

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2008-0127

For

Violation of Waste Discharge Requirements
Order No. 95-54 and R1-2004-0027 (NPDES No. CA0023043)

In the Matter of
Forestville Water District
Wastewater Treatment, Reclamation, and Disposal Facility
WDID No. 1B83100OSON

Sonoma County

This Complaint to assess administrative civil liability for penalties pursuant to Water Code section 13385 is issued to the Forestville Water District (hereinafter Discharger) for violations of Waste Discharge Requirements (WDRs) Order Nos. 95-54 and R1-2004-0027 subject to mandatory minimum penalties occurring during the period February 29, 2000 through June 30, 2008.

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

1. The Discharger owns and operates the wastewater collection, treatment, reclamation, and disposal facilities which serve the unincorporated communities of Forestville and Mirabel Heights Zone of Benefit (Mirabel Heights). Treated, disinfected, dechlorinated effluent is discharged to Jones Creek, a tributary to Green Valley Creek which is tributary to the Russian River. The permit allows the Discharger to discharge to Jones Creek from October 1st through May 14th each year.
2. The Regional Water Board adopted Waste Discharge Requirements Order No. 95-54 for the Discharger on August 24, 1995. On October 6, 2004, the Board rescinded Order No. 95-54 and replaced it with Waste Discharge Requirements Order No. R1-2004-0027. Both serve as a National Pollution Discharge Elimination System Permit (NPDES) under the Federal Clean Water Act.
3. This Complaint covers violations of effluent limitations, subject to mandatory minimum penalties, that occurred between February 29, 2000 and June 30, 2008. Details of effluent limitation violations are summarized in Finding 13., below.

The effluent limitation violations are subject to the mandatory minimum penalties provision contained in Water Code section 13385, subdivisions (h) and (i). During the time period covered by this Complaint, discharges from the facility also resulted in permit violations subject to discretionary penalties. This Complaint does not cover any of those violations; Regional Water Board staff expect to review those

violations at a future date as resources and priorities dictate.

4. Among the provisions in the WDRs are requirements to implement a discharge monitoring program and to prepare and submit timely 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.
5. 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 limitations 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. Total Coliform is neither a Group I nor a Group II pollutant; therefore, exceedances of effluent limitations for total coliform bacteria do not count as serious violations.
6. 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.

7. 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 for violations of WDRs.
8. Water Code section 13385, subdivision (k)(1) provides that the Regional Water Board may elect to require all or a portion of mandatory minimum penalties imposed under section 13385, subdivisions (h) or (i) against a publicly owned treatment works serving an eligible small community be directed to a compliance project (CP) in accordance with Section X of the Enforcement Policy. The Discharger's ability to direct all or a portion of the mandatory minimum penalties to

a CP is subject to a State Water Board determination whether the Discharger meets the definition of a POTW serving a small community. Mandatory minimum penalties for late reports may not be directed to a CP. This Complaint includes requirements for CPs as specified in the Enforcement Policy.

9. Water Code section 13385, subdivision (l)(1) provides that the Regional Water Board may direct, with concurrence of the discharger, a portion of mandatory minimum penalties imposed under section 13385, subdivisions (h) or (i) to a Supplemental Environmental Project (SEP) in accordance with Section IX of the Enforcement Policy. 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 incorporates requirements for SEPs as specified in the Enforcement Policy.
10. For the purpose of determining a Discharger's compliance with effluent limitations in its Waste Discharge Requirements Order/NPDES permit, the 30 day average is equivalent to the monthly average, which is defined as the arithmetic mean of all daily determinations made during a calendar month. Where less than daily sampling is required, the average shall be determined by the sum of all the measured daily discharges divided by the number of days during the calendar month when the measurements were made. If only one sample is collected during that period of time, the value of the single sample shall constitute the monthly average.
11. Order No. 95-54 included the following effluent limitation:
 - a. Effluent Limitation B.1.

Waste discharged shall not contain constituents in excess of the following limitations:

Constituent	Units	Monthly Average ^a	Weekly Average ^b	Daily Maximum
BOD ₅	mg/l	30	45	60
	lb/day ^{c,d}	63	94	125

a The arithmetic mean of the values for effluent samples collected in a period of 30 consecutive days.

b The arithmetic mean of the values for effluent samples collected in a period of seven consecutive days.

c The daily discharge (lbs/day) is obtained from the following calculation for any calendar day:
 Daily Discharge (lb/day) =

$$\frac{8.34}{N} \sum_i^N Q_i C_i$$

in which N is the number of samples analyzed in any calendar day. Q_i and C_i are the flow rate (mgd) and the constituent concentration (mg/l), respectively, which are associated with each of the N grab samples which may be taken in any calendar day. If a composite sample is taken, C_i is the concentration measured in the composite sample; and Q_i is the average flow rate occurring during the period over which samples are composited.

d The mass emission rates are calculated using the design wet-weather flow of 0.25 mgd.

12. Order No. R1-2004-0027 includes the following effluent limitations:

B. EFFLUENT LIMITATIONS

2. Advanced treated wastewater sampled at Discharge Serial No. 001 shall not contain constituents in excess of the following limitations:

Constituent	Units	Monthly Average ⁴	Weekly Average ⁵
BOD (20°, 5-day)	mg/l	10	15
	lb/day (dry-weather) ^{6,7}	11	16
	lb/day (maximum wet-weather) ^{6,7}	48	73

Mass effluent limitations for BOD are technology-based limits, thus they apply at all times at the end of the treatment and disinfection train (Discharge Serial No. 001).

⁴ The arithmetic mean of all daily determinations made during a calendar month. Where less than daily sampling is required, the average shall be determined by the summation of all the measured daily discharges divided by the number of days during the calendar month when the measurements were made. If only one sample is collected during that period of time, the value of the single sample shall constitute the monthly average.

⁵ The arithmetic mean of all daily determinations made during a calendar week, Sunday to Saturday. Where less than daily sampling is required, the average shall be determined by the summation of all the measured daily discharges divided by the number of days during the calendar week when the measurements were made. If only one sample is collected during that period of time, the value of the single sample shall constitute the weekly average.

⁶ The mass discharge (lbs/day) is obtained from the following calculation of any calendar week or month:

$$\frac{8.34}{N} \sum_i^N Q_i C_i$$

in which N is the number of samples analyzed in any calendar week or month. Q_i and C_i are the flow rate (mgd) and the constituent concentration (mg/l), respectively, which are associated with each of the N grab samples which may be taken in any calendar day, week, or month. If a composite sample is taken, C_i is the concentration measured in the composite sample; and Q_i is the average flow rate occurring during the period over which samples are composited.

⁷ Mass based effluent limitations are based on the WWTF average dry-weather design flow of 0.130 mgd. During wet-weather periods when the flow rate into the WWTF exceeds the dry weather design

flow, the mass emission limitations shall be calculated using the concentration-based effluent limitations and the actual daily average flow rates (not to exceed the peak design flow of 0.58 mgd.)

4. The disinfected effluent, sampled at Discharge Serial No. 001 or transferred to Graton CSD (Discharge Serial No. 004) shall not contain concentrations of total coliform bacteria exceeding the following limitations:
 - a. The median concentration shall not exceed a Most Probable Number (MPN) of 2.2 per 100 milliliters, using the bacteriological results of the last seven days for which analyses have been completed.
 - b. The number of coliform bacteria shall not exceed an MPN of 23 per 100 milliliters in more than one sample in any 30-day period.
 - c. No sample shall exceed an MPN of 240 total coliform bacteria per 100 milliliters.

5. Effluent shall not contain any measurable settleable solids, as measured at Discharge Serial No. 001.

6. The arithmetic mean of the BOD (20°C, 5-day) and suspended solids values for effluent samples collected from Discharge Serial No. 001 in a period of 30 consecutive days shall not exceed 15 percent of the arithmetic mean of the values for influent samples collected at approximately the same times during the same period (85 percent removal). Percent removal shall be determined from the 30-day average value of influent wastewater concentration in comparison to the 30-day average value of effluent concentration for the same constituent over the same time period. (40 CFR §133.101(j).)

7. Advanced treated disinfected wastewater discharged to Jones Creek, sampled at Discharge Serial No. 002, shall not contain detectable levels of total chlorine using an analytical method or chlorine analyzer with a minimum detection level of 0.1 mg/l.

11. Effluent Limitations for Protection of Freshwater Aquatic Life

During periods of discharge to Jones Creek, representative samples of advanced treated wastewater collected at Discharge Serial No. 002 shall not contain constituents in excess of the following limits:

Constituent	Units	Interim Limitations ^a		Final Limitations ^b	
		1-Hour Average	4-day Average	AMEL	MDEL
Copper ^c	ug/l	Attachment E	Attachment E	Attachment B	Attachment C

Notes:

AMEL – Average Monthly Effluent Limitation

MDEL – Maximum Daily Effluent Limitation

- a These interim limitations shall be effective until October 6, 2009.
- b final effluent limitations shall replace the interim limitations on October 6, 2009.
- c Interim and final effluent limitations for copper, lead and zinc are for total recoverable metal fraction and are determined using formulas that are based on the hardness of the receiving water at the time the discharge is sampled. Attachment E of this Order provides calculated interim acute and chronic aquatic life values for copper and lead for a range of hardness values using the formulas noted in Attachment E. Attachment B, C, and D provide calculated final effluent limitations for copper, lead, and zinc, respectively, for a range of hardness values using the formulas noted therein.

13. According to monitoring reports submitted by the Discharger for the period February 29, 2000 through June 30, 2008, the Discharger exceeded effluent limitations twenty-two times while discharging to Jones Creek. Of those twenty-two exceedances, sixteen were serious violations, as described in Water Code section 13385, subdivisions (h)(1) and (h)(2) and Finding 5., above, and six were chronic effluent violations, as described in Water Code section 13385, subdivision (i)(1) and Finding 6., above. The mandatory minimum penalty amount for these violations is \$57,000 as shown in the following table:

Effluent Limitation Exceedances
February 29, 2000 to June 30, 2008

Date	Parameter	Reported Value	Permit Limit	Units	Violation Type	Mandatory Penalty
02/29/00	BOD, 30-Day Average	297	63	lb/day	Serious	\$3,000
12/06/05	Copper	54	24.34	ug/l	Serious	\$3,000
01/05/06	Copper	40	14.36	ug/l	Serious	\$3,000
03/02/06	Copper	37	14.36	ug/l	Serious	\$3,000
04/04/06	Copper	34	13.52	ug/l	Serious	\$3,000
01/02/07	BOD 7-Day Average	16	15	mg/l	Chronic	\$0
01/06/07	BOD, 7-Day Average	28.8	16	lb/day	Serious	\$3000
01/08//07	BOD, 7-Day Average	16	15	mg/l	Chronic	\$0
01/13/07	BOD, 30-Day Average	19.9	16	lb/day	Chronic	\$3,000
01/31/07	BOD, 7-Day Average	15	11	lb/day	Chronic	\$3,000
03/03/07	BOD, 7-Day Average	61.1	16	lb/day	Serious	\$3,000
03/31/07	BOD, 30-Day Average	19	11	lb/day	Serious	\$3,000
01/19/08	BOD, 7-day Average	19	16	lb/day	Chronic	\$0
01/22/08	BOD, 7-day Average	21	15	mg/l	Serious	\$3,000
01/26/08	BOD, 7-day Average	36.4	26	lb/day	Serious	\$3,000
01/31/08	BOD, 30-day Average	15.2	10	mg/l	Serious	\$3,000
01/31/08	BOD, 30-day Average	33.7	20	lb/day	Serious	\$3,000
02/19/08	BOD, 7-day Average	31	15	mg/l	Serious	\$3,000
02/23/08	BOD, 7-day Average	54	16	lb/day	Serious	\$3,000

02/29/08	BOD, 30 day Average	15.5	10	mg/g	Serious	\$3,000
02/29/08	BOD, 30-day Average	30.3	11	lb/day	Serious	\$3,000
03/03/08	BOD, 7-day Average	20.2	16	lb/day	Chronic	\$3,000
					Total	\$57,000

14. Regional Water Board staff costs associated with this enforcement action are estimated to be a minimum of \$10,000. This includes staff time to tally violations and prepare this Complaint and public notices; prepare for, and attend the public hearing; and respond to comments.
15. 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, subsection (a)(2).

FORESTVILLE WATER DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer proposes that the Discharger be assessed an administrative civil liability in the amount of \$57,000
2. A hearing will be conducted on this Complaint by the Regional Water Board on March 12, 2009, unless the Discharger waives the right to a hearing under Water Code Section 13323, subdivision (b) 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:

Option 1: Full Payment

Pay the penalty of \$57,000 in full to the State Water Pollution Cleanup and Abatement Account (CAA) by January 16, 2009 or,

Option 2: Compliance Project

Submit a conceptual proposal for a CP designed to correct the effluent limitation violations within five years and that will cost at least \$47,000 and the supporting information described in 3., below, to the Assistant Executive Officer by January 16, 2009, and pay \$10,000 to the CAA by January 16, 2009 or in compliance with a payment schedule issued in writing by the Assistant Executive Officer. The sum of the CP and the amount of the penalty to be paid to the CAA must at least equal the amount of the full penalty.

If the State Water Board determines that the Discharger is not eligible to complete a CP, the Discharger may either pay the remaining balance of the penalty (\$47,000), or pay at least \$11,000 to the CAA and submit to the Assistant

Executive Officer a proposal for a Supplemental Environmental project, in accordance with the requirements below, within 30 days of the State Water Board's determination. All payments, including money not used for the CP, must be payable to the CAA.

Option 3: Supplemental Environmental Project

Remit \$21,000 to the CAA by January 16, 2009 (or in compliance with a payment schedule issued in writing by the Assistant Executive Officer) and, by January 16, 2009, submit to the Assistant Executive Officer, a proposal for a Supplemental Environmental Project (SEP). Completion of an SEP will result in suspension of payment of an equivalent amount into the CAA up to \$36,000; if the cost of the SEP is less than \$36,000, the Discharger must remit payment of the balance of the total assessed penalty to the CAA by January 16, 2009 (or in compliance with a payment schedule issued in writing by the Assistant Executive Officer).

3. If the Discharger chooses to propose a CP, it must demonstrate to the satisfaction of the State Water Board that it is a publicly owned treatment works serving a small community. In order to make this demonstration, the Discharger must submit to the Assistant Executive Officer any documentation that it may have regarding: 1) population served by the POTW; 2) median income of residents served; 3) the rate of unemployment; 4) population density of the area served; and 5) any additional information that may be relevant to a determination of "small community" status for the Discharger. The Assistant Executive Officer will then use this information to request that the State Water Board determine whether the Discharger qualifies as a POTW serving a small community, and is eligible under 13385(k) to complete a CP in lieu of paying all or a portion of the penalties.
4. If the State Water Board determines that the Discharger does qualify as a POTW serving a small community, the Discharger must submit a full CP proposal, including a financing plan to complete the project, within thirty days of the State Water Board's determination, to the Assistant Executive Officer for approval. CP proposals shall conform to the requirements specified in Chapter X of the Enforcement Policy. The proposal must include a time schedule, for concurrence by the Assistant Executive Officer, to address implementation and completion of the proposal. If the proposal and/or implementation schedule are not acceptable, the Assistant Executive Officer may allow the Discharger 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 CP, must be payable to the CAA.
5. Any SEP proposal shall conform to the requirements specified in Chapter IX of the Enforcement Policy. The SEP proposal must include a time schedule, for

concurrence by the Assistant Executive Officer, to address implementation and completion of the SEP. If the proposed SEP and/or implementation schedule is not acceptable, the Assistant Executive Officer may allow the Discharger thirty days to submit a new or revised proposal, or may demand that 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 CAA.

6. The Assistant Executive Officer shall maintain jurisdiction over any approved CP/SEP implementation time schedules throughout the life of the CP/SEP. If, given written justification from the Discharger, the Assistant Executive Officer determines that a delay in the CP/SEP implementation schedule was beyond the reasonable control of the Discharger, the Assistant Executive Officer may revise the implementation schedule as appropriate.
7. If the Discharger waives the hearing and pays the liability, the resulting settlement may become effective on January 17, 2009 without any further action by the Regional Water Board. If there are significant public comments, the Assistant Executive Officer may withdraw the Complaint, reissue it as appropriate, or take other appropriate action.
8. 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.
9. 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, including a proposed SEP/CP.
10. Notwithstanding the issuance of this Complaint, the Regional Water Board shall retain the authority to assess additional penalties for violations of the Discharger's WDRs.

Luis G. Rivera
Assistant Executive Officer

December 15 , 2008
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