

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2006-0117
Mandatory Minimum Penalties

For

Violations of Waste Discharge Requirements
Order Nos. 98-26 and R1-2004-0024
WDID No. 1A84005ODN

In The Matter of
Crescent City Harbor District
Seafood-Processing Wastewater Treatment Facility

Del Norte County

This complaint to assess Mandatory Minimum Penalties pursuant to Water Code section 13385, subdivisions (h) and (i) is issued to the Crescent City Harbor District (hereinafter Discharger), for violations of Waste Discharge Requirements Order No. 98-26 and Waste Discharge Requirements Order No. R1-2004-0024 (NPDES No. CA0024473) for the period January 1, 2000, through May 31, 2006.

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

1. On February 26, 1998, the Regional Water Quality Control Board, North Coast Region, (hereinafter Regional Water Board) adopted Waste Discharge Requirements Order No. 98-26 for the Crescent City Harbor District Seafood-Processing Wastewater Treatment Facility (WWTF), to regulate discharges of waste from seafood processing facilities located within Crescent City harbor. Order 98-26 was rescinded except for enforcement of past violations, and replaced with Waste Discharge Requirements Order No. R1-2004-0024 (Order No. R1-2004-0024) on May 12, 2004. Both of these WDRs serve as National Pollutant Discharge Elimination System (NPDES) permits under the federal Clean Water Act. Both orders require the Discharger to implement a discharge monitoring program and to prepare and submit monthly NPDES self monitoring reports to the Regional Water Board. The treated seafood-processing wastewater is discharged into the Pacific Ocean through the City of Crescent City's Municipal Wastewater Treatment Plant outfall.
2. This complaint covers violations of effluent limitations (contained in Order No. 98-26 and Order No. R1-2004-0024) that occurred during the period of January 1, 2000, through May 31, 2006. The details of these violations are presented in Finding 13 of this Complaint. Violations identified in Finding 14 are subject to the mandatory minimum penalties provision contained in Water Code section 13385, subdivisions (h) through (l).

3. 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 NPDES permit effluent limitations.
4. 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.
5. Water Code section 13385, subdivision (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, subdivision (i)(1) 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, among other enforcement issues, issues related to assessing mandatory minimum penalties.
7. 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) in accordance with the State Water Board's Water Quality 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). This Complaint includes requirements for SEPs as specified in the Enforcement Policy.
8. 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.

9. 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.
10. For the purpose of compliance determinations, the 6-month median is calculated using a discrete 6 month period. All samples collected during the period are used in determining the median. In this case the 6-month periods are:
 - a. June through November 2004;
 - b. December 2004 through May 2005;
 - c. June through November 2005; and
 - e. December 2005 through May 2006.
11. Order No. 98-26 includes the following effluent limitations and toxicity discharge limitations:

B. EFFLUENT LIMITATIONS

2. Representative samples of the discharge must not contain constituents in excess of the following limits:

Constituents	Units	30-day Average ¹	Daily Maximum ¹
FOR BOTTOM FISH PROCESSING			
Total Suspended Solids	lb/1000 lb of seafood	2.0	3.6
Oil and Grease	lb/1000 lb of seafood	0.55	1.0
FOR DUNGENESS CRAB PROCESSING			
Total Suspended Solids	lb/1000 lb of seafood	2.0	8.1
Oil and Grease	lb/1000 lb of seafood	0.61	1.8

¹ Total pounds of pollutant discharged for each 1,000 pounds of seafood processed.

FOR SHRIMP PROCESSING

Total Suspended Solids	lb/1000 lb of seafood	54	160
Oil and Grease	lb/1000 of seafood	42	126

FOR ALL PROCESSING

Hydrogen Ion	pH	Within the range of 6.0 to 9.0	
Acute Toxicity	Tu _a	1.5	2.5

12. Order No. R1-2004-0024 includes the following effluent limitations and toxicity discharge limitations:

B. EFFLUENT LIMITATIONS

1. Waste discharged to the Pacific Ocean (Discharger Serial No. 001) during seafood processing shall not contain constituents in excess of the following limits:

Constituent	Units	Monthly Average ^a	Daily Maximum
Suspended Solids	lb/1000lb bottom fish	2.0	3.6
	lb/1000 lb crab	2.7	8.1
	lb/1000 lb shrimp	54	160
Oil and Grease	lb/1000 lb bottom fish	0.55	1.0
	lb/1000 lb crab	0.61	1.8
	lb/1000 lb shrimp	42	126
pH	Units	Within limit of 6.0 and 9.0 at all times	

2. Waste discharged to the Pacific Ocean (Discharger Serial No. 001) during pump maintenance shall not contain constituents in excess of the following limits:

Constituent	Units	Monthly Average ^a	Daily Maximum
Flow	gal	--	1000
Total Suspended Solids	mg/L	--	60
Oil and Grease	mg/L	25	40
Settleable Solids	ml/L	1.0	1.5
Turbidity	NTU	75	100
pH	Units	Within limit of 6.0 and 9.0 at all times	

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

C. EFFLUENT LIMITATIONS FOR TOXIC POLLUTANTS

1. Wastes discharged to the Pacific Ocean (Discharge Serial No. 001) shall not contain toxic constituent in excess of the following limits (constituents are as described and defined in the Ocean Plan): (The table below shows only one of 14 constituents listed in the permit, the others are not relevant to this action.)

(Limiting Concentrations are expressed as milligrams per liter)

Constituent	6-Month Median	Monthly Average	Daily Maximum	Instantaneous Maximum
Ammonia	13	--	50	130

13. Suspended solids, settleable solids, turbidity, pH, and ammonia are Group 1 pollutants as described in title 40 Code of Federal Regulations, section 123.45, Appendix A. . A serious violation occurs whenever a Group 1 pollutant effluent limit is exceeded by more than 40 percent.
14. According to monitoring reports submitted by the Discharger, for the period January 1, 2000, through May 31, 2006, the Discharger has seventeen serious violations in accordance with Water Code section 13385, subdivision (h) and two chronic violations in accordance with Water Code section 13385, subdivision (i)(1). The mandatory minimum penalty amount for those violations is \$54,000 as shown in the following table:

**Effluent Limitation Exceedances
 January 1, 2000, through May 31, 2006**

Date	Pollutant	Reported Value	Limits	Violation Type	Mandatory Penalty
04/06/00	pH, Daily Max	4.7	6.0-9.0	Chronic	\$ 0
02/28/01	Suspended Solids, Daily Max	16.2 lbs/1000 lbs of fish processed	3.6 lbs/1000 lbs of fish processed	Serious	\$ 3,000
05/29/01	Suspended Solids, Daily Max	107.5 lbs/1000 lbs of fish processed	3.6 lbs/1000 lbs of fish processed	Serious	\$ 3,000
05/30/01	Suspended Solids, Daily Max	15.3 lbs/1000 lbs of fish processed	3.6 lbs/1000 lbs of fish processed	Serious	\$3,000
6/31/01	Suspended Solids, Monthly Max	12.7lbs/1000 lbs of fish processed	2.0 lbs/1000 lbs of fish processed	Serious	\$3,000

06/05/01	Suspended Solids, Daily Max	6.6 lbs/1000 lbs of fish processed	3.6 lbs/1000 lbs of fish processed	Serious	\$3,000
06/06/01	Suspended Solids, Daily Max	10.1 lbs/1000 lbs of fish processed	3.6 lbs/1000 lbs of fish processed	Serious	\$3,000
6/30/01	Suspended Solids, Monthly Max	5.0 lbs/1000 lbs of fish processed	2.0 lbs/1000 lbs of fish processed	Serious	\$3,000
07/11/01	Suspended Solids, Daily Max	24.9 lbs/1000 lbs of fish processed	3.6 lbs/1000 lbs of fish processed	Serious	\$3,000
06/17/04	Pump Maintenance Turbidity, Daily Max	141 NTU	100 NTU	Serious	\$3,000
06/24/04	Pump Maintenance Turbidity, Daily Max	142 NTU	100 NTU	Serious	\$3,000
06/04 through 11/04	Ammonia	52	13	Serious	\$3,000
11/19/04	Pump Maintenance Turbidity, Daily Max	325 NTU	100 NTU	Serious	\$3,000
11/21/04	Pump Maintenance Turbidity, Daily Max	300 NTU	100 NTU	Serious	\$3,000
11/21/04	Pump Maintenance Settleable Solids, Daily Max	6 mg/L	1.5 mg/L	Serious	\$3,000
12/04 through 05/05	Ammonia	24	13	Serious	\$3000
12/6/05	Pump Maintenance Turbidity, Daily Max	109.0 NTU	100 NTU	Chronic	\$0
12/05 through 05/06	Ammonia	18	13	Serious	\$3000
06/30/06	Suspended Solids, Monthly Max	7.7 lbs/1000 lbs of fish processed	2.0 lbs/1000 lbs of fish processed	Serious	\$3000
06/30/06	Oil and Grease Daily Max	1.5 mg/l	1.0 mg/l	Serious	\$3000
Total					\$54,000

15. The WWTF was nonoperational for the following months: September 2001 through November 2002; March 2003; May 2003; July 2003 through October 2003; September through October 04; July 2004 (2 days of processing only); August 2004 (1 day of processing only); and March 2005 through November 28, 2005. From November 2003 through March 2006 crab has been the only seafood processed.

16. The total amount of the mandatory minimum penalties for serious and chronic violations occurring during the period January 1, 2000 through May 31, 2006, is \$54,000.
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, subdivision (a)(2).

THE CRESCENT CITY HARBOR 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 \$54,000 for the violations that occurred from January 1, 2000, through May 31, 2006.
2. A hearing shall be conducted on this Complaint by the Regional Board on February 8, 2007, 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 \$54,000 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 \$34,500 and pay the balance of the penalty (\$19,500) within thirty 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 \$54,000.
3. If the Discharger chooses to propose a SEP, it must submit a proposal within thirty 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. The SEP proposal must include a time schedule, for concurrence by the Executive Officer, to address implementation and completion of the SEP. If the proposed SEP and/or implementation schedule is not acceptable, the Executive Officer may allow the Discharger thirty 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, 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 thirty 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. The Executive Officer shall maintain jurisdiction over approved SEP implementation time schedules throughout the life of the SEP. If, given written justification from the Discharger, the Executive Officer determines that a delay in the SEP 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 and or previously suspended liabilities assessed for failure to comply with the SEP, 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

December 11, 2006