

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2007-0066

For

Violation of Waste Discharge Requirements Order No. R1-2004-0013 and
Violation of Order No. 2006-0003-DWQ (Sanitary Sewer Systems)

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

Humboldt County

This Complaint to assess administrative civil liability for penalties pursuant to Water Code section 13385 is issued to the City of Eureka (hereinafter Discharger) for violations of effluent limitations and discharge prohibitions contained in Waste Discharge Requirements Order No. R1-2004-0013 (NPDES No. CA0024449) and State Water Resources Control Board Order No. 2006-0003-DWQ from April 1, 2004 to June 30, 2007.

The Executive Officer of the California Regional Water Quality Control Board, North Coast Region (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. 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 land owner.
2. The WWTF is regulated by Waste Discharge Requirements (WDRs) Order No. R1-2004-0013, adopted by the Regional Water Board on March 24, 2004. These WDRs serve as a National Pollutant Discharge Elimination System (NPDES) Permit under the federal Clean Water Act.

3. The State Water Resources Control Board adopted Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Wastewater Collection Agencies on May 2, 2006. The Discharger enrolled in the General WDRs on April 10, 2006.
4. Sanitary sewer overflows (SSOs) are discharges from sanitary sewer systems of domestic, industrial, and commercial wastewater. SSOs contain high levels of suspended solids, pathogenic organisms, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants. SSOs may cause a public nuisance when untreated wastewater is discharged to areas with high public exposure, such as streets or surface waters used for drinking, fishing, or body contact recreation. SSOs may pollute surface or ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters.
5. This Complaint covers violations of effluent limitations and discharge prohibitions that occurred from April 1, 2004 to June 30, 2007 and that are contained in WDRs Order No. R1-2004-0013. Details of effluent limitations violations are summarized in Finding 14, and details of discharge prohibitions violations are summarized in Finding 15 of this Complaint. Effluent limitation violations are subject to mandatory minimum penalties provisions contained in Water Code section 13385, subdivisions (h) and (i).
6. Among the provisions in the WDRs are requirements to implement a discharge monitoring program and to prepare and submit monthly and annual NPDES self-monitoring reports to the Regional Water Board pursuant to the authority of Water Code section 13383. These reports are designed to ensure compliance with effluent limitations contained in the WDRs.
7. Water Code section 13385, subdivision (a) provides for the imposition of civil liability by the Regional Water Board. Section 13385, subdivision (c) provides that the maximum amount of civil liability that may be imposed by the Regional Water Board may be up to \$10,000 for each day in which the violation occurs, plus up to \$10 per gallon of waste discharged in excess of 1,000 gallons that is not susceptible to cleanup or is not cleaned up.
8. Water Code section 13385, subdivision (h)(1) establishes a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation of an NPDES permit effluent limitation. Water Code section 13385, subdivision (h)(2) states that a serious violation occurs if the discharge from a facility regulated by an NPDES permit exceeds the effluent limitation 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, or 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.

9. Water Code section 13385, subdivision (i)(1) 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 the 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.
 - D. Violates a toxicity discharge limitation where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

Violations under section 13385, subdivision (i)(1) of the Water Code are referred to as chronic violations in this Complaint.

10. On February 19, 2002, the State Water Resources Control Board (State Water 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, among other enforcement subjects, issues related to assessing mandatory minimum penalties.
11. 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 supplemental environmental project (SEP) in accordance with Section IX of the Enforcement Policy of the State Water Board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to a SEP may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000). This Complaint includes requirements for SEPs as specified in the Enforcement Policy.
12. WDRs Order No. R1-2004-0013 contains the following:
 - A. Discharge Prohibitions
 1. "The discharge of waste to Humboldt Bay is prohibited unless it is done in such a manner to assure that all wastewater is conveyed to the mouth of the Bay and dispersed in the Pacific Ocean during periods of ebb tide."

5. "The discharge of untreated or partially treated...waste from anywhere within the collection, treatment, or disposal system is prohibited."

B. Effluent Limitations

1. Representative samples of the discharge to the Pacific Ocean shall not contain constituents in excess of the following limitations (Table A and Table B):

TABLE A

	Units	Monthly Average 0.1	Weekly Average ---	Daily Maximum 0.2
Settleable Solids	ml/l			
Fecal Coliform	MPN/100 ml	14 ¹ , 43 ²	---	
pH	Std. units	Not less than 6.0 or greater than 9.0		

4. A minimum chlorine residual of 1.0 mg/l shall be maintained at the end of the concrete chlorine contact chamber. There shall be no detectable levels of chlorine discharged to the wildlife management area or the receiving waters, using a minimum detection limit of 0.1 mg/l.

13. State Water Resources Control Board Order No. 2006-0003 DWQ includes the following prohibitions:

C. PROHIBITIONS

1. Any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.
2. 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.

¹ Median

² Not more than 10 percent of the samples in a calendar month shall exceed 43 MPN/100 ml.

14. Effluent Limitation Violations:

According to monitoring reports submitted by the Discharger for the period from April 1, 2004 through June 30, 2007, the Discharger exceeded effluent limitations ten times while discharging to the Pacific Ocean.

Table 1: Effluent Limitation Exceedances
April 1, 2004 through June 30, 2007

Date	Parameter	Reported Value	Permit Limit	Units	Violation Type	Mandatory Penalty
04/30/2005	Chlorine Residual, Daily Maximum	0.44	0.1	mg/l	Serious, 1 st	\$3,000
06/30/2005	Coliform, Monthly Maximum	14% of samples were > 43	10% of samples can be > 43	MPN/100 ml	Chronic, 2 nd	\$0
08/31/2005	Coliform, Monthly Maximum	15% of samples were > 43	10% of samples can be > 43	MPN/100 ml	Chronic, 3 rd	\$0
09/30/2005	Coliform, Monthly Maximum	28% of samples were > 43	10% of samples can be > 43	MPN/100 ml	Chronic	\$3,000
12/29/2005	Chlorine Residual, Daily Maximum	0.2	0.1	mg/l	Serious	\$3,000
12/30/2005	Minimum Chlorine Residual – Contact Chamber	0.92	1.0	mg/l	Chronic	\$3,000
03/06/2006	Settleable Solids, Daily Maximum	0.5	0.2	ml/l	Chronic	\$3,000
05/17/2006	Chlorine Residual, Daily Maximum	0.11	0.1	mg/l	Chronic	\$3,000
06/30/2006	Chlorine Residual, Daily Maximum	0.39	0.1	mg/l	Chronic, 3 rd	\$0
09/25/2006	pH	5.9	6.0<pH<9.0	Std. units	Chronic, 3 rd	\$0
					TOTAL →	\$18,000

15. Discharge Prohibitions Violations

From March 29, 2006 to June 30, 2007, the Discharger had four SSOs resulting in discharges totaling 79,480 gallons of untreated wastewater to public and private lands in violation of discharge prohibitions described above in Finding 12. The volume of discharge that was cleaned up is not subject to the additional \$10 per gallon penalty pursuant to Water Code section 13385, subdivision (c) described above in Finding 7.

From April 1, 2004 to June 30, 2007 the Discharger had two out-of-window discharges from the outfall to Humboldt Bay totaling 38,650,000 gallons of treated, disinfected, and dechlorinated wastewater to Humboldt Bay.

A summary of the overflows and out-of-window discharges with the associated maximum penalty, which was determined using the formula shown in Finding 7, follows:

Table 2: Discharge Prohibitions Violations
April 1, 2004 to June 30, 2007

DATE	Type	Location	Gallons Discharged	Gallons Recovered	Gallons to Receiving Waters	Maximum Penalty
12/31/2005	Out-of-window discharge	Outfall to Humboldt Bay	2,665,000	0	2,665,000	\$26,650,000
10/11/2006	SSO	Upper reaches of Martin Slough at failed pressure sewer main	17,000	7,000	10,000	\$100,000
1/22/2007	SSO	Alley behind 1118 6 th St.	338	338	0	\$10,000
2/21/2007	SSO	K St. between 2 nd & 3 rd	1,080	0	1,080	\$10,800
02/21/2007 – 02/22/2007	SSO	O St. Lift Station	68,400	0	68,400	\$684,000
4/9/2007	Out-of-window discharge	Outfall to Humboldt Bay	1,200,000	0	1,200,000	\$12,000,000
Total →						\$39,454,800

16. In determining the amount of civil liability, the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violations; the Discharger's ability to pay; any prior history of violations; the degree of culpability; economic benefit or savings, if any, resulting from the violations; and other matters that justice may require. At a minimum, liability is assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.
17. The minimum liability mandated by the Water Code is \$18,000 for the effluent limitation violations described in Finding 14. In view of the prior history of out-of-window discharges and associated nature, circumstances, extent, and gravity of the violations, each out-of-window discharge is being assessed a penalty of \$10,000. Four SSOs resulting in

approximately 80,000 gallons of untreated wastewater being discharged into surface waters are more serious violations than out-of-window discharges because they adversely affect public health and beneficial uses of surface waters as described in Finding 4. Due to their serious nature, these SSO violations are being assessed a total penalty of \$50,000.

18. The issuance of this complaint is an enforcement action to protect the environment, and is therefore exempt from provisions of the California Environmental Quality Act (Public Resources Code sections 21000 et seq.) pursuant to title 14, California Code of Regulations, sections 15308 and 15321, subdivision (a)(2).

THE CITY OF EUREKA IS HEREBY GIVEN NOTICE THAT:

1. Based on a review of the above facts and required factors, the Executive Officer proposes that the Discharger be assessed an administrative civil liability in the amount of \$88,000.
2. A hearing will be conducted on this Complaint by the Regional Water Board on October 24 and 25, 2007, unless the Discharger waives the right to a hearing by signing and returning the waiver form attached to this Complaint within thirty days of the date of this Complaint. By doing so, the Discharger agrees to:
 - a. Pay the total assessed penalty of \$88,000 to the State Water Pollution Cleanup and Abatement Account within thirty days of the date of this Complaint or,
 - b. Propose a SEP in an amount that is equal to or exceeds \$51,500 and pay the balance of the penalty within thirty days from the date of the Complaint (or in compliance with a payment schedule issued in writing by the Executive Officer). The sum of the SEP amount and the amount of the fine to be paid to the State Water Pollution Cleanup and Abatement Account shall at least equal the full penalty amount of \$88,000.
3. If the Discharger chooses to propose a SEP, a proposal must be submitted within thirty days of the date of this Complaint to the Executive Officer for conceptual approval. The SEP proposal shall conform to the requirements specified in the Enforcement Policy. The SEP proposal must include a time schedule, for concurrence by the Executive Officer, to address implementation and completion of the SEP. If the proposed SEP and/or implementation schedule is not acceptable, the Executive Officer may allow the Discharger an additional thirty days to submit a new or revised proposal, or may demand that, during the same thirty-day period

- the Discharger remit all or a portion of the assigned penalties. All payments, including money not used for the SEP, must be payable to the State Water Pollution Cleanup and Abatement Account.
4. If the Discharger waives the hearing and pays the liability, the resulting settlement may become effective on the next day after the thirty-day public comment period on this Complaint ends. If there are significant public comments, the Executive Officer may withdraw the Complaint, reissue a new complaint, or take other appropriate action.
 5. 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.
 6. 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 thirty days to comment on any proposed settlement of this Complaint.
 7. The Executive Officer shall maintain oversight over approved SEP implementation time schedules throughout the life of the SEP. If, given written justification from the Discharger, the Executive Officer determines that a delay in the SEP implementation schedule was beyond the reasonable control of the Discharger; the Executive Officer may revise the implementation schedule as appropriate.
 8. Notwithstanding the issuance of this Complaint, the Regional Water Board shall retain the authority to assess additional penalties for violation of the Discharger's WDRs.

Catherine E. Kuhlman
Executive Officer

August 6, 2007