

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2005-0005

Mandatory Minimum Penalties

For
Violations of Waste Discharge Requirements
Order No. 95-54
WDID No. 1B831000SON

In The Matter
of
Forestville Water District Wastewater Treatment Facility
(formerly Forestville County Sanitation District)
Sonoma County

This Complaint to assess mandatory minimum penalties pursuant to California Water Code Section 13385(h) and/or (i) is issued to the Forestville Water District (hereafter referred to as the Discharger) for violations of Waste Discharge Requirements Order No. 95-54 (NPDES No. CA0023043) for the period January 29, 2000, through May 5, 2004.

The Executive Officer finds the following:

1. On August 24, 1995, the Regional Water Quality Control Board, North Coast Region, (hereinafter Regional Water Board) adopted Waste Discharge Requirements Order No. 95-54 (Order No. 95-54), for the Forestville County Sanitation District (CSD), to regulate discharges of waste from the Forestville CSD wastewater collection, treatment and disposal facility (WWTF). Order No. 95-54 required the Forestville CSD to implement a discharge monitoring program and to prepare and submit monthly NPDES self-monitoring reports to the Regional Water Board.
2. The WWTF was owned by the Forestville CSD and operated by the Sonoma County Water Agency (SCWA) through June 30, 2004. The Forestville Water District submitted a Report of Waste Discharge to the Regional Water Board on August 10, 2004, identifying the Forestville Water District (District) as the new owner of the municipal wastewater treatment facility as of July 1, 2004.¹ In accordance with Sonoma County Local Agency Formation Commission Resolution No. 2434, all liabilities and obligations of the Forestville County Sanitation District transferred to the Forestville Water District.

¹ The Sonoma County Local Agency Formation Commission (LAFCO) adopted Resolution No. 2434 on September 10, 2003, ordering a conditional reorganization consisting of dissolution of the Forestville County Sanitation District and the Mirabel Heights Zone of Benefit, approval for the Forestville Water District to exercise its latent sewer service powers, and designation of the Forestville Water District as the successor in interest to the Forestville County Sanitation District and the Mirabel Heights Zone of Benefit. LAFCO filed a Certificate of Completion with the Sonoma County Recorder on June 30, 2004, declaring that the terms and conditions of Resolution 2434 have been completed.

Therefore, the Forestville Water District is referred to as the Discharger in this Complaint.

3. This Complaint covers violations of effluent limitations that occurred during periods of discharge to receiving waters for the period of January 29, 2000 through May 5, 2004. During this time period, the Discharger violated Effluent Limitations B.1, B.2, and B.3 of Order No. 95-54 a total of 35 times. The details of these 35 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.
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 A 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. This 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. 95-54 included the following effluent limitations:
- a. Effluent Limitation B.1.

Wastes discharged shall not contain constituents in excess of the following:

<u>Constituent</u>	<u>Units</u>	<u>30-day Average^a</u>	<u>7-day Average^b</u>	<u>Daily Maximum</u>
BOD (20°C,5-day)	mg/l	30	45	60
	lb/day ^{c, d}	63	94	125
Nonfilterable residue (NFR)	mg/l	50	65	80
	lb/day	104	136	167
Settleable Solids	ml/l	0.1	---	0.2
Chlorine Residual	mg/l	--	---	0.1
Coliform Organisms	MPN/100 ml	2.2 ^e	---	23
Hydrogen Ion Concentration	pH Units	not less than 6.5 nor greater than 8.5		

Footnotes:

- a The arithmetic mean of the values for effluent samples collected in a period of 30 consecutive days.
 b The arithmetic mean of the values for effluent samples collected in a period of seven consecutive days.
 c 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.

- d The mass emission rates are calculated using the design wet-weather flow of 0.25 mgd.
 e median

b. Effluent Limitation B.2.a.

Representative sample of Discharge Serial No. 002 must not contain constituents in excess of the following Effluent Limitations for the Protection of Freshwater Aquatic Life:

<u>Constituent</u>	<u>Unit</u>	<u>4-Day Average</u>	<u>1-Hour Average</u>
Copper**	ug/l	b	b

Footnotes:

** Specified effluent limitations must be determined based on the hardness of the receiving water at the time the discharge is sampled. Appendix A of Order No. 95-54 lists calculated values for each metal based on various hardness values.

Footnote b: The 4-DAY AVERAGE copper = $e^{0.8545H - 1.465}$; 1-HOUR AVERAGE copper = $e^{0.9422H - 1.464}$. For example where hardness is 50 mg/l, the 4-DAY AVERAGE copper = 6.5 ug/l and the 1-HOUR AVERAGE copper = 9.2 ug/l.

c. Effluent Limitation B.3.

The arithmetic mean of the BOD (20°C, 5-day) and Suspended Solids values by weight for effluent samples collected at Discharge Serial No. 002 in a period of 30 consecutive days shall not exceed 15 percent of the arithmetic mean of the values, by weight, for influent samples collected at approximately the same times during the same period (85 percent removal).

10. The Enforcement Policy states that for the purpose of determining serious violations, BOD, NFR, settleable solids, and pH are identified as Group I pollutants and chlorine residual and copper are identified as Group II pollutants in Title 40 Code of Federal Regulations, Section 123.45, Appendix A. Total coliform is neither a Group I nor a Group II pollutant, therefore it has no serious threshold.
11. According to monitoring reports submitted by the Discharger, during a six month period beginning January 29, 2000, the Discharger exceeded effluent limitations 21 times during periods of discharge to receiving waters. Of those 21 exceedances, 10 were serious violations in accordance with CWC Section 13385 (h) and 11 were chronic effluent violations in accordance with CWC Section 13385(i)(1). The mandatory penalty amount for those violations is \$60,000 as shown in the following table:

Effluent Limitation Violations^{2, 3, 4}
For the Six-Month Period Beginning January 29, 2000

Date	Parameter	Reported Value	Violation Type⁵	Mandatory Penalty
1/29/00	Chlorine Residual	0.3 mg/l	Serious, 1 st	\$3,000
2/16/00	NFR, Daily Concentration	101 mg/l	Chronic, 2 nd	---
2/16/00	NFR, Weekly Concentration	101 mg/l	Serious, 3 rd	\$3,000
2/16/00	BOD, Daily Concentration	91 mg/l	Serious, 4 th	\$3,000
2/16/00	BOD, Weekly Concentration	91 mg/l	Serious	\$3,000
2/16/00	BOD, Daily Load	827 lb/day	Serious	\$3,000
2/16/00	BOD, Weekly Load	562 lb/day	Serious	\$3,000
2/16/00	NFR, Daily Load	918.2 lb/day	Serious	\$3,000
2/16/00	NFR, Weekly Load	623 lb/day	Serious	\$3,000
2/16/00	Settleable Solids, Daily Max	10 ml/l	Serious	\$3,000
2/27/00	pH	6.4	Chronic	\$3,000
2/28/00	pH	6.3	Chronic	\$3,000
2/29/00	Settleable Solids, Monthly Avg.	2.5 ml/l	Chronic	\$3,000
3/8/00	pH	6.3	Chronic	\$3,000
3/9/00	pH	6.3	Chronic	\$3,000
3/10/00	pH	6.3	Chronic	\$3,000
3/11/00	pH	6.4	Chronic	\$3,000
3/12/00	pH	6.4	Chronic	\$3,000
3/13/00	pH	6.4	Chronic	\$3,000
3/25/00	pH	6.4	Chronic	\$3,000
4/5/00	Copper	31 ug/l	Serious	\$3,000
			Total	\$60,000

12. According to monitoring reports submitted by the Discharger during a six-month period beginning February 28, 2001, the Discharger exceeded effluent limitations one time. This was a serious violation in accordance with CWC Section 13385(h). The mandatory penalty amount for this violation is \$3,000 as shown in the following table:

² See Finding 6 of this Complaint for the definition of a chronic violation

³ See Finding 5 of this Complaint for the definition of a serious violation

⁴ For the purpose of determining serious violations, BOD and suspended solids are Group I pollutants and chlorine residual, copper are Group II pollutants, as defined in Title 40 Code of Federal Regulations, Section 123.45, Appendix A.

⁵ The notations 1st, 2nd, 3rd, and 4th in the Violation Type column provide a tally of chronic violations. Serious violations also count in the tally of chronic violations. As stated in Finding 6, a penalty is assessed beginning with the 4th chronic violation. All serious violations are assessed a penalty.

Effluent Limitation Violations^{2, 3, 4}
For the Six-Month Period Beginning February 28, 2001

Date	Parameter	Reported Value	Violation Type	Mandatory Penalty
2/28/01	Chlorine Residual, Daily Max	0.5 mg/l	Serious	\$3,000
Total				\$3,000

13. According to monitoring reports submitted by the Discharger during a six month period beginning November 8, 2002, the Discharger exceeded discharge and effluent limitations three times. Of those three exceedances, one was a serious violation in accordance with CWC Section 13385(h) and two 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:

Effluent Limitation Violations^{2, 3, 4}
For the Six-Month Period beginning November 8, 2002

Date	Parameter	Reported Value	Violation Type	Mandatory Penalty
11/8/02	Chlorine residual, Daily Max	0.2 mg/l	Serious, 1 st	\$3,000
12/16/02	Coliform, Daily Max	130 MPN/100 ml	Chronic, 2 nd	---
3/5/03	Copper	22 mg/l	Chronic, 3 rd	---
Total				\$3,000

14. According to monitoring reports submitted by the Discharger during a six month period beginning February 4, 2004, the Discharger exceeded discharge and effluent limitations 10 times. Of those 10 exceedances, five 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 \$21,000 as shown in the following table:

Effluent Limitation Violations^{2, 3, 4}
For the Six-Month Period Beginning February 4, 2004

Date	Parameter	Reported Value	Violation Type	Mandatory Penalty
2/4/04	BOD, Percent Removal	80%	Chronic, 1 st	---
2/4/04	NFR, Percent Removal	80%	Chronic, 2 nd	---
2/18/04	NFR, Weekly Load	139.1 lb/day	Chronic, 3 rd	---
2/18/04	BOD, Weekly Load	134.7 lb/day	Serious, 4 th	\$3,000
2/18/04	BOD, Daily Load	203.9 lb/day	Serious	\$3,000
2/18/04	NFR, Daily Load	207.3 lb/day	Serious	\$3,000
2/29/04	BOD, Monthly Load	101.2 lb/day	Serious	\$3,000
2/29/04	NFR, Monthly Load	111.3 lb/day	Chronic	\$3,000
3/31/04	Coliform, Daily Load	30 MPN/100 ml	Chronic	\$3,000
5/5/04	Copper	33 mg/l	Serious	\$3,000
Total				\$21,000

15. The total amount of the mandatory penalties for serious and chronic violations occurring during the period January 29, 2000, through May 5, 2004, is \$87,000. Regional Water Board staff costs for addressing this enforcement action are estimated at approximately \$6,500: \$4,550 for 70 hours of staff time to prepare this Complaint and associated documents for the enforcement hearing⁶ 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 \$51,000. The remaining \$36,000 must be paid to the State Water Pollution Cleanup and Abatement Account.
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 15321(a)(2).

FORESTVILLE WATER DISTRICT 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 \$87,000 for the violations that occurred from January 29, 2000, through May 5, 2004.
2. A hearing shall be conducted on this Complaint by the Regional Board on March 15-16, 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 \$87,000 in full within 30 days of the date of this Complaint, or
 - b. Propose an SEP in an amount up to \$51,000 and pay the balance of the penalty 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 \$87,000.
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 first installment of the suspended penalty of \$51,000. All payments, including money not used for the SEP, must be payable to the State Water Pollution Cleanup and Abatement Account.

⁶ The cost of staff time is \$65 per hour.

4. The signed waiver will 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 and reissue it as appropriate.
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.

Ordered by _____

Catherine E. Kuhlman
Executive Officer

January 20, 2005