

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2007-0102

For

Violation of Waste Discharge Requirements
Order Nos. 95-47, R1-2004-0009 and R1-2005-0096
NPDES No. CA0023078

In the Matter of

Fort Bragg Municipal Improvement District No. 1
Wastewater Treatment Facility
WDID No. 1B84083OMEN

Mendocino County

This complaint, to assess administrative civil liability for penalties pursuant to Water Code section 13385 is issued to Fort Bragg Municipal Improvement District No. 1 (hereinafter Discharger), for violations of Waste Discharge Requirements (WDRs) Order Nos. 95-47, R1-2004-0009 and R1-2005-0096 and Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems. Mandatory minimum penalties are assessed for violations of effluent limitations occurring during the period from May 14, 2004 through October 31, 2007 (dates during which WDR Order Nos. R1-2004-0009 and R1-2005-0096 were applicable). Discretionary penalties are assessed for violations of discharge prohibitions occurring during the period from January 1, 2003 through October 31, 2007.

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

1. The Discharger operates a municipal wastewater treatment facility (WWTF), located in the City of Fort Bragg to collect, treat, and dispose of wastewater generated within the sewerage district. The WWTF is designed to provide secondary treatment, disinfect the wastewater using chlorine, and then discharge the treated effluent to the Pacific Ocean through an ocean outfall. Associated with the WWTF is a sanitary sewer system consisting of 30 miles of gravity pipeline, pressure mains, and six pump stations, interceptor lines, collection lines, cleanouts, and manholes. Sewage lateral lines connected to the public sewer serving buildings on private property are not within the jurisdiction of the City and are the responsibility of the land owner.

2. From June 22, 1995 to March 23, 2004, the Discharger's WWTF was regulated by WDRs Order No. 95-47. On March 24, 2004, the Regional Water Board adopted WDRs Order No. R1-2004-0009 which became effective on May 13, 2004. On October 12, 2005, the Regional Water Board adopted new WDRs Order No. R1-2005-0096 to reflect modifications to Order No. R1-2004-0009. All of these waste discharge requirements serve as a National Pollution Discharge Elimination System Permit (NPDES) under the Federal Clean Water Act.
3. On January 29, 2007, the Executive Officer issued Cleanup and Abatement Order No. R1-2007-0011 for violations and threatened violations of Waste Discharge Requirements Order No. R1-2005-0096, and for violations of prohibitions contained in the Water Quality Control Plan for the North Coast Region (Basin Plan), and for the ongoing threat to water quality and public health posed by sanitary sewer overflows resulting from the pressurized-sewer leaks and deteriorated condition of the Pudding Creek Force Main. To minimize the potential for future pipeline failures along the Pudding Creek Beach, the Regional Water Board adopted Cease and Desist Order No. R1-2007-0015 on April 26, 2007 directing the Discharger to permanently repair or replace compromised sections of the Force Main. The Order included a time schedule for system upgrades, environmental review, securing funding, and construction of the project by October 1, 2009.
4. 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 which became effective on January 2, 2007. The Discharger enrolled in the General WDRs on November 3, 2006.
5. Sanitary sewer overflows (SSOs) are discharges from sanitary sewer systems of domestic, industrial, 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.
6. This Complaint covers violations of effluent limitations that occurred from May 14, 2004 through October 31, 2007 and violations of discharge prohibitions that occurred from January 1, 2003 through October 31, 2007. Details of effluent limitation violations are summarized in Finding 17. Details of discharge prohibition violations are summarized in Finding 20. The effluent limitation violations are subject to the mandatory minimum penalties provision contained in Water Code section 13385, subdivisions (h) and (i). Violations of discharge prohibitions are subject to penalties contained in Water Code section 13385, subdivision (c).

7. Among the provisions in the WDRs are requirements to implement a discharge monitoring program and to prepare and submit timely 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.
8. 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 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.
9. 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.
10. 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 Water Code section 13385, subdivision (i)(1) are referred to as chronic violations in this Complaint.

11. 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.

12. The Enforcement Policy provides that the Regional Water board may elect to allow a discharger to satisfy some or all of the monetary assessment imposed in an administrative civil liability complaint or order by completing or funding one or more supplemental environmental projects (SEPs). The SEPs must be completed in accordance with Section IX of the Enforcement Policy. This Complaint includes requirements for SEPs as specified in the Enforcement Policy.
13. Order Nos R1-2004-0009 and R1-2005-0096 both include the following discharge prohibitions and effluent limitations:

A. DISCHARGE PROHIBITIONS

1. The discharge of any waste not disclosed by the Permittee or within the reasonable contemplation of the Regional Water Board is prohibited.
2. Creation of a pollution, contamination, or nuisance, as defined by Section 13050 of the CWC is prohibited. [Health and Safety Code, Section 5411]
3. The discharge of sludge or digester supernatant is prohibited, except as authorized under F. SOLIDS DISPOSAL AND HANDLING REQUIREMENTS.
4. The discharge of untreated waste or partially treated waste from anywhere within the collection, treatment, or disposal facility, except as provided for bypasses under the conditions in General Provision H.13 of this Order, is prohibited.

B. EFFLUENT LIMITATIONS¹ FOR CONVENTIONAL POLLUTANTS.

1. Wastes discharged to the Pacific Ocean (Discharge Serial No. 001) shall not contain constituents in excess of the following limits:

¹ Effluent limitations shall be applicable at the point of completion of treatment and disinfection, unless otherwise specified.

Constituent	Units	Monthly Average ²	Weekly Average ³	Daily Maximum
BOD ₅	mg/l	30	45	--
	lb/day ^{4,5}	250	375	--
Suspended Solids	mg/l	30	45	--
	lb/day ^{4,5}	250	375	--

- The arithmetic mean of the BOD (20°C, 5-day) and suspended solids values for effluent samples collected in a calendar month shall not exceed 15 percent of the arithmetic mean of the values for influent samples collected at approximately the same times during the same period (85 percent removal). Percent removal shall be determined from the monthly average value of influent wastewater concentration in comparison to the monthly average value of effluent concentration for the same constituent over the same time period.

C. EFFLUENT LIMITATIONS FOR TOXIC POLLUTANTS

- Wastes discharged to the Pacific Ocean (Discharge Serial No. 001) shall not contain toxic constituents in excess of the following limits (constituents are as described and defined in the 2001 Ocean Plan):

² 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.

³ 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.

⁴ Mass-based effluent limitations are based on the WWTF dry weather design flow of 1.0 mgd. During wet-weather periods when the flow rate into the WWTF exceeds the dry weather design flow, the mass emission limitation shall be calculated using the concentration-based effluent limitations and the actual flow rates (not to exceed the 30-day average wet weather design flow of 2.2 mgd.)

⁵ The mass discharge (lbs/day) is obtained from the following formula for any calendar day, week, or month:

$$\frac{8.34}{N} \sum_i^N Q_i C_i$$

in which N is the number of samples analyzed in any calendar day, week, or month. 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 that may be taken in any calendar day, week or month. 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.

Constituent	Units	6-Month Median ⁶	Daily Maximum ⁷	Instantaneous Maximum ⁸
Copper	µg/l	53	512	1,430
	lb/day	0.44	4.27	11.9

14. 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.
15. Water Code section 13050, subdivision (m), defines nuisance as anything which meets all of the following requirements:
- a. Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
 - b. Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals maybe unequal.
 - c. Occurs during, or as a result of, the treatment or disposal of waste.
16. The Enforcement Policy states that for the purpose of determining serious violations Suspended Solids and Biochemical Oxygen Demand (BOD) are identified as Group I pollutants and Copper is identified as a Group II pollutant in title 40 Code of Federal Regulations, section 123.45, Appendix A.

⁶ The 6-month median shall apply as a moving median of daily values for any 180-day period in which daily values represent flow weighted average concentrations within a 24-hour period. If only one sample is collected during the 180-day period, the single measurement shall be used to determine compliance with the effluent limitation for the entire time period.

⁷ The daily maximum limitations for copper and cyanide shall apply to flow-weighted, 24-hour composite samples. The daily maximum limitation for ammonia shall apply to the maximum result of all grab samples collected in a calendar day. The daily maximum is defined as the maximum result of all samples collected in a calendar day.

⁸ The instantaneous maximum shall apply to grab sample determinations for Table B constituents. Each value collected in a calendar day is evaluated independently and compared to the limitation.

17. Effluent Limitation Violations

According to monitoring reports submitted by the Discharger for the period from May 14, 2004 through October 31, 2007, the Discharger exceeded effluent limitations four times while discharging to the Pacific Ocean. Three of the exceedances are not serious (chronic) effluent violations, as described in Water Code section 13385, subdivision (i)(1). One of the exceedances is a serious effluent violation, as described in Water Code section 13385, subdivisions (h)(1) and (h)(2). The mandatory minimum penalty amount for these violations is \$6,000 as shown in the following table:

Table 1: Effluent Limitation Exceedances
May 14, 2004 through October 31, 2007

Date	Parameter	Reported Value	Permit Limit	Units	Violation Type	Mandatory Penalty
07/31/04	BOD, 30-Day Avg.	32	30	mg/l	Chronic	\$3,000
01/31/05	Suspended Solids, Percent Removal	79	85	%	Serious	\$3,000
02/16/05	BOD, 7-Day Avg.	51	45	mg/l	Chronic	\$0
02/16/05	BOD, 7-Day Avg.	493	375	lb/day	Chronic	\$0
					Total Penalties	\$6,000

18. A mandatory minimum penalty of \$3,000 is assessed for the chronic BOD violation occurring on 07/31/2004 because five violations of effluent limitations occurred within the previous six-month period (during February 2004). See explanation in Finding 10.
19. The copper, 6-Month Median limits frequently were exceeded during two six-month periods of 05/2004 through 10/2004 and 11/ 2004 through 04/2005. Automatic sampling device fittings were made of copper and were corroded. The fittings were replaced and subsequent effluent sampling did not contain copper in excess of effluent limits. This indicates that elevated levels of copper in effluent were caused by corroded copper fittings in the automatic sampling device. No mandatory minimum penalty is being assessed for these exceedances.
20. Discharge Prohibition Violations

During the period between January 1, 2003 and October 31, 2007 the Discharger experienced twenty-three prohibited discharges consisting of thirteen SSOs and ten other discharge events. Eleven of the thirteen SSOs and all ten of the other discharge events resulted in discharges to

receiving waters and public use beach shorelines tributary to the Pacific Ocean. A summary of the discharge events follows:

Table 2: Summary of prohibited discharges
January 1, 2003 through October 31, 2007

Date	Location	Estimated Volume Discharged to Receiving Waters (gallons)	Comments	Maximum Potential Penalty
1/17/03	Force Main at Pudding Creek Beach and Pudding Creek Rd	75 Gallons discharged to Beach-sand area	Spill caused by cracked 10-inch diameter Force Main	\$10,000
1/27/03	141-A Boat Yard Drive	12 Gallons discharged to storm drain and receiving waters and unknown volume recovered	SSO caused by Grease	\$10,000
1/28/03	Force Main at Pudding Creek Rd and Hwy 1	Unknown Volume discharged to storm drain and Beach-sand area and unknown volume recovered	Spill caused by cracked 10-inch diameter Force Main	\$10,000
3/22/03	100 Block N Sanderson	11 Gallons discharged to storm drain and receiving waters	SSO caused by Grease	\$10,000
3/22/03	110 Oak Terrace	25 Gallons discharged to storm drain and receiving waters	SSO caused by Grease	\$10,000
3/24/03	311 N McPherson	8 Gallons discharged to storm drain and receiving waters and unknown volume recovered	SSO caused by Blockage	\$10,000
10/14/03	501 S Franklin	Unknown Volume discharged to storm drain and receiving waters and unknown volume recovered	SSO caused by Blockage	\$10,000
7/17/04	WWTF	10-15 Gallons discharged to the Pacific Ocean	Digester supernatant	\$10,000
8/04/04	WWTF	710 400 gallons discharged to storm drain and recovered; 30 gallons	Digester supernatant	\$10,000

Date	Location	Estimated Volume Discharged to Receiving Waters (gallons)	Comments	Maximum Potential Penalty
		discharged to beach and 50 gallons to digester roof; and 230 gallons soaked in the ground		
8/19/04	1960 Cedar	Unknown Small Vol. Unknown volume of discharge to storm drain and receiving waters	SSO caused by Blockage	\$10,000
3/02/05	Force Main at Pudding Creek Beach and Hwy1	100 Gallons discharged to Beach-sand area	Spill caused by cracked 10-inch diameter Force Main	\$10,000
8/30/05	Force Main at Pudding Creek Beach and 200 ft. south of Lift Station	700 Gallons discharged to Beach-sand area	Spill caused by cracked 10-inch diameter Force Main	\$10,000
10/20/05	Cedar Street and North Sanderson Way	40 Gallons discharged to storm drain; unknown volume to receiving waters and unknown volume recovered	SSO caused by Blockage	\$10,000
12/27/05	100 Block W Alder Street	180 Gallons discharged to storm drain; unknown volume to receiving waters and unknown volume recovered	SSO caused by I&I	\$10,000
1/13/06	501 Franklin Street	0 400 gallons recovered	SSO caused by Grease	\$10,000
2/28/06	1351 Oak Street	1844 Raw sewage discharge	Spill caused by broken sewer	\$18,440
6/01/06	Force Main at Pudding Creek Beach and Pudding Creek Rd	2500 Discharged to Beach-sand area	Spill caused by cracked 10-inch diameter Force Main	\$25,000
6/16/06	Force Main at Pudding Creek Beach and Hwy 1	200 Discharged to Beach-sand area	Spill caused by cracked 10-inch diameter Force Main	\$10,000
11/01/06	19400 S Harbor Drive (Caito Fisheries)	600 Discharged to receiving waters	SSO caused by Grease	\$10,000
3/28/07	WWTF	<10 Treated sludge (chlorine contactor) discharged to storm drain inlet thence Beach	Spill of treated sludge to Beach – public access area	\$10,000

Date	Location	Estimated Volume Discharged to Receiving Waters (gallons)	Comments	Maximum Potential Penalty
		shoreline		
04/17/07	WWTF	124,000 Discharge to receiving waters	Release of treated un-dechlorinated effluent; Due to electrical circuit failure	\$1,240,000
7/17/07	Manhole at Intersection of Franklin Street and Chestnut	0 1500 gallons overflow with 700 gallons to storm drain thence dry ditch; All recovered	SSO caused by Grease	\$10,000
09/27/07	741 E Oak Street	210 Discharge to storm drain thence receiving waters; 10 gallons recovered and 10 gallons soaked in the ground	SSO caused by Grease	\$10,000
			Total Penalties	\$1,483,440

21. In determining the amount of any civil liability, 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 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. At a minimum, Water Code section 13385, subdivision (e) requires that liability be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.
22. The minimum liability mandated by the Water Code is \$6,000 for the effluent limitation violations described in Finding 18.
23. Thirteen of the twenty-three prohibited discharges were SSOs, two of which resulted in no discharge to receiving waters. No penalty is being assessed for these two SSOs. The remaining SSOs consisted of small-volume discharges ranging up to 1800 gallons. In all instances, the Discharger responded immediately upon notification of an overflow and took action to resolve the problem. Where possible, the discharged waste was recovered and the area cleaned up. The Discharger recently

- acquired a grant for \$750,000 for sewer improvements and I/I correction of problem areas in the collection system. The Discharger identified problem areas in the collection system and initiated a preventive maintenance program that includes television inspection of sewer mains and root removal and cleaning of mains with a water jet rodder. The Discharger also implemented a fats, oil, and grease (FOG) program through the wastewater treatment plant's pretreatment program. The Discharger has become proactive in addressing SSOs and has attempted to mitigate or prevent reoccurrences. A total penalty of \$10,000 is assessed for these eleven small-volume SSOs.
24. The WWTF experienced two discharges resulting in approximately 30 gallons of digester supernatant and partially treated sludge to receiving waters and a third release of 124,000 gallons of treated, disinfected effluent due to electrical circuit failure. In these incidents, the Discharger responded immediately upon notification of the discharges and took action to resolve the problem. The District's current budget includes \$100,000 for the collection enterprise to install new electrical controllers and eliminate future failures. Additionally, the WWTF now has a second digester on-line, which will allow for maintenance cleaning on the primary digester and minimize overflows. These three prohibited discharges are assessed a total penalty of \$10,000.
 25. The Pudding Creek Force Main Line (PCFML) has experienced six discharges of untreated wastewater that resulted from cracks and deteriorated sections of the pressurized main line. These six incidents caused a discharge of untreated wastewater to public beach areas and posed a threat to public health. The PCFML has a chronic and prolonged history of failures that resulted in discharges to public beach areas. The Discharger recently obtained a \$1.5 million Clean Beaches Grant to fund replacement of the PCFML. These six SSO violations are being assessed a total penalty of \$30,000.
 26. 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 FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO. I IS HEREBY GIVEN NOTICE THAT:

1. Based on a review of the above facts and required factors, the Assistant Executive Officer proposes that the Discharger be assessed an administrative civil liability in the amount of \$56,000. This assessment

includes \$6,000 in mandatory minimum penalties for effluent violations, and \$50,000 for violations of discharge prohibitions.

2. A hearing will be conducted on this Complaint by the Regional Water Board on January 17, 2008, 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:

Option 1

Pay the total assessed penalty of \$56,000 in full to the State Water Pollution Cleanup and Abatement Account (CAA) within thirty days of the date of this Complaint or,

Option 2

In lieu of paying the full amount of the penalty, propose an SEP in an amount up to \$35,500 and pay the balance of the penalty, which is \$20,500, to the CAA within thirty days from the date of the Complaint (or in compliance with a payment schedule issued in writing by the Assistant 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 at least equal the amount of the full penalty. The sum of the SEP and the amount paid to the CAA shall at least equal the amount of the full penalty.

3. If the Discharger chooses to propose a SEP, it must submit a proposal within thirty days of the date of this Complaint to the Assistant Executive Officer for conceptual approval. The SEP proposal shall conform to the requirements specified in the Enforcement Policy. The SEP proposal must include a time schedule, for concurrence by the Assistant Executive Officer, to address implementation and completion of the project. If the proposed SEP and/or implementation schedules are not acceptable, the Assistant 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 CAA.
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 Assistant Executive Officer may withdraw the Complaint, reissue it as appropriate, 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.
7. The Assistant Executive Officer shall maintain oversight over approved SEP implementation time schedules throughout the life of the project. If, given written justification from the Discharger, the Assistant Executive Officer determines that a delay in the project implementation schedule was beyond reasonable control of the Discharger, the Assistant 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 WDRs.

Luis G. Rivera
Assistant Executive Officer

November 16, 2007