

California Regional Water Quality Control Board  
North Coast Region

Administrative Civil Liability Complaint No. R1-2008-0026

For

Violation of Waste Discharge Requirements  
Order Nos. 97-24 and R1-2005-0009 (NPDES No. CA0024040)

In the Matter of  
Mendocino County Water Works District No. 2  
Anchor Bay Wastewater Treatment Facility  
WDID No. 1B83118OMEN

Mendocino County

This Complaint, to assess administrative civil liability for penalties pursuant to Water Code section 13385, is issued to the Mendocino County Water Works District No. 2 (hereinafter Discharger) for violations of Waste Discharge Requirements (WDRs) Order Nos. 97-24 and R1-2005-0009. Mandatory minimum penalties are assessed for violations of effluent limitations occurring during the period from March 10, 2004 through June 30, 2007.

The Assistant 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 Anchor Bay Wastewater Treatment Facility (WWTF) that discharges secondary treated municipal wastewater into the Pacific Ocean during winter months (October 1 to May 14) only.
2. The Regional Water Board adopted Waste Discharge Requirements Order No. 97-24 for the Discharger on March 27, 1997. Order No. 97-24 was rescinded and replaced with Waste Discharge Requirements Order No. R1-2005-0009 on April 20, 2005. Both Orders serve as a National Pollutant Discharge Elimination System (NPDES) permit under the Federal Clean Water Act.
3. This Complaint covers violations of effluent limitations that occurred from March 10, 2004 through June 30, 2007. Details of effluent limitation violations are summarized in Finding 10. The effluent limitation violations are subject to the mandatory minimum penalties provision contained Water Code sections 13385, subdivisions (h) and (i).
4. 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.
5. 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. 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.

6. Water Code section 13385, subdivision (i)(1) establishes 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.

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 issues, issues related to assessing mandatory minimum penalties for violations of WDRs.
8. For the purpose of determining a Discharger's compliance with effluent limitations in its Waste Discharge Requirements 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.
9. Order No. 97-24 includes the following discharge prohibitions and effluent limitation:

## B. EFFLUENT LIMITATIONS

Waste discharged to the Pacific Ocean (Discharge Serial 002) 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 <sup>a</sup>	Daily Maximum
Coliform Organisms (Total)	MPN/100	23 <sup>b</sup>	230

<sup>a</sup> The arithmetic mean of the values for effluent samples collected in a period of 30 consecutive days.

<sup>b</sup> median.

10. According to monitoring reports submitted by the Discharger for the period between March 10, 2004 and June 30, 2007, the Discharger exceeded effluent limitations two times while discharging effluent to the Pacific Ocean. Both were chronic effluent violations, as described in Water Code section 13385, subdivision (i)(1). The mandatory minimum penalty amount for violations during this time period is \$3,000 as shown in the following table:

Effluent Limitation Exceedances  
 March 10, 2004 to June 30, 2007

Date of Violation	Description of Violation and Permit Limits	Reported Value	Violation Type	Mandatory Penalty
5/31/04	Exceeded 30-Day Median of 23 MPN/100 ml for Coliform	41 MPN/100 ml	Chronic	\$3,000
3/31/05	Exceeded 30-Day Median of 23 MPN/100 ml for Coliform	33 MPN/100 ml	Chronic	\$0
			Total	\$3,000

11. A mandatory minimum penalty of \$3,000 is assessed for the chronic Coliform violation occurring on May 31, 2004 because five violations of effluent limitations occurred within the previous six-month period (violations occurred between January 14, 2004 through March 9, 2004). Penalty assessment for the previous violations was considered in Administrative Civil Liability Complaint No. R1-2005-0050 issued on June 15, 2005.
12. 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 MENDOCINO COUNTY WATER WORKS DISTRICT NO. 2 IS HEREBY GIVEN NOTICE THAT:

1. Based on the review of the above facts and required factors, the Assistant Executive Officer proposes that the Discharger be assessed an administrative civil liability in the amount of \$3,000.
2. A hearing shall be conducted on this Complaint by the Regional Water Board on April 24, 2008, 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 pay the mandatory minimum penalty of \$3,000 in full to the State Pollution Cleanup and Abatement Account within thirty days of the date of this Complaint.
3. 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 Assistant Executive Officer may withdraw this Complaint, and reissue a new complaint, or take other appropriate action.
4. 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.
5. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability that stems from a 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.
6. Notwithstanding the issuance of the Complaint, 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.

---

Luis G. Rivera  
Assistant Executive Officer

February 25, 2008