

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2007-0022

For

Violation of Waste Discharge Requirements
Order No. 93-42
NPDES No. CA0023051

In The Matter Of
Occidental County Sanitation District
and Sonoma County Water Agency
Wastewater Treatment Facility
WDID No. 1B83001OSON

Sonoma County

This Complaint to assess Mandatory Minimum Penalties and administrative civil liability pursuant to Water Code section 13385 is issued to the Occidental County Sanitation District and the Sonoma County Water Agency for violations of Waste Discharge Requirements Order No. 93-42 (NPDES No. CA0023051) during the period April 17, 2003 to October 31, 2006.

The Executive Officer of the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) finds the following:

1. The Occidental County Sanitation District (hereinafter OCSD), owns the Occidental Wastewater Treatment Facility (WWTF) located east of and serving the Town of Occidental. Treated effluent is disposed of by irrigation during the summer and by discharge to Dutch Bill Creek during the winter. The Sonoma County Water Agency (hereinafter SCWA), located at 2150 W. College Avenue, Santa Rosa, is under contract to operate and maintain the WWTF. The OCSD and SCWA are collectively hereinafter referred to as the Discharger.
2. The Regional Water Board adopted Waste Discharge Requirements Order No. 93-42 (WDR Order No. 93-42) for the WWTF on May 27, 1993. WDR Order No. 93-42 serves as a National Pollutant Discharge Elimination System (NPDES) permit under the Federal Clean Water Act and allows the Discharger to discharge treated effluent at a rate of up to one percent of the flow of the receiving water during the period of October 1 through May 14 of each year, and prohibits discharge to Dutch Bill Creek and its tributaries during the period of May 15 through September 30 of each year.

3. This Complaint covers violations of effluent limitations contained in WDR Order No. 93-42 for discharges to Dutch Bill Creek and its Tributaries that took place from April 17, 2003 through September 30, 2006. The Discharger violated Effluent Limitations B.1 and B.5 of Order No. 93-42 a total of thirty-five times. The details of these thirty-five violations are summarized in Findings 12, 13, and 14 of this Complaint. These violations are subject to the mandatory minimum penalties provisions contained in California Water Code Section 13385, subdivisions (h) and (i).
4. Water Code section 13385, subdivision (h)(1) establishes a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation of an NPDES permit effluent limitation. 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 of the 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 of the 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 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) 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) of the Water Code 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, amongst 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 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.
8. Water Code section 13385, subdivision (k)(1) provides that the Regional Water Board may 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 requirements for CPs as specified in the Enforcement Policy.
9. For the purpose of determining a Discharger's compliance with effluent limitations in its WDR Order/NPDES permit, 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.
10. For the purpose of determining a Discharger's compliance with effluent limitations in its WDR Order/NPDES permit, 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.
11. Order No. 93-42 includes, among other things, the following effluent limitations:

B. EFFLUENT LIMITATIONS

1. Waste discharged to Graham's Pond prior to the time the average annual dry weather flow equals or exceeds 0.034 mgd shall not contain constituents in excess of the following limits:

<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	12	18	24
Suspended Solids (TSS)	mg/l	50	65	80
	lb/day	20	27	33
Chlorine Residual	mg/l	--	---	0.1

5. The survival of test fish in 96-hour static or continuous flow bioassays in undiluted effluent samples shall equal or exceed 90 percent survival 67 percent of the time, and 70 percent survival 100 percent of the time for discharges from Graham's Pond to Dutch Bill Creek.
12. According to monitoring reports submitted by the Discharger, for the period between April 17, 2003 and September 30, 2006, effluent was discharged into surface waters during three winter periods, defined as October 1 through May 14. Violations during the three winter periods are shown in three separate tables, below. For the discharge period October 2003 to May 2004, the Discharger has ten serious violations, as defined by Water Code section 13385, subdivision (h) and six chronic violations, as defined by Water Code section 13385, subdivision (i)(1). The mandatory minimum penalty amount for those violations is \$48,000 as shown in the following table:

^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. 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 taken, 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.

Effluent Limitation Exceedances^{1, 2, 3}
October 2003 to May 2004

Date	Parameter	Reported Value	Effluent Limit	Units	Violation Type	Mandatory Penalty
12/15/2003	Cl ₂ Residual	0.3	0.1	mg/L	Serious	\$3,000
12/16/2003	Cl ₂ Residual	15.8	0.1	mg/L	Serious	\$3,000
12/23/2003	BOD, Daily Mass Load	57.51	24	lb/day	Serious	\$3,000
12/23/2003	TSS, Daily Mass Load	60.01	33	lb/day	Serious	\$3,000
12/23/2003	BOD, Weekly Mass Load	19.5	18	lb/day	Chronic	\$3,000
12/29/2003	Cl ₂ Residual	12.8	0.1	mg/L	Serious	\$3,000
12/30/2003	BOD, Daily Mass Load	35.34	24	lb/day	Serious	\$3,000
12/30/2003	TSS, Daily Mass Load	40.78	33	lb/day	Chronic	\$3,000
12/30/2003	BOD, Weekly Mass Load	20.2	18	lb/day	Chronic	\$3,000
12/31/2003	BOD, Monthly Mass Load	24.41	12	lb/day	Serious	\$3,000
12/31/2003	TSS, Monthly Mass Load	27.85	20	lb/day	Chronic	\$3,000
2/17/2004	Cl ₂ Residual	12.4	0.1	mg/L	Serious	\$3,000
2/25/2004	TSS, Daily Mass Load	46.84	33	lb/day	Serious	\$3,000
2/25/2004	TSS, Weekly Mass Load	46.84	27	lb/day	Serious	\$3,000
2/25/2004	TSS, Monthly Mass Load	23.14	20	lb/day	Chronic	\$3,000
5/12/2004	TSS, Weekly Concentration	68	65	mg/L	Chronic	\$3,000
Total						\$48,000

¹ See Finding 6 of this Complaint for the definition of a chronic violation.

² See Finding 5 of this Complaint for the definition of serious violation.

³ For the purpose of determining serious violations, BOD, and suspended solids are Group I pollutants and chlorine residual is a Group II pollutant, as defined in title 40, Code of Federal Regulations, section 123.45, Appendix A.

13. For the winter period October 2004 to May 2005, the Discharger had four serious violations and seven chronic violations. The mandatory minimum penalty amount for those violations is \$27,000 as shown in the following table:

**Effluent Limitation Exceedances
October 2004 to May 2005**

Date	Parameter	Reported Value	Effluent Limit	Units	Violation Type	Mandatory Penalty
12/8/2004	BOD, Daily Mass Load	31.69	24	lb/day	Chronic, 1 st	---
12/8/2004	TSS, Daily Mass Load	45.64	33	lb/day	Chronic, 2 nd	---
12/8/2004	BOD, Weekly Mass Load	31.69	18	lb/day	Serious, 3 rd	\$3,000
12/8/2004	TSS, Weekly Mass Load	45.64	27	lb/day	Serious	\$3,000
2/2/2005	Fish Toxicity	40%	90%/67%	Survival	Chronic	\$3,000
2/16/2005	TSS, Weekly Mass Load	28.2	27	lb/day	Chronic	\$3,000
3/23/2005	BOD, Daily Mass Load	24.87	24	lb/day	Chronic	\$3,000
3/23/2005	BOD, Weekly Load	24.87	18	lb/day	Chronic	\$3,000
3/23/2005	TSS, Daily Mass Load	54.48	33	lb/day	Serious	\$3,000
3/23/2005	TSS, Weekly Mass Load	54.48	27	lb/day	Serious	\$3,000
3/31/2005	TSS, Monthly Mass Load	20.86	20	lb/day	Chronic	\$3,000
Total						\$27,000

14. For the winter period October 2005 to May 2006, the Discharger had four serious violations and four chronic violations. The mandatory minimum penalty amount for those violations is \$18,000 as shown in the following table:

**Effluent Limitation Exceedances
October 2005 to May 2006**

Date	Parameter	Reported Value	Effluent Limit	Units	Violation Type	Mandatory Penalty
12/24/2005	BOD, Weekly Mass Load	36.8	18	lb/day	Serious, 1 st	\$3,000
12/31/2005	BOD, Weekly Mass Load	24.4	18	lb/day	Chronic, 2 nd	---
12/31/2005	BOD, Monthly Mass Load	16.4	12	lb/day	Chronic, 3 rd	---
4/12/2006	BOD, Daily Mass Load	48.8	24	lb/day	Serious	\$3,000
4/12/2006	TSS, Daily Mass Load	61.4	33	lb/day	Serious	\$3,000
4/15/2006	BOD, Weekly Mass Load	29.7	18	lb/day	Serious	\$3,000
4/15/2006	TSS, Weekly Mass Load	37.3	27	lb/day	Chronic	\$3,000
4/30/2006	BOD, Monthly Mass Load	14.6	12	lb/day	Chronic	\$3,000
Total						\$18,000

15. The total amount of the mandatory minimum penalties for the 35 serious and chronic violations occurring during the period April 17, 2003 through October 31, 2006, is \$93,000. Regional Water Board staff costs associated with this enforcement action will amount to approximately \$10,000, which may include staff time in tallying these violations and preparing this Complaint, preparing public notices, attending the public hearing, preparing responses to public comments, and evaluating and tracking of a Compliance Project or Supplemental Environmental Project through to completion.

16. The issuance of this Complaint is an enforcement action to protect the environment, and is therefore exempt from the provision 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).

SONOMA COUNTY WATER AGENCY AND OCCIDENTAL COUNTY
SANITATION DISTRICT ARE 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 \$93,000 for effluent violations that occurred from April 17, 2003 through October 31, 2006.
2. A hearing shall be conducted on this Complaint by the Regional Water Board on April 25 and 26, 2007, unless the Discharger waives the right to a hearing under Water Code section 13323, subdivision (b) by signing and returning the waiver form attached to this Complaint within thirty days of the date of this Complaint. By doing so, the Discharger agrees to:
 - a. Pay the mandatory minimum penalty of \$93,000 in full to the State Water Pollution Cleanup and Abatement Account within thirty days of the date of this Complaint, or
 - b. Propose a CP that will cost at least \$83,000 and pay the balance of the penalty (to recover staff costs) within thirty 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 penalty to be paid to the State Water Pollution Cleanup and Abatement Account shall at least equal the amount of the full penalty, or
 - c. Propose a SEP that will cost at least \$54,000 and pay the balance of the penalty within thirty 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 SEP amount and the amount of the fine to be paid to the State Water Pollution Cleanup and Abatement Account shall at least equal the amount of the full penalty.
3. If the Discharger chooses to propose a CP or SEP, a proposal must be submitted within thirty days of the date of this Complaint to the Executive Officer for conceptual approval. Any CP or SEP proposal shall also conform to the requirements specified in the Enforcement Policy. The CP or SEP proposal must include a time schedule, for concurrence by the Executive Officer, to address implementation and completion of the CP or SEP. If the proposed CP or 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 thirty-day period the Discharger remit all or a portion of the assigned penalties. All payments, including money not used for the CP or 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 thirty day public comment period on this Complaint ends. If there are significant public comments, the Executive Officer may withdraw this Complaint, reissue a new complaint, 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 civil liability occasioned by the 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, including a proposed CP or SEP.
7. The Executive Officer shall maintain oversight over approved CP or SEP implementation time schedules throughout the life of the CP or SEP. If, given written justification from the Discharger, the Executive Officer determines that a delay in the CP or SEP implementation schedule was beyond the reasonable control of the Discharger, the Executive Officer may revise the implementation schedule as appropriate.
8. Notwithstanding the issuance of this Complaint, the Regional Water Board shall retain the authority to assess additional penalties beyond the mandatory minimum penalties for violations of the Discharger's waste discharge requirements.

Catherine E. Kuhlman
Executive Officer

March 5, 2007