

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2005-0038

Mandatory Minimum Penalties

For

Violations of Waste Discharge Requirements

Order No. 94-110

and

Order No. R1-2001-0022

In The Matter

of

Georgia-Pacific Corporation Fort Bragg Lumber Mill

WDID NO. 1B84089OMEN

Mendocino County

This Complaint to assess mandatory minimum penalties pursuant to California Water Code Section 13385(h) and/or (i) is issued to the Georgia-Pacific Corporation (hereafter referred to as the Discharger) for violations of Waste Discharge Requirements Order No. 94-110 (NPDES Permit No. CA0005304) for the period February 24, 2000, through March 22, 2001, and Waste Discharge Requirements Order No. R1-2001-0022 for the period March 22, 2001, to August 5, 2002.

The Executive Officer finds the following:

1. On September 22, 1994, the Regional Water Quality Control Board, North Coast Region, (Regional Water Board) adopted Waste Discharge Requirements Order No. 94-110 (Order No. 94-110), for the Discharger to regulate discharges of waste from the Fort Bragg Lumber Mill. Order No. 94-110 was rescinded and replaced with Waste Discharge Requirements Order No. R1-2001-0022 (Order No. R1-2001-0022) on March 22, 2001. Both Orders required the Discharger to implement a discharge monitoring program and to prepare and submit monthly NPDES self-monitoring reports to the Regional Water Board.
2. The G-P Fort Bragg Mill ceased operations in 2002. On August 25, 2002, at the request of the Discharger, the Regional Water Board rescinded Waste Discharge Requirements Order No. R1-2001-0022.

3. This Complaint covers violations of effluent limitations that occurred during periods of discharge to receiving waters for the period of February 24, 2000, through August 5, 2002. The details of these violations are summarized in Findings 12 through 15 of this Complaint. These violations are subject to the mandatory minimum penalties provision contained in Sections 13385(h) through (l) of the California Water Code.
4. California Water Code Section 13385(h)(1) requires the Regional Water Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each serious violation.
5. California Water Code Section 13385(h)(2) states that a serious violation occurs if the discharge from a facility regulated by an NPDES permit exceeds the effluent limitations for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 Code of Federal Regulations, by 40 percent or more, or for a Group II pollutant, as specified in Appendix B to Section 123.45 of Title 40 Code of Federal Regulations, by 20 percent or more.
6. California Water Code Section 13385(i)(1) requires the Regional Water Board to assess a mandatory penalty 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 any six-month period:
 - 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 discharge limitation where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

Violations under Section 13385(i)(1) of the California Water Code are referred to as chronic violations in this Complaint.

7. On February 19, 2002, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2002-0040 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on July 30, 2002. The Enforcement Policy addresses, amongst other enforcement issues, issues related to assessing mandatory minimum penalties allowing supplemental environmental projects. This Complaint includes requirements for supplemental environmental projects specified in Section IX of the Enforcement Policy.
8. CWC Section 13385(l)(1) provides that a portion of mandatory minimum penalties imposed under CWC 13385(h) or (i) can be directed to a supplemental environmental project in accordance with the Enforcement Policy. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to a supplemental environmental project may not exceed fifteen thousand

dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).

9. Order No. 94-110 included the following effluent limitations and toxicity discharge limitations:

B. EFFLUENT LIMITATIONS

1. Discharges in the Mill Pond overflow weir in excess of the following limits is prohibited:

Table A Constituents	Unit	30-Day Average	7-Day Average	Daily Maximum
Settleable Solids	ml/l	0.1	---	0.2
Grease and Oil	mg/l	10	15	225

Table B Constituents	Unit	6-Month Median	Daily Maximum	Instantaneous Maximum
Cyanide	µg/l	1	4	10
Zinc	µg/l	20	80	200

10. Order No. R1-2001-0022 included the following effluent limitations and toxicity discharge limitations:

B. EFFLUENT LIMITATIONS

Discharges in the Pacific Ocean shall not contain constituents in excess of the following limits (Table A and Table B constituents are as described and defined in the California Ocean Plan, adopted on March 20, 1997):

Table B Constituents	Unit	6-Month Median	Daily Maximum	Instantaneous Maximum
Chronic Toxicity	TUc		3	---
Cyanide	µg/l	3	12	30

11. The Enforcement Policy states that for the purpose of determining serious violations, settleable solids and Grease and Oil are identified as Group I pollutants and cyanide and zinc are identified as Group II pollutants in Title 40 Code of Federal Regulations, Section 123.45, Appendix B. Chronic Toxicity is neither a Group I nor a Group II pollutant, therefore exceedances of it do not count as serious violations.

12. According to monitoring reports submitted by the Discharger, the Discharger exceeded four effluent limitations during the 180-day period from February 24, 2000, to August 21, 2000. Of those four exceedances, three were serious violations in accordance with CWC Section 13385(h) and one was a chronic violation in accordance with CWC Section 13385(i)(1). The mandatory penalty amount for those violations is \$12,000 as shown in the following table:

**Table 1. Effluent Limitation Exceedances
 February 24, 2000, through August 21, 2000**

Violation Date	Description of Violation	Violation Type	Mandatory Penalty
02/24/00	Exceeded 6-Month Average Zinc Limitation of 20 µg/l (27 µg/l)	1 st Chronic (Serious)	\$3,000
03/24/00	Exceeded Daily Maximum Cyanide Limitation of 4 µg/l (37 µg/l)	2 nd Chronic (Serious)	\$3,000
03/24/00	Exceeded Instantaneous Maximum Cyanide Limitation of 10 µg/l (37 µg/l)	3 rd Chronic (Serious)	\$3,000
03/24/00	Exceeded Weekly Average Oil & Grease Limitation of 15 mg/l (17 mg/l)	4 th Chronic	\$3,000
Total			\$12,000

13. According to monitoring reports submitted by the Discharger, the Discharger exceeded five effluent limitations during the 180-day period from March 5, 2000, to August 31, 2000. Of those five exceedances, two were serious violations in accordance with CWC Section 13385 (h) and three were chronic violations in accordance with CWC Section 13385 (i)(1). The mandatory penalty amount for those violations is \$6,000 as shown in the following table:

**Table 2. Effluent Limitation Exceedances
 March 5, 2000, through August 31, 2000**

Violation Date	Description of Violation	Violation Type	Mandatory Penalty
03/24/00	Exceeded Daily Maximum Cyanide Limitation of 4 µg/l (37 µg/l)	1 st Chronic (Serious)	Previously assessed
03/24/00	Exceeded Instantaneous Maximum Cyanide Limitation of 10 µg/l (37 µg/l)	2 nd Chronic (Serious)	Previously assessed
03/24/00	Exceeded Weekly Average Oil & Grease Limitation of 15 mg/l (17 mg/l)	3 rd Chronic	No MMP
08/23/00	Exceeded Daily Maximum Settleable Solids Limitation of 0.2 ml/l (0.6 ml/l)	4 th Chronic (Serious)	\$3,000
08/31/00	Exceeded Monthly Average Oil & Grease Limitation of 10 mg/l (17 mg/l)	Serious	\$3,000
Total			\$6,000

14. According to monitoring reports submitted by the Discharger, the Discharger exceeded four effluent limitations during the 180-day period from October 1, 2000, to March 29, 2001. Of those four exceedances, all were serious violations in accordance with CWC Section 13385(h). The mandatory penalty amount for those violations is \$12,000 as shown in the following table:

**Table 3. Effluent Limitation Exceedances
October 1, 2000, through March 29, 2001**

Violation Date	Description of Violation	Violation Type	Mandatory Penalty
02/22/01	Exceeded Daily Maximum Settleable Solids Limitation of 0.2 ml/l (0.3 ml/l)	1 st Chronic (Serious)	\$3,000
03/22/01	Exceeded Daily Maximum Cyanide Limitation of 12 µg/l (47 µg/l)	2 nd Chronic (Serious)	\$3,000
03/22/01	Exceeded Instantaneous Maximum Cyanide Limitation of 30 µg/l (47 µg/l)	3 rd Chronic (Serious)	\$3,000
03/29/01	Exceeded Daily Maximum Cyanide Limitation of 12 µg/l (24 µg/l)	4 th Chronic (Serious)	\$3,000
Total			\$12,000

15. According to monitoring reports submitted by the Discharger, the Discharger exceeded four effluent limitations during the 180-day period from February 7, 2002, to August 5, 2002. Of those four exceedances, one was a serious violation in accordance with CWC Section 13385(h) and three were chronic violations in accordance with CWC Section 13385(i)(1). The mandatory penalty amount for those violations is \$6,000 as shown in the following table:

**Table 4. Effluent Limitation Exceedances
February 7, 2002, through August 5, 2002**

Violation Date	Description of Violation	Violation Type	Mandatory Penalty
02/28/02	Exceeded Daily Maximum Chronic Toxicity Limitation of 3 TUc (8 TUc)	1 st Chronic	No MMP
03/21/02	Exceeded Daily Maximum Cyanide Limitation of 12 µg/l (14 µg/l)	2 nd Chronic	No MMP
04/04/02	Exceeded Daily Maximum Cyanide Limitation of 12 µg/l (17 µg/l)	3 rd Chronic (Serious)	\$3,000
08/05/02	Exceeded Daily Maximum Chronic Toxicity Limitation of 3 TUc (8 TUc)	4 th Chronic	\$3,000
Total			\$6,000

16. The total amount of the mandatory penalties for serious and chronic violations occurring during the period February 24, 2000, through August 5, 2004, is \$ 36,000. Regional Water Board staff costs for addressing this enforcement action are estimated at approximately \$780 for 12 hours of staff time to prepare this Complaint and

associated documents for the enforcement hearing¹ and \$1,950 for 30 future staff hours for tracking a supplemental environmental project. The total amount eligible for expenditure on a supplemental environmental project is \$25,500. The remaining \$10,500 must be paid to the State Water Pollution Cleanup and Abatement Account.

17. 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).

THE GEORGIA-PACIFIC CORPORATION IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Water Board proposes that the Discharger be assessed a Mandatory Penalty in the amount of \$36,000 for the violations that occurred from February 24, 2000, through August 5, 2004.
2. A hearing shall be conducted on this Complaint by the Regional Water Board on June 22, 2005, unless the Discharger waives the right to a hearing by signing and returning the waiver form attached to this Complaint within 30 days of the date of this Complaint. By doing so, the Discharger agrees to:
 - a. Pay the mandatory penalty of \$36,000 in full within 30 days of the date of this Complaint, or
 - b. Propose an SEP in an amount up to \$25,500 and pay the balance of the penalty plus staff costs within 30 days of the date of this Complaint. The sum of the SEP amount and the amount of the fine to be paid to the State Water Pollution Cleanup and Abatement Account shall equal the full penalty of \$36,000.
3. If the Discharger chooses to propose an SEP, it must submit a proposal within 30 days of the date of this Complaint to the Executive Officer for conceptual approval. Any SEP proposal shall conform to the requirements specified in Section IX of the Enforcement Policy and the attached Standard Criteria and Requirements for Supplemental Environmental Projects. If the proposed SEP is not acceptable, the Executive Officer may allow the Discharger 30 days to submit a new or revised proposal, or may demand that, during the same 30-day period, the Discharger pay the balance of the suspended penalty of \$36,000. All payments, including money not used for the SEP, must be payable to the State Water Pollution Cleanup and Abatement Account.
4. If the Discharger waives the hearing, the resulting settlement may become effective on the next day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment

¹ The cost of staff time is \$65 per hour.

period. If there are significant public comments, the Executive Officer may withdraw the Complaint, reissue it as appropriate, or take other appropriate action.

5. If a hearing is held, the Regional Water Board may impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability; or refer the matter to the Attorney General to have a Superior Court consider enforcement.
6. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act, including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.
7. Notwithstanding the issuance of the Complaint, the Regional Water Board shall retain the authority to assess additional penalties for violations of the Discharger's waste discharge requirements.

Ordered by _____

Catherine E. Kuhlman
Executive Officer

May 11, 2005