

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2006-0034

Mandatory Minimum Penalties

For

Violations Of Waste Discharge Requirements
Order Nos. 96-7 And R1-2001-0060
(WDID No. 1B82084OHUM)

In The Matter Of
McKinleyville Community Services District
Wastewater Treatment Facility

Humboldt County

This complaint to assess mandatory minimum penalties and administrative civil liability pursuant to California Water Code 13385(Complaint) is issued to McKinleyville Community Services District (hereinafter Discharger) for violations of Waste Discharge Requirements Order No. 96-7 (NPDES No. CA0024490) and Waste Discharge Requirements Order No. R1-2001-0060 for the period January 1, 2000, through May 31, 2005.

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

1. The Discharger owns and operates the McKinleyville Wastewater Treatment Facility (WWTF), which serves the unincorporated area of Mckinleyville and discharges secondary-treated domestic wastewater into the Mad River. The WWTF consists of four oxidation ponds and a newly added fifth pond as a marsh polishing pond.
2. The Regional Water Board adopted Waste Discharge Requirements Order No. 96-7 for the Discharger on April 25, 1996. The Discharger currently is regulated by Waste Discharge Requirements Order No. R1-2001-0060, adopted by the Regional Water Board on June 28, 2001. Both of these Waste Discharge Requirements serve as National Pollutant Discharge Elimination System (NPDES) permits under the federal Clean Water Act. Order No. 96-7 was rescinded on June 28, 2001.
3. This Complaint covers violations of effluent limitations that occurred during periods of discharge to receiving waters for the period of January 1, 2000, through May 31, 2005. The details of these violations are presented in Finding 15 of this Complaint. Violations identified in Finding 15 are subject to the mandatory minimum penalty provision contained in Sections 13385(h) through (l) of the California Water Code (CWC).

4. CWC 13385(h)(1) requires the Regional Water Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation of an NPDES permit effluent limitation.
5. CWC 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. CWC 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 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 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, among other enforcement issues, issues related to assessing mandatory minimum penalties.
8. CWC Section 13385(l)(1) provides that a portion of mandatory minimum penalties imposed 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.
9. CWC Section 13385(k)(1) provides that the Regional Water Board may elect to require all or a portion of mandatory minimum penalties imposed under CWC Section 13385(h) or (i) against a POTW serving an eligible small community may be directed to a 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.

10. For the purpose of compliance determinations, the 30-day average is equivalent to the monthly average, which is defined as the arithmetic mean of all daily determinations made during a calendar month. Where less than daily sampling is required, the average shall be determined by the sum of all the measured daily discharges divided by the number of days during the calendar month when the measurements were made. If only one sample is collected during that period of time, the value of the single sample shall constitute the monthly average.
11. For the purpose of compliance determinations, the 7-day average is equivalent to the weekly average, which is defined as the arithmetic mean of all daily determinations made during a calendar week, Sunday to Saturday. Where less than daily sampling is required, the average shall be determined by the sum of all the measured daily discharges divided by the number of days during the calendar week when the measurements were made. If only one sample is collected during that period of time, the value of the single sample shall constitute the weekly average.
12. Order No. 96-7 includes the following effluent limitations:

B. EFFLUENT LIMITATIONS

1. Representative samples of wastewater effluent shall not contain constituents in excess of the following limits:

<u>Constituent</u>	<u>Units</u>	<u>30-day Average^a</u>	<u>Monthly Median</u>	<u>Daily Maximum</u>
BOD (20°C, 5-day)	mg/l	30	---	---
	lb/day	295	---	---
Suspended Solids	mg/l	95	---	---
	lb/day	935	---	---
Coliform Organisms	MPN/100 ml	---	23	230

2. For all discharges into the Mad River the arithmetic mean of the BOD values by weight (lbs/day) for effluent samples collected in a period of thirty consecutive days shall not exceed 15% of the arithmetic mean of the values, by weight, for influent samples collected at approximately the same times during the same period (85% removal of BOD).
3. For all discharges into the Mad River the maximum suspended solids value by weight shall not exceed 35% by weight for influent samples collected at approximately the same times during the sample period (65% removal of suspended solids.)

^a The arithmetic mean of the values for effluent samples collected in a period of 30 consecutive days.

13. Order No. R1-2001-0060 includes the following effluent limitations:

B. EFFLUENT LIMITATIONS

1. Representative samples of the discharge (SN001) to the Mad River, summertime percolation ponds, and water recycling areas shall not contain constituents in excess of the following limits:

<u>Constituent</u>	<u>Units</u>	<u>Monthly Average^a</u>	<u>Weekly Average^b</u>	<u>Daily Maximum^c</u>
BOD (20°C, 5-day)	mg/l	45	65	---
	lb/day ^d	441	637	---
Suspended Solids	mg/l	95	---	---
	lb/day ^d	931	---	---
Coliform Organisms (Total)	MPN/100 ml	23 ^e	---	230

4. The arithmetic mean of the BOD (20°C, 5-day) and Suspended Solids values, by weight, for effluent samples collected in a period of 30 consecutive days shall not exceed 35 percent of the arithmetic mean of the values, by weight, for influent samples collected at approximately the same times during the same period (65 percent removal). [40CFR133.105(a)(3) and (b)(3)] Percent removal shall be determined from the 30-day average value of raw wastewater concentration in comparison to the 30-day average value of effluent concentration for the same constituent over the same time period. [40CFR133.101(j)]

14. The Enforcement Policy states that for the purpose of determining serious violations, BOD, suspended solids, and pH are identified as Group I 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, exceedances of effluent limitations for total coliform bacteria do not count as serious violations.

^a The arithmetic mean of the values for effluent samples collected in a calendar month.

^b The arithmetic mean of all samples collected in a calendar week, Sunday to Saturday.

^c The maximum result of all samples collected in a calendar day.

^d The daily discharge (lbs/day) is obtained from the following calculation of any calendar day:

$$\frac{8.34}{N} \sum_{i=1}^N Q_i C_i$$

In which N is the number of samples analyzed in any calendar day. Q_i and C_i 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 take, C_i is the concentration measured in the composite sample; and Q_i is the average flow rate occurring during the period over which samples are composited

^e Median

15. According to monitoring reports submitted by the Discharger for the period between January 1, 2000, and May 31, 2005, the Discharger exceeded effluent limitations ninety-two times while discharging effluent to the Mad River. Of those ninety-two exceedances, thirty-one were serious violations in accordance with CWC Section 13385(h) and sixty-one were chronic effluent violations in accordance with CWC Section 13385(i)(1). The MMP amount for those violations is \$231,000 as shown in the following table:

**Effluent Limitation Exceedances
January 1, 2000 through May 31, 2005**

DATE	Pollutant	Reported Value	Violation Type	Mandatory Penalty
01/31/00	BOD 30-Day Average	317 lbs/day	1 st Chronic	\$0
01/31/00	BOD 30-Day Average	37 mg/l	2 nd Chronic	\$0
01/31/00	BOD % Removal	84%	3 rd Chronic	\$0
02/29/00	BOD 30-Day Average	305 lbs/day	Chronic	\$3,000
05/08/00	Coliform Daily Max	240 MPN/100 ml	Chronic	\$3,000
05/31/00	BOD % Removal	84%	Chronic	\$3,000
12/31/00	BOD 30-Day Average	424 lbs/day	Serious	\$3,000
12/31/00	Suspended Solids 30-Day Average	996 lbs/day	1 st Chronic	\$0
12/31/00	BOD 30-Day Average	33.5 mg/l	2 nd Chronic	\$0
12/31/00	BOD % Removal	70%	Serious	\$3,000
12/31/00	Suspended Solids % Removal	6%	Serious	\$3,000
01/31/01	BOD 30-Day Average	437 lbs/day	Serious	\$3,000
01/31/01	BOD 30-Day Average	42 mg/l	Serious	\$3,000
01/31/01	BOD % Removal	67%	Serious	\$3,000
01/31/01	Suspended Solids % Removal	65%	Serious	\$3,000
02/28/01	BOD 30-Day Average	35 mg/l	Chronic	\$3,000
03/31/01	BOD 30-Day Average	30.5 mg/l	Chronic	\$3,000
05/31/01	BOD 30-Day Average	113 mg/l	Serious	\$3,000
11/30/01	BOD Monthly Average	53 mg/l	1 nd Chronic	\$0
12/01/01	BOD Weekly Average	682 lbs/day	2 nd Chronic	\$0
12/31/01	Suspended Solids Monthly Average	100mg/l	3 rd Chronic	\$0
12/31/01	BOD Monthly Average	682 lbs/day	Serious	\$3,000
12/31/01	Suspended Solids Monthly Average	1400 lbs/day	Serious	\$3,000
12/31/01	Suspended Solids % Removal	55%	Chronic	\$3,000
03/31/02	BOD Monthly Average	527 lbs/day	Chronic	\$3,000
03/31/02	Suspended Solids % Removal	51%	Serious	\$3,000
12/07/02	BOD Weekly Average	78 mg/l	1 st Chronic	\$0
12/21/02	BOD Weekly Average	1180 lbs/day	Serious	\$3,000
12/28/02	BOD Weekly Average	950 lbs/day	Serious	\$3,000
12/31/02	BOD Monthly Average	63 mg/l	Serious	\$3,000
12/31/02	Suspended Solids Monthly Average	140 mg/l	Serious	\$3,000
12/31/02	BOD Monthly Average	710 lbs/day	Serious	\$3,000
12/31/02	Suspended Solids Monthly Average	1755 lbs/day	Serious	\$3,000

12/31/02	BOD % Removal	62%	Chronic	\$3,000
12/31/02	Suspended Solids % Removal	3%	Serious	\$3,000
01/04/03	BOD Weekly Average	891 lbs/day	Chronic	\$3,000
01/31/03	BOD Monthly Average	599 lbs/day	Chronic	\$3,000
01/31/03	Suspended Solids Monthly Average	1276 lbs/day	Chronic	\$3,000
01/31/03	BOD % Removal	63%	Chronic	\$3,000
01/31/03	Suspended Solids % Removal	42%	Serious	\$3,000
03/31/03	BOD % Removal	64%	Chronic	\$3,000
03/31/03	Suspended Solids % Removal	44%	Serious	\$3,000
05/12/03	Coliform MPN Daily Max	>1600/100 ml	Chronic	\$3,000
05/31/03	BOD Monthly Average	46 mg/l	Chronic	\$3,000
12/27/03	BOD Weekly Average	70 mg/l	1st Chronic	\$0
12/27/03	BOD Weekly Average	709 lbs/day	2 nd Chronic	\$0
12/31/03	BOD Monthly Average	47.5 mg/l	3 rd Chronic	\$0
12/31/03	Suspended Solids Monthly Average	110 mg/l	Chronic	\$3,000
12/31/03	BOD Monthly Average	483 lbs/day	Chronic	\$3,000
12/31/03	Suspended Solids Monthly Average	1122 lbs/day	Chronic	\$3,000
12/31/03	Suspended Solids % Removal	58%	Chronic	\$3,000
01/31/04	BOD Monthly Average	59 mg/l	Chronic	\$3,000
01/31/04	BOD Monthly Average	494 lbs/day	Chronic	\$3,000
02/07/04	BOD Weekly Average	70 mg/l	Chronic	\$3,000
02/07/04	BOD Weekly Average	668 lbs/day	Chronic	\$3,000
02/21/04	BOD Weekly Average	70 mg/l	Chronic	\$3,000
02/21/04	BOD Weekly Average	689 lbs/day	Chronic	\$3,000
02/29/04	BOD Monthly Average	70 mg/l	Serious	\$3,000
02/29/04	BOD Monthly Average	679 lbs/day	Serious	\$3,000
02/29/04	Suspended Solids % Removal	63%	Chronic	\$3,000
03/31/04	BOD Monthly Average	53 mg/l	Chronic	\$3,000
04/30/04	BOD Monthly Average	46 mg/l	Chronic	\$3,000
12/10/04	BOD Weekly Average	78 mg/l	1 st Chronic	\$0
12/31/04	BOD Monthly Average	537 lb/day	2 nd Chronic	\$0
12/31/04	TSS Monthly Average	110 mg/l	3 rd Chronic	\$0
12/31/04	BOD Monthly Average	67 mg/l	Serious	\$3,000
12/31/04	BOD % Removal	61%	Chronic	\$3,000
12/31/04	TSS % Removal	32%	Serious	\$3,000
1/7/05	BOD Weekly Average	84 mg/l	Chronic	\$3,000
1/7/05	BOD Weekly Average	1152 lb/day	Serious	\$3,000
1/17/05	Bioassay Survival	0%	Chronic	\$3,000
1/31/05	BOD Monthly Average	74 mg/l	Serious	\$3,000
1/31/05	BOD Monthly Average	771 lb/day	Serious	\$3,000
1/31/05	TSS Monthly Average	96 mg/l	Chronic	\$3,000
1/31/05	TSS Monthly Average	595 lb/day	Chronic	\$3,000
1/31/05	BOD % Removal	54%	Chronic	\$3,000
1/31/05	TSS % Removal	40%	Serious	\$3,000
2/4/05	BOD Weekly Average	78 mg/l	Chronic	\$3,000

2/7/05	Bioassay Survival	0%	Chronic	\$3,000
2/18/05	BOD Weekly Average	68 mg/l	Chronic	\$3,000
2/28/05	TSS Monthly Average	96 mg/l	Chronic	\$3,000
2/28/05	BOD Monthly Average	580 lb/day	Chronic	\$3,000
2/28/05	BOD Monthly Average	73 mg/l	Serious	\$3,000
2/28/05	TSS % Removal	46%	Serious	\$3,000
3/4/05	BOD Weekly Average	69 mg/l	Chronic	\$3,000
3/7/05	Bioassay Survival	0%	Chronic	\$3,000
3/18/05	BOD Weekly Average	69 mg/l	Chronic	\$3,000
3/31/05	BOD Monthly Average	69 mg/l	Serious	\$3,000
3/31/05	BOD Monthly Average	523 lb/day	Chronic	\$3,000
3/31/05	TSS % Removal	64 mg/l	Chronic	\$3,000
4/11/05	Bioassay Survival	5%	Chronic	\$3,000
5/31/05	BOD Monthly Average	62 mg/l	Chronic	\$3,000
Total				\$231,00

16. The total amount of the mandatory minimum penalties for serious and chronic violations occurring during the period January 1, 2000, through May 31, 2005 is \$231,000. Regional Water Board staff costs associated with this enforcement action may amount to \$10,000 at the time this matter is settled, including staff time to tally violations and prepare this Complaint, public notices, public hearing, response to comments, and evaluation and tracking of a CP or SEP through completion.
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).

McKINLEYVILLE COMMUNITY SERVICES DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Water Board proposes that the Discharger be assessed a **mandatory minimum penalty in the amount of \$231,000** for the violations that occurred from January 1, 2000, through May 31, 2005.
2. A hearing shall be conducted on this Complaint by the Regional Water Board on May 17, 2006, 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 minimum penalty of \$231,000 in full to the State Water Pollution Cleanup and Abatement Account within 30 days of the date of this Complaint, or

- b. Propose a SEP in an amount up to \$123,000 and pay the balance of the penalty (\$108,000) within 30 days of the date of this Complaint (or in compliance with a payment schedule issued in writing by the Executive Officer). 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 amount of \$231,000, or
 - c. Propose a CP in an amount up to \$221,000 and pay the \$10,000 balance of the penalty (to recover staff costs) within 30 days from the date of the Complaint (or in compliance with a payment schedule issued in writing by the Executive Officer). The sum of the CP amount and the amount of the fine to be paid to the State Water Pollution Cleanup and Abatement Account shall equal the full penalty.
3. If the Discharger chooses to propose an 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 also conform to the requirements specified in the Enforcement Policy and the attached guidance documents for SEPs and CPs. The SEP or CP proposal must include a time schedule, for concurrence by the Executive Officer, to address implementation and completion of the SEP or CP. If the proposed SEP or CP and/or implementation schedule 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 remit all or a portion of the assigned penalties. All payments, including money not used for the SEP or 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 not significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint, reissued 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 take necessary actions to achieve compliance.
8. The Executive Officer shall maintain jurisdiction over approved SEP and CP implementation time schedules throughout the life of the SEP or CP. If, given written

justification from the Discharger, the Executive Officer determines that a delay in the SEP or CP implementation schedule was beyond the reasonable control of the Discharger; the Executive Officer may revise the implementation schedule as appropriate.

9. All payments, including money not used for the CP and or previously suspended liabilities assessed for failure to comply with the CP must be payable to the State Water Pollution Cleanup and Abatement Account.
10. 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.

Catherine E. Kuhlman
Executive Officer

March 16, 2006

(031606_McKinleyvilleCSD_Complaint)