

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Order No. R1-2009-0042

For

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

In the Matter of
Fairhaven Power Plant
Wastewater Treatment Facility
WDID No. 1B85026RHUM

Humboldt County

The California Regional Water Quality Control Board, North Coast Region (Regional Water Board), having received from DG Fairhaven Power, LLC, formerly Fairhaven Power Company (hereinafter Discharger), a waiver of the right to a hearing in the matter of mandatory minimum penalties imposed pursuant to Water Code section 13385, subdivision (h) for failing to submit self monitoring reports in a timely manner and violating Waste Discharge Requirements (WDRs) Order No. R1-2002-76 (NPDES No. CA0024571), and having received from the Discharger a request to implement a supplemental environmental project (SEP) in lieu of payment of the full penalty prescribed, finds the following:

1. The Discharger owns and operates the Fairhaven Power Plant (FPP). The FPP is an 18.75 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 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. On June 2, 2001, Fairhaven Power Company submitted a Report of Waste Discharge, applying for a renewal of its permit to discharge wastewater to waters of the State and the United States. On August 22, 2002, the Regional Water Board adopted new Waste Discharge Requirements (WDRs) Order No. R1-2002-0076 for the FPP (hereinafter "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 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 existing Permit until it was due for renewal, at which time the Regional Water Board would incorporate the name change into

the renewed Permit. The Discharger applied for a Permit renewal on February 22, 2007. The Permit expired August 22, 2007; however, because the Regional Water Board has not yet renewed the Permit, the requirements of the existing Permit remain in effect. Regional Water Board staff have drafted revised WDRs, and plan to present these to the Regional Water Board for consideration in late 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) 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 of untimely submittals that occurred on or after January 1, 2004. On July 28, 2008, the Regional Water Board received six late quarterly self-monitoring reports ranging from 58 to 513 days late.
6. 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 an SEP may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).
7. On August 21, 2008, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R1-2008-0104, assessing a mandatory minimum penalty of \$165,000 for late self monitoring reports as described in Finding No. 5, above. On October 21, 2008, the Discharger waived its right to a public hearing and, on November 7, 2008, the Discharger paid the sum of \$75,000 to the State Water Pollution Cleanup and Abatement Account (CAA), and proposed an SEP, as described in Finding 8, below, to cover the outstanding balance of \$90,000.
8. The proposed SEP consists of redirecting treated wastewater discharges from an ocean outfall to a land discharge location, converting approximately 6 acres of land into new wetlands, and improving approximately 4 acres of marginal wetlands. The wetlands will not be a part of the treatment process. This effluent disposal option will provide a permanent open wetland area for wildlife and habitat preservation, and is intended, in part, to demonstrate an innovative use of industrial treated wastewater. Local non-regulatory partners will participate in

vegetation management, conduct wildlife and habitat viewings, and provide educational opportunities. Regional Water Board staff have reviewed the SEP proposal, and believe that the project is consistent with the guidelines contained in the Water Quality Enforcement Policy, and that the SEP will improve freshwater beneficial uses by enhancing and creating area wetlands, and improve ocean water quality by exchanging a direct effluent ocean discharge for an effluent discharge filtered and dissipated by wetlands. The SEP is projected to cost \$208,000, which will fulfill the outstanding \$90,000 balance.

9. Government Code section 11415.60, subdivision (a), states that an agency may formulate and issue a settlement on any terms the parties determine are appropriate. The Regional Water Board and the Discharger concur that the Discharger's proposal described in Finding 8 is a fair settlement of the ACLC and is in the interest of the public. Regional Water Board staff have reviewed the proposed SEP and believe it meets all the criteria specified in section IX of the Enforcement Policy. The proposed settlement has been properly noticed for public review, and the Regional Water Board has considered all comments.
10. The issuance of this Order 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).
11. Any person affected by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with section 13320 of the Water Code and title 23, California Code of Regulations, section 2050. The petition must be received by the State Water Board within thirty days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

THEREFORE, IT IS HEREBY ORDERED pursuant to Water Code section 13385 that:

1. The Discharger has been assessed a mandatory minimum penalty of \$165,000 for the violations noted in Finding 5, above, and described in detail in ACLC No. R1-2008-0104. The Discharger has paid the sum of \$75,000 to the CAA. The Discharger shall apply the remaining sum of \$90,000 toward the SEP described in Finding 8, above, diverting its existing ocean discharge to a freshwater discharge, creating new wetlands and enhancing existing wetlands. Upon the Executive Officer's determination that the SEP has been completed, the remaining \$90,000 liability will be suspended. If the final project cost is less than \$90,000, the remaining balance shall be paid to the CAA. The sum of the SEP cost, and the amount paid to the CAA shall at least equal the amount of the full penalty.
2. The Discharger has completed several initial tasks required for the SEP, and shall submit progress reports describing the planning and construction of the SEP and shall complete the SEP according to the following time schedule:

| TASK | DUE DATE |
|---|---|
| Conduct topographical survey and begin plans for wetlands area. | March 24, 2009 (Completed) |
| Begin a geotechnical investigation to develop a hydrological plan. | March 26, 2009 (Completed) |
| Begin effluent sampling and analysis for freshwater standards. | March 26, 2009 (Completed) |
| Submit final permit application to Humboldt County Planning Commission and begin environmental review process. | September 15, 2009 |
| Submit plans for developing wetland areas and diverting effluent from the existing ocean outfall location to its new discharge location. | October 1, 2009 |
| Submit a new Report of Waste Discharge to the Regional Water Board. | October 1, 2009 |
| Submit a listing of local agencies and non-profit groups involved in the project and a description of their involvement. | January 1, 2010 |
| Start construction. | May 1, 2010 |
| Complete construction. | December 31, 2011 |
| Annual Progress Reports. | December 31, 2010 December 31, 2011 December 31, 2012 |
| Submit final SEP report to Regional Water Board. The report shall describe the completion of the project, an overall evaluation of the project, and its ability to meet the stated goal of establishing wetland vegetation. The report shall include a post-project accounting of expenditures to demonstrate compliance. | December 31, 2013 |

3. If, given written justification from the Discharger, the Executive Officer determines that adhering to the SEP's implementation schedule is not possible, and the causes of that delay are beyond the reasonable control of the Discharger, the Executive Officer may revise the implementation schedule as appropriate. Written justification must be received by the Executive Officer before the specific due date occurs, must describe circumstances causing the delay, and must state when each task of the SEP will be completed.
4. Failure to meet the deadlines above, including completing the SEP, will result in the Discharger being required to pay the remaining \$90,000 penalty.
5. Notwithstanding the issuance of this Order, the Regional Water Board shall retain continuing jurisdiction to determine compliance with the terms of the suspended

penalty provisions above, as well as the authority to assess additional penalties for other violations of the Discharger's waste discharge requirements.

Certification:

I, Catherine Kuhlman, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on July 23, 2009.

Catherine Kuhlman
Executive Officer

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