

California Regional Water Quality Control Board
North Coast Region

COMPLAINT NO. R1-2004-0112
FOR
ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
CITY OF EUREKA
ELK RIVER WASTEWATER TREATMENT FACILITY
FOR
VIOLATIONS OF WASTE DISCHARGE REQUIREMENTS
ORDER NO. 98-9

Humboldt County

The Executive Officer of the California Regional Water Quality Control Board, North Coast Region (Regional Water Board), hereby gives notice that:

1. The City of Eureka (City) owns and operates the Elk River Wastewater Treatment Facility (WWTF). The WWTF serves both the City and the surrounding unincorporated areas within the Humboldt Community Services District (HCSD). The WWTF discharges secondary-treated domestic wastewater into Humboldt Bay.
2. The Regional Water Board adopted Waste Discharge Requirements Order No. 98-9 for the City on February 26, 1998. The City currently is regulated by Waste Discharge Requirements Order No. R1-2004-0013, adopted by the Regional Water Board on March 24, 2004. Both of these Waste Discharge Requirements serve as National Pollution Discharge Elimination System (NPDES) permits under the federal Clean Water Act.
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 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 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 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 February 1998 through March 2004, the City violated NPDES permit conditions contained in Waste Discharge Requirements Order No. 98-9 for which the Regional Water Board may impose civil liability under Section 13385 of the California Water Code. The violations are summarized as follows:

Sanitary Sewer Overflows: From February 1998 through March 2004, there were 43 sewage overflows occurring within City-owned pipes. Of the 43 sewage overflows, 39 resulted in discharges to receiving waters. All sewage system overflows were reported to the Regional Water Board in a timely manner. Some spills were contained and cleaned up prior to any sewage reaching receiving waters. A summary of the 39 spills occurring within City-owned pipes that resulted in discharges to receiving waters is shown in Attachment A and is incorporated herein by this reference in its entirety and made a part of this Complaint.

Out-of-Window Discharge Violations: An out-of-window discharge is a treated and disinfected effluent discharge to Humboldt Bay that does not occur during the ebb tide window. Discharge to Humboldt Bay during an ebb tide is a NPDES permit condition so that the effluent discharge flows immediately out into the Pacific Ocean. Under these conditions, the discharge is the functional equivalent to an ocean discharge. Out-of-window discharges to Humboldt Bay do not flow immediately out into the Pacific Ocean and are in violation of the State Policy For Enclosed Bays and Estuaries. In these cases, the discharged effluent was fully treated and disinfected. From February 1998 through March 2004, there were five out-of-window discharges to Humboldt Bay as follows:

Date	Reported Discharge
May 12, 2000	500,000 gallons
July 21, 2002	730,000 gallons
November 15, 2002	600,000 gallons
March 21, 2004	5,300,000 gallons
March 29, 2004	1,100,000 gallons

Serious Effluent Limitation Violations: From February 1998 through March 2004, there were three serious effluent violations as follows:

Date	Pollutant	Reported Value
February 24, 2002	Chlorine Residual	0.15 mg/l
December 29, 2002	Chlorine Residual	0.65 mg/l
July 17, 2003	Chlorine Residual	0.16 mg/l

7. The sanitary sewer overflows violate the discharge prohibitions contained in the Waste Discharge Requirements. Attachment A summarizes the sanitary overflows and details the civil liabilities. These violations are subject to a \$20,150 penalty.
8. Chlorine residual is a Group II pollutant. The three chlorine residual violations are serious violations, as chlorine is a Group II pollutant, and exceeds the effluent limitation by more than 20%. These chlorine residual limit violations are subject to a \$3,000 MMP each for a total of \$9,000.
9. The out-of -window discharges to Humboldt Bay violate the discharge prohibitions contained in the Waste Discharge Requirements. In these cases, the discharged effluent was fully treated and disinfected. No significant water quality impacts were associated with

these discharges. These violations are subject to a \$3,000 penalty each for a total of \$15,000.

10. The total amount of penalties for serious violations, sanitary sewer overflows, and out-of-window discharge violations occurring during the period from February 1998 to March 2004 is \$44,150. Staff costs associated with these violations and issuance of this Complaint total \$4,100.
11. The Regional Water Board has evaluated all violations during the 1998 to 2004 period but will not be assigning civil liabilities for all violations as some had no impact to beneficial uses of receiving waters. Staff has considered these factors in the liability recommendations.
12. The Executive Officer of the Regional Water Board has issued an Administrative Civil Liability Complaint (ACLC) in the amount of \$48,250. An Order to confirm the ACLC is scheduled for a hearing before the Regional Water Board on January 26, 2005, in Santa Rosa, California. If the Regional Water Board members confirm the ACLC, the Regional Water Board will then adopt an Administrative Civil Liability Order for \$48,250.

Proposed Civil Liability

13. 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.
14. 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 violation; the violator's ability to pay; any prior history of violations; the degree of culpability; economic benefit or savings, if any, resulting from the violation; and other matters that justice may require. The Regional Water Board is also required to consider the requirement in this section that states that, at a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

- 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 Regional Water Board 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

The proposed liability does not pose a significant financial burden on the City.

- c). Prior History of Violations

The City has a history of violations. It has been cooperative in addressing the violations and has taken aggressive steps to mitigate or prevent such reoccurrences. This history was considered in determining the proposed liability.

d). Degree of Culpability

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

e). Economic Savings

The City did not realize significant cost savings for these violations.

f). Other Matters as Justice May Require

Staff costs associated with determining and investigating these violations, confirming and discussing the violations with the City, and administrative procedures for issuing a Complaint and scheduling a public hearing total \$4,100

15. 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 \$48,250.

Waiver of Hearing

16. You may waive the right to a future hearing. If you wish to waive the hearing, please check and sign the waiver and return it together with a cashier's check or money order, made payable to the State Water Resources Control Board for \$48,250 within 15 days of receipt of this Complaint to the California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, CA 95403.

Catherine E. Kuhlman
Executive Officer

November 17, 2004