

California Regional Water Quality Control Board  
North Coast Region

Administrative Civil Liability Complaint No. R1-2005-0095

Mandatory Minimum Penalties

For  
Violations of Waste Discharge Requirements  
Order No. 95-47

In The Matter  
of  
Fort Bragg Municipal Improvement District No.1 Wastewater Treatment Facility  
WDID No. 1B84083OMEN

Mendocino County

This Complaint to assess mandatory minimum penalties pursuant to California Water Code Section 13385(h) and (i) is issued to the Fort Bragg Municipal Improvement District No.1 (hereafter referred to as the Discharger) for violations of Waste Discharge Requirements Order No. 95-47 (NPDES No. CA0023078) for the period January 1, 2000, through May 13, 2004.

The Executive Officer finds the following:

1. On June 22, 1995, the Regional Water Quality Control Board, North Coast Region, (Regional Water Board) adopted Waste Discharge Requirements Order No. 95-47 (Order No. 95-47), for the Fort Bragg Municipal Improvement District No. 1 to regulate discharges of waste from the Fort Bragg Wastewater Treatment Facility. Order No. 95-47 was rescinded and replaced with Waste Discharge Requirements Order No. R1-2004-0009 (Order No. R1-2004-0009) on March 24, 2004. Order No. R1-2004-0009 became effective on May 13, 2004. 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.
2. This Complaint covers violations of effluent limitations (contained in Order No. 95-47) that occurred during periods of discharge to receiving waters for the period of January 1, 2000, through May 13, 2004. The details of these violations are summarized in Finding 12 of this Complaint. These violations are subject to the mandatory minimum penalties provision contained in Sections 13385(h) and (i) of the California Water Code.
3. California Water Code Section 13385(h)(1) requires the Regional Water Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each serious violation.

4. California Water Code 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.
5. California Water Code 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-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(i)(1) of the California 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, among other enforcement issues, issues related to assessing mandatory minimum penalties allowing compliance projects. This Complaint includes requirements for compliance projects specified in Section X of the Enforcement Policy.
7. CWC section 13385(k)(1) provides that a portion of mandatory minimum penalties imposed against a POTW serving an eligible small community under CWC 13385(h) or (i) may be directed to a compliance project (CP) in accordance with Section X of 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. Order No. 95-47 includes the following effluent limitations and toxicity discharge limitation:

**B. EFFLUENT LIMITATIONS**

1. Waste discharged to the Pacific Ocean (Discharge Serial No. 001) shall not contain constituents in excess of the following limits (Table A and Table B constituents are as described and defined in the California Ocean Plan, adopted on March 22, 1990):

**Table A. Major Wastewater Constituents**

Constituent	Unit	30-Day Average	7-Day Average	Daily Maximum
Grease and Oil	mg/l	25	40	75
	lb/day	208	334	625
BOD (20°C, 5-day)	mg/l	30	45	60
	lb/day	250	375	500
Suspended Solids	mg/l	30	45	60
	lb/day	250	375	500
pH	Standard Units	Within limits of 6.0 and 9.0 at all times		
Total Coliform Organisms	MPN/100ml	23 <sup>1</sup>	---	230

**Table B. Toxic Materials Limitations**

Constituent	Unit	6-Month Median <sup>2</sup>	Daily Maximum	Instantaneous Maximum
Cyanide	mg/l	0.051	0.2	0.51
	lb/day	0.42	1.67	4.25
Copper	mg/l	0.053	0.5	1.43
	lb/day	0.44	4.17	11.9

<sup>1</sup> Median

<sup>2</sup> The six-month median mass emission rate is calculated by multiplying the six-month median concentration and the average flow rate over the period in million gallons per day.

11. The Enforcement Policy states that for the purpose of determining serious violations, BOD, Suspended Solids, Grease and Oil, and pH are identified as Group I pollutants and Cyanide and Copper are identified as Group II 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.
  
12. According to monitoring reports submitted by the Discharger, the discharge exceeded effluent limitations 74 times during the 180-day period from January 11, 2000, to May 13, 2004. Of those 74 exceedances, 23 were serious violations in accordance with CWC Section 13385(h) and 51 were chronic violations in accordance with CWC Section 13385(i)(1). The mandatory minimum penalty (MMP) amount for those violations is \$192,000 as shown in the following table:

**Table 1. Effluent Limitation Exceedances  
January 1, 2000, through May 13, 2004**

Violation Date	Description of Violation (Reported Value)	Violation Type	Mandatory Penalty
01/15/00	Exceeded 7-Day Avg. TSS Limit of 375 lbs/d (442 lbs/d)	1 <sup>st</sup> Chronic	NO MMP
01/15/00	Exceeded 7-Day Avg. TSS Limit of 45 mg/l (51 mg/l)	2 <sup>nd</sup> Chronic	NO MMP
01/22/00	Exceeded 7-Day Avg. TSS Limit of 375 lbs/d (478 lbs/d)	3 <sup>rd</sup> Chronic	NO MMP
01/22/00	Exceeded 7-Day Avg. BOD Limit of 375 lbs/d (381 lbs/d)	Chronic	\$3,000
01/29/00	Exceeded 7-Day Avg. TSS Limit of 375 lbs/d (384 lbs/d)	Chronic	\$3,000
01/31/00	Exceeded 30-Day Avg. TSS Limit of 30 mg/l (34 mg/l)	Chronic	\$3,000
01/31/00	Exceeded 30-Day Avg. TSS Limit of 250 lbs/d (354 lbs/d)	Serious	\$3,000
01/31/00	Exceeded 30-Day Avg. BOD Limit of 30 mg/l (32 mg/l)	Chronic	\$3,000
01/31/00	Exceeded 30-Day Avg. BOD Limit of 250 lbs/d (308 lbs/d)	Chronic	\$3,000
02/05/00	Exceeded 7-Day Avg. TSS Limit of 375 lbs/d (424 lbs/d)	Chronic	\$3,000
02/22/00	Exceeded Daily Max. BOD Limit of 500 lbs/d (653 lbs/d)	Chronic	\$3,000
02/26/00	Exceeded 7-Day Avg. BOD Limit of 375 lbs/d (653 lbs/d)	Serious	\$3,000
02/22/00	Exceeded Daily Max. TSS Limit of 500 lbs/d (562 lbs/d)	Chronic	\$3,000
02/26/00	Exceeded 7-Day Avg. TSS Limit of 375 lbs/d (562 lbs/d)	Chronic	\$3,000
02/29/00	Exceeded 30-Day Avg. BOD Limit of 250 lbs/d (373 lbs/d)	Serious	\$3,000

<b>Violation Date</b>	<b>Description of Violation (Reported Value)</b>	<b>Violation Type</b>	<b>Mandatory Penalty</b>
02/29/00	Exceeded 30-Day Avg. TSS Limit of 250 lbs/d (283 lbs/d)	Chronic	\$3,000
02/29/00	Exceeded 30-Day Median Total Coliform Limit of 23 MPN/100 ml (42 MPN/ 100 ml)	Chronic	\$3,000
03/04/00	Exceeded 7-Day Avg. BOD Limit of 375 lbs/d (391 lbs/d)	Chronic	\$3,000
03/11/00	Exceeded 7-Day Avg. TSS Limit of 375 lbs/d (435 lbs/d)	Chronic	\$3,000
03/31/00	Exceeded 30-Day Avg. BOD Limit of 250 lbs/d (274 lbs/d)	Chronic	\$3,000
03/31/00	Exceeded 30-Day Avg. TSS Limit of 250 lbs/d (271 lbs/d)	Chronic	\$3,000
03/31/00	Failed to achieve 85% Removal of TSS (82%)	Chronic	\$3,000
04/05/00	Exceeded Daily Max. TSS Limit of 500 lbs/d (582 lbs/d)	Chronic	\$3,000
04/08/00	Exceeded 7-Day Avg. TSS Limit of 45 mg/l (48 mg/l)	Chronic	\$3,000
04/08/00	Exceeded 7-Day Avg. TSS Limit of 375 lbs/d (582 lbs/d)	Serious	\$3,000
04/30/00	Exceeded 30-Day Avg. TSS Limit of 30 mg/l (34 mg/l)	Chronic	\$3,000
04/30/00	Exceeded 30-Day Avg. TSS Limit of 250 lbs/d (309 lbs/d)	Chronic	\$3,000
04/30/00	Failed to achieve 85% Removal of TSS (79%)	Serious	\$3,000
12/12/00	Exceeded 6-Month Median Copper Limit of 0.053 mg/l (0.062 mg/l)	1 <sup>st</sup> Chronic	NO MMP
12/16/00	Exceeded 7-Day Avg. Grease and Oil Limit of 334 mg/l (339 lbs/d)	2 <sup>nd</sup> Chronic	NO MMP
12/16/00	Exceeded 7-Day Avg. Grease and Oil Limit of 40 mg/l (59.5 mg/l)	Serious	\$3,000
12/31/00	Exceeded 30-Day Avg. Grease and Oil Limits of 25 mg/l (59.5 mg/l)	Serious	\$3,000
12/31/00	Exceeded 30-Day Avg. Grease and Oil Limit of 208 lbs/d (339 lbs/d)	Serious	\$3,000
12/14/00	Exceeded 6-Month Median Cyanide Limit of 0.051 mg/l (0.081 mg/l)	Serious	\$3,000
12/14/00	Exceeded 6-Month Median Cyanide Limit of 0.42 lbs/d (0.44 lbs/d)	Chronic	\$3,000
02/20/01	Exceeded Daily Max. Grease and Oil Limit of 625 lbs/d (931 lbs/d)	Serious	\$3,000
02/24/01	Exceeded 7-Day Avg. Grease and Oil Limit of 40 mg/l (49.6 mg/l)	Chronic	\$3,000
02/24/01	Exceeded 7-Day Avg. Grease and Oil Limit of 334 mg/l (931 lbs/d)	Serious	\$3,000
02/28/01	Exceeded 30-Day Avg. Grease and Oil Limit of 208 lbs/d (481 lbs/d)	Serious	\$3,000
11/10/01	Exceeded 7-Day Avg. BOD Limit of 45 mg/l (46 mg/l)	1 <sup>st</sup> Chronic	NO MMP
11/17/01	Exceeded 7-Day Avg. TSS Limit of 45 mg/l (47 mg/l)	2 <sup>nd</sup> Chronic	NO MMP
11/18/01	Effluent pH outside pH 6.0-9.0 range (pH 5.8)	3 <sup>rd</sup> Chronic	NO MMP

Violation Date	Description of Violation (Reported Value)	Violation Type	Mandatory Penalty
11/19/01	Effluent pH outside pH 6.0-9.0 range (pH 5.9)	Chronic	\$3,000
11/20/01	Effluent pH outside pH 6.0-9.0 range (pH 5.9)	Chronic	\$3,000
11/24/01	Exceeded 7-Day Avg. TSS Limit of 45 mg/l (56 mg/l)	Chronic	\$3,000
11/21/01	Exceeded Daily Max. Total Coliform Limit of 230 MPN/ 100 ml (240 MPN/ 100 ml)	Chronic	\$3,000
11/25/01	Effluent pH outside pH 6.0-9.0 range (pH 5.9)	Chronic	\$3,000
11/27/01	Exceeded Daily Max. Total Coliform Limit of 230 MPN/ 100 ml (900 MPN/ 100 ml)	Chronic	\$3,000
11/28/01	Exceeded Daily Max. TSS Limit of 500 lbs/d (710 lbs/d)	Serious	\$3,000
12/01/01	Exceeded 7-Day Avg. TSS Limit of 375 lbs/d (710 lbs/d)	Serious	\$3,000
12/01/01	Exceeded 7-Day Avg. BOD Limit of 375 lbs/d (420 lbs/d)	Chronic	\$3,000
11/30/01	Exceeded 30-Day Avg. TSS Limit of 30 mg/l (42 mg/l)	Serious	\$3,000
11/30/01	Exceeded 30-Day Avg. TSS Limit of 250 lbs/d (360 lbs/d)	Serious	\$3,000
11/30/01	Exceeded 30-Day Median Total Coliform Limit of 23 MPN (131 MPN/ 100 ml)	Chronic	\$3,000
12/04/01	Effluent pH outside pH 6.0-9.0 range (pH 5.9)	Chronic	\$3,000
12/05/01	Effluent pH outside pH 6.0-9.0 range (pH 5.9)	Chronic	\$3,000
12/06/01	Exceeded Daily Max. Total Coliform Limit of 230 MPN (300 MPN/ 100 ml)	Chronic	\$3,000
12/06/01	Exceeded Daily Max. TSS Limit of 500 lbs/d (787 lbs/d)	Serious	\$3,000
12/08/01	Exceeded 7-Day Avg. TSS Limit of 375 lbs/d (787 lbs/d)	Serious	\$3,000
12/20/01	Exceeded Daily Max. TSS Limit of 500 lbs/d (588 lbs/d)	Chronic	\$3,000
12/22/01	Exceeded 7-Day Avg. TSS Limit of 375 lbs/d (588 lbs/d)	Serious	\$3,000
12/31/01	Exceeded 30-Day Avg. TSS Limit of 250 lbs/d (456 lbs/d)	Serious	\$3,000
12/31/01	Failed to achieve 85% Removal of TSS (79%)	Serious	\$3,000
12/31/01	Exceeded 30-Day Avg. BOD Limit of 250 lbs/d (306 lbs/d)	Chronic	\$3,000
12/31/01	Failed to achieve 85% Removal of BOD (78%)	Serious	\$3,000
01/03/02	Exceeded Daily Max. Total Coliform Limit of 230 MPN (1600 MPN/100 ml)	Chronic	\$3,000
02/20/02	Effluent pH outside pH 6.0-9.0 range (pH 5.9)	Chronic	\$3,000
06/11/02	Exceeded Daily Max. Total Coliform Limit of 230 MPN (1600 MPN/100 ml)	Chronic	\$3,000
11/18/03	Exceeded 6-Month Median Copper Limit of 0.053 mg/l (0.067 mg/l)	Serious	\$3,000
02/21/04	Exceeded 7-Day Avg. BOD Limit of 375 lbs/d (424 lbs/d)	<sup>1st</sup> Chronic	NO MMP
02/21/04	Exceeded 7-Day Avg. TSS Limit of 375 lbs/d (499 lbs/d)	<sup>2nd</sup> Chronic	NO MMP

Violation Date	Description of Violation (Reported Value)	Violation Type	Mandatory Penalty
02/29/04	Exceeded 30-Day Avg. BOD Limit 250 lbs/d (310 lbs/d)	Chronic	\$3,000
02/29/04	Exceeded 30-Day Avg. TSS Limit of 250 lbs/d (319 lbs/d)	Chronic	\$3,000
02/29/04	Failed to achieve 85% Removal of TSS (80%)	Chronic	\$3,000
		Total	\$192,000

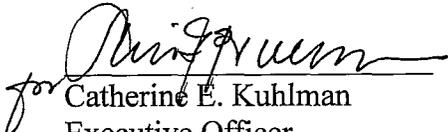
17. The total amount of the mandatory minimum penalties for serious and chronic violations occurring during the period January 1, 2000, through May 13, 2004 is \$192,000.
18. The issuance of this Complaint is an enforcement action to protect the environment, and is therefore exempt from the provisions 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).

**THE FORT BRAGG MUNICIPAL 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 \$192,000 for the violations that occurred from January 1, 2000, through May 13, 2004.
2. A hearing shall be conducted on this Complaint by a hearing panel of the Regional Water Board on November 15, 2005, unless the Discharger waives the right to a hearing by signing and returning the waiver form attached to this Complaint. By doing so, the Discharger agrees to:
  - a. Pay the mandatory penalty of \$192,000 in full within 30 days of the date of this Complaint (or in compliance with a payment schedule issued in writing by the Executive Officer), or
  - b. Propose a CP in an amount up to \$192,000 and pay the balance of the penalty 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 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 a CP, they must submit a proposal within 30 days of the date of this Complaint to the Executive Officer for conceptual approval. Any CP proposal shall conform to the requirements specified in Section X of the Enforcement Policy and the attached Standard Criteria and Requirements for Compliance Projects. If the proposed CP 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 pay the suspended penalty of \$192,000. All payments, including money not used for the CP, must be payable to the State Water Pollution Cleanup and Abatement Account.

4. The 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 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 to take necessary actions to achieve compliance.
8. 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.

  
for Catherine E. Kuhlman  
Executive Officer

September 12, 2005

**W A I V E R   O F   T H E   R I G H T   T O   A   H E A R I N G**

By signing below, I hereby affirm and acknowledge the following:

1. I am the duly authorized representative of the Fort Bragg Municipal Improvement District No. 1 (Discharger) in connection with Complaint No. R1-2005-0095(Complaint);
2. I am informed of the right provided by Water Code Section 13323, Subdivision (b), to a hearing within ninety (90) days of issuance of an Administrative Civil Liability Complaint;
3. I agree to waive the Discharger's right to a hearing before the Regional Water Board with regard to the violations alleged in the Complaint and to the terms of the one paragraph below I have marked:

Payment in full.

By checking the box, I agree to remit the full penalty of \$192,000 to the State Water Pollution Cleanup and Abatement Account, c/o State Water Resources Control Board at 5550 Skylane Boulevard, Suite A, Santa Rosa, California, 95403, within 30 days of the date of this Complaint.

Payment and undertake an approved Compliance Project.

By checking the box, I agree to complete a compliance project (CP) in lieu of the suspended liability up to \$192,000. I also agree to remit payment of the balance of the penalty to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days of the date of this Complaint, unless, in advance of that date, I obtain the Executive Officer's written approval of a different payment schedule. I understand that the CP proposal shall conform to the requirements specified in Section X of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, the attached Standard Criteria and Requirements for Compliance Projects, and be subject to approval by the Regional Water Board Executive Officer (Executive Officer). If the CP proposal, or its revised version, is not acceptable to the Executive Officer, I agree to pay the suspended penalty amount for the CP within 30 days of the date of the letter from the Executive Officer denying the approval of the proposed/revised CP. I further agree to satisfactorily complete the approved CP within a time schedule set by the Executive Officer. I understand that failure to adequately complete the approved CP will require immediate payment of the suspended liability to the CAA.

4. I understand that I am giving up the Discharger's right to be heard, and to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed.
5. I understand that this waiver is effective immediately, but will be void if the Executive Officer withdraws and reissues the Complaint.

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title/Organization