

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2008-0123

For

Mandatory Minimum Penalties for Violation of Waste Discharge Requirements
Order No. R1-2001-0060 (NPDES No. CA0024490)

In the Matter of
McKinleyville Community Services District
Wastewater Treatment Facility
WDID No. 1B82084OHUM

Humboldt County

This Complaint, to assess administrative civil liability for penalties pursuant to Water Code section 13385, is issued to the McKinleyville Community Services District (hereinafter Discharger) for violations of Waste Discharge Requirements Order No. R1-2001-0060 (NPDES Permit No. CA0024490)(hereinafter referred to as WDRs) that occurred during the period June 1, 2005 through July 31, 2008.

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 wastewater collection, treatment, and disposal facilities (WWTF) that serve the unincorporated area of McKinleyville in northern Humboldt County. The WWTF consists of two primary ponds followed by secondary oxidation ponds, constructed wetlands, and disinfection facilities. Treated and disinfected wastewater is discharged to the Mad River during the winter months at a dilution ratio of at least 100 to 1, whenever the river flow exceeds 200 cubic feet per second as measured at the Highway 101 Bridge. During the summer months (May 15 to September 30) and low-flow periods in the river (less than 200 cubic feet per second as measured at the Highway 101 Bridge), treated wastewater is discharged using a combination of percolation ponds and pasture irrigation.
2. The Regional Water Board adopted Order No. R1-2001-0060, Waste Discharge Requirements, for the Discharger on June 28, 2001. The Order was later superseded by Order No. R1-2008-0039, which became effective on August 1, 2008. The adoption of Order No. R1-2008-0039 does not prevent the Regional Water Board from taking any enforcement action for past violations of Order No. R1-2001-0060. The Orders serve as a National Pollutant Discharge Elimination System (NPDES) Permit No. CA0024490 under the Clean Water Act.
3. This Complaint only covers violations of effluent limitations subject to mandatory minimum penalties that occurred from June 1, 2005 through July 31, 2008.

During that period, there were also discharges from the facility that resulted in violations of effluent limitations, discharge prohibitions, and receiving water limits, which may be subject to discretionary penalties pursuant to Water Code section 13350(e) and 13385(c). This Complaint does not cover any of those violations; Regional Water Board staff expect to review those violations at a future date as resources and priorities dictate.

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.
6. 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.

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 subjects, issues related to assessing mandatory minimum penalties.

8. 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 serving an eligible small community be directed to a compliance project (CP) in accordance with Section X of the Enforcement Policy. The Discharger's ability to direct all or a portion of the mandatory minimum penalties to a CP is subject to a State Water Board determination whether the Discharger meets the definition of a POTW serving a small community. Mandatory minimum penalties for late reports may not be directed to a CP. This Complaint includes requirements for CPs as specified in the Enforcement Policy.
9. 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 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 thousand dollars (\$15,000). This Complaint incorporates requirements for SEPs as specified in the Enforcement Policy.
10. 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 simple sample shall constitute the monthly average.
11. Order No. R1-2001-0060 includes the following effluent limitations:

B. EFFLUENT LIMITATIONS

1. Representative samples of the discharge (SN 001) to the Mad River, summertime percolation ponds, and water recycling areas shall not contain constituents in excess of the following limits:

<u>Constituent</u>	<u>Unit</u>	<u>Monthly Average^a</u>	<u>Weekly Average^b</u>	<u>Daily Maximum^c</u>
BOD (20°, 5-day)	mg/l	45	65	---
	lbs/day ^d	441	637	---
Suspended Solids (NFR)	mg/l	95	---	---
	lbs/day	931	---	---
Settleable Solids	ml/l	0.1		0.2
Coliform Organisms (Total)	MPN/100 ml	23 ^e	---	230

4. The arithmetic mean of the BOD (20°C, 5 day) and Suspended Solids values, by weight, for effluent samples collected in a period of 30 consecutive days shall not exceed 35 percent of the arithmetic mean of the values, by weight, for influent samples collected at approximately the same times during the same period (65 percent removal) [40 CFR 133.105 (a)(3) and (b)(3)]. Percent removal shall be determined from the 30-day average value of raw wastewater concentration in comparison to the 30-day average value of effluent concentration for the same constituent over the same time period. [40 CFR 133.101 (j)]

6. There shall be no acute toxicity in the effluent. Effluents are considered acutely toxic when there is: 1) less than 90 percent survival 70 percent of the time based on any monthly median, or 2) less than 70 percent survival 100 percent of the time. Compliance with this limitation shall be determined in accordance with **F. GENERAL PROVISIONS.24.**

12. The Enforcement Policy states that for the purpose of determining serious violations, BOD and NFR (suspended solids) are identified as Group I pollutants in title 40 Code of Federal Regulations, section 123.45, Appendix A. Title 40 Code of Federal Regulations, section 123.45, Appendix A considers violations of acute toxicity tests based on Bioassay (96 Hr.) to be equivalent to violations of Group II pollutants. Total Coliform is neither a Group I nor a Group II pollutant;

^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 Median

therefore, exceedances of effluent limitations for total coliform bacteria do not count as serious violations.

13. According to monitoring reports submitted by the Discharger for the period from June 1, 2005 through July 31, 2008, the Discharger exceeded effluent limitations subject to MMPs twenty three times. Eighteen of the exceedances are non-serious (chronic) effluent violations, as described in Water Code section 13385, subdivision (i)(1), and in Finding 6., above. Five of the exceedances are serious effluent violations, as described in Water Code section 13385, subdivisions (h)(1) and (2), and Finding 5., above. The mandatory minimum penalty amount for these violations is \$60,000 as shown in the following table:

Table 1: Effluent Limitation Exceedances
(Subject to Mandatory Minimum Penalties)
June 1, 2005 through July 31, 2008

Date	Parameter	Reported Value	Permit Limit	Units	Violation Type	Mandatory Minimum Penalty
11/07/05	Bioassay Survival	5	>70	% survival	Serious	\$3,000
11/10/05	Weekly BOD Average	80	65	mg/l	Chronic	\$0
11/18/05	Weekly BOD Average	66	65	mg/l	Chronic	\$0
11/30/05	Monthly BOD Average	73	65	mg/l	Chronic	\$3,000
11/30/05	Monthly BOD Average	650	441	lb/day	Chronic	\$3,000
11/30/05	Monthly NFR Average	165	95	mg/l	Chronic	\$3,000
11/30/05	Monthly NFR Average	1469	931	lb/day	Chronic	\$3,000
11/30/05	NFR Percent Removal	60	65	% removal	Chronic	\$3,000
12/31/05	Monthly BOD Average	54	45	mg/l	Chronic	\$3,000
01/31/06	Monthly BOD Average	49	45	mg/l	Chronic	\$3,000
01/31/06	Monthly BOD Average	721	441	lb/day	Serious	\$3,000
01/31/06	Monthly NFR Average	1075	931	lb/day	Chronic	\$3,000
02/07/06	Bioassay Survival	35	>70	% survival	Serious	\$3,000
02/31/06	Monthly BOD Average	610	441	lb/day	Chronic	\$3,000
02/31/06	NFR Percent Removal	62	65	% removal	Chronic	\$3,000
03/31/06	Monthly BOD Average	537	441	lbs/day	Chronic	\$3,000
03/14/06	NFR Percent Removal	59	65	%	Chronic	\$3,000
04/30/06	Monthly BOD Average	53	45	mg/l	Chronic	\$3,000
04/30/06	Monthly BOD Average	672	441	lb/day	Serious	\$3,000
04/30/06	NFR Percent Removal	54	65	% removal	Chronic	\$3,000
05/06/06	Bioassay Survival	5	>70	%	Serious	\$3,000

Date	Parameter	Reported Value	Permit Limit	Units	Violation Type	Mandatory Minimum Penalty
11/03/06	Weekly BOD Average	75	65	mg/l	Chronic	0
11/30/06	Monthly NFR Average	104	95	mg/l	Chronic	0
11/30/06	Monthly NFR Average	1077	931	lb/day	Chronic	0
11/30/06	NFR Percent Removal	64	65	% removal	Chronic	\$3,000
03/31/07	Monthly BOD Average	457	441	lb/day	Chronic	\$3,000
09/07/07	Weekly BOD Average	75	65	mg/l	Chronic	0
					TOTAL	\$60,000

14. Regional Water Board staff costs associated with addressing the mandatory minimum penalties for effluent limit violations of the WDRs 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 compliance project, if any, through to completion.
15. 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 MCKINLEYVILLE COMMUNITY SERVICES DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board is issuing this Complaint for \$60,000 to the Discharger for violations of WDRs, subject to mandatory minimum penalties, that occurred from June 1, 2005 through July 31, 2008.
2. A hearing will be conducted on this Complaint by the Regional Water Board on March 12, 2009, 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:

Option 1: Pay Full Penalty

Pay the penalty of \$60,000 in full to the State Water Pollution Cleanup and Abatement Account (CAA) by January 16, 2009 or,

Option 2: Compliance Project (CP)

Submit a conceptual proposal for a CP designed to correct the effluent limitation violations within five years, that will cost at least \$50,000, and the supporting information described in Finding 3., below, to the Assistant Executive Officer by January 16, 2009, and pay \$10,000 to the CAA by January 16, 2009 (or in compliance with a payment schedule issued in writing by the Assistant Executive Officer). The sum of the CP and the amount of the penalty to be paid to the CAA must at least equal the amount of the full penalty.

If the State Water Board determines that the Discharger is not eligible to complete a CP, the Discharger may either pay the remaining balance of the penalty (\$50,000), or pay at least \$12,500 to the CAA and submit to the Assistant Executive Officer a proposal for a Supplemental Environmental project, in accordance with the requirements below, within 30 days of the State Water Board's determination. All payments, including money not used for the CP, must be payable to the CAA.

Option 3: Supplemental Environmental Project (SEP)

Remit \$22,500 to the CAA by January 16, 2009 (or in compliance with a payment schedule issued in writing by the Assistant Executive Officer) and, by January 16, 2009, submit to the Assistant Executive Officer, a proposal for a Supplemental Environmental Project (SEP). Completion of an SEP will result in suspension of payment of an equivalent amount into the CAA up to \$37,500; if the cost of the SEP is less than \$37,500, the Discharger must remit payment of the balance of the total assessed penalty to the CAA by January 16, 2009 (or in compliance with a payment schedule issued in writing by the Assistant Executive Officer).

3. If the Discharger chooses to propose a CP, it must demonstrate to the satisfaction of the State Water Board that it is a publicly owned treatment works serving a small community. In order to make this demonstration, the Discharger must submit to the Assistant Executive Officer any documentation that it may have regarding: 1) population served by the POTW; 2) median income of residents served; 3) the rate of unemployment; 4) population density of the area served; and 5) any additional information that may be relevant to a determination of "small community" status for the McKinleyville Community Services District. The Assistant Executive Officer will then use this information to request that the State Water Board determine whether the Discharger qualifies as a POTW serving a small community, and is eligible under 13385(k) to complete a CP in lieu of paying all or a portion of the penalties.

4. If the State Water Board determines that the Discharger does qualify as a POTW serving a small community, the Discharger must submit a full CP proposal, including a financing plan to complete the project, within thirty days of the State Water Board's determination, to the Assistant Executive Officer for approval. CP proposals shall conform to the requirements specified in Chapter X of the Enforcement Policy. The proposal must include a time schedule, for concurrence by the Assistant Executive Officer, to address implementation and completion of the proposal. If the proposal and/or implementation schedule are not acceptable, the Assistant 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 CP, must be payable to the CAA.
5. Any SEP proposal shall conform to the requirements specified in Chapter IX of 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.
6. The Assistant Executive Officer shall maintain jurisdiction over any approved CP/SEP implementation time schedules throughout the life of the CP/SEP. If, given written justification from the Discharger, the Assistant Executive Officer determines that a delay in the CP/SEP implementation schedule was beyond the reasonable control of the Discharger, the Assistant Executive Officer may revise the implementation schedule as appropriate.
7. If the Discharger waives the hearing and pays the full liability, the resulting settlement may become effective on January 17, 2009 without any further action by the Regional Water Board. If there are significant public comments, the Assistant Executive Officer may withdraw the Complaint, reissue it as appropriate, or take other appropriate action.
8. 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.
9. 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 CP or SEP.

10. Notwithstanding the issuance of this Complaint, the Regional Water Board shall retain the authority to assess additional penalties for violations of the Discharger's WDRs.

Luis G. Rivera
Assistant Executive Officer

December 12, 2008

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