

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2010-0045

For

Violation of Waste Discharge Requirements Order No. 92-120 and
State Water Resources Control Board Order No. 2006-0003-DWQ

In the Matter of
Gualala Community Services District
Wastewater Treatment Facility
WDID No. 1B89005RMEN

Mendocino County

This Administrative Civil Liability Complaint (Complaint) is issued under the authority of California Water Code (CWC) section 13323 to the Gualala Community Services District (Discharger) to assess administrative civil liability pursuant to CWC sections 13385 and 13350 for violations of Waste Discharge Requirements (WDRs) Order No. 92-120 and violations of Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems that occurred from June 1, 2000 through December 1, 2009.

The Assistant Executive Officer of the Regional Water Quality Control Board, North Coast Region (Regional Water Board) hereby gives notice that:

1. The Discharger owns and operates wastewater collection, treatment, and disposal facilities that serve the community of Gualala and provide advanced treatment of wastewater for the Sea Ranch North Wastewater Treatment Facility (WWTF). The Discharger's WWTF is located east of Highway 1 at the north end of the Sea Ranch in Mendocino County.
2. Unless waived, the Regional Water Board will hold a hearing on this Complaint at its **July 15, 2010**, meeting located at 5550 Skylane Blvd, Ste A, Santa Rosa, CA. The Discharger or its representative will have an opportunity to be heard and contest the allegations in this Complaint and the imposition of the civil liability. Not less than 10 days before the hearing date, an agenda for the meeting will be available on the Regional Water Board's website http://www.waterboards.ca.gov/northcoast/board_info/board_meetings/.
3. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed civil liability, or refer the matter to the Attorney General to have a Superior Court consider enforcement. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by submitting a signed waiver and paying the civil liability in full or by taking other actions as described in the attached waiver form. 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 an additional factor as justice may require.

4. 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. Accordingly, interested persons will be given thirty days to comment on any proposed settlement of this Complaint.

STATEMENT OF PROHIBITIONS AND REQUIREMENTS APPLICABLE TO THE DISCHARGER

5. On September 24, 1992, the Regional Water Board adopted WDRs Order No. 92-120, which prescribes waste discharge requirements to the Discharger to treat up to 0.131 million gallons (average dry weather flow) of wastewater from the Discharger's wastewater collection, treatment, and disposal facilities and the Sea Ranch North WWTF and discharge the advanced treated wastewater to storage ponds prior to reclamation through irrigation at the Sea Ranch Golf Links.
6. Prohibition A.4. of WDRs Order No. 92-120 states that "[t]he discharge of untreated waste from anywhere within the collection, treatment, or disposal facility is prohibited. Further, Prohibition A.5. states that "[t]he discharge of waste from the Gualala Community Services District Wastewater Treatment and Disposal Facilities to the Gualala River and its tributaries or the Pacific Ocean and its tributaries is prohibited.
7. On May 2, 2006, the State Water Board adopted Order No. 2006-0003-DWQ, which prescribed Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (General Order). The General Order establishes minimum requirements to prevent Sanitary Sewer Overflows (SSOs) from publicly owned and operated sanitary sewer systems. The General Order also allows each Regional Water Board to issue more stringent WDRs for sanitary sewer systems within their respective jurisdiction. The Discharger enrolled under the General Order on October 24, 2006.
8. Prohibition C.1 of the General Order states that any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.
9. Section 301 of the Federal Water Pollution Control Act (33 U.S.C. § 1311) (Clean Water Act) and CWC section 13376 prohibit the discharge of pollutants to surface water except in compliance with an NPDES permit. Neither State Board Order No. 2006-0003-DWQ nor WDRs Order No. 92-120 serve as an NPDES Permit.
10. Pursuant to CWC section 13385(a), any person who violates any prohibition issued pursuant to CWC Section 13243, CWC Section 13376, or any requirements of Section 301 of the Clean Water Act is subject to administrative civil liability pursuant to CWC Section 13385(c), in an amount not to exceed the sum of both of the following: (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up exceeds 1,000 gallons, an additional

liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

11. Pursuant to CWC section 13350 (a) any person who discharges waste or causes or permits waste to be deposited where it is discharged into waters of the state in violation of any waste discharge requirement issued by a regional board is subject to administrative civil liability pursuant to CWC section 13350(e). Section 13350(e) provides that civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

ALLEGATIONS

12. On July 6, 2006, an estimated 15,000 gallons of untreated wastewater was discharged from the wet well of Lift Station #4 to China Gulch, a tributary to the Gualala River, which is a water of the United States. A check valve on a pump became stuck in the open position, which recycled the effluent back to the wet well rather than sending it to the treatment plant. The overflow began in the afternoon or early evening of July 6, 2006 and was discovered at 7:00 a.m. on the following day. Prior to this incident, the Discharger encountered a similar issue with the check valve, but at that time a high-level Supervisory Control and Data Acquisition (SCADA) alarm notified the operators of the check valve situation and the Discharger corrected the issue without incident. On July 6, 2006, the electronic controller at Lift Station #4 was in the process of being replaced so there was no alarm. The check valve was repaired on July 7, 2006 and the new electronic controller was installed.
13. On November 26, 2006 an estimated 13,000 gallons of untreated wastewater was discharged from the wet well of Lift Station #4 to China Gulch. An error in the new electronic controller that regulates the levels in the wet well caused the well to overflow. The overflow began at 1:00 p.m. on November 26, 2006 and was discovered at 6:00 a.m. on the following day. There was no SCADA alarm due to the fact that the malfunction occurred in the electronic controller itself. The Discharger corrected the problem by resetting the system and contacted the programmer of the system to set up an alarm in the event that the electronic controller again malfunctioned. In addition, the Discharger began to inspect and refresh the electronic controllers weekly to prevent a similar malfunction.
14. On May 12, 2008, an estimated 33,264 gallons of secondary treated wastewater were discharged from Sonoma County Service Area #6, Sea Ranch North Wastewater Treatment and Disposal Facilities (CSA #6) to Salal Creek, a tributary to the Gualala River, which is a water of the United States. The release was caused by a leak in the PVC Pipe assembly connected to the facility's pumps. According to the Discharger's SCADA records, flow to the Gualala Plant stopped at 9:31 p.m. on May 11, 2008 and the spill continued until 6:30 a.m. the following day, when a Sea Ranch Water employee received notification of the leak and shut down the pump. The Discharger replaced the PVC piping in the assembly with galvanized pipe to reduce the possibility of future stress damage.

15. The following table summarizes the discharges that occurred between July 1, 2006 and December 1, 2009 addressed above:

Date	Estimated Volume Discharged (Gallons)	Estimated Volume Recovered	Estimated Volume Discharged to Surface Waters (Gallons)	Discharge Characteristics	Maximum Potential Penalty (CWC § 13385)
7/6/2006	≤15,000	0	≤15,000	Untreated Wastewater	\$150,000
11/26/2006	13,000	0	13,000	Untreated Wastewater	\$130,000
5/12/2008	33,264	9,264	24,264	Secondary Treated Wastewater	\$242,640
Total →					\$522,640

16. Between January 1, 2000 and December 1, 2009, the Discharger had five violations of effluent limitations, eleven incomplete report violations and two late reports, as shown in the following table:

Date	Violation	Description
6/22/2000	Effluent BOD violation	Average weekly limit is 15 mg/l, reported at 19 mg/l
6/30/2000	Reporting violation	Did not report Weekly Total Coliform for week ending 6/7/2000
6/30/2000	Reporting violation	Did not report Weekly Total Coliform for week ending 6/14/2000
6/30/2000	Reporting violation	Did not report Weekly Total Coliform for week ending 6/21/2000
6/30/2000	Reporting violation	Did not report Weekly BOD for week ending 6/7/2000
6/30/2000	Reporting violation	Did not report Weekly BOD for week ending 6/14/2000
6/30/2000	Reporting violation	Did not report Weekly BOD for week ending 6/21/2000
6/30/2000	Reporting violation	Did not report Weekly NFR for week ending 6/14/2000
6/30/2000	Reporting violation	Did not report Weekly NFR for week ending 11/21/2000
6/30/2000	Effluent BOD violation	Average monthly limit is 10 mg/l, reported at 11.7 mg/l
7/16/2000	Late self-monitoring report	June 2000 SMR due 7/15/2000, received 7/21/2000. Total of 6 days late
11/16/2003	Reporting violation	Did not report Weekly Total Coliform for week ending 11/16/2003

Date	Violation	Description
11/16/2003	Reporting violation	Did not report Weekly BOD for week ending 11/16/2003
11/16/2003	Reporting violation	Did not report Weekly NFR for week ending 11/16/2003
7/3/2005	Effluent BOD violation	Average weekly limit is 15 mg/l, reported at 20 mg/l
2/19/2006	Effluent BOD violation	Average weekly limit is 15 mg/l, reported at 16 mg/l
3/3/2006	Late 2005 annual report	Report due 1/30/2006, received 2/2/2006. Total of 2 days late.
3/5/2006	Effluent BOD violation	Average weekly limit is 15 mg/l, reported at 17 mg/l

CONSIDERATION OF FACTORS

17. In determining the amount of civil liability to be assessed against the Discharger, the Regional Water Board has taken into consideration the factors set forth in CWC Sections 13327 and 13385, subdivision (e) as summarized below.

Nature, Circumstances, Extent and Gravity of the Violations:

18. Wastewater Discharges: More than 50,000 gallons of wastewater discharged to surface waters over the course of three reported spills. The system consists of four lift stations with eleven miles of gravity sewers and five miles of force mains. The spills were the result of separate equipment malfunctions at the two lift stations. Each of the spills began in the afternoon or evening and continued through the night until it was discovered the following day. After the two spills in 2006, problems with the electronic controller at Lift Station #4 were corrected; an alarm will now sound if the same situation occurs. If the Discharger had an after-hours alarm system in place, the 2008 spill could have been discovered earlier and the volume of the discharge substantially decreased.
19. Effluent Limitations and Reporting Violations: None of these violations are believed to represent a direct impact on groundwater. The treated effluent is not discharged to surface water but rather is used to irrigate a golf course. Further, the Discharger has not had a reporting violation since 2003 and the late reports were a combined total of 8 days late, which does not suggest a serious and recurring noncompliance issue.

Susceptibility to Cleanup, Cleanup Activities Taken, and Toxicity of the Discharge:

20. The Discharger recovered 9,264 gallons of secondary treated wastewater from the May 2008 discharge, but neither of the other two spills were contained or cleaned up. By the time the Discharger discovered each of those spills; the wastewater had entered China Gulch and was not susceptible to cleanup.

21. The toxicity of the untreated wastewater discharged during the July 2006 and November 2006 discharges is not specifically known; however, raw sewage is generally toxic to aquatic organisms unless highly diluted. Raw sewage contains high levels of suspended solids, pathogenic organisms, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants. Following the May 2008 discharge, creek samples were taken upstream and downstream from the discharge point. Lab results showed that the discharge raised turbidity from 1.92 to 1.97 NTU, lowered pH from 6.59 to 6.43 and did not change the total suspended solids concentrations. In general, secondary treated wastewater is less toxic than untreated wastewater, but it can still negatively impact beneficial uses due to constituents such as bacteria or nutrients.
22. Effluent Limitations and Reporting Violations: Neither the effluent limit violations nor the reporting violations were susceptible to cleanup. The toxicity from the BOD exceedances is not likely to have a significant impact to beneficial uses. None of the five BOD violations exceeded the permit limit by more than 33% and they were spread over an eight-year period.

Culpability and Prior History of Violations:

23. The Discharger owns and operates the facilities where the violations alleged herein occurred. As the owner and operator, the Discharger is responsible for the maintenance of the facilities and compliance with its WDRs. To prevent further violations, the Discharger implemented weekly inspections of the system and used a camera to assess the condition of as much of the line as possible. The Discharger also identified likely sources of Infiltration and Inflow (I&I) in the system and is working to reduce the flow.
24. A Cleanup and Abatement Order was issued in 2006 for threatened discharges posed by excess wastewater in storage. The Discharger complied with the terms of that order. The three spills described in this Complaint are the only reported sanitary sewer overflows that have occurred at the Discharger's facilities in the past ten years. This spill history and the maintenance program suggest that, overall; the system is well operated and maintained.

Ability to Pay and Effect on Ability to Continue its Business:

25. On July 1, 2009, the State Water Board determined that the Discharger is not a small community with financial hardship as defined by CWC section 13385(k)(2). However, Mendocino County is classified as a "rural county" and the Discharger's service area has a population of 1,890, which meets the population criterion for a small community. The median household income in Mendocino County is \$45,991, which is just below the California median household income of \$47,493. The Discharger has a total of three employees and a yearly budget of approximately \$500,000.

Economic Benefit to Discharger:

26. The Discharger's history and pattern of alleged violations does not suggest that the Discharger is deferring necessary costs for operation and maintenance nor otherwise deriving an economic benefit from the acts that constituted the violation. The discharge caused by an open check valve could have been limited or prevented by the installation of a newer electronic controller, which the District purchased and was in the process of installing when the discharge occurred. That newly-installed electronic controller led to the November 2006 Discharge when the controller malfunctioned shortly after it was installed, which could not have been reasonably foreseen. Prior to the May 2008 incident, the PVC assembly at CSA#6 had not experienced problems in the section that caused the discharge, thus the Discharger had no reason to re-plumb the assembly. Further, the Discharger's effluent and reporting violations consist of five violations of effluent limitations, eleven incomplete report violations, and two late reports over the eight-year period covered by this Complaint. Some economic benefit may have been gained, if the incomplete reports were a result of the Discharger's failure to test for those constituents. However, the infrequency of the violations suggests that there is not a pattern of noncompliance. Based on these facts, Regional Water Board staff believes that the Discharger did not realize a significant economic benefit from the alleged violations.

Other Matters as Justice May Require:

27. Regional Water Board staff costs associated with the discharge violations is estimated to be a minimum of \$4,050 based on an estimated hourly wage of \$135. This includes staff time to investigate violations and prepare this Complaint and necessary public notices. If this matter proceeds to hearing, the Regional Water Board 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 Complaint through hearing.

MAXIMUM AND PROPOSED CIVIL LIABILITY

28. Taking into consideration the above factors and using the 2009 Water Quality Enforcement Policy's Penalty Calculation Methodology as guidance¹, the proposed penalties for the individual spills are as follows:
- a. 7/6/2006 The maximum penalty for this discharge is \$150,000. The discharge was the result of equipment failure and unanticipated, however untreated sewage carries serious environmental health risks and the discharge continued unabated for over 12 hours. Staff proposes a penalty of \$15,000.

¹ On November 17, 2009, the State Water Resources Control Board adopted a revision to the Water Quality Enforcement Policy including the addition of a Penalty Calculation Methodology. However, the Office of Administrative Law has not yet adopted the revision so it is not yet a statewide policy.

- b. 11/26/2006 The maximum penalty for this discharge is \$130,000. As with the July 2006 spill, the discharge occurred as the result of equipment failure but, again, the spill went undetected for some time, allowing a significant amount of raw sewage to enter receiving waters. Staff proposes a penalty of \$13,000.
- c. 5/12/2008 The maximum penalty for this discharge is \$240,000. The discharge was of secondary treated wastewater, which carries fewer potential impacts than untreated wastewater. Staff proposes a penalty of \$3,000.
- d. Effluent and Reporting Violations: The maximum penalty for these violations is \$90,000. Adverse water impacts are unlikely as the treated effluent is not discharged to surface water but rather is used to irrigate a golf course. Additionally, the Discharger has not had a reporting violation since 2003. Staff does not propose assessing a penalty for these violations.

29. Thus, the Assistant Executive Officer proposes that the Discharger be assessed an administrative civil liability in the amount of \$31,000 and the staff costs associated with this enforcement action in the amount of \$4,050 for a total of \$35,050. The total includes the following:

July 2006 spill	\$15,000
November 2006 spill	\$13,000
May 2008 spill	\$3,000
Effluent Limitations and Reporting Violations	\$0
Staff Costs	\$4,050
TOTAL	\$35,050

CEQA EXEMPTION

30. 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 (Pub. Resources Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321, subdivision (a)(2).

Luis G. Rivera
 Assistant Executive Officer

April 26, 2010