

Order R1-2022-0044
Stipulated Administrative Civil Liability Order
City of Eureka Elk River WWTP

cited in Order No. R1-2016-0001, which permits discharges to Humboldt Bay, identified as a Water of the United States.

3. On November 16, 2021, Regional Water Board staff invited the Discharger to enter settlement discussions prior to issuance of a formal administrative civil liability complaint (ACLC) for mandatory minimum penalties (MMPs) issued by the Regional Water Board. These MMPs are based on 57 exceedances of the effluent limits for Settleable Solids, Ammonia, Fecal Coliform, and Cyanide. These violations, which occurred during the period of July 3, 2017 through September 30, 2022 were subject to MMPs, pursuant to Water Code section 13385, subdivisions (h) and (i), for an administrative civil liability amount of \$165,000.
4. Pursuant to Water Code section 13385, subdivision (h), the Regional Water Board shall assess a \$3,000 MMP for each serious violation. A “serious violation” means any waste discharge that violates the effluent limitations contained in the applicable WDRs for a Group II pollutant by 20 percent or more or for a Group I pollutant by 40 percent or more.
5. Pursuant to Water Code section 13385, subdivision (i), the Regional Water Board must assess a \$3,000 MMP for each violation whenever the discharger does any of the following four or more times in period of six consecutive months, except that the requirement to assess the MMP shall not be applicable to the first three violations:
 - a. Violates a WDRs effluent limitation.
 - b. Fails to file a report pursuant to Water Code section 13260.
 - c. Files an incomplete report pursuant to Water Code section 13260.
 - d. Violates a toxicity effluent limitation contained in the applicable WDRs where the WDRs do not contain pollutant-specific effluent limitations for toxic pollutants.
6. The Discharger’s self-monitoring reports from July 3, 2017 through September 30, 2022 document 57 violations of effluent limitations set forth in WDRs Order No. R1-2016-0001. Of the 57 effluent limitation violations, two were exempt for occurrence during the initial six-month period and occurrence during a previous MMP violation period.
7. This Stipulated Order resolves 55 non-exempt effluent limitation violations subject to MMPs pursuant to Water Code section 13385, subdivisions (h) and (i), as identified in Attachment A, incorporated herein by reference. The total administrative civil liability amount is **\$165,000** (55 violations x \$3,000).
8. Pursuant to Water Code section 13385, subdivision (I)(1), in lieu of assessing penalties pursuant to subdivision (h) or (i), the Regional Water Board, with the concurrence of the Discharger, may direct a portion of the penalty amount to be

expended on a supplemental environmental project (SEP) in accordance with the enforcement policy of the State Water Resources Control Board (State Water Board). If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be expended on a SEP may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).

- a. Water Code section 13385, subdivision (I)(2), provides: "For the purposes of this section, a 'supplemental environmental project' means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section."
9. Pursuant to Water Code section 13385, subdivision (I)(1), the Discharger is allowed to spend an amount of money on an approved SEP that is equal to or more than fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds \$15,000 ($\$165,000 - \$15,000 = \$150,000$) for a total amount of \$90,000 ($\$15,000 + \$150,000(0.5) = \$90,000$) to be directed towards the approved SEP. Discharger has proposed to direct the penalty amount toward a SEP as described in section 15 below.
 10. To resolve the alleged violations set forth in Attachment A, by consent and without further administrative proceedings, the Parties have agreed to the imposition of an administrative civil liability amount of **\$165,000** against the Discharger. The Discharger may apply up to \$90,000 (SEP Amount) of this amount to implement the SEP, and such amount shall be permanently suspended upon timely completion of the SEP required herein.
 11. The Parties have agreed to settle the matter without administrative proceedings or civil litigation and to present this Stipulated Order to the Regional Water Board, or its delegate, for adoption as an Order by settlement pursuant to Government Code section 11415.60.
 12. The Prosecution Team has determined that this resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the alleged violations except as provided in this Stipulated Order, and that this Stipulated Order is in the public's interest.

Section III: Stipulations

The foregoing Recitals are adopted by the Parties and they stipulate to the following:

13. **Jurisdiction:** The Regional Water Board has subject-matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.

14. **Administrative Civil Liability:** The Discharger hereby agrees to imposition of an administrative civil liability amount of **\$165,000** to resolve the alleged violations. The Parties agree that of the \$165,000, the Discharger shall expend the SEP Amount of \$90,000 to implement the SEP. Upon the Regional Water Board's review and approval of the information submitted pursuant to paragraph 20, the Discharger's obligation to pay the SEP Amount shall be permanently suspended. The Discharger shall also pay the balance of the total penalty amount or (\$165,000-\$90,000=\$75,000). The \$75,000 amount is due and payable pursuant to this paragraph and shall be submitted by check, made payable to the "State Water Pollution Cleanup and Abatement Account," no later than 30 days following notification from the Executive Officer or her/his delegate. The check shall reference the Order number R1-2022-0044 on page one of the Stipulated Order, and be mailed to:

State Water Resources Control Board Accounting Office
Attn: ACL Payment
PO Box 1888
Sacramento, CA 95812-1888

The Dischargers shall provide a copy of the check via email to the State Water Resources Control Board, Office of Enforcement (Asa.Standfeldt@waterboards.ca.gov) and the Regional Water Board (Zane.Stromberg@waterboards.ca.gov).

15. **SEP Description:** The proposed SEP consists of retrofitting multiple Low Impact Development (LID) features in target Drainage Management Areas (DMAs) which will reduce runoff and associated pollution entering Humboldt Bay through the City of Eureka's Wharfinger parking lot (Project Area). The Wharfinger building and parking lot are located on the corner of Marina Way and Waterfront Drive in Eureka, and waste drains into Humboldt Bay mostly through the parking lot system. The project will expand and transform existing LID planters in the parking lot into storm water self-treatment and retention basins.

The Wharfinger site has 6 DMAs, and the proposed planter alterations will take place in DMAs 2-5. Each LID feature will undergo a soil amendment, replacing existing planter materials at varying depths with new soil and six inches of amended compost, beneath six inches of mulch and native, drought-resistant plants.

The planter alterations in the Project Area will result in increased stormwater storage, treatment, and groundwater recharge and reduce parking lot runoff and pollution entering Humboldt Bay. Overall, the project is expected to provide

approximately 45,975 gallons of additional self-treating storage volume and reduce the impervious area, and consequently the resulting runoff and flow entering the piping system, by approximately 26,718 square feet. The Project Area is also located within the same sub watershed as the Facility.

The SEP falls into the SEP categories of Pollution Reduction, and Environmental Restoration and Protection. Regional Water Board staff reviewed the SEP Proposal and concluded that it meets the definition of a SEP, pursuant to the State Water Board’s 2017 Policy on Supplemental Environmental Projects (SEP Policy). The SEP, as described and as incorporated into this Order is allowable as a SEP, in accordance with section VI of the SEP Policy. Finally, the SEP will be completed within 12 months of Order adoption.

16. **SEP Milestone Requirements:** The Discharger agrees that this Stipulated Order includes the Milestone Requirements set forth in Table 1 below. The Discharger agrees that acknowledgement of the completion of any Milestone Requirement is contingent on the Regional Water Board’s or its delegate’s adoption of this Stipulated Order. The implementation schedule for completion of the SEP is as follows:

Table 1 – Milestone Requirements

Task	Description	Proposed Completion Date
1	Complete Project Design and Compile Project Documents	January 31, 2023
2	Solicit Bids from Construction Firms	January 31, 2023
3	Receive Bids from Construction Firms and Award Contracts for Project Implementation	February 28, 2023
4	Construction Firm Under Contract	March 8, 2023
5	Begin Project Construction	April 1, 2023
6	Construction Completion (Fully Installed and Operational)	June 30, 2023
7	Submission of Final Report/ Certificate of SEP Completion	September 28, 2023

17. Representations and Agreements Regarding the SEP:

- a. As a material condition for the Regional Water Board's acceptance of this Stipulated Order, the Discharger agrees that it will spend the SEP Amount to implement the SEP in accordance with Table 1.
- b. The Discharger agrees that the Regional Water Board has the right to require a third-party audit, at the Discharger's expense, of the funds expended to implement the SEP, and that the Discharger bears ultimate responsibility for meeting all deadlines specified in this Stipulated Order.

18. Publicity Associated with the SEP: Whenever the Discharger or its agents or subcontractors publicize one or more elements of the SEP, they shall state in a **prominent manner** that the SEP was undertaken as part of a settlement to a Regional Water Board enforcement action against the Discharger.

19. Progress Reports and Inspection Authority: The Discharger shall provide certified written quarterly reports describing the progress of SEP implementation, including the status of the Milestone Requirements as described in Table 1. The Discharger agrees that Regional Water Board staff, or its third-party oversight staff, have permission to inspect the SEP at any time without advance notice during normal business hours.

20. Certification of SEP Completion: No later than 90 days (by September 30, 2023, unless extended) after the SEP Completion Date (on or before June 30, 2023, unless extended), a responsible official of the Discharger shall submit the certification of project completion, including a certified statement, signed under penalty of perjury, that documents the Discharger's expenditures to implement the SEP and documents that the Discharger completed the SEP in accordance with the terms of this Stipulated Order. The expenditures may include external payments to outside vendors, but may *not* include the normal, routine work undertaken by Discharger's staff. In making such certification, the signatories may rely upon normal organizational project tracking systems that capture employee time and external payments to outside vendors, such as environmental and information technology contractors or consultants. Documentation of SEP completion may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate SEP completion and verify the costs incurred. The Discharger shall provide Regional Water Board staff with any additional information reasonably necessary to verify the Discharger's SEP expenditures and completion. The Certification of Completion shall also include confirmation that the Discharger followed all applicable environmental laws and regulations in implementing the SEP, including the California Environmental Quality Act (CEQA), Porter-Cologne Act, and the federal Clean Water Act.

21. **Time Extension for SEP:** The Executive Officer may extend the deadlines contained in this Stipulated Order if the Discharger demonstrates delays from unforeseeable contingencies, provided that the Discharger continues to undertake all appropriate measures to meet its deadlines. **The Discharger shall make any deadline extension request in writing at least 30 days prior to the applicable deadline.** Under no circumstances may the completion of the SEP exceed five (5) years from the effective date of this Stipulated Order. Any approval of an extension by the Executive Officer or her/his designee must be in writing.
22. **Regional Water Board Acceptance of Completed SEP:** Upon the Discharger's satisfaction of its obligations under this Stipulated Order, completion of the SEP, and any audits, the Executive Officer will issue a "Satisfaction of Order." The Satisfaction of Order shall terminate any further obligations of the Discharger under this Stipulated Order and permanently suspend the remaining administrative civil liability amount.
23. **Failure to Expend All Suspended Funds on the Approved SEP:** If the Discharger is not able to demonstrate to the reasonable satisfaction of the Executive Officer that the entire SEP amount was spent on the completed SEP, the Discharger shall pay the full administrative civil liability (ACL) amount of \$165,000. The Executive Officer shall issue a "Notice of Violation" that will require the Discharger to pay the total ACL amount to the State Water Pollution Cleanup and Abatement Account within 30 days of the Notice of Violation's issuance date. The Discharger shall submit payment consistent with the payment method described in Section III, paragraph 14. Timely payment of the full ACL amount shall satisfy the Discharger's obligations to implement the SEP.
24. **Failure to Complete the SEP:** If the SEP is not fully implemented by the SEP Completion Date, or if there has been a material failure to satisfy any of the Milestone Requirements, Regional Water Board staff shall issue a Notice of Violation to the Discharger requiring the Discharger to pay some or all of the SEP Amount. The amount to be paid shall be determined via a Motion for Payment of Suspended Liability decided by the Regional Water Board or its delegate. The Discharger shall be liable to pay the entire SEP Amount, or, if shown by the Discharger, some portion thereof less the amount spent to achieve any completed Milestone Requirement as stipulated to by the Parties in writing, or as determined by the Motion for Payment of Suspended Liability. Unless the Regional Water Board or its delegate determines otherwise, the Discharger shall not be entitled to any credit, offset, or reimbursement from the Regional Water Board for expenditures made on the SEP prior to the Notice of Violation's issuance date. Within 30 days of the Regional Water Board's or its delegate's ruling on the Motion for Payment of Suspended Liability, the Discharger shall submit payment pursuant to the ruling and consistent with the payment method described in Section III, paragraph 14. Payment of the Suspended Liability amount determined by the

Regional Water Board or its delegate, following the Motion for Payment of Suspended Liability, shall satisfy the Discharger's obligation to implement the SEP.

25. **Regional Water Board is not Liable:** Neither Regional Water Board members nor Regional Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from negligent or intentional acts or omissions of the Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

26. **Party Contacts for Communications related to Stipulation/Order:**

For the Regional Water Board:

Zane Stromberg
Environmental Scientist
North Coast Regional Water Quality
Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403
Zane.Stromberg@waterboards.ca.gov
(707) 576-2674

For the Discharger:

Brian Gerving
Director of Public Works
City of Eureka Elk River
Wastewater Treatment Plant
4301 Hilfiker Lane,
Eureka, Humboldt County, CA
bgerving@ci.eureka.ca.gov
(707) 441-4152

27. **Compliance with Applicable Laws:** The Discharger understands that complying with the terms of this Stipulated Order, including payment of the administrative civil liability set forth herein, is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject the discharger to further enforcement, including additional administrative civil liability.

28. **Matters Addressed by Stipulation:** Upon the Regional Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the alleged violation(s) as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the completion of the SEP as specified herein.

29. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions

or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Regional Water Board reserves all rights to take additional enforcement actions, including, without limitation, the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Stipulated Order.

30. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
31. **Public Notice:** The Discharger understands that this Stipulated Order must be posted for public notice for a 30-day on the Regional Water Board's website for public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board, or its delegate, for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board or its delegate. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
32. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Regional Water Board's or its delegate's adoption of the Order, and public review of this Stipulated Order is lawful and adequate. The Parties understand that the Regional Water Board, or its delegate, have the authority to require a public hearing on this Stipulated Order. In the event procedural objections are raised or the Regional Water Board requires a public hearing prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure and/or this Stipulated Order as necessary or advisable under the circumstances.
33. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.
34. **Modification:** The Parties shall not modify this Stipulated Order by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegate.
35. **If Order Does Not Take Effect:** In the event that the Order does not take effect because the Regional Water Board or its delegate does not approve it, or the State Water Board or a court vacates it in whole or in part, the Parties acknowledge that the matter may proceed to a contested evidentiary hearing before the Regional

Water Board to determine whether to assess administrative civil liability for the underlying alleged violation(s), unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during settlement discussions will not be admissible as evidence in any hearing on the alleged violation(s). The Parties agree to waive any and all objections that efforts to settle this matter preclude the Regional Water Board from proceeding with a contested evidentiary hearing on the matter, including, but not limited to the following:

- a. Objections related to prejudice or bias of any Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulated Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged in this matter; or
 - b. Laches¹ or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
36. **Waiver of Hearing:** Discharger has been informed of the rights Water Code section 13323, subdivision (b) provides, and hereby waives its right to a hearing before the Regional Water Board prior to the Order's adoption.
37. **Waiver of Right to Petition or Appeal:** Discharger hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to any court, such as California County Superior Courts and/or any California appellate level court. This explicit waiver of rights includes potential future decisions by the Regional Water Board, or its delegate directly related to this Stipulated Order, including, but not limited to time extensions, determination of SEP completion, and other terms contained in this Stipulated Order.
38. **Covenant Not to Sue:** Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or directly relating to any matter expressly addressed by this Stipulated Order or the SEP.

¹ "Laches" is defined by Black's Law Dictionary, 2nd Ed., as: "1. Unreasonable delay or negligence in pursuing a right or claim (...) in a way that prejudices the party against whom relief is sought. 2. The equitable doctrine by which a court denies relief to a claimant who has unreasonably delayed or been negligent in asserting the claim, when that delay or negligence has prejudiced the party against whom relief is sought."

39. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments from Regional Water Board employees or officials regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval this Stipulated Order requires.
40. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Stipulated Order.
41. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder of the Order shall remain in full force and effect.
42. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
43. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board, or its delegate, enters the Order incorporating the terms of this Stipulated Order.

Order R1-2022-0044
Stipulated Administrative Civil Liability Order
City of Eureka Elk River WWTP

IT IS SO STIPULATED.

**California Regional Water Quality Control Board,
North Coast Region Prosecution Team**



Digitally signed by
Claudia E. Villacorta
Date: 2022.12.19
16:10:15 -08'00'

Date: _____

By: _____

Water Boards

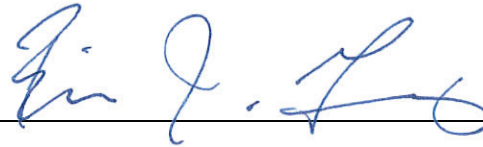
**Claudia E. Villacorta, P.E.
Assistant Executive Officer**

Order R1-2022-0044
Stipulated Administrative Civil Liability Order
City of Eureka Elk River WWTP

**City of Eureka Elk River
Wastewater Treatment
Plant**

Date: 12/27/2022

By:



**Brian Gerving,
Director of Public Works**

ORDER OF THE REGIONAL WATER BOARD

44. This Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.
45. Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Regional Water Board and is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code, §21000 et seq.) in accordance with California Code of Regulations, title 14, section 15321(a)(2). This Order includes a SEP in the North Coast Region. If the Regional Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment that is not otherwise exempt from CEQA, the Discharger shall conduct the necessary and appropriate environmental review prior to approval of the applicable plan. The Discharger will bear all costs of determining whether implementation of any plan required by this Order will have a significant impact on the environment and, if so, the discharger shall bear all costs of preparing any documents necessary for environmental review. If necessary, the Discharger and a consultant acceptable to the Regional Water Board shall enter into a memorandum of understanding (MOU) with the Regional Water Board regarding such costs prior to undertaking any environmental review.
46. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under the Order.

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Stipulated Administrative Civil Liability Order
City of Eureka Elk River WWTP

IT IS HEREBY ORDERED pursuant to Water Code section 13323 and Government Code section 11415.60, on behalf of the California Regional Water Quality Control Board, North Coast Region.

Date: 2/9/2023

By:


Digitally signed by Valerie Qunito
Date: 2023.02.09 16:51:29
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Water Boards

Valerie Qunito
Executive Officer

Stipulated Order No. R1-2022-0044 for the City of Eureka Elk River WWTP

Attachments:

- A. Exhibit A – List of Violations Requiring Mandatory Minimum Penalties
- B. Exhibit B – Supplemental Environmental Project Description

Mandatory Penalty Administrative Civil Liability

Eureka City

Eureka City Elk River WWTP

WDID No. 1B82151OHUM

NPDES No. CA0024449

EXHIBIT "A"

Effluent Limitations 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	1024192	1/10/2017	Fecal Coliform	Other	Daily Maximum	43	140	MPN/100	Y	b	226%	7/14/2016	C	1	N		\$0
2	1024191	1/31/2017	Ammonia, Total (as N)	Group 1	Monthly Average	4.1	6.4	mg/L	Y	b	56%	8/4/2016	S	2	N		\$0
3	1024193	2/9/2017	Fecal Coliform	Other	Daily Maximum	43	900	MPN/100	Y	b	1993%	8/13/2016	C	3	N		\$0
4	1029034	6/5/2017	Ammonia, Total (as N)	Group 1	Daily Maximum	10	13	mg/L	Y	b	30%	12/7/2016	C	> Ct. 3	N		\$0
5	1029035	6/19/2017	Ammonia, Total (as N)	Group 1	Daily Maximum	10	18	mg/L	Y	b	80%	12/21/2016	S	> Ct. 3	N		\$0
6	1029036	6/19/2017	Fecal Coliform	Other	Daily Maximum	43	240	MPN/100	Y	b	458%	12/21/2016	C	> Ct. 3	N		\$0
7	1029033	6/30/2017	Ammonia, Total (as N)	Group 1	Monthly Average	4.1	13	mg/L	Y	b	217%	1/1/2017	S	> Ct. 3	N		\$0
8	1033780	07/03/2017	Ammonia, Total (as N)	Group 1	Daily Maximum	10	12	mg/L	N		20%	01/04/2017	C	> Ct. 3	Y	13385(i)	\$ 3,000
9	1033786	07/31/2017	Ammonia, Total (as N)	Group 1	Monthly Average	4.1	9.4	mg/L	N		129%	02/01/2017	S	> Ct. 3	Y	13385(i)	\$ 3,000
10	1033781	08/03/2017	Fecal Coliform	Other	Daily Maximum	43	130	MPN/100	N		202%	02/04/2017	C	> Ct. 3	Y	13385(i)	\$ 3,000
11	1033783	08/21/2017	Fecal Coliform	Other	Daily Maximum	43	170	MPN/100	N		295%	02/22/2017	C	> Ct. 3	Y	13385(i)	\$ 3,000
12	1033785	08/31/2017	Fecal Coliform	Other	Monthly Median	14	17	MPN/100	N		21%	03/04/2017	C	> Ct. 3	Y	13385(i)	\$ 3,000
13	1033784	09/15/2017	Fecal Coliform	Other	Daily Maximum	43	130	MPN/100	N		202%	03/19/2017	C	> Ct. 3	Y	13385(i)	\$ 3,000
14	1033782	09/17/2017	Fecal Coliform	Other	Daily Maximum	43	50	MPN/100	N		16%	03/21/2017	C	> Ct. 3	Y	13385(i)	\$ 3,000
15	1038524	10/31/2017	Ammonia, Total (as N)	Group 1	Monthly Average	4.1	5.7	mg/L	N		39%	05/04/2017	C	> Ct. 3	Y	13385(i)	\$ 3,000
16	1038522	11/02/2017	Fecal Coliform	Other	Daily Maximum	43	49	MPN/100	N		14%	05/06/2017	C	> Ct. 3	Y	13385(i)	\$ 3,000
17	1038523	11/30/2017	Ammonia, Total (as N)	Group 1	Monthly Average	4.1	4.4	mg/L	N		7%	06/03/2017	C	> Ct. 3	Y	13385(i)	\$ 3,000
18	1092756	01/03/2018	Cyanide, Total (as CN)	Group 2	Daily Maximum	1	1.1	ug/L	N		10%	07/07/2017	C	> Ct. 3	Y	13385(i)	\$ 3,000
19	1092757	01/03/2018	Cyanide, Total (as CN)	Group 2	Monthly Average	0.5	1.1	ug/L	N		120%	07/07/2017	S	> Ct. 3	Y	13385(h)	\$ 3,000
20	1042982	01/31/2018	Ammonia, Total (as N)	Group 1	Monthly Average	4.1	5.4	mg/L	N		32%	08/04/2017	C	> Ct. 3	Y	13385(i)	\$ 3,000
21	1092049	07/02/2018	Cyanide, Total (as CN)	Group 2	Maximum Daily	1	2.9	ug/L	N		190%	01/03/2018	S	> Ct. 3	Y	13385(h)	\$ 3,000
22	1092050	07/02/2018	Cyanide, Total (as CN)	Group 2	Monthly Average	0.5	2.9	ug/L	N		480%	01/03/2018	S	> Ct. 3	Y	13385(h)	\$ 3,000
23	1051682	09/30/2018	Ammonia, Total (as N)	Group 1	Monthly Average	4.1	7.1	mg/L	N		73%	04/03/2018	S	> Ct. 3	Y	13385(h)	\$ 3,000
24	1055587	10/31/2018	Ammonia, Total (as N)	Group 1	Monthly Average	4.1	5.3	mg/L	N		29%	05/04/2018	C	> Ct. 3	Y	13385(i)	\$ 3,000
25	1055588	11/30/2018	Ammonia, Total (as N)	Group 1	Monthly Average	4.1	6.4	mg/L	N		56%	06/03/2018	S	> Ct. 3	Y	13385(h)	\$ 3,000
26	1055589	12/31/2018	Ammonia, Total (as N)	Group 1	Monthly Average	4.1	5.8	mg/L	N		41%	07/04/2018	S	> Ct. 3	Y	13385(h)	\$ 3,000
27	1058220	01/01/2019	Cyanide, Total (as CN)	Group 2	Daily Maximum	1	1.9	ug/L	N		90%	07/05/2018	S	> Ct. 3	Y	13385(h)	\$ 3,000
28	1058223	01/01/2019	Cyanide, Total (as CN)	Group 2	Monthly Average	0.5	1.9	ug/L	N		280%	07/05/2018	S	> Ct. 3	Y	13385(h)	\$ 3,000
29	1058222	01/31/2019	Ammonia, Total (as N)	Group 1	Monthly Average	4.1	5.3	mg/L	N		29%	08/04/2018	C	> Ct. 3	Y	13385(i)	\$ 3,000
30	1058221	02/11/2019	Fecal Coliform	Other	Monthly Maximum	43	50	MPN/100	N		16%	08/15/2018	C	> Ct. 3	Y	13385(i)	\$ 3,000
31	1061468	04/01/2019	Cyanide, Total (as CN)	Group 2	Daily Maximum	1	2.9	ug/L	N		190%	10/03/2018	S	> Ct. 3	Y	13385(h)	\$ 3,000
32	1061469	04/30/2019	Cyanide, Total (as CN)	Group 2	Monthly Average	0.5	2.9	ug/L	N		480%	11/01/2018	S	> Ct. 3	Y	13385(h)	\$ 3,000
33	1061467	06/13/2019	Ammonia, Total (as N)	Group 1	Daily Maximum	10	12	mg/L	N		20%	12/15/2018	C	> Ct. 3	Y	13385(i)	\$ 3,000
34	1061466	06/30/2019	Ammonia, Total (as N)	Group 1	Monthly Average	4.1	9.5	mg/L	N		132%	01/01/2019	S	> Ct. 3	Y	13385(h)	\$ 3,000
35	1066116	07/03/2019	Ammonia, Total (as N)	Group 1	Daily Maximum	10	12	mg/L	N		20%	01/04/2019	C	> Ct. 3	Y	13385(i)	\$ 3,000
36	1066115	07/31/2019	Ammonia, Total (as N)	Group 1	Monthly Average	4.1	7.4	mg/L	N		80%	02/01/2019	S	> Ct. 3	Y	13385(h)	\$ 3,000
37	1070171	11/30/2019	Ammonia, Total (as N)	Group 1	Monthly Average	4.1	4.4	mg/L	N		7%	06/03/2019	C	> Ct. 3	Y	13385(i)	\$ 3,000
38	1080900	08/03/2020	Fecal Coliform	Other	Daily Maximum	43	130	MPN/100	Y	a	202%	02/05/2020	C	Ct. 1	N		\$ 0
39	1080901	08/05/2020	Fecal Coliform	Other	Daily Maximum	43	50	MPN/100	Y	a	16%	02/07/2020	C	Ct. 2	N		\$ 0
40	1084953	10/06/2020	Ammonia, Total (as N)	Group 1	Daily Maximum	10	16	mg/L	N		60%	04/09/2020	S	Ct. 3	Y	13385(h)	\$ 3,000
41	1084954	10/21/2020	Fecal Coliform	Other	Daily Maximum	43	80	MPN/100	N		86%	04/24/2020	C	> Ct. 3	Y	13385(i)	\$ 3,000
42	1084955	10/31/2020	Ammonia, Total (as N)	Group 1	Monthly Average	4.1	8.9	mg/L	N		117%	05/04/2020	S	> Ct. 3	Y	13385(h)	\$ 3,000
43	1084956	12/31/2020	Ammonia, Total (as N)	Group 1	Monthly Average	4.1	6.6	mg/L	N		61%	07/04/2020	S	> Ct. 3	Y	13385(h)	\$ 3,000
44	1089550	01/31/2021	Ammonia, Total (as N)	Group 1	Monthly Average	4.1	6	mg/L	N		46%	08/04/2020	S	> Ct. 3	Y	13385(h)	\$ 3,000
45	1092197	06/24/2021	Fecal Coliform	Other	Daily Maximum	43	80	MPN/100	N		86%	12/26/2020	C	> Ct. 3	Y	13385(i)	\$ 3,000
46	1095596	07/04/2021	Fecal Coliform	Other	Daily Maximum	43	50	MPN/100	N		16%	01/05/2021	C	> Ct. 3	N	13385(i)	\$ 3,000
47	1095600	07/13/2021	Fecal Coliform	Other	Daily Maximum	43	50	MPN/100	N		16%	01/14/2021	C	> Ct. 3	Y	13385(i)	\$ 3,000
48	1095597	07/14/2021	Settleable Solids	Group 1	Daily Maximum	0.2	0.3	mg/L	N		50%	01/15/2021	S	> Ct. 3	Y	13385(h)	\$ 3,000
49	1095601	07/19/2021	Fecal Coliform	Other	Daily Maximum	43	220	MPN/100	N		412%	01/20/2021	C	> Ct. 3	Y	13385(i)	\$ 3,000
50	1095603	08/03/2021	Fecal Coliform	Other	Daily Maximum	43	50	MPN/100	N		16%	02/04/2021	C	> Ct. 3	Y	13385(i)	\$ 3,000
51	1095604	08/04/2021	Fecal Coliform	Other	Daily Maximum	43	50	MPN/100	N		16%	02/05/2021	C	> Ct. 3	Y	13385(i)	\$ 3,000
52	1095602	08/11/2021	Fecal Coliform	Other	Daily Maximum	43	50	MPN/100	N		16%	02/12/2021	C	> Ct. 3	Y	13385(i)	\$ 3,000
53	1095605	08/17/2021	Fecal Coliform	Other	Daily Maximum	43	50	MPN/100	N		16%	02/18/2021	C	> Ct. 3	Y	13385(i)	\$ 3,000
54	1095598	08/31/2021	Fecal Coliform	Other	Monthly Median	14	17	MPN/100	N		21%	03/04/2021	C	> Ct. 3	Y	13385(i)	\$ 3,000
55	1095599	09/22/2021	Fecal Coliform	Other	1-Hour Average	43	130	MPN/100	N		202%	03/26/2021	C	> Ct. 3	Y	13385(i)	\$ 3,000
56	1099807	11/30/2021	Ammonia, Total (as N)	Group 1	Monthly Average	4.1	5.5	mg/L	N		34%	06/03/2021	C	> Ct. 3	Y	13385(i)	\$ 3,000
57	1099808	12/13/2021	Ammonia, Total (as N)	Group 1	Daily Maximum	10	14	mg/L	N		40%	06/16/2021	S	> Ct. 3	Y	13385(h)	\$ 3,000
58	1099809	12/31/2021	Ammonia, Total (as N)	Group 1	Monthly Average	4.1	8.2	mg/L	N		100%	07/04/2021	S	> Ct. 3	Y	13385(h)	\$ 3,000
59	1103586	1/25/2022	Fecal Coliform	Other	Daily Maximum	43	50	MPN/100	N		16%	7/29/2021	C	> Ct. 3	Y	13385(i)	\$ 3,000
60	1106715	6/23/2022	Fecal Coliform	Other	Daily Maximum	43	500	MPN/100	N		1063%	12/25/2021	C	> Ct. 3	Y	13385(i)	\$ 3,000
61	1109711	07/10/2022	Fecal Coliform	Other	Monthly Maximum	43	50	MPN/100	N		16%	01/11/2022	C	> Ct. 3	Y	13385(i)	\$ 3,000
62	1109710	08/10/2022	Fecal Coliform	Other	Monthly Maximum	43	70	MPN/100	N		63%	02/11/2022	C	> Ct. 3	Y	13385(i)	\$ 3,000
63	1109712	08/21/2022	Fecal Coliform	Other	Monthly Maximum	43	500	MPN/100	N		1063%	02/22/2022	C	> Ct. 3	Y	13385(i)	\$ 3,000
64	1109713	09/04/2022	Fecal Coliform	Other	Monthly Maximum	43	140	MPN/100	N		226%	03/08/2022	C	> Ct. 3	Y	13385(i)	\$ 3,000

Total Penalty: \$ 165,000

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.

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

2 - 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

3 - 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 July 3, 2017 and September 30, 2022

Group I Violations Assessed MMP:	23
Group II Violations Assessed MMP:	8
Other Effluent Violations Assessed MMP:	24
Violations Exempt from MMP:	9
Total Violations Assessed MMP:	55

Mandatory Minimum Penalty = (20 Serious Violations + 35 Non-Serious Violations) x \$3,000 = \$165,000

Exhibit B - Supplemental Environmental Project Proposal
Wharfinger Parking Lot Stormwater Modifications Project

1 Name of Project: Wharfinger Parking Lot Stormwater Modifications

2 Project Applicant: City of Eureka

3 Contact Person and Title:

Brian Gerving, Director of Public Works, City of Eureka

Department of Public Works
City Hall, 531 K Street, Eureka CA 95501
(707) 441-4152
bgerving@ci.eureka.ca.gov

Jesse Willor, P.E., Civil Engineer, City of Eureka

Department of Public Works
City Hall, 531 K Street, Eureka CA 95501
(707) 441-4031
jwillor@ci.eureka.ca.gov

4 Project Description:

In order to reduce runoff and associated pollution entering Humboldt Bay, the City of Eureka's Wharfinger Parking lot will be retrofitted with low-impact development (LID) features in target drainage management areas (DMAs). The Wharfinger building and parking lot located at Marina Way and W Waterfront Drive drains into Humboldt Bay mostly through the parking lot piping system. This project will focus on expanding and transforming existing planters in the parking lot into self-treating and retaining areas.

The City of Eureka has proposed alterations to several existing planter features in the parking lot. Each LID feature will undergo a soil amendment by replacing existing planter materials at varying depths with new soil, and 6 inches of amended compost, beneath 6 inches of mulch and native and drought resistant plants.

In conclusion, the planter alterations will result in increased stormwater storage, treatment, and groundwater recharge as well as reduce parking lot runoff and pollution entering Humboldt Bay. Parking lot runoff can carry oils, tire sediments, and metals into our Bay without effective water treatment. By directing stormwater to rain gardens instead of into the piping system, the City is providing a more natural and aesthetically pleasing treatment system and allowing the in-line oil water separator to operate more effectively by reducing the pipe flow. Estimated storage and runoff reductions for each DMA and LID feature can be

seen in Table 2. Overall, the project is anticipated to provide approximately 45,975 gallons of additional self-treating storage volume (not considering subsoil infiltration) and reduce the impervious area runoff and flow entering the piping system by approximately 26,718 SF.

5 Compliance with SEP Criteria

The Stormwater Modification Project will provide increased stormwater storage, treatment and groundwater recharge, as well as reduce parking lot runoff and pollution entering Humboldt Bay. The increased stormwater treatment and storage provided by the Stormwater Modification Project will improve water quality, reduce the likelihood of stormwater damage from flooding, and provide an aesthetically-pleasing means of stormwater runoff treatment.

6 Above and Beyond Discharger’s Obligations:

The City of Eureka voluntarily agrees to undertake the SEP. The City is not required to undertake this project, and this project was never considered by the City before or absent the current regulatory enforcement action.

7 No Benefit to the Water Board Members, Staff, Family:

This SEP provides no direct fiscal benefit to the Regional Water Board’s functions, its members, its staff, or family of members or staff.

8 Nexus to the Nature or Location of Violations:

The SEP will be located at the Wharfinger building parking lot, directly adjacent to Humboldt Bay, which is within the same hydrologic subarea as the City of Eureka Elk River Wastewater Treatment Plant. Thus, the SEP has a direct nexus to the nature of the violations alleged in Exhibit A.

9 Brief work plan containing deliverables and schedule. The deliverables must include Quarterly Progress Reports (if completion of the project takes longer than 12 months) and a Final Completion Report.

Project Term/ Milestones: January 31, 2023 through September 28, 2023

Task	Description	Proposed Completion Date
1	Complete Project Design and Compile Project Documents	January 31, 2023
2	Solicit Bids from Construction Firms	January 31, 2023

Task	Description	Proposed Completion Date
3	Receive Bids from Construction Firms and Award Contracts for Project Implementation	February 28, 2023
4	Construction Firm Under Contract	March 8, 2023
5	Begin Project Construction	April 1, 2023
6	Construction Completion (Fully Installed and Operational)	June 30, 2023
7	Submission of Final Report/ Certificate of SEP Completion	September 28, 2023

Milestones: Construction is expected to occur in April of 2023, once a construction firm has been contracted. The project is expected to be fully completed by June of 2023, and we expect the Final Completion Report to be turned in at the end of September 2023.

10 Performance Standard

The following performance standards must be achieved for the SEP to be deemed complete: (1) Completed construction of LID project as described in section 4 and (2) Submit a Final Completion Report upon completion of the project.

11 Reports to the Regional Water Board

Progress Reports:

Depending on the final Estimated Completion Dates for the City’s Supplemental Environmental Project, Quarterly Progress Reports might be included to the Order.

Final Report

The final report will document that the project has been completed, will include a summary of all completed tasks, and will have an accounting of all expenditures. The accounting will clearly show whether the final cost of the successfully completed SEP was less than, equal to, or more than the liability suspended amount of \$90,000. The following statement will be included above the signature

line of the report: *“I certify under penalty of perjury that the foregoing is true and correct.”*

Due Date: Within one month after the project is complete, but no later than September 28, 2023.

All reports shall be submitted to the North Coast Regional Water Quality Control Board’s (Regional Water Board) contact, Zane Stromberg via email at Zane.Stromberg@waterboards.ca.gov.

12 California Environmental Quality Act (CEQA) Compliance:

The project is ready for implementation and construction will occur this coming Winter/Spring. This project has a class 1 CEQA exemption and is fully permitted. Construction is scheduled to begin in April of 2023 and will take approximately six months. The project is occurring on property owned by the City of Eureka.

13 Extensions:

The SEP Completion Date is the due date of the final report, September 28, 2023, unless the Executive Officer approves an extension. If an extension is granted, it shall apply to the reports to the Regional Water Board. If an extension is necessary, the City of Eureka shall submit a written request for such extension to the Executive Officer as required by paragraph 21 in Stipulated Order No. R1-2022-0044.