

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2008-0104

For

Violation of Waste Discharge Requirements
Order No. R1-2002-76
NPDES No. CA0024571

In the Matter of
DG Fairhaven Power, LLC
Wastewater Treatment Facility
WDID No. 1B85026RHUM

Humboldt County

This complaint to assess mandatory minimum penalty and administrative civil liability (ACL) pursuant to Water Code section 13385 is issued to DG Fairhaven Power, LLC (hereinafter Discharger), formerly Fairhaven Power Company, for violation of Waste Discharge Requirements (WDR's) Order No. R1-2002-76 (NPDES No. CA0024571).

The Assistant Executive Officer of the Regional Water Quality Control Board, North Coast Region (Regional Water Board), hereby gives notice that:

1. The Discharger owns and operates the Fairhaven Power Plant (FPP). The FPP is a 17 megawatt, woodwaste-fired, steam-electric power generation facility. The Discharger discharges boiler blowdown, cooling tower blowdown, and demineralizer back flushing wastewater to the Pacific Ocean via the Evergreen Pulp, Inc., Samoa Pulp Mill ocean outfall. The FPP is subject to requirements under the National Pollutant Discharge Elimination System (NPDES). The facility is located on the Samoa Peninsula in Section 20, T5N, R1W, HB&M at Latitude 40 48'43" North, Longitude 124 12'33" West, as shown on Attachment A, incorporated herein, and made a part of this Order.
2. Fairhaven Power Company submitted a June 2, 2001 Report of Waste Discharge, and applied for renewal of its permit to discharge wastewater. On August 22, 2002, the Regional Water Board adopted new Waste Discharge Requirements (WDRs) Order No. R1-2002-0076 for the FPP (hereafter "Permit"), which also serve as an NPDES Permit under the Federal Clean Water Act.
3. In April 2005, the Discharger acquired the Fairhaven Power Company, the previous owner of the FPP. The Regional Water Board received the Discharger's Application for WDRs on April 1, 2005. Regional Water Board staff informed the Discharger that FPP would continue to be regulated under the Permit, and that a name change would occur when the Permit was renewed. The Discharger applied for a Permit renewal on February 22, 2007. The Permit expired August 22, 2007. The Discharger is still regulated, however, under the Permit until it is renewed by the Regional Water Board. Regional Water Board

staff has drafted revised WDRs for a new permit, and plan to present these to the Regional Water Board for approval in 2009.

4. Among the provisions in the Permit are requirements to implement a discharge monitoring program and to prepare and submit quarterly 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 or to clearly identify all violations of effluent limitations contained in waste discharge requirements.
5. Water Code section 13385, subdivision (h) requires the Regional Water Board to assess a mandatory minimum penalty (MMP) of three thousand dollars (\$3,000) for each serious violation. Water Code section 13385.1, subdivision (a)(1) identifies the failure to make a timely submittal of a discharge monitoring report required pursuant to Water Code section 13383 for each complete period of thirty days following the deadline for submitting the report as a "serious violation." These penalties only apply to violations that occur on or after January 1, 2004.
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 issues related to assessing mandatory minimum and discretionary penalties.
7. Water Code section 13385, subdivision (l)(1) provides that a portion of MMPs 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. 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 thousands dollars (\$15,000). This complaint includes requirements for SEPs as specified in the Enforcement Policy.
8. The Enforcement Policy also provides that the State Water Board supports the inclusion of SEPs in ACL actions as long as the projects meet the criteria specified in section IX of the Enforcement Policy.
9. On July 28, 2008, the Regional Water Board received six late quarterly self-monitoring reports. The total amount of the mandatory minimum penalties for the six late reports is \$165,000, as shown below:

Report Period	Due Date	Date Received	Total Days Late as of 7/28/08	Total 30-Day Periods Late	Mandatory Minimum Penalty
4 th Quarter 2006	2/1/2007	7/28/2008	513	17.1	\$51,000
1 st Quarter 2007	5/1/ 2007	7/28/2008	424	14.1	\$42,000
2 nd Quarter 2007	8/1/2007	7/28/2008	363	12.1	\$33,000
3 rd Quarter 2007	11/1/2007	7/28/2008	240	8.0	\$24,000
4 th Quarter 2007	2/1/2008	7/28/2008	148	4.9	\$12,000
1 st Quarter 2008	5/1/2008	7/28/2008	58	1.9	\$3000
Total					\$165,000

10. 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 21000et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321, subdivision (a)(2).

The Discharger is Hereby Given Notice that:

1. The Assistant Executive Officer of the Regional Water Board must assess the Discharger a mandatory minimum penalty of \$165,000 for six late self-monitoring reports.
2. A hearing shall be conducted on this complaint by the Regional Water Board on December 11, 2008, 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 signing and returning the waiver form, the Discharger agrees to:
 - a. Pay the total assessed penalty of \$165,000 to the State Water Pollution Cleanup and Abatement Account (CAA) within thirty days of the date of this complaint, or
 - b. Propose a SEP in an amount up to \$90,000 and pay the balance of the penalty to the CAA within thirty days from the date of this complaint. The sum of the SEP amount and the amount of the penalty to be paid to the CAA shall at least equal the full penalty amount of \$165,000.
3. If the Discharger chooses to propose a SEP, a proposal must be submitted within thirty days of the date of this complaint to the Executive Officer for conceptual approval. Any SEP proposal shall conform to the requirements specified in Section IX of the Enforcement Policy. The SEP must include a time schedule, for concurrence by the Executive Officer, to address implementation and completion

of the SEP. If the proposed SEP 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 assessed penalties. All payments, including money not used for the SEP, must be payable to the CAA.

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 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 or reissue it as appropriate.
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, 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 jurisdiction over approved SEP implementation time schedules throughout the life of the SEP. If, given written justification from the Discharger prior to any due date, the Executive Officer determines that a delay in the 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 for violations of the requirements of the Discharger's waste discharge requirements.

Luis G. Rivera
Assistant Executive Officer

August 21, 2008