

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R1-2023-0033

**IN THE MATTER OF
TOM COOKE MEMORIAL WASTEWATER TREATMENT PLANT
FORTUNA MUNICIPAL WASTEWATER TREATMENT FACILITY
HUMBOLDT COUNTY**

This Administrative Civil Liability Complaint (Complaint) is issued by the Assistant Executive Officer of the North Coast Regional Water Quality Control Board (Regional Water Board) to the City of Fortuna (Discharger) (collectively, Parties) for violations of effluent limitations contained in Waste Discharge Requirements (WDRs) Order No. R1-2017-0005, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0022730, for which the Regional Water Board may impose civil liability pursuant to Water Code section 13385. The Regional Water Board's Executive Officer has delegated their authority under Water Code section 13323 to issue this Complaint to the Assistant Executive Officer.

1. Fortuna Municipal Wastewater Treatment Facility (Facility) is a publicly owned treatment works (POTW), located at 180 Dinsmore Drive, Fortuna, Humboldt County, CA. The Facility is regulated under Waste Discharge Requirements Order No. R1-2017-0005. The order serves as both an NPDES permit and as waste discharge requirements for discharges from the facility.
2. The Regional Water Board adopted WDRs Order No. R1-2017-0005 (2017 Order) on August 17, 2017, and it became effective on November 1, 2017. The 2017 Order established, among other things, final effluent limitations for the discharges from the Discharger's permitted discharge location, Discharge Point 001. Order No. R1-2017-0005 included final effluent limitations for the discharges from a second permitted discharge location, Discharge Point 003, identifying that location as a water of the United States, rather than a land discharge location.
3. Section IV.A. of the 2017 Order contains, in part, the following effluent limitations for Nitrate, Ammonia, Dichlorobromomethane, and Total Coliform with which the Discharger is required to maintain compliance at Discharge Point 001 and 003:

Parameter	Units	Monthly Average	30-Day/ Monthly Median	Single Sample
Nitrate Nitrogen, Total (as N)	mg/L	32	--	--

Ammonia Nitrogen, Total (as N)	mg/L	9.4	--	--
Dichlorobromomethane	ug/L	0.56	--	--
Total Coliform	MPN/100 mL	--	23	240

ALLEGATIONS:

4. Self-monitoring reports submitted by the Discharger between April 1, 2021, through March 14, 2023, show that the Discharger violated the above-referenced Nitrate Nitrogen effluent limitation on three(3) occasions, Ammonia Nitrogen effluent limitation on one (1) occasion, Dichlorobromomethane effluent limitation on one (1) occasion, and Total Coliform effluent limitation on four (4) occasions as identified in Exhibit A. Exhibit A is attached hereto and is incorporated herein by this reference. This Complaint only addresses administrative civil liability for the violations specifically identified in Exhibit A, which are subject to mandatory minimum penalties (MMPs) under Water Code section 13385, subdivisions (h) and/or (i).

LEGAL PROVISIONS UPON WHICH LIABILITY IS BASED:

5. Water Code section 13376 prohibits the discharge of pollutants in violation of effluent limitations set forth in WDRs.
6. Water Code section 13385, subdivision (h)(1), requires the Regional Water Board to assess an MMP of three thousand dollars (\$3,000) for each serious violation.
7. Water Code section 13385, subdivision (h)(2), defines a “serious violation” as “any waste discharge that violates the effluent limitations contained in the applicable [WDRs] 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 or 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.”
8. Water Code section 13385, subdivision (i)(1), also requires the Regional Water Board to assess an MMP 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 a period of 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; or

- d. Violates a toxicity effluent limitation contained in the applicable WDRs where the WDRs do not contain pollutant-specific effluent limitations for toxic pollutants.
9. Water Code section 13385, subdivision (i)(2), defines a “period of six consecutive months” to mean “the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.”
10. Water Code section 13385.1, subdivision (a)(1) also defines a “serious violation” as a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY ASSESSMENT:

11. The Assistant Executive Officer proposes that the Discharger be assessed an MMP of Fifteen thousand dollars (\$15,000) for exceeding the effluent limitations for Nitrate, Ammonia, Dichlorobromomethane, and Total Coliform specifically identified in Exhibit A.

THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:

12. The Regional Water Board will hold a hearing on this Complaint on a date proposed by the Regional Water Board Advisory Team, likely on August 3-4, 2023. The meeting is tentatively scheduled to take place in the town of Santa Rosa in Sonoma County, California, at a location to be announced, or at a location posted on the Regional Water Board’s website, unless the Discharger does one of the following by the deadline to submit the Waiver Form (Attachment B), which will be specified in the Notice of Public Hearing and Hearing Procedures that will subsequently be issued by the Advisory Team:
 - a. Waive the right to a hearing before the Regional Water Board and pay the proposed MMP of **\$15,000** in full;
 - b. Waive the right to a hearing-within-90-days before the Regional Water Board after service of this Complaint to engage the Regional Water Board Prosecution Team in settlement negotiations; or
 - c. Waive the right to a hearing-within-90-days before the Regional Water Board after service of this Complaint to extend the hearing date and/or hearing deadlines and allow additional time to prepare for hearing.
13. To select one of the waiver options identified above, the Discharger must complete the enclosed Waiver Form and submit it to the Regional Water Board Advisory Team. If the Discharger has questions about the Waiver Form or wishes

to request an extension to the deadline, it should contact the Regional Water Board Advisory Team.

All submittals and communications to the Advisory Team shall be sent to:

Advisory Team

Valerie Quinto
Executive Officer
Regional Water Quality Control Board
North Coast Region
Valerie.Quinto@waterboards.ca.gov

Nathan Jacobsen
Attorney IV
Office of Chief Counsel
State Water Resources Control Board
(916) 341-5181
Nathan.Jacobsen@waterboards.ca.gov

14. If a hearing takes place, it will be governed by the Notice of Public Hearing and Hearing Procedures that will be provided by the Regional Water Board Advisory Team.
15. During the hearing, the Regional Water Board will hear testimony and arguments and affirm, reject, or modify the proposed MMP amount, or determine whether to refer the matter to the Attorney General for recovery of judicial civil liability.
16. Issuance of this Complaint is an enforcement action and is, therefore, exempt from the California Environmental Quality Act (Pub. Resources and Code section 21000 *et seq.*), pursuant to California Code of Regulations, title 14, section 15321, subdivision (a)(2).

Claudia E. Villacorta, P.E.
Assistant Executive Officer

Attachments:

- A. Exhibit A: List of Violations Requiring Mandatory Minimum Penalties
- B. Hearing Waiver Form for Administrative Civil Liability Complaint

MANDATORY PENALTY ADMINISTRATIVE CIVIL LIABILITY

Fortuna City

Fortuna City WWTP

WDID No. 1B83135OHUM

NPDES No. CA0022730

EXHIBIT "A"

Effluent Limitation Violations Requiring Mandatory Minimum Penalties

#	Violation Number	Violation Date	Constituent	Pollutant Group	Limitation Period	Limit	Result/Average	Units	Exempted from MMP?	Exempt Reason	% Over Limit	Date 180 Days Prior	Serious or Chronic Violation?	No. of Violations within 180 days	Mandatory Fine?	Water Code	Penalty
1	1083797	12/08/2020	Total Coliform	Other	Maximum Daily	240	350	MPN/100	Y	b (R1-2021-0044)	46%	06/11/2020	N/A	Ct. 1	N		\$ 0
2	1088517	02/19/2021	Chlorine, Total Residual	Group 2	Maximum Daily	0.02	0.03	mg/L	Y	b (R1-2021-0044)	50%	08/23/2020	N/A	Ct. 2	N		\$ 0
3	1092054	04/13/2021	Nitrate, Total (as N)	Group 1	Monthly Average	32	37	mg/L	N	a	16%	10/15/2020	N/A	Ct. 3	N		\$ 0
4	1092051	04/20/2021	Total Coliform	Other	Single Sample	240	350	MPN/100	N		N/A	10/22/2020	C	Ct. 4	Y	13385(i)	\$ 3,000
5	1092052	04/26/2021	Total Coliform	Other	Single Sample	240	350	MPN/100	N		N/A	10/28/2020	C	Ct. 5	Y	13385(i)	\$ 3,000
6	1092053	04/30/2021	Total Coliform	Other	Monthly Median	23	214.5	MPN/100	N		N/A	11/01/2020	C	Ct. 6	Y	13385(i)	\$ 3,000
7	1095607	07/13/2021	Ammonia, Total (as N)	Group 1	Monthly Average	9.4	9.7	mg/L	N		3%	01/14/2021	C	Ct. 6	Y	13385(i)	\$ 3,000
8	1106084	05/19/2022	Dichlorobromomethane	Group 2	Monthly Average	0.56	0.92	ug/L	N	a	64%	11/20/2021	N/A	Ct. 1	N		\$ 0
9	1106086	05/31/2022	Total Coliform	Other	30-Day Median	23	49	MPN/100	N	a	N/A	12/02/2021	N/A	Ct. 2	N		\$ 0
10	1106085	06/16/2022	Nitrate, Total (as N)	Group 1	Monthly Average	32	35	mg/L	N	a	9%	12/18/2021	N/A	Ct. 3	N		\$ 0
11	1109356	07/11/2022	Nitrate, Total (as N)	Group 1	Monthly Average	32	33	mg/L	N		3%	01/12/2022	C	Ct. 4	Y	13385(i)	\$ 3,000

Total Penalty: \$15,000

Legend of Table

a. The first three violations in a 180-day period shall not receive MMP assessment unless serious.

b. Violation is not eligible for MMP because it was already included in a previous Enforcement Action. Included in this list to show rolling 180-day count.

Ct. Count – The number that follows represents the number of exceedances in the past 180 days. A count > than Ct. 3 means that a penalty under Water Code Section 13385 (i) applies.

- Violation occurs on sample date or last date of averaging period.

- For Group I pollutants, a violation is serious when the limit is exceeded by 40% or more

- For Group II pollutants, a violation is serious when the limit is exceeded by 20% or more

- When a serious violation occurs on the same day as a chronic, the serious violation is only assessed an MMP once and is counted last for the day when determining the number of chronic violations to be assessed a penalty.

Violation Period Between April 1, 2021, and March 14, 2023

Group I Violations Assessed MMP: 2

Group II Violations Assessed MMP: 0

Other Effluent Violations Assessed MMP: 3

Violations Exempt from MMP: 0

Total Violations Assessed MMP: 5

Mandatory Minimum Penalty = (0 Serious Violations + 5 Non-Serious Violations) x \$3,000 = \$15,000

North Coast Regional Water Quality Control Board

WAIVER FORM FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent the City of Fortuna Municipal Wastewater Treatment Plant (Discharger) in connection with Administrative Civil Liability Complaint No. R1-2023-0033 (Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, “a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing.”

- OPTION 1: Check here if the Discharger waive the hearing requirement and will pay the liability in full.**
- a. I hereby waive any right the Discharger may have to a hearing before the North Coast Regional Water Quality Control Board (Regional Water Board).
 - b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **fifteen thousand dollars (\$15,000)** by submitting a check that references “ACL Complaint No. R1-2023-0033” made payable to the Accounting Office, Attn: ACL Payment Accounting Office, PO Box 1888, Sacramento, California, 95812-1888, and a copy of the check to the Regional Water Board within 30 days from the date on which this waiver is executed.
 - c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments from any source (excluding the Regional Water Board’s Prosecution Team) during this comment period, the Regional Water Board’s Assistant Executive Officer may withdraw the Complaint, return payment, and issue a new Complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
 - d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type

alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

- OPTION 2: Check here if the Discharger waive the 90-day hearing requirement in order to engage in settlement discussions.**
- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the Complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Regional Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1." In these discussions, the Discharger may raise settlement options, including a Supplemental Environmental Project(s), that meet the State Water Resources Control Board's requirements. Copies of the State Water Resources Control Board's 2017 Water Quality Enforcement Policy and 2018 Policy on Supplemental Environmental Projects, are available at: https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf and https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/seps/20180503_sep_policy_amd.pdf
- OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.**
- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the Complaint. By checking this box, the Discharger requests that the Regional Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Water Board to approve the extension.

**CITY OF FORTUNA
MUNICIPAL WASTEWATER TREATMENT PLANT**

(Print Name and Title)

(Signature)

(Date)