

California Regional Water Quality Control Board
North Coast Region

COMPLAINT NO. R1-2005-0123
(REPLACING COMPLAINT NO. R1-2005-0028)

FOR

MANDATORY PENALTIES

IN THE MATTER OF
STOCKTON PACIFIC ENTERPRISES, INC.

FOR

VIOLATIONS OF WASTE DISCHARGE REQUIREMENTS
ORDER NOS. R1-2001-0063 AND R1-2004-0047
(NPDES NO. CA0005894)
ID NO. 1B77005OHUM

Humboldt County

This complaint to assess mandatory minimum penalties pursuant to Water Code Section 13385 (Complaint) is issued to Stockton Pacific Enterprises, Inc. (hereinafter Discharger), for violations of Waste Discharge Requirements Order Nos. R1-2001-0063 and R1-2004-0047 (NPDES No. CA0005894) for the period August 15, 2003, through March 2, 2005.

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

1. On June 28, 2001, the North Coast Regional Water Quality Control Board (hereinafter Regional Water Board) adopted Waste Discharge Requirements Order No. R1-2001-0063 for the Samoa Pacific Cellulose, LLC Pulp Mill at Samoa, Humboldt County. Samoa Pacific Cellulose, LLC transferred ownership of the Samoa Pulp Mill to the Permittee on August 15, 2003. On June 22, 2004, the Regional Water Board adopted Waste Discharge Requirements Order R1-2004-0047 (NPDES Permit No. CA0005894) for Stockton Pacific Enterprises, Inc. The new Order made a name change in the permit and other minor modifications. The Permittee operated the Samoa Pulp Mill between August 15, 2003, and March 2, 2005, under Order Nos. R1-2001-0063 and R1-2004-0047. Both of these Waste Discharge Requirements serve as National Pollutant Discharge Elimination System (NPDES) permits under the federal Clean Water Act. Order No. R1-2001-0063 was rescinded on June 22, 2004.
2. The Samoa Pulp Mill discharges industrial wastewater from the pulping process and storm water from the Mill into the Pacific Ocean.
3. 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 certain NPDES permit effluent limitations.
4. Water Code Section 13385(h)(2) defines a serious violation as any waste discharge of a Group I pollutant that exceeds the effluent limitation contained in the applicable waste

discharge requirements by 40 percent or more, or any waste discharge of a Group II pollutant that exceeds the effluent limitation by 20 percent or more.

5. Water Code Section 13385(i) requires the Regional Water Board to assess a MMP of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the permittee 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 effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
6. During the period between August 15, 2003, through March 2, 2005, the Permittee violated NPDES permit conditions contained in Waste Discharge Requirements Order Nos. R1-2001-0063 and R1-2004-0047 for which the Regional Water Board may impose civil liability under Section 13385 of the California Water Code.
7. Order Nos. R1-2001-0063 and R1-2004-0047 both contain **B. EFFLUENT LIMITATION 1**, which establishes the following applicable effluent limitations:

Parameter	Units	Monthly Average	Daily Maximum
BOD ¹ @ 20°C	Lbs/day	11,270	21,630
TSS ²	Lbs/day	22,960	42,560

BOD and TSS are identified in Appendix A, Title 40 Code of Federal Regulations, Section 123.45, as Group I pollutants.

Data contained in the Permittee's self-monitoring reports for the months August 2003 through December 2004 reveal that the discharge violated effluent limitations for biochemical oxygen demand and total suspended solids as follows:

- a) Serious violations

Violation Date	Limit ³ Exceeded	Reported Discharge Mass (lbs/day)
February 18, 2004	Daily Maximum TSS	62,580
May 2004	Monthly Average BOD	20,726
May 28, 2004	Daily Maximum BOD	38,750
June 2004	Monthly Average BOD	18,510

¹ Biochemical Oxygen Demand

² Total Suspended Solids

³ Biochemical Oxygen Demand Limits: Monthly Average 11,270 lbs/day, Daily Maximum 21,630 lbs/day.
 Total Suspended Solids Limits: Monthly Average 22,960 lbs/day, Daily Maximum 42,560 lbs/day.

Violation Date	Limit ³ Exceeded	Reported Discharge Mass (lbs/day)
July 2004	Monthly Average BOD	22,218
July 28, 2004	Daily Maximum BOD	41,927
August 2004	Monthly Average BOD	16,674
August 4, 2004	Daily Maximum BOD	33,235
September 2004	Monthly Average BOD	33,920
September 2004	Monthly Average TSS	32,754
September 1, 2004	Daily Maximum BOD	34,668
September 8, 2004	Daily Maximum BOD	40,249
September 29, 2004	Daily Maximum BOD	55,135
September 29, 2004	Daily Maximum TSS	85,766
October 2004	Monthly Average BOD	16,174
November 2004	Monthly Average BOD	17,171

b) Chronic violations

Violation Date	Limit ³ Exceeded	Reported Discharge Mass (lbs/day)
August 2003	Monthly Average BOD	12,992
September 2003	Monthly Average BOD	11,801
November 2003	Monthly Average BOD	11,860
December 2003	Monthly Average BOD	11,993
January 2004	Monthly Average BOD	13,425
March 2004	Monthly Average BOD	12,403
April 2004	Monthly Average BOD	13,339
May 2004	Monthly Average TSS	27,580
June 23, 2004	Daily Maximum BOD	25,587
September 8, 2004	Daily Maximum TSS	48,075
November 23, 2004	Daily Maximum BOD	26,063

8. A total of 16 biochemical oxygen demand (BOD) and total suspended solids (TSS) violations exceeded the applicable effluent limits by more than 40% and are serious violations. Therefore, these violations are subject to California Water Code Section 13385(h), and a MMP of three thousand dollars (\$3,000) must be assessed for each serious violation. The total amount of the mandatory penalty for serious effluent violations is **\$48,000**.
9. A total of 11 other, non-serious exceedances of applicable effluent limits occurred during the enforcement period. In accordance with California Water Code Section 13385(i), a MMP of three thousand dollars (\$3,000) must be assessed for each violation, beginning with the fourth violation occurring within a six-month period. Five violations occurred during the six-month period of August 2003 through January 2004. Of those five violations, the first three are not subject to MMPs and two are subject to MMPs as non-serious, chronic violations.

10. Ten violations occurred during the six-month period of February 2004 through July 2004. In accordance with California Water Code Section 13385(i), a MMP of three thousand dollars (\$3,000) must be assessed for each non-serious violation, beginning with the fourth violation occurring within a six-month period. Of the 10 violations that occurred during the six-month period of February 2004 through July 2004, the first three are not subject to MMPs. Of the seven remaining violations, five have been assessed MMPs as serious violations and two are subject to MMPs as non-serious, chronic violations.

Twelve violations occurred during the four-month period of August 2004 through November 2004. In accordance with California Water Code Section 13385(i), a MMP of three thousand dollars (\$3,000) must be assessed for each violation, beginning with the fourth violation occurring within a six-month period. Of the 12 serious and chronic violations that occurred during the four-month period of August 2004 through November 2004, the first three are not subject to MMPs. Of the remaining nine violations, seven have been assessed MMPs as serious violations and two are subject to MMPs as non-serious, chronic violations.

The total amount of the MMPs for the six non-serious, chronic effluent violations described above is **\$18,000**.

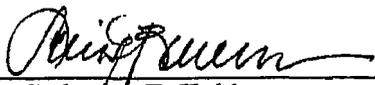
11. The total amount of the MMPs for serious and chronic violations occurring during the period August 2003 through November 2004 is **\$66,000**.
12. On April 22, 2005, the Executive Officer issued Administrative Civil Liability Complaint (Complaint) No. R1-2005-0028 in the amount of \$1,655,635 to assess Mandatory Penalties and discretionary Administrative Civil Liability. Following the issuance of Complaint No. R1-2005-0028, the Regional Water Board and the Humboldt County District Attorney entered into joint settlement negotiations with the Discharger. Those settlement negotiations revealed that as a result of foreclosure the Discharger no longer has any assets or resources and is no longer conducting business of any kind. While not individually named in the Complaint, the officers and directors of the Discharger agreed to pay the sum of \$125,000 to settle both the claims by the District Attorney and the Regional Water Board. The terms of that proposed settlement are outlined in a proposed Stipulated Final Judgment in the matter of *The People of the State of California v. Stockton Pacific Enterprises, Inc.*, a copy of which is attached hereto. Because the Regional Water Board is not a party to the proposed Stipulated Final Judgment, the proposed settlement must be effectuated via this Administrative Civil Liability Complaint.
13. Based on the foregoing, Complaint No. R1-2005-0028 is hereby rescinded and replaced with this Complaint. This Complaint proposes that the Discharger be assessed **Sixty-Six Thousand Dollars (\$66,000)** in mandatory penalties for the violations outlined above.
14. A hearing shall be scheduled to be conducted on this Complaint by the Regional Water Board 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 pay the mandatory penalty of \$66,000 in compliance with the **terms** of the proposed Stipulated Final Judgment.

15. 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.
16. 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 the proposed settlement of this Complaint. The settlement will become effective upon written notification by the Regional Water Board Executive Officer provided no significant comments are received during the public review period. If the Executive Officer concludes that any timely received comment is significant, the Executive Officer may withdraw the Complaint and reissue it as appropriate.

Waiver of Hearing

You may waive the right to a future hearing. If you wish to waive the hearing, please **fill** out and sign the enclosed waiver form within 30 days of the date of this Complaint to the California Regional Water Quality Control Board, North Coast Region, 5550 **Skylane** Boulevard, Suite A, Santa **Rosa**, CA 95403. Executing the waiver form obligates you to pay the sum of **Sixty-Six Thousand Dollars (\$66,000)** in mandatory penalties **according** to the **terms** of the proposed Stipulated Final Judgment.



for Catherine E. Kuhlman
Executive Officer

December 21, 2005