

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2007-0064

For

Violations of Waste Discharge Requirements
Order No. R1-2004-0036 (NPDES No. CA0022713) and
Violations of Order No. 2006-0003-DWQ (Sanitary Sewer Systems)

In the Matter of
City of Arcata
Wastewater Treatment Facility
WDID No. 1B82114OHUM

Humboldt County

This Complaint, to assess administrative civil liability for penalties pursuant to Water Code Section 13385, subdivision (c) and mandatory minimum penalties pursuant to Water Code section 13385, subdivisions (h) and (i), is issued to the City of Arcata (hereinafter Discharger) for violations of Waste Discharge Requirements (WDRs) Order No. R1-2004-0036 (NPDES Permit No. CA0022713) and State Water Resources Control Board Order No. 2006-0003-DWQ for the period of June 22, 2004 through March 31, 2007.

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 Arcata Wastewater Treatment Facility (WWTF) that serves both the City of Arcata and the Glendale area, which is administered by the Fieldbrook Community Services District. The WWTF discharges secondary treated domestic wastewater into Arcata Bay (Humboldt Bay).
2. The Regional Water Board adopted Waste Discharge Requirements Order No. R1-2004-0036 on June 22, 2004. The order serves as a National Pollutant Discharge Elimination System Permit (NPDES) under the federal Clean Water Act and became effective upon adoption.
3. The State Water Resources Control Board adopted Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Wastewater Collection Agencies on May 2, 2006. The Discharger enrolled in the General WDRs on June 1, 2006.

4. Sanitary sewer overflows (SSOs) are discharges from sanitary sewer systems of domestic, industrial, and commercial wastewater. In the City of Arcata, SSOs primarily consist of domestic and commercial wastewater. SSOs contain high levels of suspended solids, pathogenic organisms, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants. SSOs may cause a public nuisance, when untreated wastewater is discharged to areas with high public exposure, such as streets or surface waters used for drinking, fishing, or body contact recreation. SSOs may pollute surface or ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters.
5. This Complaint covers violations of effluent limitations and discharge prohibitions contained in WDRs Order No. R1-2004-0036 and prohibitions contained in State Water Resources Control Board Order No. 2006-0003-DWQ that occurred during the periods of discharge to receiving waters from June 22, 2004 to March 31, 2007. The details of these effluent limitation violations are presented in Finding 17 of this complaint, and the details of the discharge prohibitions violations are summarized in Finding 18. Violations in Finding 17 are subject to the mandatory minimum penalties provisions contained in Water Code section 13385, subdivisions (h) and (i). Violations in Finding 18 are subject to penalties in Water Code section 13385 (c).
6. Among the provisions in the WDRs are requirements to implement a discharge monitoring program and to prepare and submit monthly and annual NPDES self-monitoring reports to the Regional Water Board pursuant to the authority of Water Code section 13383. These reports are designed to ensure compliance with effluent limitations contained in the WDRs.
7. Water Code section 13385, subdivision (a) provides for the imposition of civil liability by the Regional Water Board. Section 13385, subdivision (c) provides the maximum amount of civil liability that may be imposed by the Regional Water Board. The amount may be up to \$10,000 dollars for each day in which the violation occurs, plus up to \$10 per gallon of waste discharged in excess of 1,000 gallons that is not susceptible to cleanup or is not cleaned up.
8. 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 of the 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 of the Code of Federal Regulations, by 20 percent or more.

9. Water Code section 13385, subdivision (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, subdivision (i)(1) of the Water Code are referred to as chronic violations in this Complaint.

10. 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.
11. Water Code section 13385, subdivision (l)(1) provides that a portion of mandatory minimum penalties imposed under section 13385, subdivisions (h) or (i) may be directed 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 environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000). In addition, the Enforcement Policy states that the State Water Board supports the inclusion of SEPs in other administrative civil liability actions as long as the project meets the criteria specified in the Enforcement Policy. This Complaint includes requirements for SEPs as specified in the Enforcement Policy.
12. For the purpose of determining a Discharger's compliance with effluent limitations in its WDR Order/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 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.
13. For the purpose of determining a Discharger's compliance with effluent limitations in its WDR Order/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 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.

14. Order No. R1-2004-0036 includes the following discharge prohibitions and effluent limitations:

A. DISCHARGE PROHIBITIONS

1. The discharge of waste to Humboldt Bay (Arcata Bay) is prohibited unless it can be done in conjunction with the Arcata Marsh and Wildlife Sanctuary.
2. The discharge of any waste not specifically regulated by this Permit is prohibited.
3. The discharge of sludge or digester supernatant is prohibited, except as authorized under section D: Solids Disposal and Handling Requirements.
4. The discharge of untreated or partially treated waste (receiving a lower level of treatment than described in Finding No. 3) from anywhere within the collection, treatment, or disposal facility is prohibited.

B. EFFLUENT LIMITATIONS

1. Representative samples of the discharge from Outfall 001 must not contain constituents in excess of the following limits:

	<u>Units</u>	<u>Monthly Average^a</u>	<u>Weekly Average^b</u>	<u>Daily Maximum</u>
BOD ₅	mg/L	30	45	60
	lbs/day ^c	575	863	1151
Suspended Solids	mg/L	30	45	60
	lbs/day ^c	575	863	1151
Settleable Solids	ml/l	0.1		0.2
Total Coliform	MPN/100	14 ^d		43 ^e
pH	S U	Not less than 6 nor greater than 9		
Copper	µg/L	2.8		5.7
Zinc	µg/L	47		95

Cyanide	µg/L	0.5	1.0
2,3,7,8-TCDD TEQ	pg/L	.014	.028

- ^a The arithmetic mean of the values for effluent samples collected in a period of 30 calendar days.
- ^b The arithmetic mean of the values for effluent samples collected in a period of 7 calendar days.
- ^c The daily discharge (lbs/day) is obtained from the following calculation on any calendar day:

$$\text{Daily Discharge (lbs/day)} = \frac{8.34}{N} \sum_{i=1}^N Q_i C_i$$

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 were composited.

- ^d Median
- ^e Not more than 10 percent of samples collected in a 30 day period shall exceed 43 MPN/100 ml (fecal)

2. Representative samples of the discharge from Outfall 002 (to the AMWS) shall not contain constituents in excess of the following limits:

	Units	Monthly Average	Weekly Average	Daily Maximum
BOD ₅	mg/l	30	30	60
Suspended Solids	mg/l	30	45	60
Settleable Solids	ml/l	0.1		0.2
Total Coliform	MPN/100ml	23		230
pH	Standard Units	Not less than 6.0 nor greater than 9.0		

3. The arithmetic mean of the BOD₅ 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 BOD₅ and suspended solids values, by weight, for influent samples collected at approximately the same times during the same 30 day period (85 percent removal).
15. State Water Resources Control Board Order No. 2006-0003 DWQ includes the following prohibitions:
- C. PROHIBITIONS
1. Any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.
 2. Any SSO that results in a discharge of untreated or partially treated wastewater that creates a nuisance as defined in California Water Code Section 13050(m) is prohibited.
16. The Enforcement Policy states that for the purpose of determining serious violations Total Suspended Solids is identified as a Group I pollutant in title 40 Code of Federal Regulations, section 123.45, Appendix A. Cyanide and Copper are identified as Group II pollutants. Fecal Coliform is neither a Group I nor a Group II pollutant; therefore, exceedances of effluent limitations for fecal coliform bacteria do not count as serious violations.
17. Effluent Limitation Violations

According to monitoring reports submitted by the Discharger for the period between June 22, 2004, and March 31, 2007, the Discharger exceeded effluent limitations twenty-one times. Seven of the exceedances are serious violations in accordance with Water Code section 13385, subdivision (h). Fourteen of the exceedances are chronic violations in accordance with Water Code section 13385, subdivision (i)(1). The mandatory minimum penalty amount for these violations is \$54,000 as shown in the following table:

Effluent Limitation Exceedances
June 22, 2004 to March 31, 2007

Date	Description of Violation	Reported Value	Limits	Violation Type	Mandatory Minimum Penalty
11/30/04	Exceeded 30-day average TSS limit	34 mg/l	30 mg/l	chronic	-
12/31/04	Failed to achieve 85% removal of TSS	83 %	85 %	chronic	-
12/31/04	Exceeded 30-day	32 mg/l	30 mg/l	chronic	-

	average TSS limit				
12/31/04	Exceeded 30-day average TSS limit	812 lbs/day	619 lbs/day	chronic	\$3,000
03/31/05	Exceeded 30-day average TSS limit	716lbs/day	613 lbs/day	chronic	\$3,000
04/12/05	Exceeded Total Coliform limit for wetland	900 MPN/100ml	230 MPN/100ml	chronic	\$3,000
05/12/05	Exceeded Daily Maximum TSS	1276 lbs/day	1151 lbs/day	chronic	\$3000
05/31/05	Exceeded 30-day average TSS limit	33 mg/l	30mg/l	chronic	\$3,000
05/31/05	Failed to achieve 85% removal of TSS	79%	85%	chronic	\$3,000
05/31/05	Exceeded 30-day average TSS limit	707 lbs/day	575 lbs/day	chronic	\$3,000
09/23/05	Exceeded monthly average cyanide limit	3.8 ug/l	0.5 ug/l	serious	\$3,000
12/01/05	Exceeded 7-day average TSS limit	2043 lbs/day	1877 lbs/day	chronic	\$3000
12/29/05	Exceeded daily copper maximum	10 ug/l	5.7 ug/l	serious	\$3,000
12/29/05	Exceeded monthly average Copper limit	10 ug/l	2.8	serious	\$3,000
12/31/05	Failed to achieve 85 % removal of TSS	81%	85%	chronic	\$3,000
01/31/06	Failed to achieve 85% removal of TSS	84%	85%	chronic	\$3,000
03/02/06	Exceeded 7-day average TSS limit	2821 lbs/day	2287 lbs/day	chronic	\$3,000
05/03/06	Exceeded monthly average cyanide limit	4.3 ug/l	0.5 ug/l	serious	\$3,000
05/03/06	Exceeded daily maximum cyanide limit	4.3 ug/l	1.0 ug/l	\$3,000serious	\$3,000
10/10/06	Exceeded monthly average cyanide limit	3.3 ug/l	0.5 ug/l	serious	\$3,000
10/10/06	Exceeded daily maximum cyanide limit	3.3 ug/l	1.0 ug/l	serious	\$3,000
Total					\$54,000

18. Discharge Prohibitions Violations

During the period between June 22, 2004 and March 31, 2007, the Discharger reported seventeen SSOs. Six were the result of overflows from the Pickwick cleanout. Five occurred at 12th and L Streets over a five-day period. Eleven overflows were the result of line blockages, with the remainder related to high

flows caused by rainfall and infiltration and inflow (I&I). A summary of the overflows follows:

Table 2: Summary of SSO Events
June 22, 2004 through March 31, 2007

Date	Location	Estimated Volume Discharge (gallons)	Comments	Maximum Potential Penalty
02/16/05	1845 Iverson St.	60	Blockage	\$10,000
02/28/05	1061 Hallen Drive	300 to 500	Blockage	\$10,000
02/28/07	89 12 th Street	1,800	Blockage	\$18,000
04/18/05	Pickwick Cleanout	1,800	I&I, Rainfall	\$18,000
12/28/05	Pickwick Cleanout	1175	I&I Rainfall	\$11,750
01/13/06	Pickwick Cleanout	320	I&I Rainfall	\$10,000
01/13/06	12 th Street & L Street	180	Partial Blockage	\$10,000
01/14/06	12 th Street & L Street	465	Partial Blockage	\$10,000
01/15/06	12 th Street & L Street	465	Partial Blockage	\$10,000
01/16/06	12 th Street & L Street	465	Partial Blockage	\$10,000
01/17/06	12 th Street & L Street	105	Partial Blockage	\$10,000
02/01/06	Pickwick Cleanout	1295	I&I Rainfall	\$12,950
02/28/06	Pickwick Cleanout	450	I&I Rainfall	\$10,000
06/01/06	Alley, F & G Sts. Between 9 th & 10 th Sts.	25	Blockage	\$10,000
11/04/06	Manhole @ Hwy 101, N/E of 15 th Street	2,550	Blockage	\$25,500
02/21/07	Pickwick Cleanout & manhole @ Crescent Way & Old Arcata Road	2,040	I&I Rainfall	\$20,400
03/27/07	Manhole @ Stromberg and Alliance	280	Blockage	\$10,000
Total				\$216,600

19. In determining the amount of any civil liability, pursuant to Water Code section 13385, subdivision (e), the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violation, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. The Regional Water Board is also required to consider the requirement in this section that states that, at a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

20. The minimum liability mandated by the Water Code is \$54,000 for the effluent limitation violations described in Finding 17. The remaining maximum potential penalty of \$216,000 is for seventeen SSOs that resulted in discharges of untreated wastewater to public streets, storm drains and ultimately Arcata Bay (Humboldt Bay). Six of the Seventeen overflows occurred at the Pickwick Cleanout which has been a recurring problem for decades. The discharge that occurred at 12th and L Street overflowed for five days. The remaining SSOs were individual occurrences. The six discharges from the Pickwick Cleanout were the result of Inflow and Infiltration (I&I) from storm events. The remaining overflows were the result of blockages in the collection system. None of the wastewater was captured or cleaned up. All the discharges pose a threat to public health and have the potential to seriously impact the beneficial uses of Arcata Bay. The recurring nature of the overflows warrants a penalty of \$50,000 dollars. The chronic overflows associated with the Pickwick Cleanout need to be addressed by the City with a project that will eliminate the discharges.
21. 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, subdivision (a)(2).

THE CITY OF ARCATA IS HEREBY GIVEN NOTICE THAT:

1. Based on a review of the above facts and required factors, the Executive Officer of the Regional Water Board is issuing this Complaint for \$104,000 to the Discharger for the penalties associated with discharge prohibitions (\$50,000) and mandatory minimum penalties associated with effluent limitation violations (\$54,000) that occurred from June 22, 2004 through March 31, 2007.
2. A hearing will be conducted on this Complaint by the Regional Water Board on October 25, 2007, unless the Discharger waives the right to a hearing 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 penalty of \$104,000 in full to the State Water Pollution Cleanup and Abatement Account (CAA) within thirty days of the date of this Complaint, or
 - b. Propose an SEP in an amount up to \$59,500 and pay the balance of the penalty, which is \$44,500, to the CAA 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 proposed SEP amount and the amount of the fine to be paid to the State Water Pollution Cleanup and Abatement Account shall equal the full penalty.

3. If the Discharger chooses to propose an SEP, a proposal must be submitted within thirty days of the date of this Complaint to the Executive Officer for conceptual approval. Any SEP proposal shall also conform to the requirements specified in the Enforcement Policy. The SEP proposal must include a time schedule, for concurrence by the Executive Officer, to address implementation and completion of the SEP. If the proposed SEP 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 SEP, 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 the Complaint, issue 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.
7. The Executive Officer shall maintain oversight over approved SEP implementation time schedules throughout the life of the SEP. If, given written justification from the Discharger, the Executive Officer determines that a delay in the SEP 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 this 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

July 30, 2007

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