

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2006-0094
Mandatory Minimum Penalties

For

Violations of Waste Discharge Requirements
Order No. 98-50, and Order No. R1-2003-0044
(WDID No. 1B84086OHUM)
NPDES No. CA0023027

In The Matter Of
Humboldt County Resort Improvement District No. 1
Shelter Cove 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 the Humboldt County Resort Improvement District No. 1 (hereinafter Discharger) for violations of Waste Discharge Requirements Order No. R1-2003-0044 (NPDES Permit No. CA0023027) for the period of January 1, 2000 through April 30 2006.

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

1. The Discharger owns and operates the Shelter Cove wastewater treatment facility that serves the sewered portions of the District. Wastewater receives secondary treatment and is discharged to the Pacific Ocean via an outfall with a dilution ratio of 50:1. During the spring and summer months some or all of the effluent is used to irrigate the Discharger's nine-hole golf course.
2. The Regional Water Board adopted Waste Discharge Requirements Order No. 98-50 for the discharger on May 29, 1998. This order was rescinded on May 15, 2003 and the discharger is currently regulated by Order No. R1-2003-0044 adopted on May 15, 2003. Both orders serve(d) as National Pollutant Discharge Elimination System Permits (NPDES) under the federal Clean Water Act.
3. This Complaint covers violations of effluent limitations that occurred during the periods of discharge to receiving waters from January 1, 2000 to April 30, 2006. The details of these violations are presented in Finding 14 of this Complaint. Violations in Finding 15 are subject to the mandatory minimum penalties provision contained in Water Code section 13385, subdivisions (h) through (l).

4. Water Code section 13385, subdivision (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. Water Code section 13385, subdivision (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. Water Code section 13385, subdivision (i)(1) requires the Regional Water Board to assess a mandatory minimum 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. Exceeds 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. Exceeds a toxicity discharge limitation where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

Violations under section 13385, subdivision (i)(1) 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 subjects, issues related to assessing mandatory minimum penalties.
8. Water Code section 13385, subdivision (l)(1) provides that a portion of mandatory minimum penalties imposed under section 13385, subdivisions (h) or (i) may be directed to a supplemental environmental project (SEP) at the discretion of the Regional Water Board and 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 conditions regarding SEPs as specified in the Enforcement Policy.

9. Water Code section 13385, subdivision (k)(1) provides that the Regional Water Board may, in its discretion, elect to allow all or a portion of mandatory minimum penalties imposed under section 13385, subdivisions (h) or (i) against a POTW serving an eligible small community to be directed to a compliance project (CP) in accordance with Section X of the Enforcement Policy of the State Water board. This Complaint includes conditions regarding 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. Portions of Order Nos. 98-50 and R1-2003-0044 that are subject to mandatory minimum penalties include the following effluent limitations:

B. EFFLUENT LIMITATIONS

1. Representative samples of the discharge to the Pacific Ocean, through Outfall No. 001, shall not contain constituents in excess of the following limitations.

TABLE A
 MAJOR WASTEWATER CONSTITUENTS

	Units	Monthly Average ¹	Weekly Average ²	Daily Maximum
Total Coliform	MPN/100 ml	23 ³	---	230

¹ The arithmetic mean of the values for effluent samples collected in a period of 30 consecutive days.

² The arithmetic mean of the values for effluent samples collected in a period of seven consecutive days.

³ Median

3. The average percent removal of BOD and suspended solids in any consecutive 30 day period shall not be less than 85 percent, as determined by analysis of influent and effluent samples collected at approximately the same time.

13. The Enforcement Policy states that for the purpose of determining serious violations, suspended solids 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, exceedences of effluent limitations for total coliform bacteria do not count as serious violations.

14. According to monitoring reports submitted by the Discharger for the period between January 1, 2000, and April 30, 2006, the Discharger had 13 serious violations in accordance with Water Code section 13385, subdivision (h) and five chronic violations in accordance with CWC section 13385, subdivision (i)(1). The mandatory minimum penalty amount for those violations is \$45,000 as shown in the following table:

**Effluent Limitation Exceedances
 January 1, 2000 to April 30, 2006**

Date	Description of Violation	Reported Value	Limits	Violation Type	Mandatory Minimum Penalty
01/31/00	% Removal of TSS	78%	85%	Serious	\$3000
03/31/00	% Removal of TSS	20%	85%	Serious	\$3000
09/30/00	% Removal of TSS	50%	85%	Serious	\$3000
11/30/00	% Removal of TSS	59%	85%	Serious	\$3000
03/31/00	% Removal of TSS	46%	85%	Serious	\$3000
05/31/01	% Removal of TSS	79%	85%	1 st Chronic	\$0
07/31/01	% Removal of TSS	80%	85%	2 nd Chronic	\$0
09/31/01	% Removal of TSS	35%	85%	Serious	\$3000
10/30/01	% Removal of TSS	83%	85%	Chronic	\$3000
01/31/02	% Removal of TSS	32%	85%	Serious	\$3000
02/28/02	% Removal of TSS	69%	85%	Serious	\$3000
03/31/02	% Removal of TSS	76%	85%	Serious	\$3000
04/11/02	Exceeded Daily Maximum Coliform Limit	500 MPN/100 ml	230 MPN/100 ml	Chronic	\$3000
01/31/03	% Removal of TSS	68%	85%	Serious	\$3000
12/31/03	% Removal of TSS	76%	85%	Serious	\$3000
12/31/03	% Removal of BOD	74%	85%	Serious	\$3000
01/04/04	% Removal of TSS	77%	85%	Serious	\$3000
02/17/05	Exceeded Daily Maximum Coliform Limit	1600 MPN/100 ml	230 MPN/100 ml	1 st Chronic	\$0
TOTAL					\$45,000

15. The total amount of mandatory minimum penalties for violations occurring during the period January 1, 2000, through April 30, 2006 is \$45,000. Regional Water Board staff costs associated with this enforcement action amount to approximately \$10,000 at this time, including staff time to tally violations and prepare this Complaint, public notices, public hearing, response to comments, and evaluation and tracking of a Compliance Project, if any, through to completion.
16. The issuance of this Complaint is an enforcement action to protect the environment, and is therefore exempt from the environmental document preparation 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, subsection (a)(2).

THE HUMBOLDT COUNTY RESORT IMPROVEMENT DISTRICT NO. 1 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 \$45,000** for effluent violations that occurred from January 1, 2000, through April 30, 2006.
2. A hearing shall be conducted on this Complaint by the Regional Water Board on October 18, 2006, unless the Discharger waives the right to a hearing within 90 days under Water Code section 13323, subsection (b) 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 \$45,000 in full to the State Water Pollution Cleanup and Abatement Account within 30 days of the date of this Complaint, or
 - b. Propose an SEP in an amount up to \$30,000 and pay the balance of the penalty, which is \$15,000, 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 proposed 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.
 - c. Propose a CP in the amount up to \$35,000 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 proposed 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, a proposal must be submitted 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. 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 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 Discharge of the independent obligation to take necessary actions to achieve compliance.
8. The Executive Officer shall maintain oversight 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 SEP or CP and or previously suspended liabilities assessed for failure to comply with the SEP or CP must be payable to the State Water Pollution Cleanup and Abatement Account.
10. Notwithstanding the issuance of the Compliant, the Regional Water Board shall retain the authority to assess additional penalties beyond the mandatory minimums for violations of the Discharger's waste discharge requirements.



Catherine E. Kuhlman
Catherine E. Kuhlman
Executive Officer

August 22, 2006