

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION**

In the Matter of:)	
)	Complaint No. R1-2011-0077
Crescent City Harbor District)	for
141 Starfish Way)	Administrative Civil Liability
Crescent City, CA 95531)	
_____)	

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

This Administrative Civil Liability Complaint (Complaint) is issued to the Crescent City Harbor District (Discharger) to assess administrative civil liability for discharges from its Wastewater Treatment Plant (WWTP) in violation of provision of law for which the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) must impose mandatory minimum penalties pursuant to California Water Code (CWC) Section 13385 subdivision (h). The Complaint alleges 59 effluent limit violations subject to Mandatory Minimum Penalties (MMPs) under CWC section 13385 (h) and (i). The violations cited herein occurred from December 1, 2004 through March 19, 2011 and are specifically listed in Attachment A, which is incorporated into this Complaint by reference. During this period, the Discharger was subject to the waste discharge requirements established in Order No. R1-2004-0024 and R1-2009-0040. Both serve as NPDES Permit No. CA 0024473.

1. The Discharger is alleged to have violated provisions of law for which the Regional Water Board must impose mandatory minimum penalties under CWC section 13385 subdivision (h) and (i). The Complaint proposes to assess **\$177,000** in mandatory minimum penalties for the violations described herein.
2. This Complaint is issued under authority of CWC section 13323.
3. A hearing concerning this Complaint may be held before the Regional Water Board within ninety (90) days of the date of issuance of this Complaint, unless, pursuant to CWC section 13323, the Discharger waives its right to a hearing. The waiver procedures are specified in the attached Waiver Form. The hearing in this matter is scheduled for the Regional Water Board's regular meeting on September 29, 2011 at the Regional Water Board Hearing Room, 5550 Skylane Blvd, Suite A, Santa Rosa, California. The Discharger or its designated representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Water Board. An agenda for the meeting will be available at http://www.waterboards.ca.gov/northcoast/board_info/board_meetings/ not less than 10 days before the hearing date.

- If a hearing is held on this matter, the Regional Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

The Assistant Executive Officer alleges:

STATEMENT OF PROHIBITIONS, PROVISIONS, AND REQUIREMENTS APPLICABLE TO THE DISCHARGER:

The Discharger is required to comply with the following:

R1-2004-0024 (Effective 6/11/2004):

B. EFFLUENT LIMITATIONS FOR CONVENTIONAL POLLUTANTS.

- Waste discharged to the Pacific Ocean (Discharge Serial No. 001) during seafood processing shall not contain constituents in excess of the following limits:

Constituent	Units	Monthly Average	Daily Maximum
Suspended Solids	Lbs/1000 lbs bottom fish	2.0	3.6

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

Constituent	Units	Monthly Average	Daily Maximum
Total Suspended Solids	mg/L	--	60

C. EFFLUENT LIMITATIONS FOR TOXIC POLLUTANTS

- Waste 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 Ocean Plan):

(Limiting Concentrations expressed as micrograms per liter)

Constituent	6-Month Median	Monthly Average	Daily Maximum	Instantaneous Maximum
Chlorine Residual (total)	42	--	170	1300

R1-2009-0040 (Effective 9/11/2009):

IV. EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

A. Effluent Limitations – Discharge Point No. 001

1. Final Effluent Limitations from Seafood Processing Discharge Point No. 001
 - a. The Discharger shall maintain compliance with the following effluent limitations at Discharge Point No. 001 when discharging wastes from the processing of Dungeness and tanner crab and bottom fish, with compliance measured at Monitoring Location EFF-001A as described in the attached MRP:

Parameter	Units	Average Monthly	Maximum Daily	Instantaneous Maximum	6-Month Median
Total Suspended Solids	lbs/1000 lbs of seafood (fish) processed	2	3.6	--	--
Oil and Grease	lbs/1000 lbs of seafood (fish) processed	0.55	1.0		
Ammonia Nitrogen (as N)	ug/l		50,400	126,000	12,600
Total Chlorine Residual	ug/l		168	1,260	42
Copper	ug/l		212	590	23
Zinc	ug/l		1,520	4,040	260

ALLEGED VIOLATIONS OF PROHIBITIONS, PROVISIONS, AND REQUIREMENTS APPLICABLE TO THE DISCHARGER

5. The Discharger’s self monitoring reports for the Complaint Period document 59 effluent limit exceedances, detailed in Attachment A, Table 1.

FACTUAL BASIS FOR THE ALLEGED VIOLATIONS

The alleged violations described above are based on the following facts:

6. The Discharger owns and operates a wastewater treatment facility which serves seafood processors located in Crescent City Harbor. Treated wastewater is discharged to the Pacific Ocean, a water of the United States, through an outfall shared with the City of Crescent City Wastewater Treatment Plant. The Discharger was required to operate and maintain its wastewater treatment facility in compliance with Order No R1-2004-0024 which became effective on June 11, 2004 and expired on September 10, 2009 and then in compliance with Order No. R1-2009-0040 that became effective on September 11, 2009. Both serve as NPDES Permit No. CA0024473
7. The treatment facility consists of a rotating self-cleaning screen which was designed to treat up to 800,000 gallons per day (GPD) of seafood processing wastewaters. A 500,000 gallon holding tank provides flow equalization when necessary. When seafood is not being processed and process wastewater is not being treated, up to 1000 gallons of water comprised of process water remaining in the pump wet-wells and freshwater may be discharged weekly to exercise the wastewater pumps. Seafood processing and pump maintenance wastewater are discharged to the Pacific Ocean through and outfall shared with the City of Crescent City Wastewater Treatment Facility.
8. The Discharger was issued a "Notice of Violation and Conditional Offer to Participate in Expedited Payment Program" (NOV) on June 27, 2008 related to effluent violations of waste discharge requirement. The discharger responded by letter to the complaint but did not pay the penalty of \$18,000. Because of Regional Water Board staff limitations and priorities the issue was never finalized.
9. During the period of December 1, 2004 to March 19, 2011, the Discharger's monthly self monitoring reports documented 59 effluent limit violations (detailed in Attachment A, Table 1).
10. As of March 19, 2011, the Discharger ceased discharging treated wastewater and is sending all wastewater to the City of Crescent City municipal treatment plant for processing and discharge. The NPDES Permit will be rescinded.

WATER CODE PROVISIONS UPON WHICH LIABILITY IS BEING ASSESSED DUE TO NON COMPLIANCE WITH APPLICABLE REQUIREMENTS

11. CWC section 13385(h) requires the Regional Water Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation. Pursuant to CWC § 13385(h)(2) a "serious violation" is defined as any waste

discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant by 20 percent or more, or for a Group I pollutant by 40 percent or more. Appendix A of Part 123.45 of Title 40 of the Code of Federal Regulations specifies the Group I and II pollutants.

12. CWC section 13385.1(a)(1) states a “serious violation also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in the waste discharge requirements that contain effluent limitations.”
13. The maximum amount of discretionary administrative civil liability pursuant to CWC section 13385 subdivision (c) is \$10,000 per day of violation plus \$10 times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
14. The Regional Water Board may choose to assess discretionary penalties pursuant to CWC section 13385 subdivision (c) over and above mandatory minimum penalties.
15. If the Regional Water Board decides to impose discretionary penalties, the Prosecution Team reserves the right to seek an increase in the civil liability amount, at the very least, to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

16. The Assistant Executive Officer of the Regional Water Board proposes that mandatory minimum penalties be assessed against the Discharger in the amount of **\$177,000** for the violations specifically identified in Attachment A to this Complaint.
17. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to “actions” and “special proceedings” and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees’ Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)
18. Notwithstanding the issuance of this Complaint, the Regional Board retains the authority to assess additional penalties for violations of the requirements of the Discharger’s waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.

19. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

Date

Luis G. Rivera
Assistant Executive Officer
Regional Water Board Prosecution Team

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