

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
NORTH COAST REGION**

In the Matter of:	)	
	)	
City of Eureka, Wastewater Treatment Facility	)	Complaint No. R1-2013-0037
531 K Street	)	for
Eureka, CA 95501	)	Administrative Civil Liability
	)	
Attn: Clay Yerby,	)	
Utilities Operations Manager	)	

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The Assistant Executive Officer of the Regional Water Board hereby gives notice that:

1. As a result of a sanitary sewer system overflow (SSO) which occurred on March 29, 2012, the City of Eureka (City or Discharger) is herein alleged to have violated provisions of the California Water Code and the Federal Clean Water Act, for which the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) may impose administrative civil liability pursuant to Water Code section 13385. This Administrative Civil Liability Complaint (Complaint) is issued under authority of Water Code section 13323. The Complaint proposes to assess \$89,122 in administrative civil liability for the violations cited based on considerations described herein.
2. Unless waived, a hearing concerning this Complaint will be held before the Regional Water Board on August 22, 2013, at 5550 Skylane Blvd., Santa Rosa, California. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed civil liability, or refer the matter to the Attorney General's Office for recovery of judicial liability. The Discharger or its representative will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability. An agenda for the meeting will be available at [http://www.waterboards.ca.gov/northcoast/board\\_infor/board\\_meetings](http://www.waterboards.ca.gov/northcoast/board_infor/board_meetings) not less than 10 days before the hearing date.
3. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by submitting a signed waiver and paying the civil liability in full or by taking other actions as described in the attached waiver form. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

**FACTUAL BASIS FOR THE ALLEGED VIOLATIONS**

4. The Discharger owns and operates the Elk River Wastewater Treatment Facility (WWTF) and an associated wastewater collection system that serves a population of

approximately 44,128 from the City of Eureka and unincorporated areas within the Humboldt Community Services District. The collection system consists of approximately 119 miles of gravity mains, 11 miles of pressure mains, 17 pump stations, and 9500 service laterals.

5. On March 30, 2012, the Discharger notified the Regional Water Board of multiple on-going sanitary sewer overflows (SSOs) due to a heavy storm event and subsequent rainfall runoff causing excessive infiltration/inflow into the collection system. One such SSO began on March 29, 2012 from the Discharger's "O" Street Lift Station, resulting in a discharge of approximately 90,000 gallons of untreated sewage into Martin Slough, tributary to Swain Slough, a tributary to Elk River, which is tributary to Humboldt Bay. All are waters of the state and the United States.
6. The system collects domestic, commercial, industrial, and treated groundwater remediation wastewater. This wastewater may contain high levels of suspended solids, pathogenic organisms, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants. SSOs may result in 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, aesthetic enjoyment and other beneficial uses of surface waters.
7. In 2011, the Discharger began construction of the first phase of the Martin Slough Interceptor Project (MSIP) which is designed to increase the reliability of a segment of its collection system to help reduce the incidences of SSOs and increase system efficiency. The MSIP includes installation of new collector lines connecting 16 existing lift stations to a new gravity main (interceptor), a new main pump station, a new force main, and other improvements. Once the MSIP is completed, the Discharger will be able to decommission 15 lift stations, and plans to modify the "O" Street Lift Station. The total cost of the MSIP is estimated to be \$7,432,191.
8. The Discharger's 2012 Annual WWTF Report, submitted to the Regional Water Board on February 28, 2013, includes a summary report about the collection system, listing SSO incidents that occurred during 2012. For 2012, four out of six SSOs occurred during the same storm event, including the March 29, 2012 spill. The total volume of untreated wastewater discharged during 2012 is estimated to be 122,100 gallons, all of which entered waters of the state and waters of the United States. The 2012 Annual WWTF Report also indicates that the MSIP is 40% complete and that the project improvements should reduce the volume and number of SSOs.

#### **STATEMENT OF APPLICABLE PROHIBITIONS AND REQUIREMENTS:**

9. Section 301 of the Clean Water Act (33 U.S.C. § 13311) and Water Code section 13376 prohibit the discharge of pollutants to surface water except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.
10. On June 4, 2009, pursuant to Chapter 5.5 of Division 7 of the Water Code, the Regional Water Board issued Waste Discharge Requirements (WDRs) Order No. R1-2009-0033

and NPDES Permit No.CA0024449, governing discharges from the Discharger's WWTF and collection system. Discharge Prohibition E of the WDRs prohibits the discharge of untreated waste from anywhere within the collection system.

11. On May 2, 2006, the State Water Resources Control Board adopted Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Wastewater Collection Agencies (General WDRs), pursuant to Water Code section 13263. On October 26, 2006, the Discharger enrolled for coverage under the General WDRs. Prohibition C.1 of the General WDRs, prohibits any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States.

### **ALLEGED VIOLATION OF PROHIBITIONS AND REQUIREMENTS**

12. On March 29, 2012, the Discharger discharged approximately 90,000 gallons of untreated wastewater to Martin Slough, tributary to Swain Slough, a tributary to Elk River, which is tributary to Humboldt Bay, waters of the state and the United States, violating Water Code section 13376, Section 301 of the Clean Water Act, Discharge Prohibition E of the WDRs and Prohibition C.1 of the General WDRs.

### **WATER CODE AUTHORITY FOR IMPOSING ADMINISTRATIVE CIVIL LIABILITY**

13. For violating Water Code section 13376, a discharger is subject to civil liability pursuant to Water Code section 13385, subdivision (a)(1). For violating waste discharge requirements issued pursuant to Chapter 5.5 of Division 7 of the Water Code (e.g., the WDRs), a discharger is subject to civil liability pursuant to Water Code section 13385, subdivision (a)(2). For violating Section 301 of the Clean Water Act, a discharger is subject to civil liability pursuant to Water Code section 13385, subdivision (a)(5).
14. Pursuant to Water Code section 13385, subdivision (c), the Regional Water Board may impose administrative civil liability for violations under subdivision (a), in an amount not to exceed the sum of both the following: (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, and the volume discharged but 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.
15. For violating a waste discharge requirement or other order or prohibition issued by the State Water Board (e.g., the General WDRs), a discharger is subject to civil liability pursuant to Water Code section 13350, subdivision (a).
16. Pursuant to Water Code section 13350, subdivision (e), the Regional Water Board may impose administrative civil liability for violations under subdivision (a) either (1) on a daily basis not to exceed five thousand dollars (\$5,000) for each day the violation occurs; or (2) on a per gallon basis in an amount not to exceed ten dollars (\$10) per gallon of waste discharged, but not both.

17. For the violations alleged here, the Regional Water Board may assess administrative civil liability either under Water Code section 13385 or Water Code section 13350, but not both (see § 13385, subd. (g)). Since the discharge was to waters of the United States, it is appropriate to proceed under Water Code section 13385 here, and to hold the Water Code section 13350 violation in the alternative.

#### **MAXIMUM ADMINISTRATIVE CIVIL LIABILITY**

18. Pursuant to Water Code section 13385, subdivision (c), the total maximum administrative civil liability that the Regional Water Board may assess is **\$900,000** (89,000 [gallons discharged but not cleaned up in excess of 1,000 gallons] X \$10 [per gallon] + 1[day of violation] X \$10,000 [per day of violation]).\*

#### **FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY**

19. Pursuant to Water Code section 13351 and section 13385, subdivision (e), in determining the amount of any civil liability, the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, 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.
20. On November 17, 2010, the State Water Resources Control Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code sections 13351 and 13385, subdivision (e). The entire Enforcement Policy can be found at:

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf)

21. The required factors have been considered for the violation using the methodology in the Enforcement Policy, as explained in detail in Attachment A.

#### **PROPOSED ADMINISTRATIVE CIVIL LIABILITY**

22. Based on consideration of the above facts, the applicable law, and after applying the penalty methodology, the Assistant Executive Officer of the Regional Water Board

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\*The maximum administrative civil liability under Water Code section 13350 is also \$900,000 (90,000 [gallons discharged] X \$10 [per gallon]).

proposes that civil liability be imposed administratively on the Discharger in the amount of \$89,122. The proposed liability includes \$3,600 for staff costs.

### GENERAL

23. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to “actions” and “special proceedings” and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees’ Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)
24. Notwithstanding the issuance of this Complaint, the Regional Water Board retains the authority to assess additional penalties for violations of the requirements of waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
25. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

May 24, 2013  
Date

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David F. Leland, P.E.  
Assistant Executive Officer (Acting)  
Regional Water Board Prosecution Team