California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2005-0093

Mandatory Minimum Penalties

For

Violations Of Waste Discharge Requirements
Order Nos. 94-22 and R1-2000-92b
WDID No. 1B83136OHUM

In The Matter
Of
City of Ferndale
Wastewater Treatment Facility

Humboldt County

This complaint to assess mandatory minimum penalties and administrative civil liability pursuant to Water Code Section 13385 is issued to the City of Ferndale (hereinafter Permittee), for violations of Waste Discharge Requirements (WDRs) Order No. R1-2000-92b (NPDES No. CA0022721) and its preceding Order No. 94-22, for the period January 1, 2000, through April 30, 2005.

The Executive Officer of the Regional Water Board finds the following:

1. The Permittee owns and operates a publicly owned treatment works, the Ferndale Wastewater Treatment Facility (WWTF), which serves the City of Ferndale. The WWTF discharges secondary-treated domestic wastewater into Francis Creek, a tributary to the Eel River, during the wet season (October 1 to May 14).

2. The period of violations covered in this complaint overlaps two WDRs. The Regional Water Board adopted WDRs Order No. 94-22 for the Permittee on June 23, 1994. That order was rescinded and replaced by WDRs Order No. R1-2000-92b, adopted by the Regional Water Board on November 29, 2000. Both of these WDRs serve as National Pollutant Discharge Elimination System (NPDES) permits under the federal Clean Water Act.

3. This Complaint covers violations that occurred during the period of January 1, 2000, through April 30, 2005. During this time period, the Permittee violated Effluent Limitations B.1 and B.3 of Order No. 94-22 a total of two times and Effluent Limitations B.1 and B.5 of Order No. R1-2000-92b a total of sixteen times. The details of these eighteen violations are summarized in Finding 12 of this Complaint. Violations identified in Finding 12 are subject to the mandatory minimum penalties provision contained in Sections 13385(h) and (i) of the California Water Code.

4. California Water Code Section 13385(h)(1) requires the Regional Water Board to assess a mandatory minimum penalty (MMP) of three thousand dollars ($3,000) for each serious violation of NPDES permit effluent limitations.

5. California Water Code Section 13385(h)(2) states that a serious violation occurs if the discharge from a facility regulated by an NPDES permit exceeds the effluent limitations for

a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 Code of Federal Regulations, by 40 percent or more, or for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 Code of Federal Regulations, by 20 percent or more.

6. Violations under Section 13385(i)(2) of the California Water Code are referred to as "chronic" violations in this Complaint. Water Code Section 13385(i)(2) requires the Regional Water Board to assess a mandatory penalty of three thousand dollars ($3,000) for each chronic violation, not counting the first three violations, if the Permittee does any of the following four or more times in any six consecutive months:

   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.
   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.

7. On February 19, 2002, the State Water Resources Control Board adopted Resolution No. 2002-0040 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on July 30, 2002. The Enforcement Policy addresses issues related to assessing mandatory minimum penalties.

8. CWC Section 13385(k) provides that the Regional Water Board may elect to require all or a portion of mandatory minimum penalties against a small community[1], imposed under CWC 13385(h) or (i), to be spent towards completion of a compliance project (CP) proposed by the Permittee provided that the Regional Water Board finds all of the following:

   a. The compliance project is designed to correct the violations within five years.
   b. The compliance project is in accordance with the enforcement policy of the State Water Board.
   c. The Permittee has demonstrated that it has sufficient funding to complete the compliance project.

   Any such amount expended to satisfactorily complete a CP will be permanently suspended.

9. Order No. 94-22 includes the following requirements and limitations addressed in this Complaint:

[1] California Water Code Section 79084 defines a small community as including municipalities with a population of 10,000 persons or less with a financial hardship as determined by the State Water Board. The Enforcement Policy qualifies Humboldt County as a rural county with a financial hardship.

B. EFFLUENT LIMITATIONS

1. Representative sample of waste discharged to the Salt River or its tributaries shall not contain constituents in excess of the following limits:

Constituent	Unit	30 day Average	Monthly Median	Daily Mean	Daily Maximum
Coliform Organisms (Total)	MPN/100 ml	--	23	--	230

3. The arithmetic mean of the BOD (20°C, 5 day) and Suspended Solids values by weight for effluent samples collected in a period of 30 days shall not exceed 15 percent of the arithmetic mean of the values, by weight, for influent samples collected at approximately the same times during the same period (85 percent removal).

10. Order No. R1-2000-92b includes the following requirements and limitations addressed in this Complaint:

B. EFFLUENT LIMITATIONS

1. Representative samples of the discharge shall not contain constituents in excess of the following limits.

Constituent	Unit	Monthly Average[2]	Daily Maximum[3]
BOD (20° C, 5-day)	mg/l	30	---
	lb/day[4]	250	---
Suspended Solids	mg/l	95	---
	lb/day	792	---
Coliform Organisms (Total)	MPN/100 ml	23[5]	230
Hydrogen Ion	pH	Not less than 6.5 nor greater than 8.5	

5. The arithmetic mean of the BOD (20°, 5-day) and Suspended Solids values, by weight, for effluent samples collected in a period of 30 consecutive days shall not exceed 15 percent of the arithmetic mean of the values, by weight, for influent

samples collected at approximately the same times during the same period (85 percent removal).

11. The Enforcement Policy states that for the purpose of determining serious violations, biochemical oxygen demand (BOD), suspended solids (TSS), pH, and percent removal are identified as a Group I pollutant in Title 40 Code of Federal Regulations, Section 123.45, Appendix A. Total coliform is neither a Group I nor a Group II pollutant; therefore, it has no serious threshold.

12. According to monitoring reports submitted by the Permittee, for the period January 1, 2000, through April 30, 2005, the Permittee had eight serious violations in accordance with CWC Section 13385(h) and ten chronic violations in accordance with CWC Section 13385(i)(1). The **mandatory penalty** amount for those violations is **$33,000** as shown in the following table:

Date	**Parameter**	**Reported Value**	**Violation Type**	**Penalty Amount**
February 29, 2000	Coliform, Daily Max	1600 MPN	Chronic	$0
October 31, 2000	BOD % Removal	51.65%	Serious	$3,000
January 9, 2001	Coliform, Daily Max	1600 MPN	Chronic	$0
January 31, 2001	BOD Monthly Av	85.9 mg/l	Serious	$3,000
January 31, 2001	BOD % Removal	34.92%	Serious	$3,000
March 20, 2001	pH, Daily Min	6.4	Chronic	$3,000
March 27, 2001	pH, Daily Min	6.2	Chronic	$3,000
Mar 31, 2001	BOD % Removal	55.61%	Serious	$3,000
Mar 31, 2001	BOD Monthly Av	40.1 mg/l	Chronic	$3,000
April 3, 2001	pH, Daily Min	6.0	Serious	$3,000
Nov 31, 2001	Coliform, 30-day Median	66 MPN	Chronic	$0
December 31, 2001	Coliform, 30-day Median	66.5 MPN	Chronic	$0
March 31, 2002	TSS % Removal	46%	Serious	$3,000
April 30, 2002	TSS % Removal	60%	Serious	$3,000
November 26, 2002	Coliform, Daily Max	500 MPN	Chronic	$0
November 30, 2002	Coliform, 30-day Median	263 MPN	Chronic	$0
December 30, 2003	Coliform, Daily Max	1600 MPN	Chronic	$0
January 31, 2004	TSS % Removal	54%	Serious	$3,000
			Total Penalties	**$33,000**

13. 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 (Public Resources Code Section 21000 et seq.) pursuant to Title 14, California Code of Regulations Sections 15308, and 15321(a)(2).

THE CITY OF FERNDALE IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Water Board proposes that the Permittee be assessed a **Mandatory Penalty** in the amount of **$33,000** for violations that occurred from January 1, 2000, through April 30, 2005.

2. A hearing shall be conducted on this Complaint by a hearing panel of the Regional Water Board on November 15, 2005, unless the Permittee waives the right to a hearing by signing and returning the waiver form attached to this Complaint within 30 days of the date of this Complaint. By doing so, the Permittee agrees to:

   a. Pay the penalty of **$33,000** in full to the State Water Pollution Cleanup and Abatement Account within 30 days of the date of this Complaint (or in compliance with a payment schedule issued in writing by the Executive Officer), or

   b. Propose a CP in an amount up to **$33,000** and pay the balance of the penalty within 30 days of the date of this Complaint (or in compliance with a payment schedule issued in writing by the Executive Officer). The sum of the CP amount and the amount of the fine to be paid to the State Water Pollution Cleanup and Abatement Account shall equal the full penalty.

3. If the Permittee chooses to propose a CP, it must submit an acceptable proposal within 30 days of the date of this Complaint to the Executive Officer for conceptual approval. Any CP proposal shall conform to the requirements specified in Section X of the Enforcement Policy. The CP proposal must include a time schedule, for concurrence by the Executive Officer, to address implementation and completion of the CP. If the proposed CP and/or implementation schedule is not acceptable, the Executive Officer may allow the Permittee 30-days to submit a new or revised proposal, or may demand that, during the same 30-day period the Permittee remit all or a portion of the assigned penalties.

4. The Executive Officer shall maintain jurisdiction over approved CP implementation time schedules throughout the life of the CP. If, given written justification from the Permittee, the Executive Officer determines that a delay in the CP implementation schedule was beyond the reasonable control of the Permittee; the Executive Officer may revise the implementation schedule as appropriate.

5. All payments, including money not used for the CP and or previously suspended liabilities assessed for failure to comply with the CP must be payable to the State Water Pollution Cleanup and Abatement Account.

6. The settlement will become effective on the next day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and reissue it as appropriate.

7. 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 enforcement.

8. 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, including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.

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Catherine E. Kuhlman
Executive Officer

September 12, 2005

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