

Date	Parameter	Reported Value	Violation Type	Mandatory Penalty
1/12/02	BOD, Weekly Avg. Load	22 lb/day	Chronic	\$3,000
1/30/02	BOD, Weekly Avg. Conc.	47 mg/l	Chronic	\$3,000
1/31/02	BOD, Monthly Avg. Conc.	42 mg/l	Serious	\$3,000
1/31/02	BOD, Monthly Avg. Load	19 lb/day	Serious	\$3,000
2/6/02	Fish Bioassay (Acute Toxicity)	55% survival	Chronic	\$3,000
2/20/02	Fish Bioassay (Acute Toxicity)	45% survival	Chronic	\$3,000
2/20/02	TSS, Daily Load	38 lb/day	Chronic	\$3,000
2/23/02	TSS, Weekly Avg. Load	31 lb/day	Chronic	\$3,000
2/23/02	BOD, Weekly Avg. Load	19 lb/day	Chronic	\$3,000
2/27/02	BOD, Weekly Avg. Conc.	48 mg/l	Chronic	\$3,000
2/28/02	BOD, Monthly Avg. Conc.	39 mg/l	Chronic	\$3,000
2/28/02	BOD, Monthly Avg. Load	15 lb/day	Chronic	\$3,000
2/28/02	TSS, Monthly Avg. Conc.	52 mg/l	Chronic	\$3,000
3/31/02	BOD, Monthly Avg. Conc.	35 mg/l	Chronic	\$3,000
4/30/02	BOD, Monthly Avg. Conc.	36 mg/l	Chronic	\$3,000
5/1/02	Total Coliform	50 MPN	Chronic	\$3,000
			Total	\$105,000

15. According to monitoring reports submitted by the Dischargers during a 180-day period beginning December 14, 2002, the Dischargers exceeded effluent limitations 12 times. Of those 12 exceedances, three were serious violations in accordance with CWC Section 13385(h) and nine were chronic effluent violations in accordance with CWC Section 13385(i)(1). The mandatory penalty amount for those violations is \$30,000 as shown in the following table:

Effluent Limitation Violations^{1, 2, 3}
December 13, 2002 through April 16, 2003

Date	Parameter	Reported Value	Violation Type	Mandatory Penalty
12/18/02	BOD, Weekly Avg. Conc.	52 mg/l	Chronic	---
12/21/02	TSS, Weekly Avg. Load	36 lb/day	Chronic	---
12/21/02	BOD, Weekly Avg. Load	53 lb/day	Serious	\$3,000
12/30/02	TSS, Monthly Avg. Load	25 lb/day	Chronic	\$3,000
12/30/02	TSS, Daily Load	39 lb/day	Serious	\$3,000
12/30/02	BOD, Monthly Avg. Load	19 lb/day	Serious	\$3,000
1/4/03	TSS, Weekly Avg. Load	35 lb/day	Chronic	\$3,000
3/12/03	BOD, Weekly Avg. Conc.	47 lb/day	Chronic	\$3,000
3/31/03	BOD, Monthly Avg. Conc.	32 lb/day	Chronic	\$3,000
4/9/03	Total Coliform	170 MPN	Chronic	\$3,000
4/16/03	Total Coliform	1600 MPN	Chronic	\$3,000
4/16/03	TSS, Daily Load	34 lb/day	Chronic	\$3,000
			Total	\$30,000

16. The total amount of the mandatory penalties for the 83 serious and chronic violations occurring during the period January 1, 2000, through April 16, 2003, is \$216,000. Regional Water Board staff costs for addressing this enforcement action are estimated at approximately \$26,000: \$13,000 for 200 hours of staff time to prepare this Complaint and associated documents⁴ and \$13,000 for 200 future staff hours for tracking the progress of the compliance projects⁵.
17. Due to the nature of these violations and the lack of any documented long-term impacts to the beneficial uses of water, discretionary administrative civil liabilities in addition to the mandatory minimum penalties identified in Finding 16 are not proposed for these effluent violations.
18. In letters dated January 24, 2003, and March 24, 2003, the Dischargers identified two compliance projects to direct \$190,000 of its mandatory penalties toward, as allowed by CWC Section 13385(k). The first compliance project involves improvements to increase the efficiency of the aeration pond, such as installation of baffles or modifications to the aeration system. The cost of this compliance project is estimated to be \$90,000 or less. The second compliance project will utilize the balance of the mandatory penalties, minus Regional Water Board staff costs, amounting to \$100,000 or more, toward the purchase and installation of the tertiary filters needed to treat Occidental's share of the wastewater for the District's treatment plant upgrade to tertiary level treatment and that are part of the Dischargers' Long-Term Capital Improvement Project (described in the Dischargers' January 2003 written report titled "Occidental County Sanitation District, Financial Plan, Long-Term Capital Improvement Project".) The two proposed projects meet the requirements for compliance projects described in Finding 8 of this Complaint.
19. The issuance of this Complaint is an enforcement action to protect the environment, and is therefore exempt from the provision of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) pursuant to Title 14, California Code of Regulations Sections 15308 and 15321(a)(2).

OCCIDENTAL COUNTY SANITATION DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Water Board proposes that the Dischargers be assessed a mandatory penalty in the amount of \$216,000. The Executive Officer further proposes that \$190,000 of the penalty may be spent on the two compliance projects identified in Finding 18 in accordance with the time schedule identified in item 3 below and that the remaining \$26,000 be due and payable within 30 days of the of the date of this Complaint.
2. A hearing shall be held by the Regional Water Board on January 28, 2004 unless the Discharger agrees to waive the hearing, complete the compliance projects described in Finding 18 in accordance with the time schedule in 3 below, and pay the remaining mandatory penalty of \$26,000 in full.

⁴ The cost of staff time is \$65 per hour.

⁵ Staff time for monitoring the progress of the compliance projects was calculated at an average of 40 hours per year for a period of 5 years.

3. In lieu of paying the mandatory penalty, the Executive Officer authorizes the Dischargers to spend an amount equivalent to or greater than its mandatory penalty, minus staff costs, toward the completion of the compliance projects described in Finding 18 of this Complaint in accordance with the following time schedule:

Task	Compliance Date	Suspended Penalty
1. Complete aeration pond improvement project	April 30, 2004	\$90,000 (or actual cost of project if it is less than \$90,000)
2. Complete treatment plant upgrades, including installation of tertiary filters.	June 30, 2008	\$100,000 (or greater up to an amount that would total \$190,000 when combined with cost of aeration pond improvement project)
3. Submit progress reports on the status of completing the treatment plant improvements	June 1 and December 1 of each year until the CPs are completed	----

If the Dischargers complete each compliance project (specified as Tasks 1 and 2 in the table above) to the satisfaction of the Regional Water Board Executive Officer by the dates specified in the table above, the suspended penalties will be permanently suspended. If a compliance project is not completed to the satisfaction of the Regional Water Board Executive Officer, the suspended penalties are due and payable within 30 days of the compliance date. Payment of a previously suspended penalty does not relieve the Dischargers of the independent obligation to take necessary actions to achieve compliance.

4. If, for any reason, the Dischargers are unable to perform any activity or are unable to submit any document in compliance with the time schedule set forth above, the Dischargers may request, in writing, an extension of the time specified. The extension request must be submitted as far in advance as possible and no less than one month in advance of the due date in question and shall include justification for any delay including a description of the good faith effort performed to achieve compliance with the due date. The extension request shall also include a proposed time schedule with new performance date(s) for the due date(s) in question and all dependent dates. The Regional Water Board hereby delegates authority to the Regional Water Board Executive Officer to grant such an extension for good cause, as determined by the Regional Water Board Executive Officer, in his or her sole discretion. In no case can the compliance dates be extended beyond November 3, 2008.
5. If a hearing is held, the Regional Water Board will decide whether to accept the amount proposed by the Executive Officer in this Complaint or another modified amount.

6. The Dischargers may waive the right to a hearing. If you wish to waive the hearing, please check and sign the attached waiver and return it and a check made payable to the State Water Resources Control Board for \$26,000 to the Regional Water Board's office at 5550 Skylane Boulevard, Suite A, Santa Rosa, CA 95403, by December 3, 2003. However, any waiver of a hearing shall not be in effect until 30 days from the date of this Complaint to allow other interested persons to comment on this action.

Ordered by _____

Catherine E. Kuhlman
Executive Officer

November 3, 2003