

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2008-0046

For

Violation of Waste Discharge Requirements
Order No. R1-2001-41 (NPDES No. CA0022730) and
Violations of Order No. 2006-003-DWQ (Sanitary Sewer Systems)

In the Matter of
City of Fortuna
Wastewater Treatment Facility
WDID No. 1B83135OHUM

Humboldt County

This Complaint, to assess administrative civil liability for penalties pursuant to Water Code section 13385, is issued to the City of Fortuna (hereinafter Discharger) for violations of Waste Discharge Requirements (WDRs) Order No. R1-2001-41 (NPDES Permit No. CA0022730) and State Water Resources Control Board Order No. 2006-0003-DWQ, occurring during the period of July 1, 2005 through December 31, 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 City of Fortuna Wastewater Treatment Facility (WWTF) that discharges secondary treated municipal wastewater into the lower Eel River during winter months (October 1 to May 14) only.
2. The Regional Water Board adopted Waste Discharge Requirements Order No. R1-2001-41 for the Discharger on April 26, 2001. The Order serves as a National Pollutant Discharge Elimination System permit (NPDES No. CA0022730) under the federal Clean Water Act.
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 October 25, 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 and discharge prohibitions that occurred from July 1, 2005 through December 31, 2007. Details of effluent limitation violations subject to minimum mandatory penalties are summarized in Finding 15. Details of effluent limitation subject to discretionary penalties are summarized in Finding 16. Details of discharge prohibition violations are summarized in Finding 17. The effluent limitation violations are subject to the mandatory minimum penalties provision contained in Water Code section 13385, subdivisions (h) and (i). Violations of discretionary effluent limitations and discharge prohibitions are subject to penalties contained in Water Code section 13385, subdivision (c).
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) establishes 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) 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 issues, issues related to assessing mandatory minimum penalties and discretionary penalties for violations of WDRs.
11. The Enforcement Policy states that for the purpose of determining serious violations, pH is identified as a Group I pollutant in Title 40 Code of Federal Regulations, section 123.45, Appendix A. Total Coliform is neither a Group I or a Group II pollutant; therefore, exceedances of effluent limitations for total coliform bacteria do not count as serious violations.
12. Water Code section 13385, subdivision (l)(1) provides that the Regional Water Board may direct, with concurrence of the discharger, a portion of mandatory minimum penalties imposed under section 13385, subdivisions (h) or (i) to an SEP in accordance with Section IX of the Enforcement Policy. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to a SEP may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000). This Complaint incorporates requirements for SEPs as specified in the Enforcement Policy.
13. Order No. R1-2001-41 includes the following discharge prohibitions and effluent limitations:

A. DISCHARGE PROHIBITIONS

1. The discharge of any waste not specifically regulated by this permit is prohibited.
2. Creation of a pollution, contamination, or nuisance, as defined by Section 13050 of the California Water Code (CWC), is prohibited. [Health and Safety Code, Section 5411]
4. The discharge of untreated waste from anywhere within the collection, treatment, or disposal facility is prohibited.

B. EFFLUENT LIMITATIONS

1. Representative samples of the discharge from SN 001 to the Eel River and to the summertime percolation pond shall not contain constituents in excess of the following limits:

Constituent	Unit	30-Day Average ^a	7-Day Average ^b	Daily Maximum ^c
Suspended Solids	mg/l	30	45	60
	Lb/day ^d	375	563	751
Settleable Solids	ml/l	0.1	---	0.2
Coliform Organisms (Total)	MPN/100 ml	23 ^e	---	230

2. Representative samples of the discharge from SN 002 shall not contain constituents in excess of the following limits:

Constituent	Unit	Monthly Average ^a	Daily Maximum ^c
Coliform Organisms (Total)	MPN/100 ml	23 ^e	230
Hydrogen Ion	pH	Not less than 6.5 nor greater than 8.5	

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

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

^c The maximum result of all samples collected in a calendar day.

^d The daily discharge (lbs/day) is obtained from the following calculation of any calendar day:

$$\frac{8.34}{N} \sum_{i=1}^N Q_i C_i$$

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.

^e 30-day median. The median of all effluent samples collected in a 30-day period.

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

C. PROHIBITIONS

- Any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.
 - 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.
15. According to monitoring reports submitted by the Discharger for the period between July 1, 2005, and December 31, 2007, the Discharger exceeded effluent limitations twelve times while discharging effluent to the Eel River. Of those twelve exceedances, four were serious and eight were nonserious (chronic) effluent violations, as described in Water Code section 13385. The mandatory minimum penalty amount for violations during this time period is \$27,000, as shown in the following table:

Table 1: Effluent Limitation Exceedances
(Subject to Mandatory Minimum Penalties)
July 1, 2005 to December 31, 2007

Date of Violation	Description of Violation and Permit Limits	Discharge Point	Reported Value	Violation Type	Mandatory Penalty
1/1/06	Failed to meet Daily Maximum pH Limits between 6.5 – 8.5	SN 002	5.8	Serious	\$3,000
1/2/06	Failed to meet Daily Maximum pH Limits between 6.5 – 8.5	SN 002	5.7	Serious	\$3,000
1/11/06	Failed to meet Daily Maximum pH Limits between 6.5 – 8.5	SN 002	6.3	Serious	\$3,000
1/14/06	Failed to meet Daily Maximum pH Limits between 6.5 – 8.5	SN 002	6.3	Serious	\$3,000
1/17/06	Exceeded Daily Maximum Limit of 230 MPN/100 ml Total Coliform	SN 002	900	Chronic	\$3,000
1/31/06	Exceeded 30-Day Median Limit of 23 MPN/100 ml Total Coliform	SN 002	450	Chronic	\$3,000
1/31/06	Exceeded 30-Day Median Limit of 23 MPN/100 ml Total Coliform	SN 001	25	Chronic	\$3,000
2/28/06	Exceeded Daily Maximum Limit of 230 MPN/100 ml Total Coliform	SN 001	1600	Chronic	\$3,000
3/27/07	Exceeded Daily Maximum Limit of 230 MPN/100 ml Total Coliform	SN 001	900	1 st Chronic	\$0
3/31/07	Exceeded 30-Day Median Limit of 23 MPN/100 ml Total Coliform	SN 001	65	2 nd Chronic	\$0
4/10/07	Exceeded Daily Maximum Limit of 230 MPN/100 ml Total Coliform	SN 001	500	3 rd Chronic	\$0
4/30/07	Exceeded 30-Day Median Limit of 23 MPN/100 ml Total Coliform	SN 001	65	Chronic	\$3,000
				Total	\$27,000

16. According to monitoring reports submitted by the Discharger for the period between July 1, 2005, and December 31, 2007, the Discharger exceeded discretionary effluent limitations eleven times while discharging effluent to

holding/oxidation ponds. The discretionary effluent violations are not considered as serious as effluent violations that are discharged to the Eel River. The penalty amount for violations during this time period is \$11,000, as shown in the following table:

Table 3: Discretionary Effluent Limitation Exceedances
July 1, 2005 through December 31, 2007

Date of Violation	Description of Violation and Permit Limits	Reported Value	Penalty Amount
9/20/05	Exceeded Daily Limits of 230 MPN for Coliform	1600 MPN	\$1,000
11/15/05	Exceeded Daily limits of 0.2 ml/l Settleable Solids	4.0 ml/l	\$1,000
11/29/05	Exceeded Daily limits of 0.2 ml/l Settleable Solids	15 ml/l	\$1,000
11/30/05	Exceeded 30-Day Limits of 0.1 ml/l Settleable Solids	3.8 ml/l	\$1,000
11/30/05	Exceeded Daily Limit of 60 mg/l Suspended Solids	81.5 mg/l	\$1,000
11/30/05	Exceeded 30-Day Limits of 751 lb/day Suspended Solids	1169 lb/day	\$1,000
12/6/05	Exceeded Daily Limits of 230 MPN for Coliform	1600 MPN	\$1,000
12/16/05	Exceeded Daily limits of 0.2 ml/l Settleable Solids	4.0 ml/l	\$1,000
11/21/06	Exceeded Daily Limits of 230 MPN for Coliform	500 MPN	\$1,000
7/17/07	Exceeded Daily Limits of 230 MPN for Coliform	500 MPN	\$1,000
8/21/07	Exceeded Daily Limits of 230 MPN for Coliform	16 MPN	\$1,000
		Total	\$11,000

17. During the period between July 1, 2005 and December 31, 2007, the Discharger experienced five prohibited discharges.

Table 3: Summary of prohibited discharges
July 1, 2005 through December 31, 2007

Date	Location	Estimated Volume Discharged to Surface Waters	Comments	Maximum Potential Penalty
9/23/05	1700 Greenfield	Estimated between 400 and 500 gallons	A SSO traveled down the street to a drop inlet and discharged	\$10,000

			into Jamison Creek	
10/29/05	2654 Chism Court	Less than 30 gallons	A SSO occurred due to a plugged sewer line. The spill was cleaned up with little going into the storm drain.	\$10,000
11/21/05	924 11 th Street	None	A SSO occurred due to a plugged sewer. The SSO, located in an alley, did not reach a drop inlet.	\$10,000
12/18/06	Newell and Rohnerville	30 gallons	The SSO was discharging out of a sewer cleanout into a storm drain inlet. The City was able to collect all but about 30 gallons.	\$10,000
2/21/07	Loni Dr and 12 th Street	Unknown amount	Overflowing manhole due to heavy rain and sewer system inflow	\$10,000
			Total	\$50,000

18. 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 for the violation, and other matters that justice may require. At a minimum, Water Code section 13385, subdivision (e) requires that liability be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.
19. The mandatory minimum liability mandated by the Water Code is \$27,000 for the effluent limitation violations described in Finding 15. The discretionary effluent violations discharge to holding/oxidation ponds and are not considered as serious a violation as discharges that reach the Eel River. Therefore, a penalty of \$1,000 had been assigned to each violation for a total of \$11,000. The remaining maximum potential penalty of \$50,000 is for five SSOs. Four of the five SSOs resulted in discharges of untreated wastewater to public streets, storm drains, and ultimately the Eel River. Of the five SSOs, one did not reach waters of the State, two were estimated to be about 30 gallons each, one was between 400 to 500 gallons, and the last SSO was of an unknown amount. All discharges pose a threat to public health and have the potential to seriously impact the beneficial uses of the Eel River. Therefore, a penalty of \$20,000 is assessed for these SSOs.

20. 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 CITY OF FORTUNA 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 \$58,000. The assessment includes \$27,000 in mandatory minimum penalties for effluent violations, \$11,000 in discretionary penalties for other effluent violations and \$20,000 for sanitary sewer overflows.
2. A hearing will be conducted on this Complaint by the Regional Water Board on June 11 or 12, 2008, unless the Discharger waives the right to a hearing under Water Code section 13323, subsection (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 total assessed penalty of \$58,000 to the State Water Pollution Cleanup and Abatement Account (CAA) within thirty days of the date of this Complaint, or
 - b. Propose an SEP of at least \$36,500 and pay the balance of the penalty (\$21,500) within thirty days from the date of the Complaint (or in compliance with a payment schedule issued in writing by the Assistant 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 an SEP, a proposal must be submitted within thirty days of the date of this Complaint to the Assistant Executive Officer for conceptual approval. Any SEP proposal shall also conform to the requirements specified in the Enforcement Policy. The SEP proposal must include a time schedule, for concurrence by the Assistant Executive Officer, to address implementation and completion of the SEP. If the proposed SEP and/or implementation schedule is not acceptable, the Assistant Executive Officer may allow the Discharger thirty days to submit a new or revised proposal, or may demand that 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 CAA.
4. The Assistant 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 Assistant Executive Officer determines that a delay in the SEP implementation schedule was beyond the reasonable control

of the Discharger, the Assistant Executive Officer may revise the implementation schedule as appropriate.

5. 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.
6. 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.
7. 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, including a proposed SEP.
8. 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

April 10, 2008