California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2005-0006A

For

Violations of
California Water Code Section 13267

Hopland Public Utilities District
WDID No. 1B801540MEN

Mendocino County

This Complaint to assess Civil Liability pursuant to California Water Code (CWC) Sections 13268 and 13323 is issued to Hopland Public Utilities District (hereinafter Discharger), for violations of Cleanup and Abatement Order No. R1-2002-0096 issued pursuant to California Water Code Sections 13304 and 13267(b) for the periods December 1, 2003, through March 1, 2004, and December 1, 2004, through February 25, 2005.

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

1. On September 25, 2002, the Regional Water Board issued Cleanup and Abatement Order No. R1-2002-0096 (CAO) to the Discharger to address operation and maintenance failures and additionally, pursuant to CWC Section 13267, required the Discharger to submit a revised Report of Waste Discharge (ROWD), prepared by a qualified engineer, to analyze the wastewater treatment facility's (WWTF) capability to adequately treat the waste it receives in a manner that is protective of water quality. The CAO required submittal of the ROWD by April 30, 2003.

2. On May 1, 2003, the Discharger submitted a written request for an extension of the April 30, 2003, deadline to submit the ROWD until November 2003. The extension was granted[1] on May 5, 2003.

3. On February 2, 2004, Regional Water Board staff member Mona Dougherty contacted Evert Jacobson, General Manager of the Hopland Public Utilities District, to request the immediate submittal of the past-due ROWD. Mr. Jacobson stated that the ROWD was not completed. Ms. Dougherty stated that this was a violation of the CAO.

[1] The extension was granted in an email sent by Mona Dougherty to Evert Jacobson on May 5, 2003. The email granted an extension until the end of November 2003, as requested by the Discharger. Unfortunately as almost two years have passed, this email cannot be located.

4. On March 1, 2004, the Regional Water Board received the WWTF's January monitoring report that the Discharger later claimed had attached an additional extension request to November 2004. Regional Water Board staff have no record of receiving this second extension request and consequently did not contact the Discharger about it. The lack of response apparently did not concern the Discharger because the Regional Water Board staff received no inquiry concerning the status of the alleged second extension request.[2]

5. On August 11, 2004, the Regional Water Board Executive Officer issued a Notice of Violation (NOV) for non-submittal of the ROWD to the Discharger. The NOV stated that the failure to submit the ROWD is a violation of the California Water Code. Under California Water Code Section 13268, each day of violation could cost the Discharger up to $1,000 per day. Additional civil liability will accrue until the Regional Water Board receives a satisfactory ROWD.

6. On August 18, 2004, the Regional Water Board received a letter from the Discharger stating that a request for an extension until November 2004 had been mailed in February 2004. As noted previously, the Regional Water Board has no record it was ever received. Nor has the Discharger ever produced any proof that the request was actually submitted in February 2004.[3]

7. In late August 2004, the Discharger contacted Ms. Dougherty and stated that a ROWD would soon be submitted but that it would not be complete. Ms. Dougherty indicated that while the Discharger was free to submit the ROWD, an incomplete ROWD would not comply with the CAO. Ms. Dougherty has had several similar telephone conversations with the Discharger over the last two years requesting progress reports and clarifying the requirements of the CAO.

8. On November 30, 2004, the Regional Water Board received an incomplete submittal from the Discharger. It either addressed the issues required by the CAO in a cursory fashion or not at all. The CAO required the Discharger to submit: (1) a ROWD describing the current wastewater treatment process focusing in particular on any changes from the process described in the previous ROWD received September 21, 1992, including acceptance of septage and chemical toilet waste; and (2) a technical analysis of the organic loading of the WWTF and the ability of the WWTF to adequately treat the wastewater, a characterization of the waste entering the facility and any future plans for wastewater reclamation.

    a. The submittal acknowledges that it fails to satisfy those requirements by stating, "Although a complete examination of the wastewater plant operations is not the subject of this analysis…plant effluent has been well below thresholds established by

[2] The Discharger also asserts that it faxed this second extension request in August 2004. The Regional Water Board has no record it was ever received.

[3] Were it received, it is unlikely that such an extension, especially one of such long duration, would have been appropriate because the Regional Water Board had no information the Discharger made significant progress in the preparation of the ROWD within the previously granted one year extension.

the current waste discharge requirements…" This statement reveals that the ROWD fails to fully describe wastewater treatment processes at the WWTF as required by the CAO. Moreover, compliance with the current waste discharge requirements is not the subject of the required ROWD. In contrast, the ROWD is needed to update the waste discharge requirements to include septage operations, require more frequent monitoring, and include more stringent effluent limitations. Instead of an evaluation of the WWTF's treatment processes and a complete analysis of the WWTF's organic loading or the WWTF's ability to treat that loading, or an evaluation of the changes made to the treatment process since the previous ROWD, the Discharger submitted a limited modeling exercise addressing only BOD, with inadequate analysis of the results; and no statement of the methodology, modeling assumptions or constraints.

b. Instead of the complete waste characterization required by the CAO, the Discharger submitted a waste characterization that simply presented industry standards for septage, rather than using sampling results of actual septage received by the WWTF, and did not address the commercial sources of waste at all. The waste characterization did not address the chemicals in chemical toilet waste nor the WWTF's ability to treat the chemicals, nor the fate of the chemicals; nor did it include any sample results for the septage disposed of at the WWTF to verify that the WWTF accepts only domestic waste.

For the foregoing reasons, the Discharger did not comply with the CAO in that it failed to submit the information required by the order.

9. In a letter to the Discharger dated December 27, 2004, the Regional Water Board staff explained, in detail, the deficiencies of the ROWD outlined above.

10. On December 29, 2004, the Discharger contacted Ms. Dougherty about information required for the ROWD. The Discharger specifically asked for clarification on the septage sampling needed for the waste characterization and the additional analyses needed for the wastewater treatment processes. Ms. Dougherty stated that the Regional Water Board needed an analysis of the commercial waste that the WWTF received from the collection system and that the analysis needed to characterize the waste for nutrients, chlorides and solids in addition to BOD and TSS. Ms. Dougherty also explained that the CAO required the Discharger to sample septage and verify that it is domestic waste rather than industrial, and describe the chemical constituents found in chemical toilets. Finally, Ms. Dougherty explained that the wastewater treatment process analysis must be expanded to adequately address the complete treatment process beyond BOD and to explain the findings of the modeling parameters, assumptions and results.

11. To date, the Regional Water Board has not received sufficient supplemental information to complete the ROWD from the Discharger.

12. On January 26, 2005, the Executive Officer issued Administrative Civil Liability Complaint No. R1-2005-0006 to address the violations of the CAO. This ACLC revises and replaces ACLC No. R1-2005-0006.

13. On February 23, 2005, the Discharger submitted comments on the December 27, 2004 letter that Regional Water Board staff sent to the Discharger outlining the deficiencies of the ROWD. This comment letter and responses to the comments will be included in the agenda materials to be made available to the Regional Water Board and interested parties.

14. Timeline of Important Dates

Date	**Event**
September 25, 2002	CAO issued
April 30, 2003	Due date for ROWD – required by CAO
May 1, 2003	Discharger submitted request for extension until November 2003
May 5, 2003	Extension granted
November 30, 2003	Extension expired, Discharger in Violation of CAO
February 2, 2004	Regional Water Board staff reminded Discharger that ROWD late and Discharger in violation
March 1, 2004	Discharger allegedly submitted request for extension, no record it was received
August 11, 2004	NOV issued
August 18, 2004	Discharger responds to NOV, claims to have submitted extension request on March 1, 2004
November 30, 2004	Discharger submits incomplete ROWD
December 27, 2004	Letter sent to Discharger re: incomplete ROWD
January 26, 2005	Initial ACLC issued

15. The Discharger violated the CAO by failing to submit a complete ROWD, for which the Regional Water Board may impose Civil Liability under Section 13268(b)(1) of the CWC.

16. CWC Section 13268(b)(1) provides for the imposition of Civil Liabilities against any person failing to submit technical reports. For violations of CWC Section 13267, Section 13268(b)(1) authorizes the Regional Water Board to impose Civil Liability in an amount not to exceed the sum of $1,000 for each day in which the violation occurs.

17. The number of days of violation can be determined two ways depending on how the alleged second extension request is treated. The request could be given no weight whatsoever, because, as explained above, the Regional Water Board has no record it was ever received, much less granted. In that case, a day of violation accrued every day that a complete ROWD was past due from December 1, 2003, to February 25, 2005; a total of 452 days.

18. The other way of calculating the number of days of violation is extremely lenient. It assumes the Discharger not only submitted the second extension request on March 1, 2004, but also that it was granted the same day, giving the Discharger an extension from March 1, 2004, to the end of November 2004. In that scenario, a day of violation accrued every day that a complete ROWD was past due from December 1, 2003, to March 1, 2004, and December 1, 2004, to February 25, 2005; a total of 178 days.

Violation Period	**Days of Violation**
December 1, 2003 to March 1, 2004	91
December 1, 2004 to February 25, 2005	87
Total:	**178**

19. For simplicity, I propose to use the second, more lenient method to calculate the number of days of violation.

20. Using that method, the maximum total Civil Liability that could be imposed against the Discharger in this matter is calculated as follows:

    178 days of violation at $1,000 per day = $178,000

21. In determining the amount of any Civil Liability, pursuant to CWC Section 13327, the Regional Water Board must take into account the nature, circumstance, 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 ability to continue business; voluntary cleanup efforts; prior history of violations; the degree of culpability; economic benefit or savings resulting from the violation; and other matters that justice may require.

A. Nature, Circumstance, Extent, and Gravity of the Violations

The Discharger currently accepts a large portion of the septage generated in Mendocino County. The WWTF does not have a method of pretreatment for the septage. In addition, the WWTF does not have a formal method for analyzing tanker loads to verify the contents. The WWTF is not specifically designed to treat septage. Septage is highly concentrated waste and may contain a variety of contaminants. The Discharger does not control the discharge of waste from individual users. Regional Water Board staff have continuing concerns regarding the WWTF's ability to adequately treat the septage. This significant change in the character of the discharge poses a threat to the quality of areal ground water and threatens to cause conditions of pollution and nuisance. Additionally, the Discharger's Waste Discharge Requirements were adopted in 1993 and need to be updated to reflect current regulations. A complete ROWD is essential to the Regional Water Board staff's analysis of the WWTF and to formulate a proper update of the Waste Discharge Requirements.

Additionally, the Discharger has previously been granted an extension and had ignored Regional Water Board staff's requests for the ROWD. Regional Water Board staff have made every effort to encourage the Discharger to comply with the CAO, including several telephone calls to request a complete ROWD.

B. Susceptibility to Cleanup or Abatement

This does not apply to the nature of the violations.

C. Degree of Toxicity

This does not apply to the nature of the violations.

D. Ability to Pay

The Discharger operates a small wastewater treatment facility in rural Mendocino County. Although the Discharger has not submitted any information to the Regional Water Board indicating that they are in a financial position that would prevent them from remitting an imposed fine, Regional Water Board staff assume that the Discharger has a small annual operation budget. The Discharger, however, receives income from the fees generated by accepting large amounts of septage. Mendocino County records have not been examined to determine the annual amount of this income.

E. Effect on Ability to Continue Business

As discussed above, imposition of the maximum Civil Liability would likely have an effect on the Discharger's ability to continue operating.

F. Voluntary Cleanup Efforts

This does not apply to the nature of the violations.

G. Prior History of Violations

On September 25, 2002, the Regional Water Board Executive Officer issued Cleanup and Abatement Order No. R1-2002-0096 to the Discharger to address operation and maintenance failures. This Administrative Civil Liability Complaint addresses violations of the CAO.

On February 5, 2003, the Executive Officer issued Administrative Civil Liability Complaint No. R1-2003-0024 to the Discharger for the amount of $22,500 for failing to submit 12 self-monitoring reports and submitting nine reports more than 30 days late. The Discharger paid the $22,500 civil liability.

H. Degree of Culpability

Cleanup and Abatement Order No. R1-2002-0096 required that the Discharger submit the ROWD by April 30, 2003. The Regional Water Board granted an extension until November 30, 2003. At this time, the Regional Water Board has not received a complete ROWD, nor has the Discharger made meaningful efforts to submit one.

I. Economic Savings Resulting from the Violations

Regional Water Board staff assume that the Discharger received economic savings by delaying the cost of engineering consultants paid to perform the required analysis for over two years. Additionally, staff will draft updated waste discharge requirements for Regional Water Board consideration after adequate information is received from the Discharger. These updated waste discharge requirements will have additional requirements regarding septage acceptance and handling, more stringent effluent limitations and more frequent monitoring requirements. The Discharger enjoys economic savings by delaying the adoption of the updated waste discharge requirements. Staff does not have adequate information, however, to evaluate the economic savings resulting from the violations.

J. Other Matters as Justice May Require

Regional Water Board staff costs are estimated to be approximately $15,860 based on the following:

Regional Water Board Staff Member	Hours Worked	Total Cost ($65/Hour)
Mona Dougherty	160	$10,400
Administrative Unit	12	$780
John Short	24	$1,560
Robert Tancreto	24	$1,560
Erik Spiess	24	$1,560
Total		**$15,860**

22. The issuance of a Complaint for Administrative Civil Liability does not have the potential to result in a physical change in the environment and is therefore not a "project" subject to the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.). It is also exempt from CEQA in accordance with Title 14, California Code of Regulations, Section 15321(a)(2).

HOPLAND PUBLIC UTILITIES DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. Administrative Civil Liability Complaint No. R1-2005-0006 is hereby rescinded and replaced by this Administrative Civil Liability Complaint (No. R1-2005-0006A).

2. The Executive Officer of the Regional Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of $45,000 for the violations that occurred from December 1, 2003, through March 1, 2004, and December 1, 2004, through February 25, 2005.

3. A hearing shall be conducted on this Complaint by the Regional Water Board on April 20, 2005, unless the Discharger waives the right to a hearing by signing and returning the completed waiver form attached to this Complaint. The signed waiver must be received by the Regional Water Board no later than March 16, 2005. In submitting the signed waiver, the Discharger agrees to pay the Administrative Civil Liability of $45,000 in full within 14 days of the date of this Complaint.

3. The signed waiver reflects the Discharger's intent to settle the Complaint, but the proposed settlement does not become final until after a public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and reissue it or pursue other enforcement action as appropriate.

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 imposition of penalty.

Ordered by _____

Catherine E. Kuhlman
Executive Officer

March 2, 2005

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