

California Regional Water Quality Control Board  
North Coast Region

Administrative Civil Liability Order No. R1-2007-0008  
Mandatory Minimum Penalties

For

Violations of Waste Discharge Requirements  
Order Nos. 98-26 and R1-2004-0024  
WDID No. 1A84005ODN

In The Matter of  
Crescent City Harbor District  
Seafood-Processing Wastewater Treatment Facility

Del Norte County

This Order to assess Mandatory Minimum Penalties pursuant to Water Code section 13385, subdivisions (h) and (i) is issued to the Crescent City Harbor District (hereinafter Discharger), for violations of Waste Discharge Requirements (WDRs) Order No. 98-26 and Waste Discharge Requirements Order No. R1-2004-0024 (NPDES No. CA0024473) for the period from January 1, 2000, to June 30, 2006.

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

1. On February 26, 1998, the Regional Water Board adopted Waste Discharge Requirements Order No. 98-26 for the Crescent City Harbor District Seafood-Processing Wastewater Treatment Facility (WWTF), to regulate discharges of waste from seafood processing facilities located within Crescent City harbor. Order 98-26 was rescinded except for enforcement of past violations, and replaced with Waste Discharge Requirements Order No. R1-2004-0024 (Order No. R1-2004-0024) on May 12, 2004. Both of these WDRs serve as National Pollutant Discharge Elimination System (NPDES) permits under the federal Clean Water Act. 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. The treated seafood-processing wastewater is discharged into the Pacific Ocean through the City of Crescent City's Municipal Wastewater Treatment Plant outfall.
2. This Order covers violations of effluent limitations (contained in Order No. 98-26 and Order No. R1-2004-0024) that occurred during the period from January 1, 2000, to June 30, 2006. The details of these violations are presented in Finding 13 of this Order. Violations identified in Finding 13 are subject to the mandatory minimum penalties provision contained in Water Code section 13385, subdivisions (h) through (l).

3. Water Code section 13385, subdivision (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.
4. Water Code section 13385, subdivision (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. Water Code section 13385, subdivision (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-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, subdivision (i) (1) are referred to as chronic violations in this Order.

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 (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on July 30, 2002. The Enforcement Policy addresses, among other enforcement issues, issues related to assessing mandatory minimum penalties.
7. Water Code section 13385, subdivision (k)(1) provides that the Regional Water Board may elect to require all or a portion of mandatory minimum penalties imposed under section 13385, subdivisions (h) or (i) against a publicly owned treatment work (POTW) serving an eligible small community to be directed to a compliance project (CP) in accordance with Section X of the Enforcement Policy. This Complaint incorporates requirements for CPs as specified in the Enforcement Policy. The District requested that the Regional Water Board consider allowing the penalties to apply toward a compliance project. Under Water Code section 13385, subdivision (k), all or a portion of the mandatory minimum penalties against a POTW serving a "small community" may instead be used towards completion of a compliance project. The term "POTW" means a treatment works as defined by section 212 of the Clean Water Act, which is owned by a State or municipality (as defined by section 502(4) of the Act). (40 CFR §403.3(o).) Section 212 of the Clean Water Act defines the term "treatment works" as "any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 1281...." (33 USCA §1292(2)(A).) The term "municipality"

means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes. (33 USCA §502(4).) The District meets the definition of a POTW because it is a public body with jurisdiction over industrial waste. Under Water Code section 79084, "small community" means 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 board. (Wat. Code, §79084.) Even though the District serves only one party that contributes industrial waste to the system, it meets the definition of "municipality" under section 502 of the Clean Water Act and therefore may be considered a "small community" for the purpose of applying penalties toward a CP.

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 6-month median is calculated using a discrete 6-month period. All samples collected during the period are used in determining the median. In this case, the 6-month periods are:
  - a. June through November 2004;
  - b. December 2004 through May 2005;
  - c. June through November 2005; and
  - e. December 2005 through May 2006.
10. Waste Discharge Requirements, Order No. 98-26 includes the following effluent limitations and toxicity discharge limitations:

## **B. EFFLUENT LIMITATIONS**

2. Representative samples of the discharge must not contain constituents in excess of the following limits:

Constituents	Units	30-day Average <sup>1</sup>	Daily Maximum <sup>1</sup>
<b>FOR BOTTOM FISH PROCESSING</b>			
Total Suspended Solids	lb/1000 lb of seafood	2.0	3.6
Oil and Grease	lb/1000 lb of seafood	0.55	1.0

<sup>1</sup> Total pounds of pollutant discharged for each 1,000 pounds of seafood processed.

**FOR DUNGENESS CRAB PROCESSING**

Total Suspended Solids	lb/1000 lb of seafood	2.0	8.1
Oil and Grease	lb/1000 lb of seafood	0.61	1.8

**FOR SHRIMP PROCESSING**

Total Suspended Solids	lb/1000 lb of seafood	54	160
Oil and Grease	lb/1000 lb of seafood	42	126

**FOR ALL PROCESSING**

Hydrogen Ion	pH	Within the range of 6.0 to 9.0	
Acute Toxicity	Tu <sub>a</sub>	1.5	2.5

11. Waste Discharge Requirements, Order No. R1-2004-0024 includes the following effluent limitations and toxicity discharge limitations:

**B. EFFLUENT LIMITATIONS**

1. Waste discharged to the Pacific Ocean (Discharger Serial No. 001) during seafood processing shall not contain constituents in excess of the following limits:

Constituent	Units	Monthly Average <sup>a</sup>	Daily Maximum
Suspended Solids	lb/1000 lb bottom fish	2.0	3.6
	lb/1000 lb crab	2.7	8.1
	lb/1000 lb shrimp	54	160
Oil and Grease	lb/1000 lb bottom fish	0.55	1.0
	lb/1000 lb crab	0.61	1.8
	lb/1000 lb shrimp	42	126
pH	Units	Within limit of 6.0 and 9.0 at all times	

2. Waste discharged to the Pacific Ocean (Discharger Serial No. 001) during pump maintenance shall not contain constituents in excess of the following limits:

Constituent	Units	Monthly Average <sup>a</sup>	Daily Maximum
Flow	gal	--	1000
Total Suspended Solids	mg/L	--	60
Oil and Grease	mg/L	25	40
Settleable Solids	ml/L	1.0	1.5
Turbidity	NTU	75	100
pH	Units	Within limit of 6.0 and 9.0 at all times	

**C. EFFLUENT LIMITATIONS FOR TOXIC POLLUTANTS**

1. Wastes discharged to the Pacific Ocean (Discharge Serial No. 001) shall not contain toxic constituent in excess of the following limits (constituents are as described and defined in the Ocean Plan): (The table below shows only one of 14 constituents listed in the permit, the others are not relevant to this action.)

(Limiting Concentrations are expressed as milligrams per liter)

Constituent	6-Month Median	Monthly Average	Daily Maximum	Instantaneous Maximum
Ammonia	13	--	50	130

12. Suspended solids, settleable solids, turbidity, pH, and ammonia are Group 1 pollutants as described in title 40 Code of Federal Regulations, section 123.45, Appendix A. A serious violation occurs whenever a Group 1 pollutant effluent limit is exceeded by more than 40 percent.

13. According to monitoring reports submitted by the Discharger, for the period from January 1, 2000, to June 30, 2006, the Discharger has seventeen serious violations in accordance with Water Code section 13385, subdivision (h) and two chronic violations in accordance with Water Code section 13385, subdivision (i)(1). The mandatory minimum penalty amount for those violations is \$48,000 as shown in the following table:

**Effluent Limitation Exceedances  
 January 1, 2000, through June 30, 2006**

Date	Pollutant	Reported Value	Limits	Violation Type	Mandatory Penalty
04/06/00	pH, Daily Max	4.7	6.0-9.0	Chronic	\$ 0
02/28/01	Suspended Solids, Daily Max	16.2 lbs/1000 lbs of fish processed	3.6 lbs/1000 lbs of fish processed	Serious	\$ 3,000

<sup>a</sup> The arithmetic mean of the values for effluent samples collected in a calendar month.

05/29/01	Suspended Solids, Daily Max	107.5 lbs/1000 lbs of fish processed	3.6 lbs/1000 lbs of fish processed	Serious	\$ 3,000
05/30/01	Suspended Solids, Daily Max	15.3 lbs/1000 lbs of fish processed	3.6 lbs/1000 lbs of fish processed	Serious	\$3,000
6/31/01	Suspended Solids, Monthly Max	12.7lbs/1000 lbs of fish processed	2.0 lbs/1000 lbs of fish processed	Serious	\$3,000
06/05/01	Suspended Solids, Daily Max	6.6 lbs/1000 lbs of fish processed	3.6 lbs/1000 lbs of fish processed	Serious	\$3,000
06/06/01	Suspended Solids, Daily Max	10.1 lbs/1000 lbs of fish processed	3.6 lbs/1000 lbs of fish processed	Serious	\$3,000
6/30/01	Suspended Solids, Monthly Max	5.0 lbs/1000 lbs of fish processed	2.0 lbs/1000 lbs of fish processed	Serious	\$3,000
07/11/01	Suspended Solids, Daily Max	24.9 lbs/1000 lbs of fish processed	3.6 lbs/1000 lbs of fish processed	Serious	\$3,000
06/17/04	Pump Maintenance Turbidity, Daily Max	140 NTU	100 NTU	Serious	\$3,000
06/24/04	Pump Maintenance Turbidity, Daily Max	140 NTU	100 NTU	Serious	\$3,000
06/04 through 11/04	Ammonia	52	13	Serious	\$3,000
11/19/04	Pump Maintenance Turbidity, Daily Max	325 NTU	100 NTU	Serious	\$3,000
11/21/04	Pump Maintenance Turbidity, Daily Max	300 NTU	100 NTU	Serious	\$3,000
11/21/04	Pump Maintenance Settleable Solids, Daily Max	6 mg/L	1.5 mg/L	Serious	\$3,000
12/04 through 05/05	Ammonia	24	13	Serious	\$3000
12/6/05	Pump Maintenance Turbidity, Daily Max	109.0 NTU	100 NTU	Chronic	\$0
12/05 through 05/06	Ammonia	18	13	Serious	\$3000
Total					\$48,000

14. The WWTF was nonoperational for the following months: September 2001 through November 2002; March 2003; May 2003; July through October 2003; September through October 2004; July 2004 (2 days of processing only); August 2004 (1 day of processing only); and March 2005 through November 28, 2005. From November 2003 through March 2006 crab has been the only seafood processed.
15. The total amount of the mandatory minimum penalties for serious and chronic violations occurring during the period from January 1, 2000 to June 30, 2006, is \$48,000.
16. On December 11, 2006 the Executive Officer issued Administrative Civil Liability Complaint No. R1-2006-117, assessing a mandatory minimum penalty of \$54,000 for violations of waste discharge requirements as described in Finding 14 above. The discharger was given the opportunity to pay the penalty in full to the State Water Pollution Cleanup and Abatement Account (SWPCAA), or propose a supplemental environmental project (SEP) in an amount up to \$34,500 and pay the balance of the penalty (\$19,500) to the SWPCAA. The Discharger has neither paid the penalty nor proposed a supplemental environmental project.
17. The Discharger, after reviewing Administrative Civil Liability Complaint No. R1-2006-117, determined that the violations that occurred on June 30, 2006 for monthly maximum suspended solids and oil and grease were the result of erroneous reporting of wastewater flows. Staff review of information submitted by the Discharger concluded that the reported flows were in error and the violations shown in the Complaint for June of 2006 were eliminated. The civil liability of \$48,000 contained in this Order reflects a reduction in penalties of \$6000.
18. The issuance of this Order 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 15321, subdivision (a) (2).
19. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board to review the action in accordance with section 13320 of the Water Code and title 23, California Code of Regulations, section 2050. The petition must be received by the State Water Resources Control Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

THEREFORE IT IS HEREBY ORDERED pursuant to Water Code section 13385 that:

1. The Discharger shall be assessed the mandatory minimum penalty in the amount of \$48,000 to be paid in full to the State Water Pollution Cleanup and Abatement Account within thirty days of the date of this order.
2. If the Discharger chooses to conduct a CP in lieu of paying the full amount of the penalty, the Discharger may propose a CP up to \$38,000 and pay the \$10,000 balance of the penalty (to defer staff costs) within thirty days from the date of this Order (or in compliance with a payment schedule issued in writing by the Executive

Officer). The sum of the CP amount and the amount of the penalty to be paid to the State Water Pollution Cleanup and Abatement Account shall at least equal the amount of the full penalty.

3. If the Discharger chooses to propose a CP, it must submit a proposal within ninety days of the date of this Order to the Executive Officer for conceptual approval. Any CP proposal shall conform to the requirements specified in section X of the Enforcement Policy. The CP proposal must include a time schedule, with concurrence by the Executive Officer, to address implementation and completion of the CP. To approve a CP, the Executive Officer must find that: 1) the CP is designed to correct the violations within five years; 2) the CP is in accordance with the Enforcement Policy; and 3) the POTW has demonstrated that it has sufficient funding to complete the CP. If the proposed CP and/or implementation schedule is not acceptable, the Executive Officer may allow the Discharger thirty days to submit a new or revised proposal, or may demand that, during the same thirty-day period, the Discharger remit all or a portion of the assigned penalties. All payments, including money not used for the CP, must be payable to the State Water Pollution Cleanup and Abatement Account.
4. 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 thirty days to comment on any proposed settlement of this Complaint.
5. The Executive Officer shall maintain jurisdiction over approved CP implementation time schedules throughout the life of the CP. If, given written justification from the Discharger, the Executive Officer determines that a delay in the CP implementation schedule was beyond the reasonable control of the Discharger; the Executive Officer may revise the implementation schedule as appropriate. If the Discharger fails to adequately complete the approved CP the Executive Officer may require immediate payment of the suspended liability to the Cleanup and Abatement Account.
6. 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.

I, Catherine E. Kuhlman, Executive Officer do hereby certify that the foregoing is a full true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on March 15, 2007.

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Catherine E. Kuhlman  
Executive Officer