

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2008-0097

For
Violation of Waste Discharge Requirements
Order No. R1-2004-0047
NPDES No. CA0005894

In the Matter of

Evergreen Pulp, Inc.
Samoa Pulp Mill
WDID No. 1B77005OHUM

Humboldt County

This Complaint assesses administrative civil liability for penalties and is issued to Evergreen Pulp, Inc. (hereafter the Discharger) for violations of Waste Discharge Requirements, Order No. R1-2004-0047, for the period from March 1, 2005, to December 31, 2007. The penalties are for both discretionary and mandatory minimum penalties, issued pursuant to Water Code section 13385, subdivisions (c), (h) and (i).

The Assistant 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 Samoa Pulp Mill, which is regulated by Waste Discharge Requirements Order No. R1-2004-0047, NPDES Permit No. CA0005894. The pulp mill is located at 1 TCF Drive on the north spit of Humboldt Bay near the community of Samoa.
2. The Samoa Pulp Mill has the capacity to produce an average of 700 tons per day of bleached Kraft market pulp. The mill is permitted to discharge a monthly average of up to 20 million gallons per day of wastewater through a submerged multi-port diffuser, with a dilution ratio of 115:1, located 8,200 feet offshore in the Pacific Ocean at a depth of 82 feet. The mill does not have wastewater treatment facilities and relies on process control and best management practices to meet the terms of the waste discharge requirements. Effluent from the mill consists of process wastewater from the Kraft pulping process, wastewater from maintenance activities, solids from the raw water treatment plant, blowdown from the recovery boiler, storm water, and freshwater flows to maintain the outfall during periods of pulp mill shutdown.
3. The Regional Water Board adopted Waste Discharge Requirements (WDRs) Order No. R1-2004-0047 for Stockton Pacific Enterprises, Inc. on June 22, 2004. The Order was subsequently transferred to the Discharger on March 18, 2005. These WDRs serve as a National Pollutant Discharge Elimination System (NPDES) Permit (No. CA0005894) under the Federal Clean Water Act.

4. This Complaint covers violations of effluent limitations and discharge prohibitions contained in WDRs that occurred from March 1, 2005, through December 31, 2007. The details of these violations are presented in Findings 12 and 13 of this Complaint. These violations are subject to the mandatory minimum penalties and civil liability provisions contained in California Water Code section 13385, subsections (c), (e), (h) and (i).
5. Among the provisions in the WDRs are requirements to implement a discharge monitoring program and prepare and submit monthly and annual NPDES self-monitoring reports to the Regional Water Board pursuant to Water Code section 13383. These reports are designed to determine compliance with effluent limitations contained in the WDRs.
6. 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 maximum amount is \$10,000 dollars per day in which the violation occurs, plus \$10 per gallon of waste discharged in excess of 1,000 gallons that is in violation of the NPDES permit and not susceptible to cleanup or is not cleaned up.
7. 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 one type of 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.
8. 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 for four or more times in any period of six consecutive months:
 - (a) Violates a waste discharge requirement effluent limit.
 - (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 discharges 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.

9. 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 matters, issues related to assessing mandatory minimum penalties.
10. 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.
11. Portions of Order No. R1-2004-0047 that have been violated are as follows:

A. DISCHARGE PROHIBITIONS

5. The discharge of process chemicals prior to their intended use in the mill processes is prohibited.
6. The discharge of white liquor, green liquor, or black liquor from leaks, spills, or releases resulting from improper operation or maintenance of facilities is prohibited.

B. EFFLUENT LIMITATIONS

1. The permittee is authorized to discharge process wastewater, maintenance-related wastewater, solids from the raw water treatment plant, blowdown from the recovery boiler, and storm water from the pulpmill site and the adjacent sawmill from outfall Serial Number (SN) 001 to the Pacific Ocean. The discharge to outfall SN 001 in excess of the following limits is prohibited:

<u>Parameter</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>
Flow	mgd	20	25

<u>Parameter</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>
BOD ₅ @ 20°C	lb/day ¹	11,270	21,630
Total Suspended Solids	lb/day ²	22,960	42,560
pH	Standard Units	Within the limits of 5.0 to 9.0 ³	

2. The permittee is authorized to discharge from the water treatment plant to outfall SN 001 to the Pacific Ocean. The discharge of an effluent at an internal monitoring station designated outfall SN 001, which shall be located so as to provide for sampling before the water treatment plant discharge effluent flows into outfall SN 001, in excess of the following limits is prohibited:

<u>Parameter</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>
Total suspended solids:			
Wet Season (Oct.-Apr.)	lb/day	70,000	400,000
Dry Season (May-Sept.)	lb/day	14,000	400,000

3. Toxic Materials Limitations. The Discharge of an effluent to the Pacific Ocean from outfall SN 001 in excess of the following limits is prohibited:

OBJECTIVES FOR THE PROTECTION OF MARINE AQUATIC LIFE

<u>Parameter</u>	<u>Units</u>	<u>Daily Maximum</u>	<u>Instantaneous Maximum</u>
Adsorbable Organic Halides (AOX)	ug/l	20	-----

¹ Based on 40 CFR 430.22 and a production rate of 700 ADT/day

² Based on 40 CFR 430.22 and a production rate of 700 ADT/day

³ Compliance shall be determined under 40 CFR 401.17 and 430.22

LIMITATIONS FOR PROTECTION OF HUMAN HEALTH –
CARCINOGENS

<u>Parameter</u>	<u>Units</u>	<u>30-day Average</u>
Aldrin	ng/l	2.6

12. Effluent Limitation Violations

According to monitoring reports submitted by the Discharger for the period from March 1, 2005, through December 31, 2007, the Discharger exceeded effluent limitations twenty-nine times. Eight of the exceedances are serious violations in accordance with Water Code section 13385, subdivision (h). Twenty-one of the exceedances are chronic violations in accordance with Water Code section 13385, subdivision (i)(1). The mandatory minimum penalty amount for these violations under 13385, subdivisions (h) and (i), is \$72,000 and the maximum penalty amount under 13385 (c), computed without regard to statutory criteria for assessing civil penalties, is \$59,297,999,000 as shown in the following table:

Effluent limitation Exceedances March 1, 2005 through December 31, 2007						
Date	Violation	Reported Value	Mandatory Minimum Penalty, and Maximum Discretionary	Number of Days Used for Assessing Maximum Liability	Amount Discharged in Excess of 1,000 Gal, and Not Cleaned Up	Maximum Potential Penalty, \$10,000 /day and \$10 per gallon discharged
04/30/05	Exceeded Monthly Average BOD Limit of 11,270 lbs/day	11,735 lbs/day	1 st chronic \$0	30	418,799,000 Gallons	\$4,188,000,000
05/31/05	Exceeded Monthly Average BOD limit of 11,270 lbs/day	14,460 lbs/day	2 nd chronic \$0	31	436,099,000 Gallons	\$4,361,000,000
05/22/05	Exceeded Daily Maximum BOD limit of 21,630 lbs/day	23,878 lbs/day	3 rd chronic \$0	1	14,299,000 Gallons	\$143,000,000
07/14/05	Exceeded Daily Maximum AOX limit of 20 ug/l	30 ug/l	Serious \$3,000	1	13,599,000 Gallons	\$136,000,000
09/30/05	Exceeded Monthly Average BOD limit of 11,270 lbs/day	12,093 lbs/day	Chronic \$3,000	30	448,999,000 Gallons	\$4,490,290,000
10/31/05	Exceeded Monthly Average BOD limit of 11,270 lbs/day	12,488 lbs/day	Chronic \$3,000	31	479,969,000	\$4,799,690,000

Effluent limitation Exceedances						
March 1, 2005 through December 31, 2007						
Date	Violation	Reported Value	Mandatory Minimum Penalty, and Maximum Discretionary	Number of Days Used for Assessing Maximum Liability	Amount Discharged in Excess of 1,000 Gal, and Not Cleaned Up	Maximum Potential Penalty, \$10,000 /day and \$10 per gallon discharged
11/30/05	Exceeded Monthly Average BOD limit of 11,270 lbs/day	11,599 lbs/day	Chronic \$3,000	30	441,799,000 Gallons	\$4,418,290,000
12/01/05	Exceeded Daily Maximum TSS limit of 42,560 lbs/day	57,263 lbs/day	Chronic \$3,000	1	14,699,000 Gallons	\$147,000,000
12/20/05	Exceeded Daily Maximum TSS limit of 42,560 lbs/day	44,953 lbs/day	Chronic \$3,000	1	15,399,000 Gallons	\$154,000,000
12/22/05	Exceeded Daily Maximum TSS limit of 42,560 lbs/day	56,866 lbs/day	Chronic \$3,000	1	14,799,000 Gallons	\$148,000,000
12/29/05	Exceeded Daily Maximum TSS limit of 42,560 lbs/day	51,626 lbs/day	Chronic \$3,000	1	14,599,000 Gallons	\$146,000,000
01/01/06	Exceeded Daily Maximum TSS limit of 42,560 lbs/day	44,460 lbs/day	Chronic \$3,000	1	11,399,000 Gallons	\$114,000,000
01/02/06	Exceeded Daily Maximum TSS limit of 42,560 lbs/day	66,336 lbs/day	Serious \$3,000	1	15,099,000 Gallons	\$151,000,000
01/11/06	Exceeded 30-day Average Aldrin limit of 2.6 ng/l	5.5 ng/l	Serious \$3,000	30	436,699,000 Gallons	\$4,367,290,000
02/02/06	Exceeded Daily Maximum TSS limit of 42,560 lbs/day	43,944 lbs/day	Chronic \$3,000	1	14,399,000 Gallons	\$144,000,000
02/28/06	Exceeded Monthly Average BOD limit of 11,270 lbs/day	12,461 lbs/day	Chronic \$3,000	28	380,299,000 Gallons	\$3,803,270,000
03/06/06	Exceeded Daily Maximum TSS limit of 42,560 lbs/day	64,726 lbs/day	Serious \$3,000	1	13,899,000 Gallons	\$139,000,000
03/07/06	Exceeded Daily Maximum BOD	39,012 lbs/day	Serious \$3,000	1	13,399,000 Gallons	\$134,000,000

Effluent limitation Exceedances						
March 1, 2005 through December 31, 2007						
Date	Violation	Reported Value	Mandatory Minimum Penalty, and Maximum Discretionary	Number of Days Used for Assessing Maximum Liability	Amount Discharged in Excess of 1,000 Gal, and Not Cleaned Up	Maximum Potential Penalty, \$10,000 /day and \$10 per gallon discharged
	limit of 21,630 lbs/day					
03/07/06	Exceeded Daily Maximum TSS limit of 42,560 lbs/day	103,437 lbs/day	Serious \$3,000	1	Flow is accounted for above	\$10,000
03/16/06	Exceeded Daily Maximum BOD limit of 21,630 lbs/day	22,230 lbs/day	Chronic \$3,000	1	13,999,000	\$139,990,000
03/31/06	Exceeded Monthly Average BOD limit of 11,270 lbs/day	17,307 lbs/day	Serious \$3,000	31	422,599,000 Gallons	\$4,226,300,000
03/31/06	Exceeded Monthly Average TSS limit for water treatment plant of 70,000 lbs/day	76,287 lbs/day	Chronic \$3,000	31	Flow is accounted for above	\$310,000
06/30/06	Exceeded Monthly Average BOD limit of 11,270 lbs/day	11,705 lbs/day	Chronic \$3,000	30	451,699,000 Gallons	\$4,517,290,000
01/31/07	Exceeded Monthly Average BOD limit of 11,270 lbs/day	11,654 lbs/day	1 st Chronic \$0	31	451,399,000 Gallons	\$4,514,300,000
04/26/07	Exceeded Daily Maximum BOD limit of 21,630 lbs/day	26,550 lbs/day	2 nd Chronic \$0	1	13,299,000 Gallons	\$133,000,000
04/26/07	Exceeded Daily Maximum TSS limit of 42,560 lbs/day	61,397 lbs/day	3 rd Serious \$3,000	1	Flow is accounted for above	\$10,000
05/31/07	Exceeded Monthly Average BOD limit of 11,270 lbs/day	15,058 lbs/day	Chronic \$3,000	31	484,199,000 Gallons	\$4,842,300,000
06/30/07	Exceeded Monthly Average BOD limit of 11,270 lbs/day	12,409 lbs/day	Chronic \$3,000	30	450,999,000 Gallons	\$4,510,290,000

Effluent limitation Exceedances						
March 1, 2005 through December 31, 2007						
Date	Violation	Reported Value	Mandatory Minimum Penalty, and Maximum Discretionary	Number of Days Used for Assessing Maximum Liability	Amount Discharged in Excess of 1,000 Gal, and Not Cleaned Up	Maximum Potential Penalty, \$10,000 /day and \$10 per gallon discharged
07/31/07	Exceeded Monthly Average BOD limit of 11,270 lbs/day	12,738 lbs/day	Chronic \$3,000	31	442,999,000 Gallons	\$4,430,300,000
Totals			\$72,000			\$59,297,930,000
Maximum Potential Civil Penalty						\$59,297,999,000

13. Discharge Prohibitions Violations

During the period between March 1, 2005, and December 31, 2007, the Discharger reported three spills in violation of discharge prohibitions. A summary of the spills, together with the applicable maximum statutory civil penalties computed without regard to the statutory criteria for assessing civil penalties, follows:

Summary of Spills			
March 1, 2005, though December 31, 2007			
Date	Event	Estimated Volume Discharged (gallons)	Maximum Potential Penalty, \$10,000 /day and \$10 per gallon discharged
04/18/05	Spilled white liquor to outfall	±246 gallons	\$10,000
06/07/05	Smelt tank overflow spilled green liquor to outfall	9,000-15,000 gallons (use midpoint of 12,000 gallons)	\$10,000 plus \$110,000
08/02/05	Spilled black liquor to outfall	500 gallons	\$10,000
Maximum Potential Civil Penalty			\$140,000

14. 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 benefit, if any derived from the acts that constitute the violation(s).

15. The Regional Water Board staff and the Discharger convened settlement negotiations concerning the violations alleged in this Complaint. One topic of the negotiations was the economic benefit received by the Discharger in connection with the above violations. Prevention of these violations required certain capital improvements to the mill and the hiring of certain staff. By avoiding and delaying these costs, the Discharger obtained an economic benefit within a broad range of estimates, depending on the source, the Discharger's estimate being on the low end of the range and the Regional Water Board staff's estimate being on the high end. Based on the information provided by the discharger and other information on cost of compliance analyzed by staff, and taking into consideration the uncertainty regarding the needed method of compliance and the related compliance costs, the parties have agreed, for the purposes of settlement, that economic benefit is deemed to be \$386,908.
16. After considering all the factors listed in Finding 14, and to avoid the delay and expense from litigation, the Regional Water Board staff has determined that it is appropriate to accept a civil penalty of \$463,000 in settlement of the above violations. The law mandates the Regional Water Board to, at a minimum, recover economic benefit, or mandatory penalties, whichever is highest. The settlement amount of \$463,000 complies with that requirement.
17. The issuance of this Complaint is an enforcement action to protect the environment, and is therefore exempt from 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).

EVERGREEN PULP, INC. IS HEREBY GIVEN NOTICE THAT:

1. Based on a review of the above facts and required factors, the Assistant Executive Officer of the Regional Water Board is issuing this Complaint to the Discharger for a penalty in the amount of \$463,000.
2. A hearing will be conducted on this Complaint by the Regional Water Board on October 23 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, Evergreen Pulp, Inc. agrees to pay the \$463,000 penalty in full to the State Water Pollution Cleanup and Abatement Account ("Account") within fifteen days of the date of its receipt of notice that, subject to timely payment of the foregoing penalty amount by Discharger, the settlement has not been modified or terminated and has been made final without a hearing.

3. If the Discharger waives the hearing and agrees to pay the foregoing penalty amount as described above, the resulting settlement may become final, subject to payment of the penalty by Discharger, 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, issue a new complaint, schedule and hold a hearing before the Regional Water Board, or take other appropriate action.
4. 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.
5. 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. The foregoing procedure for noticing the Complaint for public review and comment satisfies this federal requirement.

Luis G. Rivera
Assistant Executive Officer

August 1, 2008