

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2007-0061

For

Violation of Waste Discharge Requirements
Order No. 94-60, Order No. R1-2000-71, and Order No. R1-2006-0001 and
Violations of Order No. 2006-0003-DWQ (Sanitary Sewer Systems)

In the Matter Of
City of Crescent City
Wastewater Treatment Facility
WDID No. 1A84006ODN

Del Norte County

This Complaint assesses administrative civil liability for penalties pursuant to Water Code section 13385 and is issued to the City of Crescent City (hereinafter Discharger) for violations of Waste Discharge Requirements (WDRs) Order No. 94-60, Order No. R1-2000-71 and Order No. R1-2006-0001 and State Water Resources Control Board Order No. 2006-0003-DWQ. Mandatory minimum penalties are assessed for violations of effluent limitations occurring during the period from January 1, 2000 through May 31, 2007. Discretionary penalties are assessed for violations of discharge prohibitions occurring during the period from December 1, 2003 through May 31, 2007.

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

1. The Discharger owns and operates the City of Crescent City Wastewater Treatment Facility (WWTF). The WWTF serves the City of Crescent City and the County Service Area #1 and discharges secondary treated municipal wastewater into the Pacific Ocean.
2. From April 11, 1994 to September 21, 2000, the Discharger's WWTF was regulated by WDRs Order No. 94-60. On September 22, 2000, the Regional Water Board adopted new WDRs Order No. R1-2000-71. This Order was effective until February 23, 2006. On January 25, 2006, the Regional Water Board adopted new WDRs Order No. R1-2006-0001 for the Discharger's WWTF that became effective on February 24, 2006. All of these WDRs serve as a National Pollutant Discharge Elimination System (NPDES) Permit under the Federal Clean Water Act (NPDES No. CA0022756).

3. The State Water Resources Control Board adopted Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Wastewater Collection Agencies on May 2, 2006. The Discharger enrolled in the General WDRs on July 11, 2006.
4. Sanitary sewer overflows (SSOs) are discharges from sanitary sewer systems of domestic, industrial, and commercial wastewater. SSOs contain high levels of suspended solids, pathogenic organisms, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants. SSOs may cause a public nuisance when untreated wastewater is discharged to areas with high public exposure, such as streets or surface waters used for drinking, fishing, or body contact recreation. SSOs may pollute surface or ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters.
5. This Complaint covers violations of effluent limitations that occurred from January 1, 2000, through May 31, 2007. This is consistent with the implementation date of Water Code sections 13385 (h) and (i). Details of effluent limitation violations are summarized in Finding 20. This Complaint covers violations of discharge prohibitions that occurred from December 1, 2003 through May 31, 2007. Details of discharge prohibition violations are summarized in Finding 21 of this Complaint. The effluent limitation violations are subject to the mandatory minimum penalties provision contained in Water Code section 13385, subdivisions (h) and (i).
6. Among the provisions in the WDRs are requirements to implement a discharge monitoring program and to prepare and submit monthly and annual NPDES self-monitoring reports to the Regional Water Board pursuant to the authority of Water Code section 13383. These reports are designed to ensure compliance with effluent limitations contained in the WDRs.
7. Water Code section 13385, subdivision (a) provides for the imposition of civil liability by the Regional Water Board. Section 13385, subdivision (c) provides the maximum amount of civil liability that may be imposed by the Regional Water Board. The amount may be up to \$10,000 for each 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.
8. 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.

9. 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.

10. 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.
11. Water Code section 13385, subdivision (k)(1) provides that the Regional Water Board may elect to require all or a portion of mandatory minimum penalties imposed under section 13385, subdivisions (h) or (i) against a publicly owned treatment works (POTW) serving a small community, as defined subdivision 13385(k)(2), to be directed to a compliance project (CP) in accordance with Section X of the Enforcement Policy. This Complaint includes requirements for CPs as specified in the Enforcement Policy.
12. The Enforcement Policy provides that the Regional Water board may elect to allow a discharger to satisfy some or all of the monetary assessment imposed in an administrative civil liability complaint or order by completing or funding one or more supplemental environmental projects (SEPs). The SEPs must be completed in accordance with Section IX of the Enforcement Policy. This Complaint includes requirements for SEPs as specified in the Enforcement Policy.
13. For the purpose of determining a Discharger's compliance with effluent limitations in its WDRs/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 determinations 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.

14. For the purpose of determining a Discharger's compliance with effluent limitations in its WDRs/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 determinations 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.
15. Order No. 94-60 includes the following effluent limitations:

B. EFFLUENT LIMITATIONS

1. Wastes discharged to the Pacific Ocean (Discharge Serial 001) shall not contain constituents in excess of the following limits (Table A and Table B constituents as described and defined in the California Ocean Plan, adopted on March 22, 1990):

Table A

MAJOR WASTEWATER CONSISTUENTS

<u>Constituent</u>	<u>Units</u>	<u>30-Day Average</u> ¹	<u>7-Day Average</u> ²	<u>Daily Maximum</u>
Fecal Coliform Organisms	MPN/100 ml	14 ³		43 ⁴

16. Order No. R1-2000-71 includes the following discharge prohibitions and effluent limitations:

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

² The arithmetic mean of the value for effluent samples collected in a period of 7 consecutive days

³ Median

⁴ Not more than 10 percent of samples collected in a 30-day period shall exceed 43 MPN/100 ml (fecal)

A. DISCHARGE PROHIBITIONS

2. Creation of a pollution, contamination, or nuisance, as defined by Section 13050 of the California Water Code (CWC) is prohibited.
4. The discharge of untreated waste from anywhere within the collection, treatment, or disposal facility is prohibited.
5. The discharge of waste to land that is not under the control of the permittee is prohibited, except as authorized under Section D., below.

B. EFFLUENT LIMITATIONS

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

Table A

MAJOR WASTEWATER CONSISTUENTS

<u>Constituent</u>	<u>Units</u>	<u>30-Day Average⁵</u>	<u>7-Day Average⁶</u>	<u>Daily Maximum</u>
BOD (20°C, 5-day)	mg/l	30	45	60
	lb/day ⁷	475	710	950
Fecal Coliform Organisms	MPN/100 ml	14 ⁸ , 43 ⁹		

17. Order No. R1-2006-0001 includes the following discharge prohibitions and effluent limitations:

⁵ The arithmetic mean of all samples collected in a calendar month.

⁶ The arithmetic mean of all samples collected in a calendar week, Sunday to Saturday.

⁷ The daily discharge (lbs/day) is obtained from the following calculation of any calendar 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. Qi and Ci 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, Ci is the concentration measured in the composite sample; and Qi is the average flow rate occurring during the period over which samples are composited.

⁸ Calendar month median

⁹ Not more than 10 percent of samples collected in a 30-day period shall exceed 43 MPN/100ml (fecal).

III. Discharge Prohibitions

- B. Creation of a pollution, contamination, or nuisance, as defined by Section 13050 of the California Water Code (CWC) is prohibited.
- D. The discharge or reclamation of untreated or partially treated waste (receiving a lower level of treatment than described in Finding II.B) from anywhere within the collection, treatment, or disposal facility is prohibited, except as provided for in Attachment D, Standard Provision I.G [*Bypass Provision*].
- E. The discharge of waste at any point not described in Finding II.B. or authorized by any State Water Board or other Regional Water Board permit is prohibited.

IV. EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

A. Effluent Limitations – Discharge Point 001

1. Final Effluent Limitations – Discharge Point 001

- a) The discharge of secondary treated municipal wastewater shall maintain compliance with the following effluent limitations at Discharge Point 001, with compliance measured at Monitoring Location M-001 as described in the attached Monitoring and Reporting Program (Attachment E):

Parameter	Units	Effluent Limitations	
		Average Monthly	Average Weekly
Biochemical Oxygen Demand 5-day @ 20°C	mg/L	30	45
	lbs/day	700	1050
Total Suspended Solids	mg/L	30	45
	lbs/day	475	710
Oil and Grease	mg/L	25	40

- d) Most Probable Number (MPN) of Fecal Coliform Organisms per 100 milliliters: The monthly median shall not exceed 14 and not more than ten percent of the samples collected in any calendar month shall exceed 43.

- 18. State Water Resources Control Board Order No. 2006-0003 DWQ includes the following prohibitions:

C. PROHIBITIONS

1. Any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.
 2. Any SSO that results in a discharge of untreated or partially treated wastewater that creates a nuisance as defined in California Water Code Section 13050(m) is prohibited.
19. The Enforcement Policy states that for the purpose of determining serious violations, BOD, Total Suspended Solids, and Oil and Grease are identified as Group I pollutants in title 40 Code of Federal Regulations, section 123.45, Appendix A. Fecal Coliform is neither a Group I nor a Group II pollutant; therefore, exceedances of effluent limitations for fecal coliform bacteria do not count as serious violations.
20. Effluent Limitation Violations

According to monitoring reports submitted by the Discharger for the period from January 1, 2000 through May 31, 2007, the Discharger exceeded effluent limitations thirty-six times while discharging through Discharge Point 001. Thirty-three of the exceedances are not serious effluent violations, as described in Water Code section 13385, subdivision (i)(1). Three of the exceedances are serious effluent violations, as described in Water Code section 13385, subdivisions (h)(1) and (2). The mandatory minimum penalty amount for those violations is \$69,000 as shown in the following table:

Table 1: Effluent Limitation Exceedances
January 1, 2000 through May 31, 2007

Date	Parameter	Reported Value	Permit Limit	Units	Violation Type	Mandatory Penalty
07/06/00	90% Coliform limit	220	43	MPN/100 ml	1 st Chronic	\$0
07/07/00	90% Coliform limit	79	43	MPN/100 ml	2 nd Chronic	\$0
08/31/01	Monthly average BOD	34	30	mg/L	1 st Chronic	\$0
02/28/02	Monthly average BOD	495	475	lb/day	2 nd Chronic	\$0
04/30/02	Monthly average BOD	35	30	mg/L	2 nd Chronic	\$0
04/30/02	Monthly average BOD	550	475	lb/day	3 rd Chronic	\$0
07/01/03	90% Coliform limit	130	43	MPN/100 ml	1 st Chronic	\$0
07/02/03	90% Coliform limit	1,600	43	MPN/100 ml	2 nd Chronic	\$0
07/05/03	90% Coliform limit	350	43	MPN/100 ml	3 rd Chronic	\$0
07/06/03	90% Coliform limit	220	43	MPN/100 ml	Chronic	\$3,000
07/10/03	90% Coliform limit	110	43	MPN/100 ml	Chronic	\$3,000

07/31/03	Monthly average BOD	36	30	mg/L	Chronic	\$3,000
07/31/03	Monthly median coliform	25	14	MPN/100 ml	Chronic	\$3,000
10/31/03	Monthly average BOD	33	30	mg/L	Chronic	\$3,000
11/10/03	90% Coliform limit	49	43	MPN/100 ml	Chronic	\$3,000
11/30/04	Monthly average BOD	31	30	mg/L	1 st Chronic	\$0
05/30/05	90% Coliform limit	240	43	MPN/100 ml	2 nd Chronic	\$0
08/31/05	Monthly average BOD	31	30	mg/L	2 nd Chronic	\$0
09/30/05	Monthly average BOD	31	30	mg/L	3 rd Chronic	\$0
10/31/05	Monthly average BOD	32	30	mg/L	Chronic	\$3,000
12/28/05	Weekly average BOD	927	710	lb/day	Chronic	\$3,000
12/29/05	90% Coliform limit	140	43	MPN/100 ml	Chronic	\$3,000
12/31/05	90% Coliform limit	900	43	MPN/100 ml	Chronic	\$3,000
12/31/05	Monthly average BOD	494	475	lb/day	Chronic	\$3,000
01/10/06	90% Coliform limit	50	43	MPN/100 ml	Chronic	\$3,000
01/18/06	90% Coliform limit	50	43	MPN/100 ml	Chronic	\$3,000
01/31/06	Monthly average BOD	602	475	lb/day	Chronic	\$3,000
03/12/06	90% Coliform limit	50	43	MPN/100 ml	Chronic	\$3,000
06/30/06	Monthly average BOD	38	30	mg/L	Chronic	\$3,000
07/31/06	Monthly average BOD	40	30	mg/L	Chronic	\$3,000
08/31/06	Monthly average BOD	34	30	mg/L	Chronic	\$3,000
12/25/06	Weekly average BOD	1020	710	lb/day	Serious	\$3,000
12/25/06	Weekly average TSS	887	710	lb/day	Chronic	\$3,000
12/31/06	Monthly average BOD	523	475	lb/day	Chronic	\$3,000
03/06/07	Weekly average Oil/Grease	63	40	mg/L	Serious	\$3,000
03/31/07	Monthly average Oil/Grease	63	25	mg/L	Serious	\$3,000
					TOTAL	\$69,000

21. Discharge Prohibitions Violations

During the period between December 1, 2003 and May 31, 2007, the Discharger experienced seven prohibited discharges. Two of the seven discharges were treated, disinfected effluent and five were SSOs resulting in discharges to receiving waters. A summary of the overflows follows:

Table 2: Summary of prohibited discharges
December 1, 2003 through May 31, 2007

Date	Location	Estimated Volume Discharged to Receiving Waters (gallons)	Comments	Maximum Potential Penalty
12/13/03 – 12/14/03	Manhole A inside the plant near RBCs.	7,010,000 (5,483,000 gallons of chlorinated effluent discharged to the storm drain. 1,527,000 gallons of dechlorinated effluent discharged to the East storm drain.)	Treated, disinfected effluent	\$70,100,000
12/13/03	Downtown Overflows Front, Second & N Streets	< 500 gallons	SSOs caused by I&I	\$10,000
5/26/05	Burtschell St. Lift Station	0 (2.5 gallons recovered from wet well)	SSO caused by Vandalism	\$0
12/31/05	Manhole A inside the plant near RBCs	1,684,000	Treated, disinfected effluent	\$16,840,000
12/31/05	Downtown Overflows Front, Second & N Streets	< 500 gallons	SSOs caused by I&I	\$10,000
10/20/06	(1) Across from WWTF (2) MMC & Howe (3) Howe Drive & Swim Pool (4) Inside MMC	7,000 (~5,000 gallons recovered)	SSOs caused by a plugged sewer main	\$20,000
12/25/06	Downtown Overflows A-G ¹⁰	154,000 gallons	SSOs caused by I&I	\$1,540,000
Total →				\$88,520,000

22. In determining the amount of any civil liability, the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violation, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue business, any voluntary cleanup efforts undertaken, 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. At a minimum, Water Code section 13385(e) requires that liability be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

¹⁰ See Attachment A

23. Five of the seven prohibited discharges were SSOs, one of which was caused by vandalism and resulted in no discharge to receiving waters. No penalty is being assessed for this SSO. The remaining four SSOs were discharges of untreated wastewater to public streets, storm drains, and Crescent City Harbor, all of which pose a threat to public health and a potential to seriously impact beneficial uses of Crescent City Harbor. Three of the SSOs were the result of inflow and infiltration during rain storms, which has been a recurring problem in the downtown area for many years. In view of the history of these recurring SSOs in the downtown area and the City's status as a small community with financial hardship, a total penalty of \$50,000 is assessed for these four SSOs. The other two prohibited discharges were discharges of treated, disinfected effluent that resulted from a restricted outfall line, which later was replaced by a larger outfall. A penalty of \$3,000 for each of these two discharges is being assessed (\$6,000 total).
24. Regional Water Board staff costs associated with the effluent limit violations are estimated to be a minimum of \$10,000. This includes staff time to tally violations and prepare this Complaint, public notices, public hearing, response to comments, and evaluation and tracking of a CP, if any, through to completion.
25. 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, subsection (a) (2).

THE CITY OF CRESCENT CITY IS HEREBY GIVEN NOTICE THAT:

1. Based on a review of the above facts and required factors, the Executive Officer proposes that the Discharger be assessed an administrative civil liability in the amount of \$125,000. This assessment includes \$69,000 in mandatory minimum penalties for effluent violations from January 1, 2000 through May 31, 2007.
2. A hearing will be conducted on this Complaint by the Regional Water Board on October 25, 2007, unless the Discharger waives the right to a hearing 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:

Option 1

Pay the total assessed penalty of \$125,000 in full to the State Water Pollution Cleanup and Abatement Account (CAA) within thirty days of the date of this Complaint or,

Option 2

- a. In lieu of paying the full amount of the penalty for violations of effluent limitations, propose a CP that is designed to correct the violations of effluent limitations within five years and will cost at least \$59,000, and pay \$10,000 to the CAA within thirty days of the date of this Complaint (or in compliance with a payment schedule issued in writing by the Executive Officer) and,
- b. In lieu of paying the full amount of the penalty for violations of discharge prohibitions, propose an SEP in an amount up to \$35,500 and pay the balance of the penalty, which is \$20,500, to the CAA 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 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.

The sum of the CP, the SEP, and the amounts to be paid to the CAA shall at least equal the amount of the full penalty.

3. If the Discharger chooses to propose a CP and a SEP, it must submit a proposal within thirty days of the date of this Complaint to the executive Officer for conceptual approval. Any CP and SEP proposal shall conform to the requirements specified in the Enforcement Policy. Each proposal must include a time schedule, for concurrence by the Executive Officer, to address implementation and completion of the projects. If the proposed projects and/or implementation schedules are 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 projects, 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 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. The Executive Officer shall maintain oversight over approved CP and SEP implementation time schedules throughout the life of the projects. If, given written justification from the Discharger, the Executive Officer determines that a delay in the project implementation schedule was beyond 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 for violations of the Discharger's waste discharge requirements.

Catherine E. Kuhlman
Executive Officer

July 25, 2007