

California Regional Water Quality Control Board  
North Coast Region

Administrative Civil Liability Complaint No. R1-2003-0024

For

Violations of  
California Water Code Section 13267

Hopland Public Utilities District  
WDID No. 1B801540MEN

Mendocino County

This Complaint to assess Civil Liability pursuant to California Water Code Sections 13268 and 13323 is issued to Hopland Public Utilities District (hereinafter Discharger), for violations of Monitoring and Reporting Program No. 93-11 issued pursuant to California Water Code Section 13267(b) for the period June 1, 2000, through July 31, 2002.

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

1. On January 8, 1993, the Regional Water Board adopted Waste Discharge Requirements, Board Order 93-11 (WDRs) that included Monitoring and Reporting Program No. 93-11 to regulate discharges of waste from the Discharger's wastewater collection, treatment and disposal system.
2. The Discharger violated permit conditions contained in the WDRs by failing to submit required self-monitoring reports, for which the Regional Water Board may impose Civil Liability under Section 13268(b)(1) of the California Water Code (CWC).
3. Of the monthly self-monitoring reports due during the period of June 1, 2000, to July 31, 2002, the Discharger failed to submit 12 reports and submitted nine reports late, violating Section 13267(b) of the CWC.
  - a. Provision D.7 of the WDRs requires the Discharger to submit monthly self-monitoring reports in accordance with the Monitoring and Reporting Program. Monitoring and Reporting Program No. 93-11 requires that samples be collected and analyzed weekly for BOD, Settleable Matter, Suspended Solids, and Coliform Organisms. Additionally, Chlorine Residual and Hydrogen Ion require daily monitoring.

- b. On June 19, 2001, the Regional Water Board Executive Officer issued a Notice of Violation (NOV) to the Discharger for non-submittal of self-monitoring reports. The NOV was hand delivered to Evert Jacobson, General Manager of the Hopland Public Utilities District by Regional Water Board staff member Mona Dougherty on June 21, 2001. The NOV stated that unless submittal of self-monitoring reports was resumed, the Regional Water Board would take appropriate enforcement action under the authority of the CWC.
4. CWC Section 13268(b)(1) provides for the imposition of Civil Liabilities against any person failing to submit monitoring reports. For violations of CWC Section 13267, Section 13268(b)(1) authorizes the Regional Water Board to impose Civil Liability in an amount not to exceed the sum of \$1,000 for each day in which the violation occurs. The maximum total Civil Liability that could be imposed against the Discharger in this matter is calculated as follows:

7,662 days of violation at \$1,000 per day = \$7,662,000

A day of violation has accrued every day that a self-monitoring report was past due through July 31, 2002. The days of violation for each self-monitoring report not submitted or submitted late are summarized as follows:

<b>Monitoring Report</b>	<b>Date Due</b>	<b>Date Received</b>	<b>Days of Violation</b>
June 2000	July 15, 2000	Not Submitted	746
July 2000	August 15, 2000	Not Submitted	715
August 2000	September 15, 2000	Not Submitted	684
September 2000	October 15, 2000	Not Submitted	654
October 2000	November 15, 2000	Not Submitted	623
November 2000	December 15, 2000	Not Submitted	593
December 2000	January 15, 2001	Not Submitted	562
January 2001	February 15, 2001	July 29, 2002	529
June 2001	July 15, 2001	Not Submitted	381
July 2001	August 15, 2001	July 29, 2002	348
August 2001	September 15, 2001	July 29, 2002	317
September 2001	October 15, 2001	July 29, 2002	287
October 2001	November 15, 2001	Not Submitted	258
November 2001	December 15, 2001	Not Submitted	228
December 2001	January 15, 2002	Not Submitted	197
January 2002	February 15, 2002	July 29, 2002	164
February 2002	March 15, 2002	July 29, 2002	136
March 2002	April 15, 2002	July 29, 2002	105
April 2002	May 15, 2002	July 29, 2002	75
May 2002	June 15, 2002	Not Submitted	46
June 2002	July 15, 2002	July 29, 2002	14
<b>Total</b>			<b>7,662</b>

5. In determining the amount of any Civil Liability, pursuant to CWC Section 13327, the Regional Water Board must take into account the nature, circumstance, extent, and gravity of the violation; whether the discharge is susceptible to cleanup or abatement; the degree of toxicity of the discharge; and with respect to the violator, the ability to pay; the ability to continue business; voluntary cleanup efforts; prior history of violations; the degree of culpability; economic benefit or savings resulting from the violation; and other matters that justice may require.

**A. Nature, Circumstance, Extent, and Gravity of the Violations**

The review of self-monitoring reports provides Regional Water Board staff the best indicator for treatment process performance and impact to water quality from the effluent discharge. Substandard operation and maintenance of the facility have the potential to impact water quality and public health.

The State Water Resources Control Board's Enforcement Policy contains a list of "priority" violations. One such violation is the submittal of reports required by Section 13267 of the CWC more than 30 days late. Of the 21 overdue self-monitoring reports, 20 of them were more than 30 days late as of July 31, 2002. The policy also recommends progressive enforcement for dealing with repeat violations. The Discharger has received several verbal warnings and a Notice of Violation regarding non-submittal of self-monitoring reports. The Discharger has ignored the Notice of Violation.

Consideration of the nature, circumstance, extent, and gravity of the violations does not provide reason for reduction from the maximum the amount of Civil Liability to be imposed.

**B. Susceptibility to Cleanup or Abatement**

This does not apply to the nature of the violations.

Consideration of susceptibility to cleanup or abatement does not provide reason for reduction from the maximum the amount of Civil Liability to be imposed.

**C. Degree of Toxicity**

This does not apply to the nature of the violations.

Consideration of the degree of toxicity of the violations does not provide reason for reduction from the maximum the amount of Civil Liability to be imposed.

**D. Ability to Pay**

The Discharger operates a small wastewater treatment facility in rural Mendocino County. Although the Discharger has not submitted any information to the Regional Water Board indicating that they are in a financial position that would prevent them

from remitting an imposed fine, Regional Water Board staff assumes that the Discharger has a small annual operation budget.

Consideration of the Discharger's ability to pay does provide reason for reduction from the maximum the amount of Civil Liability to be imposed.

#### **E. Effect on Ability to Continue Business**

Imposition of the maximum Civil Liability amount of \$7,662,000 would likely have an effect on the Discharger's ability to continue business.

Consideration of effect on ability to continue business does provide reason for reduction from the maximum the amount of Civil Liability to be imposed.

#### **F. Voluntary Cleanup Efforts**

This does not apply to the nature of the violations.

Consideration of voluntary cleanup efforts does not provide reason for reduction from the maximum the amount of Civil Liability to be imposed.

#### **G. Prior History of Violations**

The Discharger failed to submit three monthly self-monitoring reports and submitted eight self-monitoring reports late between October 1999 and May 2001. These violations are not included in this Administrative Civil Liability Complaint.

Consideration of prior history of violations does not provide reason for reduction from the maximum the amount of Civil Liability to be imposed.

#### **H. Degree of Culpability**

The WDRs issued require the Discharger to submit monthly self-monitoring reports. The Discharger has failed to submit these reports as required by the WDRs and the NOV.

Consideration of the degree of culpability does not provide reason for reduction from the maximum the amount of Civil Liability to be imposed.

#### **I. Economic Savings Resulting from the Violation**

The Discharger received economic savings resulting from the failure to submit self-monitoring reports. The Discharger's economic savings for laboratory costs for the required analyses at Alpha Analytical in Ukiah, California, are estimated at \$14,515. The Laboratory costs and monitoring frequency used to calculate the laboratory economic savings are reported as follows:

<b>Constituent to be Monitored</b>	<b>Monitoring Frequency</b>	<b>Months not Reported</b>	<b>Cost of Analyses</b>	<b>Total Cost</b>
BOD	4/month (48) <sup>1</sup>	12	\$33	\$1,584
TSS	4/month (48)	12	\$17	\$816
Total Coliform	4/month (48)	12	\$35	\$1,680
Settleable Solids	4/month (84) <sup>2</sup>	21	\$15	\$1,260
Chlorine Residual	daily (367) <sup>3</sup>	12	\$15	\$5,505
pH	daily (367)	12	\$10	\$3,670
<b>Total</b>				<b>\$14,515</b>

The Discharger's economic savings for staff time for sampling and reporting is estimated at \$6,240 based on the following:

<b>Hopland PUD Staff Member</b>	<b>Estimated Hours Required for Monitoring and Reporting</b>	<b>Total Cost (\$65/Hour)</b>
Evert Jacobson	2 hours/week (96) <sup>4</sup>	\$6,240

Consideration of the economic savings resulting from the violation does not provide reason for reduction from the maximum the amount of Civil Liability to be imposed.

#### **J. Other Matters as Justice May Require**

Regional Water Board staff costs are estimated to be approximately \$10,010 based on the following:

<b>Regional Water Board Staff Member</b>	<b>Hours Worked</b>	<b>Total Cost (\$65/Hour)</b>
Mona Dougherty	80	\$5,200
Administrative Unit	11	\$715
John Short	22	\$1,430
Robert Tancreto	16	\$1,040
Erik Spiess	25	\$1,625
<b>Total</b>		<b>\$10,010</b>

<sup>1</sup> Monitoring and Reporting (M&R) Program No. 93-11 requires weekly sampling for this constituent. Estimate developed equating a month to four weeks and multiplying by 12, the number of months with no report submitted. Total of 48 required analyses.

<sup>2</sup> M&R Program No. 93-11 requires weekly sampling for this constituent. Estimate developed equating a month to four weeks and multiplying by 21, the number of months with no report submitted. Total of 84 required analyses.

<sup>3</sup> M&R Program No. 93-11 requires daily sampling for this constituent. The 12 months with no report submitted encompassed 367 days. Total of 367 required analyses.

<sup>4</sup> Regional Water Board staff estimated 2 hours a week for Discharger staff time to perform sampling and reporting and estimated that each month contained four weeks and then multiplied this number by 12 months that had not been reported, for a total of 96 hours.

Consideration of other matters as justice may require does not provide reason for reduction from the maximum the amount of Civil Liability to be imposed.

6. The issuance of this Complaint is an enforcement action to protect the environment, and is therefore exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) pursuant to Title 14, California Code of Regulations, Sections 15308 and 15321(a)(2).
7. The Executive Officer of the Regional Water Board issued Administrative Civil Liability Complaint No. R1-2002-0084 on July 31, 2002. After receipt, the Discharger requested that half of the proposed \$45,000 Civil Liability be suspended contingent on submittal of punctual, complete self-monitoring reports. The Executive Officer of the Regional Water Board reissued Monitoring and Reporting Program No. 93-11 on December 19, 2002 to clarify requirements for a punctual, complete self-monitoring report. This complaint is intended to replace Administrative Civil Liability Complaint No. R1-2002-0084. This complaint is similar to Administrative Civil Liability Complaint No. R1-2002-0084, except it allows for three installment payments of \$7,500 and a suspended liability amount of \$22,500 contingent on punctual, complete submittal of self-monitoring reports for 25 months.

### **PROPOSED CIVIL LIABILITY**

Based on a review of the facts and the required factors, the Executive Officer of the Regional Water Board rescinds Administrative Civil Liability Order No. R1-2002-0084, and is issuing this Complaint with a proposed Administrative Civil Liability in the amount of \$45,000 dollars. Of this amount, \$22,500 is due and payable according to the schedule described below and \$22,500 is permanently suspended consistent with the following:

1. The Discharger shall submit \$22,500 in three installments of \$7,500. These installments are due in the Regional Water Board office no later than February 21, 2003; March 30, 2003; and June 30, 2003.
2. The Regional Water Board agrees to permanently suspend \$22,500 in additional liability contingent on submittal of 25 complete, timely self-monitoring reports. The self-monitoring reports shall be submitted as described in the Monitoring and Reporting Program No. 93-11, as amended on December 19, 2002, and as further amended in the future.

Each of the following 25 complete, timely self-monitoring reports submitted by the Discharger shall suspend \$900 of the \$22,500 additional liability.

January 2003	February 2003	March 2003	April 2003
May 2003	June 2003	July 2003	August 2003
September 2003	October 2003	November 2003	December 2003
January 2004	February 2004	March 2004	April 2004
May 2004	June 2004	July 2004	August 2004
September 2004	October 2004	November 2004	December 2004
January 2005			

**WAIVER OF HEARING**

You may waive the right to a hearing. If you wish to waive the hearing, please check and sign the enclosed waiver and return it together with a cashier's check or money order, made payable to the "State Water Resources Control Board" for \$7,500 by February 21, 2003 to the California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, CA 95403.

Ordered by \_\_\_\_\_

Susan A. Warner  
Executive Officer

February 5, 2003

(hoplandaclcforsettlement)