

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2005-0050

Mandatory Minimum Penalties

For

Violations of Waste Discharge Requirements
Order No. 97-24

In The Matter
of

Mendocino County Water Works District No. 2
Anchor Bay Wastewater Treatment Facility
WDID No. 1B83118OMEN

Mendocino County

This Complaint to assess mandatory minimum penalties pursuant to California Water Code Section 13385(h) and/or (i) is issued to the Mendocino County Water Works District No. 2 and (hereafter referred to as the Discharger) for violations of Waste Discharge Requirements Order No. 97-24 (NPDES Permit No. CA0024040) for the period January 5, 2000 through March 9, 2004.

The Executive Officer finds the following:

1. On March 27, 1997, the Regional Water Quality Control Board, Region, (Regional Water Board) adopted Waste Discharge Requirements Order No. 97-24 (Order No. 97-24), for the Mendocino County Water Works District No. 2 to regulate discharges of waste from its Anchor Bay Wastewater Treatment Facility. This Order 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. This Complaint covers violations of effluent limitations that occurred during periods of discharge to receiving waters for the period of January 5, 2000 through March 9, 2004. The details of these violations are summarized in Findings 11 through 14 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.
3. 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.

4. 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.
5. 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.

6. 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.
7. CWC Section 13385(l)(1) provides that a portion of mandatory minimum penalties imposed against a POTW serving an eligible small community under CWC 13385(h) or (i) may be directed to a supplemental environmental project (SEP) in accordance with Section IX of the Enforcement Policy of the State Water Board. 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). This Complaint includes requirements for SEPs as specified in the Enforcement Policy.
8. CWC Section 13385(k)(1) provides that a portion of mandatory minimum penalties imposed against a POTW serving an eligible small community under CWC 13385(h) or (i) may be directed to a or compliance project (CP) in accordance with Section X, of the Enforcement Policy of the State Water Board. This Complaint includes requirements for CPs as specified in the Enforcement Policy.

9. Order No. 97-24 included the following effluent limitations and toxicity discharge limitations:

B. EFFLUENT LIMITATIONS

1. Wastes discharged to the Pacific Ocean (Discharge Serial 002) 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 22, 1990):

**TABLE A
 MAJOR WASTEWATER CONSTITUENTS**

Constituent	Unit	30-Day Average ^a	7-Day Average ^c	Daily Maximum
BOD5	mg/l	30	45	60
	lbs/day ^d	5.0	7.4	10.0
Suspended Solids	mg/l	--- ^e	---	60
	lbs/day ^d			10.0
pH	pH Units	Within limits of 6.0 and 9.0 at all times		
Acute Toxicity	TUa	1.5	2.0	2.5
Total Coliform Organisms	MPN/100ml	23 ^b	---	230

**TABLE B
 TOXIC MATERIALS LIMITATIONS**

Constituent	Unit	6-Month Median	Daily Maximum
Total Chlorine Residual	mg/l	0.072	0.288
	lbs/day ^d	0.60	2.40

- a. The arithmetic mean of the values for effluent samples collected in a period of 30 consecutive days
 b. median
 c. The arithmetic mean of the values for effluent samples collected in a period of 7 consecutive days
 d. The daily discharge (lbs/day) is obtain from the following calculation for any calendar day:

$$\text{Daily Discharge (lb/day)} = \frac{8.34}{N} \sum_i^N Q_i C_i$$

In which N is the number of samples analyzed in any calendar day. Qi and Ci are the flow rate (mgd) and the constituent concentration (mg/l), respectively, which are associated with each of the N grab samples which may be taken in any calendar day. If a composite sample is taken, Ci is the concentration measured in the composite sample; and Qi is the average flow rate occurring during the period over which samples are composited.

- e. The permittee shall, as a 30-day average, remove 75 percent of the suspended solids from the influent stream before discharging to the ocean.
10. The February 19, 2002 State Water Resources Control Board Water Quality Enforcement Policy states that for the purpose of determining serious violations, total residual chlorine is identified as a Group II pollutant in Title 40 Code of Federal Regulations, Section 123.45, Appendix B. Turbidity and total coliform are neither Group I nor Group II pollutants, therefore they have no serious threshold.
 11. According to monitoring reports submitted by the Permittee, the Permittee exceeded ten effluent limitations during the 180-day period from October 1, 2000 to March 29, 2001. Of those ten exceedances, two were serious violations in accordance with CWC Section 13385 (h) and eight were chronic effluent violations in accordance with CWC Section 13385 (i)(1). The mandatory penalty amount for those violations is \$21,000 as shown in the following table:

**Table 1. Effluent Limitation Exceedances
 January 5, 2000 through June 2, 2000**

Violation Date	Description of Violation	Violation Type	Mandatory Penalty
01/05/00	Exceeded Daily Maximum BOD Limitation of 10.0 lbs/day (12.5 lbs/day)	1 st Chronic	NO MMP
01/05/00	Exceeded Daily Maximum Suspended Solids Limitation of 10 lbs/day (11.1 lbs/day µg/l)	2 nd Chronic	NO MMP
03/22/00	Exceeded Daily Maximum BOD Limitation of 10.0 lbs/day (10.1 lbs/day)	3 rd Chronic	NO MMP
04/12/00	Exceeded Daily Maximum BOD Limitation of 10.0 lbs/day (12.6 lbs/day)	4 th Chronic	\$3,000
04/12/00	Exceeded Daily Maximum Suspended Solids Limitation of 10.0 lbs/day (14.9 lbs/day)	Serious	\$3,000
04/15/00	Exceeded Daily Maximum Suspended Solids Limitation of 10.0 lbs/day (14.5 lbs/day)	Serious	\$3,000
04/19/00	Exceeded Daily Maximum Suspended Solids Limitation of 10.0 lbs/day (10.4 lbs/day)	Chronic	\$3,000
04/30/00	Failed to Meet 75% Removal for Suspended Solids for April 2000 (54%)	Chronic	\$3,000
05/03/00	Exceeded Daily Maximum BOD Limitation of 10.0 lbs/day (10.1 lbs/day)	Chronic	\$3,000
05/03/00	Exceeded Daily Maximum Suspended Solids Limitation of 10.0 lbs/day (12.4 lbs/day)	Chronic	\$3,000
Total			\$21,000

12. According to monitoring reports submitted by the Permittee, the Permittee exceeded five effluent limitations during the 180-day period from September 9, 2001 to January 4, 2002. Of those five exceedances, two were serious violations in accordance with CWC Section 13385 (h) and three were chronic effluent violations in accordance with CWC Section 13385 (i)(1). The mandatory penalty amount for those violations is \$9,000 as shown in the following table:

**Table 2. Effluent Limitation Exceedances
September 9, 2001 through January 4, 2002**

Violation Date	Description of Violation	Violation Type	Mandatory Penalty
11/21/01	Exceeded Daily Maximum BOD Limitation of 10.0 lbs/day (15.4 lbs/day)	1 st Chronic (Serious)	\$3,000
11/24/01	Exceeded 7-Day Average BOD Limitation of 45 mg/l for week ending 11/24/01 with single sample from 11/21/01 (46 mg/l)	2 nd Chronic	NO MMP
12/26/01	Exceeded Daily Maximum BOD Limitation of 10.0 lbs/day (12.2 lbs/day)	3 rd Chronic	NO MMP
12/26/01	Exceeded Daily Maximum Suspended Solids Limitation of 10.0 lbs/day (10.7 lbs/day)	4 th Chronic	\$3,000
01/04/02	Exceeded Daily Maximum BOD Limitation of 10.0 lbs/day (17.8 lbs/day)	Serious	\$3,000
Total			\$9,000

13. According to monitoring reports submitted by the Permittee, the Permittee exceeded four effluent limitations during the 180-day period from October 29, 2002 to April 26, 2003. Of those four exceedances, all were chronic effluent violations in accordance with CWC Section 13385 (i)(1). The mandatory penalty amount for those violations is \$3,000 as shown in the following table:

**Table 3. Effluent Limitation Exceedances
October 29, 2002 through April 26, 2003**

Violation Date	Description of Violation	Violation Type	Mandatory Penalty
01/30/03	Exceeded Daily Maximum Acute Toxicity Limitation of 2.5 TUa (100% Mortality)	1 st Chronic	NO MMP
03/10/03	Discharge pH was not within required range of pH 6-9 (pH 5.0)	2 nd Chronic	NO MMP
04/04/03	Exceeded Daily Maximum Total Coliform Bacteria Limitation of 230 MPN/100 ml (>1,600 MPN/100 ml)	3 rd Chronic	NO MMP
04/26/03	Discharge pH was not within required range of pH 6-9 (pH 4.0)	4 th Chronic	\$3,000
Total			\$3,000

14. According to monitoring reports submitted by the Permittee, the Permittee exceeded seven effluent limitations during the 180-day period from October 29, 2002 to April 26, 2003. Of those seven exceedances, two were serious violations in accordance with CWC Section 13385 (h) and five were chronic effluent violations 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 4. Effluent Limitation Exceedances
 September 12, 2003 through March 9, 2004**

Violation Date	Description of Violation	Violation Type	Mandatory Penalty
12/11/03	Exceeded Daily Maximum Acute Toxicity Limitation of 2.5 TUa (100% Mortality)	1 st Chronic	NO MMP
12/31/03	Failed to Meet 75% Removal for Suspended Solids for December 2003 (61%)	2 nd Chronic	NO MMP
01/14/04	Exceeded Daily Maximum Acute Toxicity Limitation of 2.5 TUa (100% Mortality)	3 rd Chronic	NO MMP
01/21/04	Exceeded Daily Maximum Total Residual Chlorine Limitation of 0.288 mg/l (1.0 mg/l)	4 th Chronic (Serious)	\$3,000
01/29/04	Exceeded Daily Maximum Total Residual Chlorine Limitation of 0.288 mg/l (0.5 mg/l)	Serious	\$3,000
02/10/04	Exceeded Daily Maximum Acute Toxicity Limitation of 2.5 TUa (100% Mortality)	Chronic	\$3,000
03/09/04	Exceeded Daily Maximum Acute Toxicity Limitation of 2.5 TUa (100% Mortality)	Chronic	\$3,000
Total			\$12,000

15. The total amount of the mandatory penalties for serious and chronic violations occurring during the period January 5, 2000 through March 9, 2004 is \$ 45,000. Regional Water Board staff costs for addressing this enforcement action are estimated at approximately \$2,600 for 40 hours of staff time to prepare this Complaint and associated documents for the enforcement hearing¹.
16. 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 1532 (a)(2).

THE MENDOCINO COUNTY WATER WORKS DISTRICT NO. 2 IS HEREBY GIVEN NOTICE THAT:

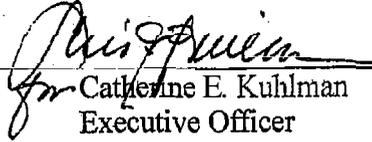
1. The Executive Officer of the Regional Water Board proposes that the Dischargers be assessed a Mandatory Penalty in the amount of \$45,000 for the violations that occurred from January 5, 2000 through March 9, 2004.

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

2. A hearing shall be conducted on this Complaint by the Regional Water Board on June 22, 2005 unless the Dischargers waive the right to a hearing by signing and returning the waiver form attached to this Complaint. By doing so, the Dischargers agree to:
 - a. Pay the mandatory penalty of \$45,000 in full within 30 days of the date of this Complaint, or
 - b. Propose a SEP in the amount up to \$30,000 and pay the balance of the penalty within 30 days of the date of the Complaint.
 - c. Propose a CP in an amount up to \$42,400 and pay the balance of the penalty within 30 days of the date of this Complaint.
3. If the Dischargers choose to propose a SEP or CP, it must submit a proposal within 30 days of the date of this Complaint to the Executive Officer for conceptual approval. Any SEP or CP proposal shall conform to the requirements specified in applicable section of the Enforcement Policy and the attached guidance documents for SEPs and CPs. If the proposed SEP or CP is not acceptable, the Executive Officer may allow the Dischargers 30 days to submit a new or revised proposal, or may demand that, during the same 30-day period, the Discharger pay the suspended penalty of \$6,000. All payments, including money not used for the SEP or the CP, must be payable to the State Water Pollution Cleanup and Abatement Account.
4. If the Discharger waives the hearing and pays the liability, 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 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. In the event that the Discharger is required to pay a previously suspended penalty amount, payment of the previously suspended penalty amount does not relieve the Discharger of the **independent** obligation to take necessary actions to achieve compliance.
8. 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

June 15, 2005