**Attachment B-ACL Complaint No. R1-2011-0013**
**Specific Factors Considered-Civil Liability**
**Fort Bragg Improvement District No. 1 (Complaint)**

Each factor of the Enforcement Policy and its corresponding score for each violation are presented below:

1. **Violation No. 1, Mandatory Minimum Penalties (Finding 17):** The **$6,000** in liability being recommended for the effluent limit exceedances alleged in the Complaint are the Mandatory Minimum Penalties (MMPs) statutorily required under CWC section 13385(h) and (i). No discretionary liability is proposed and therefore, the consideration of liability factors under CWC section 13385 factors and the methodology for assessing liability in the Enforcement Policy are not applicable.

2. **Violation No. 2 (SSO discharge violation):** In accordance with Prohibitions in WDRs, Order Nos. R1-2005 – 0096 and R1-2009-0030 and Prohibition C. 1 of the General Order, any SSO that results in discharge of untreated or partially treated wastewater to waters of the United States is prohibited.

**Calculation of Penalty for SSO at Cedar St**

**Step1. Potential for Harm for Discharge Violations**
The potential for harm to the environment associated with the discharge of raw sewage is 5. This is determined by the sum of the factors for:

a) *Harm or Potential Harm to Beneficial Uses: 2* -Below Moderate

*Discussion:* The Discharger reported SSO was not fully-recovered, and discharged to surface waters during the review period from November 1, 2007 through October 31, 2010. The Cedar Street SSO discharged 300 gallons to Cedar Creek, a tributary of Pudding Creek, thence the Pacific Ocean. The discharge was caused by a grease buildup and high wet weather flows.

Raw, undiluted sewage, as compared to treated and/or diluted wastewater, typically has about ten times the concentrations of biochemical oxygen demand, trash, total suspended solids, oil and grease, ammonia, and thousands of times the levels of viruses and bacteria. These pollutants exert varying levels of impact on water quality, and, as such, will adversely affect beneficial uses of receiving waters to different extents. Some possible adverse effects on water quality and beneficial uses as a result of an SSO include:

- Adverse impact to fish and other aquatic biota caused by bio-solid deposition, oil and grease, and toxic pollutants common in sewage (such as heavy metals, pesticides, personal care products, and pharmaceuticals);

- Creation of a localized toxic environment in the water column as a result of the discharge of oxygen-demanding pollutants that lower dissolved oxygen, and elevated ammonia concentration which is a demonstrated fish toxicant; and

- Impairment to water contact recreation and noncontact water recreation and harm to fish and wildlife as a result of elevated bacteria levels including pathogens.

At the time that the Cedar Street SSO and the South Harbor Drive SSO occurred, the area was experiencing wet weather and incidental rains leading to extraneous high flows in the sewer and receiving waters. This wet-weather induced condition is most likely to mitigate the inherent toxicity of raw sewage.

b) *Physical, Chemical, Biological or Thermal Characteristics: 2 – Moderate Risk*

*Discussion:* The discharge consisted of raw sewage comingled with storm water, which contains high levels of suspended solids, pathogenic organisms, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants that create anoxic conditions and have the potential to adversely impact aquatic organisms and public health.

c) *Susceptibility to Cleanup:* 1

*Discussion:* Less than 50% of the discharge was susceptible to Cleanup. The Cedar Street SSO occurred during high-flow periods and a complete clean up was not possible. The Discharger cleaned-up mitigated effects of the spill, managed to recover 20 gallons, 180 gallons seeped into the ground while 300 gallons of the Cedar Street SSO reached surface waters. The SSO occurred in a 60 year old section of 6" sewer of clay material located in flat terrain. The toxicity of the discharged sewage is not specifically known; however, raw sewage is generally toxic to aquatic organism unless highly diluted.

**Step 2. Assessment for Discharge Violations**

The SSO discharge is a small volume raw sewage discharge of short duration, highly diluted by comingled stormwater prior to reaching surface waters. On the basis of a known SSO-discharge volume, liability is proposed on a per gallon assessment only, as shown below.

d) *Deviation for Requirement:* Minor

*Discussion:* The Deviation reflects the extent the prohibition was violated.

e) *Per Day Factor: .06* (Table 1, pg 14 of the Enforcement Policy)

f) Gallons: 300

g) Max per gallon: $2

h) *Days of Violations*: 1

i) *Initial Liability Amount:* **$636** (Number of days (1) X Maximum penalty ($10,000) X Per Day Factor (.06) + Per Day Factor (.06) X Max per Gallon ($2) X Gallons (300)

**Step 3. Per Day Assessment for Non-Discharge Violations**
This step is not applicable because the violation is a discharge violation.

**Step 4. Adjustment Factors**

j) *Culpability*: 1

*Discussion:* The Discharger was given the neutral score of 1, which neither increases nor decreases the fine.

As the owner and operator of the System, the Discharger is fully responsible for the violations alleged in this Complaint. Administrative Civil Liability Complaints have been issued to the Discharger in 2005 and 2007 for violations occurring at the System. The Regional Water Board routinely reviews discharges from the Discharger approximately every two years. In comparison to the size and complexity of the Discharger's System, the prior violations resulted in minor impact to water quality. Overall, the System is well operated and maintained and has a consistent level of compliance with its permit limits.

Cleanup and Cooperation: 1

*Discussion:* The Discharger was given the neutral score of 1, which neither increases nor decreases the fine. The Discharger has a history of providing prompt notification of discharge events and cooperative in the cleanup follow-up and related mitigation measures necessary to protect water quality. Overall, the System is well operated and maintained and has a consistent level of compliance with its permit limits.

k) *History of Violations*: 1.1

*Discussion:* The Discharger was given the score of 1.1 which slightly increases the fine, because the overflow is in a section of old sewer located in flat terrain prone to surcharge from excessive I/I during rainfall induced wet weather flows. Otherwise the Discharger has a good prior history of long-term compliance with permit conditions and has demonstrated consistent operation and maintenance of treatment works with minimal violations.

**Step 5. Determination of Total Base Liability Amount**

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

l) *Total Base Liability Amount:* **$700** (Initial Liability ($636) x Adjustments (1)(1)(1.1)

**Steps 6 through 10 Are Applied to the Combined Total Base Liability Amount for All Violations and Will be Discussed After the Total Base Liability Amounts Have Been Determined for the Remaining Violations.**

**3. Violation No. 3 (SSO discharge violation):** In accordance with Prohibitions in WDRs, Order Nos. R1-2005 – 0096 and R1-2009-0030 and Prohibition C. 1 of the General Order, any SSO that results in discharge of untreated or partially treated wastewater to waters of the United States is prohibited.

**Calculation of Penalty for SSO at South Harbor Drive**

**Step 1. Potential for Harm for Discharge Violations**

The potential for harm to the environment associated with the discharge of raw sewage is 7. This is determined by the sum of the factors for:

a) *Harm or Potential Harm to Beneficial Uses: 4* – Above Moderate

*Discussion:* The Discharger reported SSO was not fully recovered, and discharged to surface waters during the review period from November 1, 2007 through October 31, 2010. The South Harbor Drive manhole SSO discharged 470 gallons to the Noyo River and was caused by debris and rags and high storm flows. The raw sewage overflow to the Noyo River and harbor area was not posted to alert the public of the potential health hazards. The Noyo River is a water of the United States, tributary to the Pacific Ocean.

Raw, undiluted sewage, as compared to treated and/or diluted wastewater, typically has about ten times the concentrations of biochemical oxygen demand, trash, total suspended solids, oil and grease, ammonia, and thousands of times the levels of viruses and bacteria. These pollutants exert varying levels of impact on water quality, and, as such, will adversely affect beneficial uses of receiving waters to different extents. Some possible adverse effects on water quality and beneficial uses as a result of an SSO include:

- Adverse impact to fish and other aquatic biota caused by bio-solid deposition, oil and grease, and toxic pollutants common in sewage (such as heavy metals, pesticides, personal care products, and pharmaceuticals);

- Creation of a localized toxic environment in the water column as a result of the discharge of oxygen-demanding pollutants that lower dissolved oxygen, and elevated ammonia concentration which is a demonstrated fish toxicant; and

- Impairment to water contact recreation and noncontact water recreation and harm to fish and wildlife as a result of elevated bacteria levels including pathogens.

At the time that the Harbor Drive SSO occurred, the area was experiencing wet weather and incidental rains leading to extraneous high flows in the sewer and receiving waters. This wet-weather induced condition is most likely to mitigate the inherent toxicity of raw sewage.

b) *Physical, Chemical, Biological or Thermal Characteristics: 2 – Moderate Risk*

*Discussion:* The discharge consisted of raw sewage comingled with storm water, which contains high levels of suspended solids, pathogenic organisms, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants that create anoxic conditions and have the potential to adversely impact aquatic organisms and public health.

c) *Susceptibility to Cleanup:* 1

*Discussion:* Less than 50% of the discharge was susceptible to Cleanup. The Harbor Drive SSO occurred during high-flow periods and a complete clean up was not possible. The South Harbor Drive SSO was an overflowing manhole next to a pit, truck loading dock and Caito Fisheries Building. No discharge volume was recovered and 470 gallons of the Harbor Drive SSO reached surface waters. The SSO occurred in a 35 year old section of 8" sewer of asbestos material located in flat terrain. The toxicity of the discharged sewage is not specifically known; however, raw sewage is generally toxic to aquatic organism unless highly diluted

**Step 2. Assessment for Discharge Violations**

d) *Deviation for Requirement:* Moderate

*Discussion:* The Deviation reflects the extent the prohibition was violated. The raw sewage overflow poses a potential health hazard in a public use area and partially compromises protection of public health.

e) *Per Day Factor: .2* (Table 1, pg 14 of the Enforcement Policy)

f) Gallons: 470

g) Max per gallon: $2

h) *Days of Violations*: 1

i) *Initial Liability Amount:* **$2188** (Number of days (1) X Maximum penalty ($10,000) X Per Day Factor (.2) + Per Day Factor (.2) X Max per Gallon ($2) X Gallons (470)

**Step 3. Per Day Assessment for Non-Discharge Violations**

This step is not applicable because the violation is a discharge violation.

**Step 4. Adjustment Factors**

j) *Culpability*: 1

*Discussion:* The Discharger was given the neutral score of 1, which neither increases nor decreases the fine.

As the owner and operator of the System, the Discharger is fully responsible for the violations alleged in this Complaint. Administrative Civil Liability Complaints have been issued to the Discharger in 2005 and 2007 for violations occurring at the System. The Regional Water Board routinely reviews discharges from the Discharger approximately every two years. In comparison to the size and complexity of the Discharger's System, the prior violations resulted in minor impact to water quality. Overall, the System is well operated and maintained and has a consistent level of compliance with its permit limits.

k) *Cleanup and Cooperation:* 1

*Discussion:* The Discharger was given the neutral score of 1, which neither increases nor decreases the fine. The Discharger has a history of providing prompt notification of discharge events and cooperative in the cleanup follow-up and related mitigation measures necessary to protect water quality. Overall, the System is well operated and maintained and has a consistent level of compliance with its permit limits.

l) *History of Violations*: 1.1

*Discussion:* The Discharger was given the score of 1.1 which slightly increases the fine, because the overflow is in a section of old sewer located in flat terrain prone to surcharge from excessive I/I during rainfall induced wet weather flows. Otherwise the Discharger has a good prior history of long-term compliance with permit conditions and has demonstrated consistent operation and maintenance of treatment works with minimal violations.

**Step 5. Determination of Total Base Liability Amount**

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

m) *Total Base Liability Amount:* **$2407** (Initial Liability ($2188) x Adjustments (1)(1)(1.1)

**4. Violation No. 4 (SSO discharge violation):** In accordance with Prohibitions in WDRs, Order Nos. R1-2005 – 0096 and R1-2009-0030 and Prohibition C. 1 of the General Order, any SSO that results in discharge of untreated or partially treated wastewater to waters of the United States is prohibited.

**<u>Calculation of Penalty for SSO at South Harbor Drive</u>**

**Step 1. Potential for Harm for Discharge Violations**

The potential for harm to the environment associated with the discharge of raw sewage is 7. This is determined by the sum of the factors for:

a) *Harm or Potential Harm to Beneficial Uses: 4* - Above Moderate

*Discussion:* The Discharger reported SSO was not fully recovered, and discharged to surface waters during the review period from November 1, 2007 through October 31, 2010. The South Harbor Drive manhole SSO discharged 805 gallons to the Noyo River and was caused by debris, rags and processed fish waste during dry weather conditions. The overflow of raw sewage and processed fish waste to the Noyo River and harbor area was not posted to alert the public of the potential health hazards. The Noyo River is a water of the United States, tributary to the Pacific Ocean.

Raw, undiluted sewage, as compared to treated and/or diluted wastewater, typically has about ten times the concentrations of biochemical oxygen demand, trash, total suspended solids, oil and grease, ammonia, and thousands of times the levels of viruses and bacteria. Additionally, industrial waste, such as processed fish waste has higher concentrations of biochemical oxygen demand compared to raw undiluted sewage. These pollutants exert varying levels of impact on water quality, and, as such, will adversely affect beneficial uses of receiving waters to different extents. Some possible adverse effects on water quality and beneficial uses as a result of an SSO include:

- Adverse impact to fish and other aquatic biota caused by bio-solid deposition, oil and grease, and toxic pollutants common in sewage (such as heavy metals, pesticides, personal care products, and pharmaceuticals);

- Creation of a localized toxic environment in the water column as a result of the discharge of oxygen-demanding pollutants that lower dissolved oxygen, and elevated ammonia concentration which is a demonstrated fish toxicant; and

- Impairment to water contact recreation and noncontact water recreation and harm to fish and wildlife as a result of elevated bacteria levels including pathogens.

  At the time that the Harbor Drive SSO occurred, the area was experiencing dry weather with no rains. This dry-weather induced condition is most likely to not mitigate the inherent toxicity of raw sewage.

b) *Physical, Chemical, Biological or Thermal Characteristics: 2 - Moderate Risk*

*Discussion:* The discharge consisted of raw sewage comingled with processed fish waste, which contains high levels of suspended solids, pathogenic organisms, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants that create anoxic conditions and have the potential to adversely impact aquatic organisms and public health.

c) *Susceptibility to Cleanup:* 1

*Discussion:* Less than 50% of the discharge was susceptible to Cleanup.

The Harbor Drive SSO flowed under a dock area and a complete clean up was not possible. The South Harbor Drive SSO was an overflowing manhole next to a pit, truck loading dock and Caito Fisheries Building. No discharge volume was recovered and 805 gallons of the Harbor Drive SSO reached surface waters. The SSO occurred in a 35 year old section of 8" sewer of asbestos material located in flat terrain. The manhole at South Harbor Drive continues to have repeat incidents of sewer overflows. The toxicity of the discharged sewage is not specifically known; however, raw sewage is generally toxic to aquatic organism unless highly diluted

**Step 2. Assessment for Discharge Violations**

d) *Deviation for Requirement:* Moderate

*Discussion:* The Deviation reflects the extent the prohibition was violated. The raw sewage overflow poses a potential health hazard in a public use area and partially compromises protection of public health.

e) *Per Day Factor: .2* (Table 1, pg 14 of the Enforcement Policy)

f) Gallons: 805

g) Max per gallon: $2

h) *Days of Violations*: 1

i) *Initial Liability Amount:* **$2,322** (Number of days (1) X Maximum penalty ($10,000) X Per Day Factor (.2) + Per Day Factor (.2) X Max per Gallon ($2) X Gallons (805)

**Step 3. Per Day Assessment for Non-Discharge Violations**
This step is not applicable because the violation is a discharge violation.

**Step 4. Adjustment Factors**

j) *Culpability*: 1

*Discussion:* The Discharger was given the neutral score of 1, which neither increases nor decreases the fine.

As the owner and operator of the System, the Discharger is fully responsible for the violations alleged in this Complaint. Administrative Civil Liability Complaints have been issued to the Discharger in 2005 and 2007 for violations occurring at the System. The Regional Water Board routinely reviews discharges from the Discharger approximately every two years. In comparison to the size and complexity of the Discharger's System, the prior violations resulted in minor impact to water quality. Overall, the System is well operated and maintained and has a consistent level of compliance with its permit limits.

k) *Cleanup and Cooperation:* 1

*Discussion:* The Discharger was given the neutral score of 1, which neither increases nor decreases the fine. The Discharger has a history of providing prompt notification of discharge events and cooperative in the cleanup follow-up and related mitigation measures necessary to protect water quality. Overall, the System is well operated and maintained and has a consistent level of compliance with its permit limits.

l) *History of Violations*: 1.1

*Discussion:* The Discharger was given the score of 1.1 which slightly increases the fine, because the repeat of overflow events is in a section of old sewer located in flat terrain prone to SSOs during dry-weather and surcharge from excessive I/I during rainfall induced wet weather flows. Otherwise the Discharger has a good prior history of long-term compliance with permit conditions and has demonstrated consistent operation and maintenance of treatment works with minimal violations.

**Step 5. Determination of Total Base Liability Amount**

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

m) *Total Base Liability Amount:* **$2,554** (Initial Liability ($2322) x Adjustments (1)(1)(1.1)

***5. Violation No. 5 (prohibited discharge v*iolation *of Treated-Un-chlorinated Wastewater):*** In accordance with Prohibitions in WDRs, Order Nos. R1-2005-0096 and R1-2009-0030, the discharge of untreated or partially treated wastewater to waters of the United States is prohibited.

**Calculation of Penalty for WWTF**

**Step 1 Potential for Harm for Discharge Violations**

The potential for harm to the environment associated with the discharge of partially treated un-disinfected wastewater is 8. This is determined by the sum of the factors for:

a) *Harm or Potential Harm to Beneficial Uses: 4* - Above Moderate

*Discussion:* The Discharger reported one prohibited discharge of treated-un-chlorinated wastewater. All of the discharge was released to the Pacific Ocean. The chlorine failure occurred at 0745 hrs to 0945 hrs. The calculated volume of the partially treated wastewater was 13,833 gallons (Page 4-10, WWTF 2009 Annual Report). The discharge occurred August 6, 2009, during the summer high recreational use of public beach areas in the vicinity. The partially treated discharge has the potential to adversely impact beneficial

uses such as marine aquatic life, shellfish recreational harvesting and human health. The incident of un-disinfected effluent violates the human health and aquatic life protective limit of 70 mpn/100ml set forth in the Ocean Plan. No information is available regarding any impacts that may have been caused by this discharge.

The Ocean Plan specifies bacterial objectives to protect beneficial use of ocean waters for water contact recreation and shellfish harvesting. For total and fecal coliform bacteria and the enterococcus group of bacteria, water contact standards must be met within a zone bounded by the shoreline and a distance of 1000 feet from the shoreline or the 30-foot depth contour, whichever is further from the shoreline. Shellfish harvesting standards for total coliform bacteria must be maintained throughout the water column. The Discharger has been required since 1995 (in WDR No. 95-47) to meet the most stringent water quality standards, shellfish harvesting standards, at end-of-pipe. Regional Board staff has determined that conditions are suitable for shellfish to be present in the vicinity of the outfall. The discharge of un-chlorinated partially treated wastewater is an exceedance of the bacterial water quality objective for shellfish harvesting. Additional factors that the discharge can cause or contribute to exceedances of bacterial water quality objectives include:

Conditions are suitable for shellfish to be present in the vicinity of the outfall. According to the Ocean Plan Technical Report prepared for the City of Fort Bragg, “the intertidal waters of the Fort Bragg cove support an abundant and varied array of flora and fauna.”

The Ocean Plan specifies that shellfish standards shall be maintained throughout the water column (i.e., without credit for dilution).

Total Coliform bacteria have been shown to be present in the WWTF’s discharge in concentrations exceeding the Ocean Plan shellfish standards. For the period from January 2004 through December 2008, the maximum reported effluent concentration of total coliform was greater than 1,600 MPN per 100ml.

Public access to offshore areas surrounding the facility’s outfall is open and unrestricted. Members of the public wishing to harvest shellfish in this area can approach by boat and collect shellfish in accordance to state regulations. A discharge with elevated bacteria levels including pathogens would potentially result in impairment of contact recreation, noncontact recreation and harm to human health, shellfish and other aquatic biota.

There is no documented evidence significant impacts occurred as a result of the discharge of treated un-disinfected effluent.

b) *Physical, Chemical, Biological or Thermal Characteristics: 3 - Above Moderate Risk*

*Discussion:* The discharge consisted of treated un-disinfected wastewater, which contains secondary levels of suspended solids, pathogenic organisms, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants that have the potential to adversely impact aquatic organisms and public health.

c) *Susceptibility to Cleanup:* 1

*Discussion:* Less than 50% of the discharge was susceptible to Cleanup.

The discharge that occurred was not susceptible to cleanup. By the time the discharge was discovered, it had already occurred and entered waters of the Pacific Ocean. No ground cleanup activities were necessary because the partially-treated water was released via a 650-foot outfall located 20 feet below the water surface. The receiving water is located within the Mendocino Coast Hydrologic Unit and is a water of the United States.

**Step 2. Assessment for Discharge Violations**

d) *Deviation for Requirement:* Minor

*Discussion:* The Deviation reflects the extent the prohibition was violated. Although the specific requirement was not met, uncorrected chlorination system malfunctions and discharge of partially treated un-disinfected effluent from the WWTF continues to pose a potential health hazard in a public use area and harm to human health, shellfish and other aquatic biota.

e) *Per Day Factor: .25* (Table 1, pg 14 of the Enforcement Policy)

f) Gallons: 13,833

g) Max per gallon: $2

h) *Days of Violations*: 1

i) *Initial Liability Amount:* **$9,417** (Number of days (1) X Maximum penalty ($10,000) X Per Day Factor (.25) + Per Day Factor (.25) X Max per Gallon ($2) X Gallons (13,833)

**Step 3. Per Day Assessment for Non-Discharge Violations**
This step is not applicable because the violation is a discharge violation.

**Step 4. Adjustment Factors**

j) *Culpability*: 1

*Discussion:* The Discharger was given the neutral score of 1, which neither increases nor decreases the fine.

As the owner and operator of the System, the Discharger is fully responsible for the violations alleged in this Complaint. Administrative Civil Liability Complaints have been issued to the Discharger in 2005 and 2007 for violations occurring at the System. The Regional Water Board routinely reviews discharges from the Discharger approximately every two years. In comparison to the size and complexity of the Discharger's System, the prior violations resulted in minor impact to water quality. Overall, the System is well operated and maintained and has a consistent level of compliance with its permit limits.

k) *Cleanup and Cooperation:* 1

*Discussion:* The Discharger was given the neutral score of 1, which neither increases nor decreases the fine, because overall, the System is well operated and maintained and has a consistent level of compliance with its permit limits.

l) *History of Violations*: 1.1

*Discussion:* The Discharger was given the score of 1.1 which slightly increases the fine, because of repeat incidents of chlorination system malfunction and the failure to install scales to monitor available chlorine for disinfection of secondary treated wastewater. Otherwise the Discharger has a good prior history of long-term compliance with permit conditions and has demonstrated consistent operation and maintenance of treatment works with minimal violations.

**Step 5. Determination of Total Base Liability Amount**

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

m) *Total Base Liability Amount:* **$10,358** (Initial Liability ($9,417) x Adjustments (1)(1)(1.1)

**COMBINED TOTAL BASE LIABLITY AND FACTORS APPLIED TO ALL VIOLATIONS**

The Combined Total Base Liability Amount for the 4 Violations is $15,319 ($700 + $2,407+ $2,554+$10,358).

The following factors apply to the combined Total Base Liability Amounts for all of the violations discussed above.

**Step 6. Ability to Pay and Continue in Business**

a) *Adjusted Combined Total Base Liability Amount:* ***$15,319***

Discussion: On May 27, 2010, the State Water Board determined that the Discharger is a small community with financial hardship as defined by CWC section 13385(k)(2). Mendocino County is classified as a "rural county" and the Discharger's service area has a population of 5,501, which meets the

population criterion for a small community. The median household income for the community is $28,539, which is below the California median household income of $47,493.

The Discharger has a total of five employees to operate the sewer and water enterprise. The District's annual 2010-2011 budget consist of $1.17 million for wastewater treatment facility operations and $6.8 million for staff salaries, administration and water treatment operations. The overall general fund is $15.69 million per year. In 2009, the Discharger spent in excess of $40,000.00 in sewer improvements to correct sewer invert sags and slip-line 1400 feet of sewer to reduce I/I in problem areas in the collection system. The Discharger has the ability to pay the penalty and continue to provide its services. In addition, the Discharger has modified the Wastewater Enterprise rate structure to authorize annual funding for system upgrades and to provide for financial needs. The penalty contained in this Complaint is a miniscule fraction of the operating budget.

Based on the reasons discussed above, an ability to pay factor of 1 has been applied to the Combined Total Base Liability Amount.

**Step 7. Other Factors as Justice May Require**

a) *Adjusted Combined Total Base Liability Amount: $15,319*+$9,750 (Staff Costs) = **$25,069**

b) *Discussion:* The State and Regional Water Board has incurred $9,750 in staff costs associated with the investigation and enforcement of the violations alleged herein. In accordance with the Enforcement Policy, this amount is added to the Combined Total Base Liabilty Amount.

**Step 8. Economic Benefit**

a) *Estimated Economic Benefit:* **$12,600**

Discussion: As stated above, the Discharger's history and pattern of violations indicates that the Discharger is maintaining its system adequately and has a good response program to deal with unauthorized discharge events. Regional Board staff reviews of current history of violation specific to SSO's and the incident of un-disinfected effluent reveals the following:

**SSO's**

During the last several years, the Discharger has undertaken a pro-active role (within budget constraints) in the monitoring, maintenance and cleaning on regular basis of the collection system to reduce the frequency of manhole overflows. In May of 2009 the Discharger completed a Final Wastewater Collection Facilities Management Plan Report which was partially funded by Community Development Block Grants (Nos.06-STBG-2590 and 06-EDBG-2608). The project study provides a comprehensive evaluation of the City of Fort Bragg's collection system in an effort to reduce extraneous inflow and infiltration

(I/I). The sewer evaluation included storm data obtained from January 2009 to April 2009 and identifies:

Four hydraulic bottlenecks which limit the conveyance of domestic water flows and I/I from large storm events. This condition causes the system to surcharge and in extreme cases (high storm flows) causes the hydraulic grade line to rise above street level, resulting in sanitary sewer overflows (SSO's);

Pipes with inadequate capacity or constructed with a steep and shallow gradient that is prone to surcharge at the manholes;

High-risk pipe materials for inspection and or rehabilitation: such as vitrified clay pipe (VCP) and corrugated metal pipe (CMP) which pose a higher risk of failure;

Some locations within the gravity sewer network are flowing near capacity even during dry weather, which in turn limits the collection system of available capacity when flows increase due to wet weather I/I.

The report's short term (1-5 year) recommendation is that the Discharger implement an I/I reduction and control program to systematically monitor and maintain the collection system and ultimately reduce SSO's. Further delays in correcting the above defects and failure to implement real tasks in this effort will delay mitigating SSO events in the collection system. No corrective action taken by the Discharger results in an economic benefit for the cost of deferring sewer repairs and rehabilitation of collection system problem areas with excessive I/I. Based on Discharger cost estimates for corrective work ($40K for 1400 ft.), one hundred feet of sewer repair would cost approximately $2900. The potential (at a minimum) for economic benefit associated with the three SSOs and deferring sewer repairs is $2900.

**Release of Un-disinfected Effluent**

The August 6, 2009 incident of no chlorine at the WWTF is a reoccurrence of chlorine system malfunction. It has happened before. It is negligent in that it should have been corrected to prevent chlorine system malfunction and release of 13,833 gallons of un-disinfected effluent to the Pacific Ocean. Comments on record in the California Integrated Water Quality System violation report ID: #866317 states: "Chlorine supply ran out. Discharger provided timely notification of noncompliance."

On June 21, 2010 at 1115 hrs, Discharger representative advised that WWTF uses 2-one-ton cylinder tanks on a vacuum system with auto-switch manifold regulators for chlorination. When a tank is empty it is disconnected, placed off-line and full tank connected and placed on-line. Instead, on August 6, 2009, an empty tank was connected and placed on-line. This was clearly an error on behalf of the operator. To correct the problem, they now physically mark (magnetic tags) the tanks that are empty and write tank status on regulators - date changed and date placed online.

On July 22, 2010 at 1350hrs, Discharger representative informs that the chlorination system does not have scales to measure and read-out the weight of chorine remaining in the one-ton tanks placed online. Without scales, operators

are unable to discern if there is any chlorine or how much remains in the one ton cylinder tanks. Currently, this continues to be the present method of operation which falls short in providing a measured and continuous chorine supply necessary to prevent a repeat incident of un-chlorinated effluent at the WWTF. The scales provide a safety feature that ensures that there is a chlorine supply in the chlorination system. At one time, the chlorine facility did have weight scales in-place but scales became highly corrosive and were removed. Discharger's cost estimates for new scales with anti-corrosive epoxy paint to meet the required paint standards on new equipment is an average cost estimate of $9700.

Discharger staff further looked into purchase cost of cylinder scales and included them on the equipment list for the 2010-2011 budget years. Due to funding shortfalls the purchase of the cylinder scales were deferred until future budgets.

The economic benefit associated with the release of un-disinfected effluent to the Pacific Ocean is the delayed cost of scales by foregoing the purchase and installation of safety equipment necessary to prevent chlorination system malfunction and operator error. The Dischargers average cost of scales estimated at $9,700 is a justifiable penalty.

**Step 9. Maximum and Minimum Liability Amounts**

a) *Minimum Liability Amount:* ***$13,860***

*Discussion:* The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. As discussed above, the Regional Water Board Prosecution Team's estimate of the Discharger's economic benefit obtained from the violations cited in this Complaint is $ 12,600.

b) *Maximum Liability Amount:* ***$168,330***

*Discussion:* The maximum administrative liability amount is the maximum amount allowed by Water Code Section 13385: (1) ten thousand dollars ($10,000) for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars ($10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

The proposed liability falls within these maximum and minimum liability amounts.

**Step 10. Final Liability Amount**

The final liability amount proposed for three SSOs and one prohibited discharge violation (Nos. 2, 3, 4 and 5) is $25,069. The total recommended liability for all the violations alleged in the Complaint is **$31,069** (final liability amount for these discretionary Violations + MMP for Effluent Limit Exceedances).