

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Order No. R1-2008-0049

For

Violation of Waste Discharge Requirements Order No. R1-2004-0013 and
State Water Resources Control Board Order No. 2006-0003-DWQ

In The Matter of
City of Eureka
Elk River Wastewater Treatment Facility
WDID No. 1B82151OHUM

Humboldt County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), has received from the City of Eureka (hereinafter Discharger) a waiver of the right to a public hearing in the matter of civil penalties issued pursuant to Water Code section 13385, subdivisions (a), (h) and (i). The proposed civil penalties issued pursuant to subdivision (a) are for discharges of untreated municipal wastewater that occurred between April 1, 2004 and January 31, 2008 in violation of discharge prohibitions contained in Waste Discharge Requirements (WDRs) Order No. R1-2003-0026 and in violation of Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (GWDRs) as a result of Sanitary Sewer Overflows (SSOs). The proposed civil penalties issued pursuant to subdivisions (h) and (i) are mandatory minimum penalties for discharges of municipal effluent in violation of effluent limitations contained in the Discharger's WDRs that occurred between April 1, 2004 and January 31, 2008. Having received a request to implement two Supplemental Environmental Projects (SEPs) and a sanitary sewer system upgrade project (Project) in lieu of paying the full penalty prescribed, the Regional Water Board finds the following:

1. The Discharger owns and operates the Elk River Wastewater Treatment Facility (WWTF). The WWTF serves both the Discharger and the surrounding unincorporated areas within the Humboldt Community Services District. The WWTF discharges secondary treated domestic wastewater to Humboldt Bay in a manner that is equivalent to an outfall to the Pacific Ocean. 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. The system collects and conveys over 1.5 billion gallons of wastewater per year including inflow and infiltration (I&I). 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 landowner.
2. The Regional Water Board adopted Waste Discharge Requirements Order No. R1-2004-0013 (WDRs) for the Discharger on March 24, 2004. This Order serves as a National Pollutant Discharge Elimination System (NPDES) permit under the Federal Clean Water Act (CA0024449). These WDRs permit the discharge of treated effluent to Humboldt Bay on the outgoing ebb tide. The Regional Water

Board Adopted Resolution No. 80-10, which recognizes ebb tide discharges as being a viable alternative to an ocean outfall. In order to satisfy this requirement of the WDRs, the Discharger can only discharge treated effluent during the period or window in which the ebb tide ensures discharge to the Pacific Ocean. Discharges outside of this window (out-of-window discharges) are in violation of Discharge Prohibitions A.1 of the WDRs.

3. Water Code section 13385, subdivision (a)(2) allows the Regional Water Board to assess administrative civil liability against a discharger for violation of any waste discharge requirements. The Discharger's wastewater collection and pumping system is regulated by the GWDRs, which was adopted by the State Water Resources Control Board on May 2, 2006. The Discharger enrolled in the GWDRs on October 25, 2006. Order No. 2006-0003-DWQ prohibits the discharge of untreated or partially treated wastewater from sanitary sewer systems to waters of the United States.
4. Water Code section 13385, subdivisions (h) and (i) require the Regional Water Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each specified violation of effluent limits.
5. Water Code section 13385, subdivision (l)(1) provides that a portion of mandatory minimum penalties imposed under section 13385, subdivisions (h) or (i) may be directed to a SEP in accordance with Section IX of the Enforcement Policy. The Complaint provided the Discharger the option of completing a SEP, in accordance with the specifications in the Enforcement Policy.
6. During the period from April 1, 2004 through June 30, 2007, the Discharger exceeded effluent limitations contained in its WDRs ten times. Two of the exceedances are serious violations and eight are chronic. The mandatory minimum penalty amount for these violations is \$15,000.
7. During the period from April 1, 2004 through June 30, 2007, the Discharger reported seven prohibited discharges including five SSOs. The Discharger completely recovered and cleaned up one of the small SSOs that occurred in the alley behind 6th Street. The Discharger partially recovered two SSOs that occurred at Martin Slough and did not recover the other two, which occurred at K Street and the O Street lift station. The total volume discharged from the five SSOs was 95,443 gallons, of which the Discharger recovered a total of 16,338 gallons. The other two prohibited dischargers were out-of-window discharges from the outfall to Humboldt Bay. These out-of-window discharges were the result of operator error and a lack of sufficient process control to limit operator error.
8. On August 6, 2007, the Executive Officer issued Administrative Civil Liability Complaint No. R1-2007-0066 (ACLC) assessing a civil liability penalty of \$88,000 for violations described in Findings 6 and 7, with one exception. One of the five SSOs described in Finding 7 was erroneously excluded from the ACLC but is included in this Order and is described in Finding 9 below. On August 24, 2007, the Interim Executive Officer issued a revised version of the ACLC with minor typographical changes.

9. After issuance of the ACLC, the Discharger informed the Regional Water Board of an additional SSO that occurred on April 16, 2007. A sewer line broke when a transition coupling failed and released 8,625 gallons of untreated sewage into Martin Slough. After the discharge reached surface waters, the Discharger and Humboldt Community Services District pumped 9,000 gallons of diluted sewage from Martin Slough and another 10,000 gallons of untreated sewage from Campton Road Lift Station that would have spilled if allowed to go to Martin Slough. Since the discharge mixed with receiving waters before it was recovered, the exact amount of recovered sewage is indeterminable. However, due to the prompt and thorough response by the Discharger in cleaning up the spill, the Regional Water Board only proposed a \$2,000 penalty for this violation. This SSO is included in the five SSOs that are described above in Finding 7.
10. Since June 30, 2007, the Discharger has had five more SSOs that are being incorporated into this order. Each SSO is described below including the maximum potential liability and the total proposed penalty:

Discharge Prohibitions Violations
July 1, 2007 to January 31, 2008

Date	Location	Gallons Discharged	Gallons Recovered	Gallons to Receiving Waters	Maximum Penalty
07/02/2007	O St. Lift Station	800	0	0	\$10,000
08/08/2007	Manhole at Harrison Avenue & Wood St.	600	0	0	\$10,000
10/27/2007	Pound St. Lift Station from force main	180	0	180	\$10,000
01/31/2008	Manhole at Buhne St. & R St.	300	0	300	\$10,000
01/31/2008	O St. Lift Station	9000	0	9000	\$90,000
Total →					\$130,000
Proposed Penalty →					\$15,000

- a. The July 2, 2007 SSO was caused by an obstruction in the standby generator circuit breaker during a PG&E power outage. The SSO released an estimated 800 gallons of untreated sewage to the field surrounding the pump station and no sewage entered the watercourse. The Discharger's staff cleaned the affected area.
- b. The August 8, 2007 SSO was caused by a debris blockage that released an estimated 600 gallons of untreated sewage to a seasonal tributary of Eureka Slough. The discharge location was a steep ravine that was inaccessible to cleanup equipment and prevented any recovery or cleanup. The watercourse was dry and the discharge absorbed into the ground. The Discharger restored flow in the pipe and added the sewer to its preventative maintenance program.

- c. The October 27, 2007 SSO was caused by a hole in a check valve that released 180 gallons of untreated sewage to the Elk River. The Discharger responded by closing the discharge pipe gate valve and repairing the check valve.
 - d. The January 31, 2008 SSO that discharged from a manhole at Buhne Street and R Street during a cleaning operation released an estimated 300 gallons of untreated sewage to surface waters. The discharge went into a steep ravine with no available access for equipment.
 - e. The second January 31, 2008 SSO occurred from the O Street Lift Station and released an estimated 9000 gallons of untreated sewage to surface waters. High flows leading to the SSO were the result of high rainfall and inflow and infiltration. Rainfall during this time was 162% of the average and the Discharger responded by providing supplemental pumping of H Street Lift Station and O Street Lift Station to minimize the discharge.
11. On September 27, 2007, the Discharger waived its right to a public hearing within 90 days in order to reach a settlement with the Regional Water Board. After further discussion with the Discharger, the Regional Water Board removed the April 30, 2005 Chlorine Residual Daily Maximum violation from the effluent limitation exceedances contained in the ACLC because it is an internal process parameter and is not subject to mandatory minimum penalties. The total mandatory minimum penalty is reduced from \$18,000 to \$15,000. From July 1, 2007 to January 31, 2008, the Discharger has complied with effluent limitations contained in its WDRs. The two out-of-window discharges remain a total \$20,000 penalty while the assessed penalty for the four SSOs included in the ACLC has been reduced from the \$50,000 ACLC assessment to \$20,000 in this Order. An additional \$2,000 penalty for the fifth SSO is also assessed as described in Finding 9 above. Additionally, a \$15,000 penalty is being assessed for the five SSOs described in Finding 10 above. The total Administrative Civil Liability for violation of discharge prohibitions and effluent limitations from April 1, 2004 through January 31, 2008 is now \$72,000. In determining the total liability, the Regional Water Board took into account the required factors as described in Finding 14 below. The Discharger agreed to pay the sum of \$26,000 to the State Water Pollution Cleanup and Abatement Account (CAA) and spend the remaining balance of \$46,000 on a Project and two SEPs.
12. The proposed Project will upgrade 185 feet of 6-inch vitrified clay sewer pipe and the city-owned portion of the laterals with 6-inch PVC pipe at the H Street Lift Station Basin. The Discharger's staff has determined via video inspection that root intrusion and the resulting infiltration contributes significantly to excess flows through an overflow pipe from H Street Lift Station to the Campton Street Lift Station and subsequently to O Street Lift Station. The total project cost is estimated to be \$50,000 and construction is projected to commence by August 1, 2008 and finish by October 1, 2008.

13. The two SEPs provide \$5,000 funding each to a dioxin forum and a regional storm water hotline. The two SEPs are described below:

- A. Dioxin Forum

Humboldt Bay is classified pursuant to Clean Water Act section 303 (d) as an impaired water body for dioxin. A forum to be attended by Humboldt Bay stakeholders is being designed by the Federal Environmental Protection Agency in conjunction with the Regional Water Board, Humboldt State University, the Humboldt Bay Harbor District, the Humboldt Baykeeper, Humboldt County Health Department, and local industry. The Dioxin Forum should develop recommended actions for government and non-governmental organizations to take in regards to dioxin in Humboldt Bay.

- B. Regional Storm Water Hotline

Currently there are four separate storm water hotlines in the Humboldt Bay area, one each for the cities of Eureka, Arcata and Fortuna and another for Humboldt County. Each of these is a member of The North Coast Storm Water Coalition (Coalition), whose goal is to reduce storm water pollution. The Coalition is interested in consolidating the separate hotlines in order to decrease confusion and help the public reach the right agency to report storm water pollution. The SEP funds will go toward an advertising and educational campaign to inform the public of the new number and the importance of reporting storm water issues.

14. Water Code section 13385, subdivision (e) requires the Regional Water Board to take into account certain factors in determining the amount of civil liability imposed under this section. The factors include the nature, circumstances, extent, and gravity of the violations, whether the discharge was susceptible to cleanup or abatement, the degree of toxicity and any voluntary cleanup efforts undertaken for each discharge. The Regional Water Board has no information indicating that the City would be unable to pay the proposed administrative civil liability. The Discharger has a history of SSOs but currently has a very responsive and proactive collection system program to prevent, minimize and mitigate the effects of spills. The annual budget for the Sewer Collection Division of the Public Works Department is about 1.3 million dollars and it supports ten full-time employees with 24-hour pager notification for after-hours emergencies. Since 2000, the Discharger has spent over 12 million dollars on wastewater projects. The Discharger has Proposition 50 grant funding approval of \$2.57 million for Phase 1 of the Martin Slough Interceptor Project, which upon project completion in 2009, will provide approximately 150,000 gallons of storage capacity for excess flows during large rain events. The Regional Water Board took into account all of the latter information and required factors when it considered the required factors during the determination of the proposed penalties contained in this order.

15. Government Code section 11415.60, subdivision (a) states that an agency may formulate and issue a settlement on any terms the parties determine are appropriate. The Regional Water Board and the Discharger concur that the Discharger's proposal described in Findings 12 and 13 is a fair settlement of the ACLC and is in the interest of the public.
16. A duly noticed public hearing on this matter was held before the Regional Water Board on June 11 and 12, 2008 at the Regional Water Board office in Santa Rosa, California. The documents for the agenda item were provided to the Discharger and made available to the public prior to the hearing. The Discharger and the public were given the opportunity to testify and present evidence regarding the proposed settlement.
17. The issuance of this Order is an enforcement action to protect the environment, and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, §§ 21000-21177) pursuant to title 14, California Code of Regulations, sections 15308 and 15321, subdivision (a)(2).
18. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board to review the action in accordance with section 13320 of the Water Code and title 23, California Code of Regulations, section 2050. The petition must be received by the State Water Resources Control Board within thirty days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

THEREFORE, IT IS HEREBY ORDERED, pursuant to Water Code section 13385, that:

1. The Discharger shall be assessed a total civil liability of \$72,000. The Discharger shall pay the sum of \$26,000 to the CAA and shall spend the remaining sum of \$46,000 on two SEPs and a Project. The two SEPs will help fund a dioxin forum and a regional storm water hotline, and the amount to be expended on each SEP shall at least equal \$5,000. The amount to be expended on the Project to upgrade 185 feet of sewer piping shall at least equal \$36,000. Upon the Executive Officer's determination that the Project and SEPs, as described in Findings 12 and 13 of this Order, have been completed, the remaining \$46,000 liability will be suspended. The amount of the penalty suspended will not exceed the Discharger's cost to complete the Project.
2. The Discharger shall make payments, submit progress reports describing the planning and construction phases, and shall complete the SEPs and Project according to the following time schedule:

TASK	DUE DATE
Pay \$26,000 to the CAA	No later than July 15, 2008
Provide \$5,000 for the Dioxin Forum	No later than July 30, 2008, and submit a final report by August 15, 2008 certifying completion of the SEP including a post-project accounting of expenditures.

Spend \$5,000 on the development of a regional storm water hotline	No later than September 30, 2008, and submit a final report by November 1, 2008 certifying completion of the SEP including a post-project accounting of expenditures.
Begin construction of the Project	No later than August 1, 2008. Complete construction by October 1, 2008 and submit a final report by November 1, 2008 certifying completion of the Project including an accounting of expenditures.

3. In accordance with the Enforcement Policy, if the Discharger publicizes an SEP or the results of an SEP, it must state clearly and prominently that the SEP is being done as a part of the settlement of an enforcement action.
4. If, given written justification from the Discharger, the Executive Officer determines that a delay in the Project's implementation schedule is beyond the reasonable control of the Discharger, the Executive Officer may revise the implementation schedule as appropriate. Written justification must be received by the Executive Officer before the specific due date occurs, must describe circumstances causing the delay, and must state when each task of the Project will be completed.
5. Failure to meet the deadlines above, including satisfactorily completing the Project and SEPs, will result in the Discharger being required to pay the previously suspended \$46,000 penalty. Payment of the previously suspended amount does not relieve the Discharger of the independent obligation to take necessary actions to achieve compliance.
6. Notwithstanding the issuance of this Order, the Regional Water Board shall retain continuing jurisdiction to determine compliance with the terms of the suspended penalty provisions above, as well as the authority to assess additional penalties for other violations of the Discharger's waste discharge requirements.

Certification

I, Catherine Kuhlman, Executive Officer,
do hereby certify that the foregoing is a full, true,
and correct copy of an Order adopted by the
California Regional Water Quality Control Board,
North Coast Region on June 12, 2008