

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2009-0113
For
Violation of Waste Discharge Requirements
Order No. R1-2004-0013 (NPDES No. CA0024449)

And

State Water Resources Control Board Order No. 2006-0003-DWQ

In the Matter of

City of Eureka
Greater Eureka Area
Elk River Wastewater Treatment Facility
WDID No. 1B8282151OHUM

Humboldt County

This Complaint, to assess administrative civil liability for penalties pursuant to Water Code section 13385, is issued to the City of Eureka (hereinafter Discharger) for violations of Waste Discharge Requirements Order No. R1-2004-0013 (NPDES Permit No. CA0024449) (hereinafter referred to as WDRs), and State Water Resources Control Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, that occurred during the period February 1, 2008 through July 23, 2009.

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

1. The Discharger owns and operates the Elk River Wastewater Treatment Facility (WWTF). The WWTF serves both the City of Eureka and the surrounding unincorporated areas within the Humboldt Community Services District. The WWTF discharges secondary treated disinfected domestic wastewater to Humboldt Bay in a manner that is equivalent to an outfall to the Pacific Ocean by only discharging on the ebbing tide. Associated with the WWTF is an extensive sanitary sewer system consisting of 125 miles of sewer mains, 9,500 service laterals, 17 lift stations, 3 pump stations, interceptor lines, collection lines and manholes. Sewage lateral lines connected to the public sewer serving buildings on private property are not within the jurisdiction of the Discharger and are the responsibility of the land owner.
2. The Regional Water Board adopted Order No. R1-2004-0013, Waste Discharge Requirements (WDRs), for the Discharger on March 24, 2004. The Order served as a National Pollutant Discharge Elimination System (NPDES) Permit No. CA0024449 under the Clean Water Act until July 23, 2009. The permit was renewed on June 4, 2009 with the adoption of R1-2009-0033 which became effective on July 24, 2009. This complaint covers the period from February 1, 2008 though July 23, 2009.

3. 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 California Water Code (CWC) section 13383. These reports are designed to demonstrate compliance with or to clearly identify all violations of effluent limitations, and receiving water requirements contained in the WDRs.
4. On May 2, 2006, the State Water Resources Control Board adopted Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Wastewater Collection Agencies (General WDRs). The Discharger enrolled for coverage under the General WDRs on October 25, 2006.
5. This Complaint covers violations of discharge prohibitions and effluent limitations 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 periods of discharge to receiving waters from February 1, 2008 through July 23, 2009. The details of the discharge prohibition and effluent violations are summarized in Finding 10. These Violations are subject to penalties pursuant to Water Code section 13385 (c)(h)(i).
6. Sanitary Sewer Overflows (SSOs) are discharges of domestic, industrial, and/or commercial wastewater from sanitary sewer systems. This wastewater may contain high levels of suspended solids, pathogenic organisms, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants. SSOs may result in 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.
7. Water Code section 13385, subdivision (a) provides for the imposition of civil liability by the Regional Water Board. Section 13385, subdivision (c) provides that the maximum amount of civil liability that may be imposed by the Regional Water Board 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.

CWC section 13385 applies to NPDES permit program violations or discharges to surface water. For this Complaint, discretionary penalties under CWC section 13385(c) apply to unauthorized SSOs.

8. During the period from February 1, 2008 through July 23, 2009, the Discharger's facility was subject to the requirements of Order No. R1-2004-0013 which includes the following discharge prohibitions and effluent limitations:

A. DISCHARGE PROHIBITIONS

1. "The discharge of waste to Humboldt Bay is prohibited unless it is done in such a manner to assure that all wastewater is conveyed to the mouth of the bay and dispersed in the Pacific Ocean during periods of ebb tide."
5. "The discharge of untreated or partially treated waste from anywhere within the collection, treatment, or disposal system is prohibited."

B. EFFLUENT LIMITATIONS

1. Representative samples of the discharge to the Pacific Ocean shall not contain constituents in excess of the following limitations:

Parameter	Units	Monthly Average	Weekly Average	Daily Maximum
Fecal Coliform	MPN/100 ml	14 ^e		43 ^f

^e Median

^f Not more than 10 percent of the samples collected in a 30 day calendar month shall exceed 43 MPN/100 ml.

4. A minimum chlorine residual of 1.0 mg/l shall be maintained at the end of the concrete chlorine contact chamber. There shall be no detectable levels of chlorine discharged to the wildlife management area or the receiving waters, using a minimum detection limit of 0.1 mg/l.

9. 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.
10. According to monitoring reports submitted by the Discharger for the period from February 1, 2008 through July 23, 2009, the Discharger showed violations of the effluent limit for chlorine residual in May and for fecal coliform in June and September 2008. These three violations did not meet the criteria for issuing MMPs. During the same period the Discharger reported 8 SSOs. These violations are subject to discretionary penalties as described in Findings 8 & 9,

above. The maximum potential penalty amount for these violations is **\$60,000** as shown in the following tables:

**Table 1
 Mandatory Minimum Penalties
 February 1, 2008 through July 23, 2009**

Date and CIWQS Event ID	Parameter	Reported Value	Permit Limit	Violation Type	Mandatory Penalty
5/14/2008 753812	Chlorine Residual	0.15	0.10	Chronic	1 st Chronic
6/30/2008 840518	Fecal Coliform	10.3 %	10 %	Chronic	2 nd Chronic
9/30/2008 840519	Fecal Coliform	10.5 %	10 %	Chronic	3 rd Chronic
				Total	\$0.0

**Table 2:
 Violations of Discharge Prohibitions
 Sewer System Overflows (SSOs)
 (Subject to Discretionary Penalties)
 February 1, 2008 through July 23, 2009**

Date and CIWQS Event ID	Location	Volume Discharged (Gallons)	Volume Recovered or not discharged (Gallons)	Volume to Receiving Water (Gallons)	Comments	Maximum Potential Penalty 13385 (c)(1)
6/16/08 719745	2 nd and Y Streets	10	10	0	FOG ^e	\$10,000
8/11/08 724563	3406 Lowell Street	300	300	0	Debris in Manhole	\$10,000
8/19/08 724901	Municipal Golf Course	200	200	0	Pump Sta. Failure	\$10,000
1/5/09 731453	1625 G Street	60	0	60	Private Lateral	\$0
2/18/09 733844	Mauer Marsh	100	100	0	Pipe Failure	\$10,000

^e Fats, Oils and Grease

Date and CIWQS Event ID	Location	Volume Discharged (Gallons)	Volume Recovered or not discharged (Gallons)	Volume to Receiving Water (Gallons)	Comments	Maximum Potential Penalty 13385 (c)(1)
6/20/09 739670	1019 E. Vista Drive	15	15	0	Manhole, Debris	\$10,000
6/25/09 740045	612 E. Huntoon St.	720	720	0	Debris, Root Intrusion	\$10,000
7/5/09 740672	Eureka Lodge	200	200	0	Private Lateral	\$0
Total						\$60,000

11. On June 7, 2009 a break in the 2 inch water line that serves the sprinkler system and wash down system for the WWTP's clarifiers resulted in a discharge of 84,000 gallons of treated and disinfected wastewater. The wastewater entered a storm water collection system which discharges to Elk River and Humboldt Bay. The Discharger recovered 5,000 gallons from the storm water drain. The remainder discharged to the Elk River and was not recoverable. Water samples collected from the drain showed a 0.21 mg/L chlorine residual and a total coliform count of 23 Most Probable Number (MPN) per 100 milliliters (mL). The maximum potential penalty for the spill is \$790,000.
12. In determining the amount of any civil liability under California Water Code 13385, subsection 13385(e) requires that the Regional Water Board 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.

a. Nature, Circumstances, Extent and Gravity of the Violations

Eight SSOs occurred during the assessment period ranging from minor discharges of a few gallons to a maximum of 720 gallons. Seven of the eight SSOs were either completely recovered or percolated into the ground. The one incident that resulted in wastewater reaching surface waters was associated with a private lateral, outside the jurisdiction or responsibility of the discharger. The Discharger responded to the spill, performed cleanup and required the owner to repair the lateral.

The water line break that discharged 84,000 gallons of treated and disinfected wastewater was unanticipated. The Discharger upon discovery of the break immediately shut down the system and repaired the line and collected 5000 gallons of waste water from the storm drain. The remaining 79,000 gallons discharged to the Elk River and was impossible to clean up.

b. Susceptibility to Cleanup, Cleanup Activities Taken, and Toxicity of the Discharge

Of the 8 SSOs reported 7 were fully contained and cleaned up. One SSO was partially contained, cleaned up and released about 60 gallons of raw sewage to surface waters. This SSO was not the responsibility of the discharger but was a private lateral. The Discharger's crew cleaned the affected area and required the owner of the property to repair the broken lateral. The discharged wastewater flowed to surface waters and was not susceptible to cleanup.

The 84,000 gallons of wastewater discharged from the water line break was fully treated and disinfected. This wastewater entered the treatment plant storm drain system and discharged to the Elk River. The Discharger recovered 5,000 gallons from the storm drain system but the wastewater that had reached the river was not recoverable. The Discharger's prompt and thorough response prevented a larger spill. Samples collected from the storm drain revealed total coliform levels of 23 MPN/ 100 mL. Because the wastewater was highly treated and disinfected, it is likely that any impacts to surface waters were minimal, and unlikely that the discharge presented a significant threat to public health.

c. Culpability and Prior History of Violations

The City of Eureka is fully responsible for the violations listed in this complaint. Past violations include the following:

2004 - An ACLC/ACLO was issued for the period February 1, 1998 to March 31, 2004 in the amount of \$48,250 for SSOs, MMPs and out of window discharges to Humboldt Bay. The SSOs identified in this ACLC were more numerous and of a higher volume than the current overflows. Of the 43 discharges 39 reached surface waters and ranged in volume from 30 to 14,000 gallons. Sixteen discharges were the result of lift station malfunctions.

2006 - An ACLC/ACLO was issued for the period April 1, 2004 to March 31, 2006 in the amount of \$100,000 for SSOs. Again the number overflows and gallons discharged were much higher than the current SSO discharges. There were 29 SSOs that ranged in

volume from 20 to 200,000 gallons. Eight of the SSOs were on private laterals, were small in flow and not within the jurisdiction of the Discharger. Seven were related to lift station failures that ranged in volume from 200 to 200,000 gallons. The remaining spills were in the 1000 gallon range.

2007 - An ACLC/ACLO was issued for the period April 1, 2006 to June 30, 2007 in the amount of \$88,000 for SSOs, MMPs and out of window discharges to Humboldt Bay. Nine SSOs were reported that ranged in volume from 180 gallons to 68,400 gallons. Three lift station malfunctions caused a combined sewage loss of 78,200 gallons. A pressure line break resulted in a 17,000 gallon spill.

The Discharger has a history of SSOs but has a very responsive and proactive collection system program to prevent, minimize and mitigate the effects of the spills. The annual budget for the Sewer Collection Division of the Public Works Department is in excess of 1.3 million dollars and it supports 10 full time employees with 24-hour notification for after-hours emergency response. Improvements are evident in this latest review period. The lift stations are more reliable and the spills, when they do occur, are much smaller than those reported in previous ACLCs. Rapid responses to reported spills results in smaller discharges that are amenable to recovery and cleanup.

d. Ability to Pay and Effect on Ability to Continue its Business

Regional Water Board staff has no information to indicate that the City would be unable to pay an imposed administrative civil penalty.

e. Economic Benefit to the Discharger

The Discharger's history and pattern of violations shows that the Discharger is maintaining its system adequately and has a good response program to deal with spill events. The SSOs were typically caused by debris, grease blockages or root intrusions in the main lines; incidents which are most often unpredictable. The Discharger implements a maintenance program to routinely inspect and clean its collection system with emphasis on problem areas. A capital improvement program is funded to repair and replace problem areas. Staff believes the Discharger has a proactive program to prevent SSOs, a commitment to complying with its WDRs, and that there is no economic benefit to the Discharger for the SSO or MMP violations documented in this Complaint.

f. Other Matters as Justice May Require

Regional Water Board staff costs associated with addressing the above violations of WDRs is estimated to be a minimum of \$5,000. This includes

staff time to review and tally violations, prepare this complaint, prepare public notices, participate in a public hearing, and respond to comments

13. The maximum potential penalty and imposed penalty including SSOs, the water line break spill and staff costs are shown in the following table. No penalty is proposed for the SSO violations; wastewater from the Discharger's system did not reach surface waters and, consequently, did not impact beneficial uses. The discharge from the private lateral is not within the jurisdiction of the discharger. The Discharger cleaned up the area and required the owner to repair the leak. After considering the factors described above, staff propose assessing a \$5,000 penalty for the water line break.

Violation	Staff Costs	Maximum Potential Penalty	Imposed Penalty	Total
SSOs		\$60,000	\$0	\$0
Water Line Break		\$790,000	\$5,000	\$5,000
	\$5,000		\$5,000	\$5,000
			Total	\$10,000

14. 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 EUREKA IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board is issuing this Complaint to the Discharger, assessing a penalty of **\$10,000** for NPDES permit violations subject to discretionary penalties that occurred between February 1, 2008 and July 23, 2009
2. The Regional Water Board will conduct a hearing on this Complaint on December 10, 2009, unless the Discharger waives the right to a hearing under Water Code section 13323, subdivision (b) by signing and returning the waiver form attached to this Complaint by November 10, 2009. By doing so, the Discharger agrees to pay the penalty of \$10,000 in full to the State Water Pollution Cleanup and Abatement Account (CAA) by November 20, 2009.
3. If the Discharger waives the hearing and pays the full liability, the resulting settlement may become effective on November 5, 2009 without any further action by the Regional Water Board. If there are significant public comments, the

Assistant Executive Officer may withdraw the Complaint, reissue it as appropriate, 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. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this administrative civil liability complaint through hearing. The enforcement costs can be considered as factor which justice may require.
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. Accordingly, interested persons will be given thirty days to comment on any proposed settlement of this Complaint.
6. 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

October 6 2009