

California Regional Water Quality Control Board
North Coast Region

COMPLAINT NO. R1-2005-0028

FOR

ADMINISTRATIVE CIVIL LIABILITY

AND

MANDATORY PENALTIES
IN THE MATTER OF
STOCKTON PACIFIC ENTERPRISES, INC.

FOR

VIOLATIONS OF WASTE DISCHARGE REQUIREMENTS
ORDER NOS. R1-2001-0063 AND R1-2004-0047
(NPDES NO. CA0005894)
ID NO. 1B77005OHUM

Humboldt County

This complaint to assess mandatory minimum penalties and administrative civil liability pursuant to Water Code Section 13385 (Complaint) is issued to Stockton Pacific Enterprises, Inc. (hereinafter Permittee), for violations of Waste Discharge Requirements Order Nos. R1-2001-0063 and R1-2004-0047 (NPDES No. CA0005894) for the period August 15, 2003 through March 2, 2005.

The Executive Officer of the Regional Water Board finds the following:

1. On June 28, 2001, the North Coast Regional Water Quality Control Board (hereinafter Regional Water Board) adopted Waste Discharge Requirements Order No. R1-2001-0063 for the Samoa Pacific Cellulose, LLC Pulp Mill at Samoa, Humboldt County. Samoa Pacific Cellulose, LLC transferred ownership of the Samoa Pulp Mill to the Permittee on August 15, 2003. On June 22, 2004, the Regional Water Board adopted Waste Discharge Requirements Order R1-2004-0047 (NPDES Permit No. CA0005894) for Stockton Pacific Enterprises, Inc. The new Order made a name change in the permit and other minor modifications. The Permittee operated the Samoa Pulp Mill between August 15, 2003, and March 2, 2005, under Order Nos. R1-2001-0063 and R1-2004-0047. Both of these Waste Discharge Requirements serve as National Pollutant Discharge Elimination System (NPDES) permits under the federal Clean Water Act. Order No. R1-2001-0063 was rescinded on June 22, 2004.
2. The Samoa Pulp Mill discharges industrial wastewater from the pulping process and storm water from the Mill into the Pacific Ocean.

Proposed Mandatory Penalties

3. Water Code Section 13385(h)(1) requires the Regional Water Board to assess a mandatory minimum penalty (MMP) of three thousand dollars (\$3,000) for each serious violation of certain NPDES permit effluent limitations.
4. Water Code Section 13385(h)(2) defines a serious violation as any waste discharge of a Group I pollutant that exceeds the effluent limitation contained in the applicable waste discharge requirements by 40 percent or more, or any waste discharge of a Group II pollutant that exceeds the effluent limitation by 20 percent or more.
5. Water Code Section 13385(i) requires the Regional Water Board to assess a MMP of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the permittee does any of the following four or more times in any 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.
 - d. Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
6. During the period between August 15, 2003, through March 2, 2005, the Permittee violated NPDES permit conditions contained in Waste Discharge Requirements Order Nos. R1-2001-0063 and R1-2004-0047 for which the Regional Water Board may impose civil liability under Section 13385 of the California Water Code.
7. Order Nos. R1-2001-0063 and R1-2004-0047 both contain **B. EFFLUENT LIMITATION 1**, which establishes the following applicable effluent limitations:

Parameter	Units	Monthly Average	Daily Maximum
BOD ¹ @ 20°C	Lbs/day	11,270	21,630
TSS ²	Lbs/day	22,960	42,560

BOD and TSS are identified in Appendix A, Title 40 Code of Federal Regulations, Section 123.45, as Group I pollutants.

Data contained in the Permittee's self-monitoring reports for the months August 2003 through December 2004 reveal that the discharge violated effluent limitations for biochemical oxygen demand and total suspended solids as follows:

¹ Biochemical Oxygen Demand

² Total Suspended Solids

a) Serious violations

Violation Date	Limit³ Exceeded	Reported Discharge Mass (lbs/day)
February 18, 2004	Daily Maximum TSS	62,580
May 2004	Monthly Average BOD	20,726
May 28, 2004	Daily Maximum BOD	38,750
June 2004	Monthly Average BOD	18,510
July 2004	Monthly Average BOD	22,218
July 28, 2004	Daily Maximum BOD	41,927
August 2004	Monthly Average BOD	16,674
August 4, 2004	Daily Maximum BOD	33,235
September 2004	Monthly Average BOD	33,920
September 2004	Monthly Average TSS	32,754
September 1, 2004	Daily Maximum BOD	34,668
September 8, 2004	Daily Maximum BOD	40,249
September 29, 2004	Daily Maximum BOD	55,135
September 29, 2004	Daily Maximum TSS	85,766
October 2004	Monthly Average BOD	16,174
November 2004	Monthly Average BOD	17,171

b) Chronic violations

Violation Date	Limit² Exceeded	Reported Discharge Mass (lbs/day)
August 2003	Monthly Average BOD	12,992
September 2003	Monthly Average BOD	11,801
November 2003	Monthly Average BOD	11,860
December 2003	Monthly Average BOD	11,993
January 2004	Monthly Average BOD	13,425
March 2004	Monthly Average BOD	12,403
April 2004	Monthly Average BOD	13,339
May 2004	Monthly Average TSS	27,580
June 23, 2004	Daily Maximum BOD	25,587
September 8, 2004	Daily Maximum TSS	48,075
November 23, 2004	Daily Maximum BOD	26,063

8. A total of 16 biochemical oxygen demand (BOD) and total suspended solids (TSS) violations exceeded the applicable effluent limits by more than 40% and are serious violations. Therefore, these violations are subject to California Water Code Section

³ Biochemical Oxygen Demand Limits: Monthly Average 11,270 lbs/day, Daily Maximum 21,630 lbs/day.
Total Suspended Solids Limits: Monthly Average 22,960 lbs/day, Daily Maximum 42,560 lbs/day.

13385(h), and a MMP of three thousand dollars (\$3,000) must be assessed for each serious violation. The total amount of the mandatory penalty for serious effluent violations is **\$48,000**.

9. A total of 11 other, nonserious exceedances of applicable effluent limits occurred during the enforcement period. In accordance with California Water Code Section 13385(i), a MMP of three thousand dollars (\$3,000) must be assessed for each violation, beginning with the fourth violation occurring within a six-month period. Five violations occurred during the six-month period of August 2003 through January 2004. Of those five violations, the first three are not subject to MMPs and two are subject to MMPs as non-serious, chronic violations.

Ten violations occurred during the six-month period of February 2004 through July 2004. In accordance with California Water Code Section 13385(i), a MMP of three thousand dollars (\$3,000) must be assessed for each non-serious violation, beginning with the fourth violation occurring within a six-month period. Of the 10 violations that occurred during the six-month period of February 2004 through July 2004, the first three are not subject to MMPs. Of the seven remaining violations, five have been assessed MMPs as serious violations and two are subject to MMPs as non-serious, chronic violations.

Twelve violations occurred during the four-month period of August 2004 through November 2004. In accordance with California Water Code Section 13385(i), a MMP of three thousand dollars (\$3,000) must be assessed for each violation, beginning with the fourth violation occurring within a six-month period. Of the 12 serious and chronic violations that occurred during the four-month period of August 2004 through November 2004, the first three are not subject to MMPs. Of the remaining nine violations, seven have been assessed MMPs as serious violations and two are subject to MMPs as nonserious, chronic violations.

The total amount of the MMPs for the six nonserious, chronic effluent violations described above is **\$18,000**.

10. The total amount of the MMPs for serious and chronic violations occurring during the period August 2003 through November 2004 is **\$66,000**.

Proposed Discretionary Administrative Civil Liability

11. Due to the nature of these violations, and the potential impact to beneficial uses of water, discretionary administrative civil liabilities in addition to the mandatory minimum penalties are appropriate for these effluent violations.
12. Section 13385(a) of the California Water Code provides for the imposition of civil liability issued by the Regional Water Board. Section 13385(c) provides the maximum amount of civil liability which may be imposed by the Regional Water Board. The

amount may be up to \$10,000 per day in which the violation occurs, plus up to \$10 per gallon of waste discharged in excess of 1,000 gallons that is not susceptible to cleanup or is not cleaned up.

13. In determining the amount of civil liability, the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violations; the violator's ability to pay; 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. The section requires that, at a minimum, civil liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violations.

a) Nature, Circumstances, Extent, and Gravity of the Violations

The violations documented in this action are violations of permit conditions impacting water quality and beneficial uses. The Executive Officer has considered assessing liability based, in part, on an evaluation of the actual impact of these violations on water quality and beneficial uses.

b) Ability to Pay

Ability to pay is not a valid consideration in this matter. According to CWC Section 13385(e), the Regional Water Board must recover, at a minimum, the economic benefits of noncompliance. This Complaint proposes to assess discretionary civil liabilities for exactly the amount of economic benefit. Accordingly, no reduction based on consideration of ability to pay is allowed.

c) Prior History of Violations

The Permittee has an extensive history of violations. These violations include persistent violations of effluent limitations due to lack of maintenance and lack of secondary treatment. This history was considered in determining the proposed liability.

d) Degree of Culpability

The Permittee is culpable for the violations that are the subject of this civil liability.

e) Economic Benefit/Cost Savings

The Permittee did realize significant cost savings for these violations. Cost savings includes the cost of not constructing secondary treatment units leading to significantly reduced effluent quality and a greater frequency of violations of permit effluent limitations. The total amount of the penalty for the realized cost savings is **\$1,655,635** as shown in Attachment A, and is incorporated herein by this reference in its entirety and made part of this Complaint.

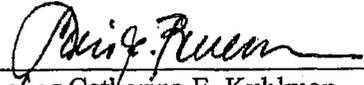
f) Other Matters as Justice May Require

Staff costs associated with determining and investigating these violations and administrative procedures for issuing a Complaint and scheduling a public hearing total **\$9,280**.

14. Based on a review of the facts and the required factors, the Executive **Officer** of the Regional Water Board is issuing this Complaint with a proposed administrative civil liability in the amount of **\$1,430,915**.
15. An Order to **confirm** this Complaint is scheduled for a hearing before the Regional Water Board on June 21, 2005, in Santa Rosa, California. If the Regional Water Board agrees with the Complaint, the Regional Water Board will confirm it by adopting an Administrative Civil Liability Order for **\$1,730,915**.

Waiver of Hearing

16. You may waive the right to a future hearing. If you wish to waive the hearing, please fill out **and** sign the enclosed waiver form and return it together with a **cashier's** check or money order, made payable to the State Water Pollution Cleanup and Abatement Account for **\$1,730,915** within 30 days of the date of this Complaint to the California Regional Water Quality Control Board, North Coast Region, 5550 **Skylane** Boulevard, Suite A, Santa Rosa, CA 95403.



for Catherine E. Kuhlman
Executive Officer

April 22, 2005

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