

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2010-0056

For

Violation of Waste Discharge Requirements
Orders No. R1-2004-0036 (NPDES No. CA0022713)

And

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

In the Matter of the

City of Arcata
Municipal Wastewater Treatment Plant
WDID No. 1B82114OHUM

Humboldt County

This Administrative Civil Liability Complaint (Complaint) is issued under the authority of California Water Code (CWC) Section 13323 to the City of Arcata (Discharger) to assess administrative civil liability pursuant to CWC section 13385 for violations, occurring from April 1, 2007 through December 31, 2009, of Waste Discharge Requirements (WDRs) Order No. 2004-0036 (National Pollutant Discharge Elimination System (NPDES) Permit No. CA0022713) (2004 Permit) and State Water Resources Control Board (State Water Board) Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (General WDR) and its subsequent amendments.

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 a Municipal Waste Water Treatment Facility and associated collection, and disposal facilities (WWTF). The facility serves residential, commercial, and industrial users within the City of Arcata and the Glendale area, which is administered by the Fieldbrook Community Services District. The WWTF provides biological secondary treatment utilizing primary clarifiers, oxidation ponds, treatment marshes and the Arcata Marsh Wildlife Sanctuary. The collection system consists of approximately two miles of force main and 61 miles of gravity sewer and serves 5,400 sewer connections. Secondary-treated municipal wastewater is discharged from the WWTF to Humboldt Bay, a water of the United States.
2. Unless waived by the Discharger, the Regional Water Board will hold a hearing on this Complaint at its July 15, 2010 meeting located in Santa Rosa at the Regional Water Board Office hearing room. 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. A notice of public hearing will be posted at least 30 days prior to the meeting at:

http://www.waterboards.ca.gov/northcoast/board_decisions/tentative_orders/. An agenda for the meeting will be available on the Regional Water Board's website at http://waterboards.ca.gov/northcoast/board_info/board_meetings not less than 10 days before the hearing date.

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 (see Attachment A).
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. 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. On June 22, 2004, the Regional Water Board adopted the Discharger's 2004 Permit, which prescribes waste discharge requirements to the Discharger for discharges from the WWTF to Humboldt Bay. The 2004 Permit was set to expire on June 22, 2009; however, the Regional Water Board administratively extended the 2004 Permit pursuant to 40 Code of Regulations Part 122.6 and California Code of Regulations Title 23, Section 2235.4.
6. Discharge Prohibition A.4. of the 2004 Permit prohibits, "[t]he 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."
7. Section B. of the 2004 Permit includes, in part, the following effluent limitations:
 - a. 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>
Fecal	MPN/100ml	14 ^d		43 ^e
Copper	µg/L	2.8		5.7

^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.

^d Median

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

- b. Representative samples of the discharge from Outfall 002 (to the Arcata Marsh Wildlife Sanctuary [AMWS]) shall not contain constituents in excess of the following limits:

	Units	Monthly Average	Weekly Average	Daily Maximum
Total Coliform	MPN/100ml	23 ^d		230

- c. The arithmetic mean of the BOD₅ and suspended solids values by weight for effluent samples collected from Outfall No. 001 in many [sic] calendar month 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).

8. On May 2, 2006, the State Water Board adopted the General WDR. The General WDR establishes minimum requirements to prevent Sanitary Sewer Overflows (SSOs) from publicly owned and operated sanitary sewer systems. The General WDR 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 WDRs on June 1, 2006.
9. Prohibition C.1 of the General WDR states that any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited. Prohibition C.2. of the General WDR states that 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.

STATUTORY AUTHORITY UPON WHICH CIVIL LIABILITY IS ASSESSED

10. An administrative civil liability may be imposed pursuant to the procedures described in CWC section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
11. Pursuant to CWC section 13385(a), any person who violates CWC section 13376 or any requirements of section 301 of the Clean Water Act is subject to civil liability pursuant to 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 and exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharge but not cleaned up exceeds 1000 gallons.

12. CWC section 13385 (h)(1), establishes a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious.
13. CWC section 13385(h)(2) states, in part, the following: “For the purpose of this section, a ‘serious violation’ means any waste discharge that violates the effluent limitations 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 or 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.”
14. Water Code section 13385(i)(1) also 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 a 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; or
 - (d) Violates a toxicity effluent limitation contained in the applicable Waste Discharge Requirements where the Waste Discharge Requirements do not contain pollutant specific effluent limitations for toxic pollutants.
15. CWC Section 13385(i)(2) states the following: “For the purpose of this section [13385], a ‘period of six consecutive months’ means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.”

ALLEGATIONS

DISCHARGE PROHIBITION VIOLATIONS

16. The Discharger reported five SSOs that resulted in a discharge to waters of the United States in violation of Prohibition A.4 of the 2004 Permit and Prohibition C.1 and 2 of the General WDR. These five SSOs resulted in the discharge of approximately 6,000 gallons of raw sewage to waters of the United States as shown in Table 1 below:

**Table 1: Sewer System Overflows (SSOs)
 (Subject to Discretionary Penalties)**

CIWQS¹ Number	Date	Location	Volume Discharged (Gallons)	Receiving Water	Cause of Discharge	Maximum Potential Penalty (CWC § 13385(c))
706941	10/19/07	Pickwick Apartments Cleanout	960	Gannon Slough/ Humboldt Bay	I&I ²	\$10,000
712178	1/31/08	Pickwick Manhole	2,780	Gannon Slough/ Humboldt Bay	I&I	\$27,800
725604	8/4/08	3749 West End Road	117	N.F. Janes Creek/ Humboldt Bay	Debris	\$10,000
734401	2/26/09	14 th Steet @ Hwy 101	1,950	Campbell Creek/ Humboldt Bay	FOG ³ and I & I	\$19,500
					Total	\$77,300

EFFLUENT LIMITATION VIOLATIONS

17. The Discharger violated effluent limitations contained in the 2004 Permit as shown in Table 2 below:

**Table 2: Effluent Limitation Exceedances
 (Subject to Mandatory Minimum Penalties)
 July 1, 2004 to December 31, 2010**

Date	Violation Description	Reported Value	Permit Limit	Units	Violation Type	Mandatory Minimum Penalty (CWC § 13385(h) & (i))
4/12/07 2 nd Quarter	Exceeded Copper AMEL ⁴	11	2.8	ug/l	Serious	\$3,000

¹ California Integrated Water Quality System
² Infiltration and Inflow caused by high rainfall
³ Fats, Oils and Grease buildup in the sewer line
⁴ AMEL = Average Monthly Effluent Limit

Date	Violation Description	Reported Value	Permit Limit	Units	Violation Type	Mandatory Minimum Penalty (CWC § 13385(h) & (i))
9/3/08 3 rd Quarter	Exceeded Copper AMEL	3.3	2.8	ug/L	1 st Chronic	\$0
TOTAL						\$6,000

MAXIMUM ADMINISTRATIVE CIVIL LIABILITY THAT MAY BE IMPOSED

18. The maximum administrative civil liability the Regional Water Board may impose for the five alleged SSO violations is \$77,300 as shown in Table 1, Finding No. 16, above.
19. The Mandatory Minimum Penalty the Regional Water Board must impose for the violations of CWC 13385 subdivision (h)(1) and (i)(1) is \$6,000 as shown in Table 2, Finding No. 17, above.
20. The total maximum administrative civil liability for all violations alleged herein is \$6,000 + \$77,300 = **\$83,300**.

CONSIDERATION OF FACTORS

21. In determining the amount of civil liability to be assessed against the Discharger, the Regional Water Board considered the following factors as required by CWC sections 13327 and 13385(e). Further, the General WDR requires the Regional Water Board to also consider additional factors in any enforcement action, which are addressed in the Regional Water Board's consideration of the 13327 and 13385(e) factors below. Pursuant to CWC section 13385(e), 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(s).

Nature, Circumstances, Extent, and Gravity of the Violation or Violations

22. The Discharger reported five SSOs during the period of review. They occurred on October 19, 2007; January 4, 2008; January 31, 2008; August 4, 2008, and February 26, 2009, respectively. The first three SSOs occurred at the Pickwick Apartments cleanout or manhole as a result of excessive Inflow and infiltration caused by high rainfall and leaking pipes. The Discharger addressed this chronic issue by installing temporary holding tanks that store excessive flow for later discharge back to the collection system. The larger issue of inadequate capacity and leaking pipes in the general area of the Pickwick Apartments is addressed as part of a compliance project associated with Administrative Civil Liability Order No. R1-2010-0001.

23. The two SSOs that occurred on August 4, 2008 and February 26, 2009 resulted from blockages in the collection line caused by debris and fats, oils and greases. High rainfall and inflow and infiltration contributed to the February spill. As a result of the five SSOs, 6,097 gallons of raw sewage discharged to tributaries of Humboldt Bay, which is a water of the State and the United States.
24. The Discharger could have prevented the SSOs with timely sewer system infrastructure improvements; however, funding constraints delayed improvements to the system. The Discharger implements a preventative maintenance program that includes continuous cleaning and repairs to the collection system. It is notable that during the review period, 34 months, only five spills resulted in discharges to surface waters. Three of the five spills were the direct result of inadequate capacity and inflow infiltration, which will be corrected with improvement to the infrastructure. The other two SSOs were not predictable.
25. An SSO is an overflow, spill release, discharge, or diversion of domestic, industrial, and/or commercial wastewater from a sanitary sewer collection system. This discharged wastewater may contain high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants. SSOs can cause a public nuisance when untreated wastewater is discharged to areas with public exposure, such as streets or surface waters used for drinking, fishing, or body contact recreation or other beneficial uses. An SSO that discharges to land and is not fully cleaned up or contained may discharge to surface water and/or infiltrate into groundwater. SSOs may pollute surface waters and/or ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters.

Whether the Discharge is Susceptible to Cleanup or Abatement

26. In most cases, either all or a portion of each SSO can be contained and returned to the sanitary sewer for treatment. During the period of review, the Discharger reported 25 instances of SSOs that were fully contained and cleaned up. The Discharger was unable to cleanup and/or abate four of the five SSOs that reached surface waters due to the high rainfall and high flow of the creeks that the discharges entered. The Discharger was unable to cleanup and/or abate the fifth SSO because the overflow reached the N.F. Janes Creek before it could be contained.

Degree of Toxicity of the Discharge

27. Each of the five SSOs reported by the Discharger during the period of review consisted of untreated raw sewage. Raw sewage, as compared to properly treated wastewater, typically has over ten times the concentrations of biochemical oxygen demand, trash, total suspended solids, oil, grease, ammonia, and over a thousand times the levels of viruses and bacteria (measured in terms of total and fecal coliform). These pollutants exert varying levels of impact on water quality, and can

adversely affect beneficial uses of receiving waters. Some adverse effects on water quality and beneficial uses include, but are not limited to:

- Adverse impacts to aquatic biota caused by bio-solid deposition and oil and grease;
- Creation of a localized toxic environment in the water column and elevated ammonia concentration, which is a demonstrated fish toxicant;
- Impairment to water contact recreation and noncontact water recreation and harm to fish and wildlife as a result of elevated bacteria levels including pathogens.
- Unknown future impact to fish and wildlife and other aquatic biota caused by recently identified pollutants in wastewater, such as pharmaceutical and personal care product chemicals.
- Reduction of dissolved oxygen causing fish kills or area avoidance.

28. SSOs that occur during dry weather are significant because they are full strength and receive no dilution. Wet weather overflows are diluted by storm water and pose a lower level of toxicity or impact. Four of the five SSOs addressed herein occurred during high rainfall periods, which most likely diluted those discharges.

Discharger's Ability to Pay and the Effect on the Discharger's Ability to Continue in Business

29. Based on information from the Discharger the combined 2009-10 budget for the collection and treatment system is \$6,074,863. The discharger has the ability to pay the penalty and continue to provide its services. In addition the Discharger has the authority to adjust its sewer rates to provide for financial needs. The penalty contained in this complaint is a very small fraction of the operating budget.

Any Voluntary Cleanup Efforts Undertaken

30. As noted in Findings 22 and 24 above the Discharger continuously makes an effort to prevent SSOs and clean up those that occur. Cleanup of those spill that reach surface waters is problematic because of the volume of the receiving water flows. No attempts to cleanup or retrieve discharges that reach surface waters are generally attempted.

Any Prior History of Violations

31. Administrative Civil Liability Complaint No. R1-2006-0006 was issued on January 4, 2006 for violations of effluent limits for the period from January 1, 2000 to June 21, 2004. The proposed penalty was \$285,000.

Administrative Civil Liability Complaint No. R1-2007-0064 was issued on June 30, 2007 for effluent violations and 17 SSOs for the period from June 22, 2004 to March 31, 2007. The proposed penalty was \$104,000. Pending the outcome of a review by the State Water Board and a lawsuit filed by the Discharger subsequent to the issuance of R1-2006-0006, \$33,000 of that penalty was held in abeyance.

Administrative Civil Liability Order No. R1-2010-0001, which was adopted by the Regional Water Board on January 21, 2010, settled both of the above administrative civil liability complaints. The Discharger was ordered to pay \$25,000 to the State Water Pollution Cleanup and Abatement Account, and to complete a Compliance Project costing in excess of \$293,000. The Compliance Project will address issues regarding treatment capability and SSOs.

Degree of Culpability

32. The Discharger is the sole owner and operator of the wastewater treatment plant and its associated collection system and is fully responsible for any violations that occur. Further, the Discharger is the named Permittee on the 2004 Permit and is the Permittee that filed a notice of intent to obtain coverage under the General WDR.

Economic Benefit or Savings

33. The Discharger received a minimal economic benefit or savings as a result of the violations alleged in this Complaint. The MMP violations appear to be one time or infrequent events that did not require significant expenditures to correct. The SSOs are the result of inadequate sewer system capacity within the area of the Pickwick Apartments. The Discharger is currently preparing plans and specifications for upgrading and improving the area collection system. One could argue that a benefit accrued from the delay in designing and implementing these upgrades and improvements, however, the delay resulted from limited funding and other priorities within the system.

Other Such Matters as Justice May Require

34. The Regional Water Board Prosecution Team spent an estimated 40 hours to prepare this Complaint and supporting evidence. Based on an average staff cost to the State of \$150 per hour, the total staff cost is estimated to be \$6,000. 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.

Proposed Civil Liability

35. Based on a consideration of the factors above, staff propose that pursuant to CWC section 13385, the Regional Water Board should impose a civil liability of **\$26,000** on the Discharger for violations of Order No. R1-2004-0036 (NPDES Permit NO. CA0022713) and State Water Board Order No. 2006-0003-DWQ, Statewide

General Waste Discharge Requirements for Sanitary Sewer Systems. The proposed penalty is comprised of \$6,000 for Mandatory Minimum Penalties and \$20,000 for the discretionary penalties calculated using the penalty calculation methodology contained in the Water Quality Enforcement Policy as guidance and consideration of the above factors.

36. The proposed civil liability assessment includes Regional Water Board prosecution team costs.

CEQA Exemption

37. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5, is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, § 21000, et seq.), in accordance with Section 15321(a)(2) ("Enforcement Actions by Regulatory Agencies"), Title 14, California Code of Regulations.

Luis G. Rivera
Assistant Executive Officer

May 19, 2010