

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2007-0041

Mandatory Minimum Penalties

For

Violations of Waste Discharge Requirements
Order Nos. 95-49 and R1-2001-71
NPDES No. CA0023060

In the Matter of
City of Willits
Wastewater Treatment Facility
WDID No. 1B80078OMEN

Mendocino County

This Complaint to assess mandatory minimum penalties and administrative civil liability pursuant to Water Code section 13385 is issued to the City of Willits (hereinafter Discharger) for violations of Waste Discharge Requirements (WDRs) Order Nos. 95-49 and R1-2001-71 (NPDES No. CA0023060) for the period January 1, 2000 through May 31, 2006.

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

1. The Discharger owns and operates the City of Willits Wastewater Treatment Facility (WWTF). The WWTF serves the sewerage area of Willits and Brooktrails and discharges secondary-treated domestic wastewater during the wet season (October 1 to May 14) to a point below the confluence of Broaddus Creek with Baechtel Creek, tributaries of Outlet Creek and thence the Eel River. During the spring and summer, treated and disinfected effluent is used for pasture irrigation on 45 acres of pasture owned by the City of Willits and 200 acres of privately owned pastures.
2. The Regional Water Board adopted Waste Discharge Requirements Order No. 95-49 for the Discharger on June 22, 1995, which serves as a National Pollutant Discharge System (NPDES) permit under the Federal Clean Water Act. Order No. 95-49 was replaced by the Regional Water Board Order No. R1-2001-71, adopted by the Regional Water Board on June 28, 2001, which also serves as a NPDES permit.
3. This Complaint covers violations of effluent limitations for discharges that occurred from January 1, 2000 through May 31, 2006. The details of these violations are presented in Finding 13 of this Complaint. These violations are subject to the mandatory minimum penalties provision contained in California Water Code section 13385, subdivisions (h) through (i).

4. Water Code section 13385, subdivision (h)(1) establishes a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation of an NPDES permit effluent limitation. 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) establishes 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, subdivision (i)(1) 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 (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 subjects, 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 public owned treatment works (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.
8. Water Code section 13385, subdivision (k)(1) provides that the Regional Water Board may direct, with concurrence of the discharger, a portion of mandatory minimum penalties imposed under section 13385, subdivisions (h) or (i) to a supplemental environmental project (SEP) in accordance with Section IX of the 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 SEP may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000). This Complaint incorporates requirements for SEPs as specified in the Enforcement Policy.

9. For the purpose of determining a Discharger's compliance with effluent limitations in its Waste Discharge Requirements/NPDES permit, 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 determinations 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.
10. For the purpose of determining a Discharger's compliance with effluent limitations in its Waste Discharge Requirements/NPDES permit, 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 determinations 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.
11. Order No. R1-2001-71 includes the following effluent limitations:

B. EFFLUENT LIMITATIONS

1. Representative samples of the discharge shall not contain constituents in excess of the following limits:

<u>Constituent</u>	<u>Units</u>	<u>Monthly Average</u> ^a	<u>Weekly Average</u> ^b	<u>Daily Maximum</u> ^c
Hydrogen Ion	pH	Not less than 6.5 or greater then 8.5		

4. The arithmetic mean of the DOB (20°C, 5-day) and Suspended Solids values by weight for effluent samples collected in a period of 30 consecutive days shall not exceed 15 percent of the arithmetic mean of the values, by weight, for influent samples collected at approximately the same times during the same period (85 percent removal).

^a The arithmetic mean of all samples collected in a calendar month.

^b The arithmetic mean of all samples collected in a calendar week, Sunday to Saturday.

^c The maximum result of all samples collected in a calendar day.

12. The Enforcement Policy states that for the purpose of determining serious violations, BOD, suspended 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.

13. According to monitoring reports submitted by the Discharger for the period between January 1, 2000, and May 31, 2006, the Discharger exceeded effluent limitations thirteen times while discharging effluent to tributaries of the Eel River. Of those thirteen exceedances, six were serious effluent violations, as defined in Water Code section 13385, subdivision (h)(2), and seven were chronic effluent violations, as described in Water Code section 13385, subdivision (i)(1). The mandatory minimum penalty amount for those violations is \$21,000, as shown in the following table:

Effluent Limitation Exceedances
 January 1, 2000 to May 31, 2006

Date	Parameter	Reported Value	Violation Type	Mandatory Penalty
1/31/03	BOD % Removal	83%	Chronic	\$0
1/3/03	TSS % Removal	84%	Chronic	\$0
3/31/03	BOD % Removal	78%	Serious	\$3,000
4/2/03	Hydrogen Ion (pH)	6.4	Chronic	\$0
4/30/03	BOD % Removal	63%	Serious	\$3,000
5/31/03	BOD % Removal	72%	Serious	\$3,000
1/31/04	BOD % Removal	84%	Chronic	\$0
4/30/04	BOD % Removal	77%	Serious	\$3,000
1/31/06	BOD % Removal	84%	Chronic	\$0
1/31/06	TSS % Removal	79%	Chronic	\$0
2/28/06	BOD % Removal	74%	Serious	\$3,000
3/31/06	BOD % Removal	84%	Chronic	\$3,000
5/31/06	BOD % Removal	80%	Chronic	\$3,000
Total				\$21,000

14. Regional Water Board staff costs associated with this enforcement action are estimated to be a minimum of \$10,000. This includes staff time to tally violations and prepare this Complaint, public notices, public hearing, response to comments, and evaluation and tracking of a SEP or CP, if any, through to completion.

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 15321, subsection (a)(2).

THE CITY OF WILLITS IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Water Board is issuing this Complaint for \$21,000 against the Discharger for the mandatory minimum penalties associated with effluent violations that occurred from January 1, 2000, through May 31, 2006.
2. A hearing shall be conducted on this Complaint by the Regional Water Board on July 25, 2007, unless the Discharger waives the right to a hearing under Water Code section 13323, subsection (b) by signing and returning the waiver form attached to this Complaint within thirty days of the date of this Complaint. By doing so, the Discharger agrees to:
 - a. Pay the mandatory minimum penalty of \$21,000 in full to the State Water Pollution Cleanup and Abatement Account within thirty days of the date of this Complaint, or
 - b. Propose an SEP in an amount up to \$18,000 and pay the \$3,000 balance of the penalty within thirty days from the date of the Complaint (or in compliance with a payment schedule issued in writing by the Executive Officer). The sum of the SEP amount and the amount of the fine to be paid to the State Water Pollution Cleanup and Abatement Account shall at least equal the amount of the full penalty.
 - c. Propose a CP in the amount up to \$15,000 and pay the \$6,000 balance of the penalty (to recover staff costs) within thirty days from the date of the Complaint (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 fine 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 an SEP or CP, a proposal must be submitted within thirty days of the date of this Complaint to the Executive Officer for conceptual approval. Any SEP or CP proposal shall also conform to the requirements specified in the Enforcement Policy. The SEP or CP proposal must include a time schedule, for concurrence by the Executive Officer, to address implementation and completion of the SEP or CP. If the proposed SEP or 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 the Discharger remit all or a portion of the assigned penalties. All payments, including money not used for the SEP or CP, must be payable to the State Water Pollution Cleanup and Abatement Account.
4. If the Discharger waives the hearing and pays the liability, the resulting settlement may become effective on the next day after the thirty day public comment period on this Complaint ends. If there are significant public comments, the Executive

Officer may withdraw this Complaint and reissue a new complaint, or take other appropriate action.

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 thirty days to comment on any proposed settlement of this Complaint, including a proposed SEP or CP.
7. The Executive Officer shall maintain jurisdiction over approved SEP and CP implementation time schedules throughout the life of the SEP or CP. If, given written justification from the Discharger, the Executive Officer determines that a delay in the SEP or CP implementation schedule was beyond the reasonable control of the Discharger, the Executive Officer may revise the implementation schedule as appropriate.
8. Notwithstanding the issuance of the Complaint, the Regional Water Board shall retain the authority to assess additional penalties beyond the mandatory minimums for violations of the Discharger's waste discharge requirements.

Catherine E. Kuhlman
Executive Officer

May 17, 2007