

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2009-0131

For

Violation of Waste Discharge Requirements
Order No. R1-2001-45

In the Matter of
Pacific Gas and Electric Company
Humboldt Bay Power Plant
WDID No. 1B82085OHUM

Humboldt County

This Complaint assesses administrative civil liability for penalties pursuant to Water Code section 13385 and is issued to the Pacific Gas and Electric Company (hereinafter Discharger) for effluent limit violations of Waste Discharge Requirements (WDRs) Order No. R1-2001-45. Mandatory minimum penalties are assessed for effluent limit violations that occurred between February 28, 2001 through December 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 a power plant located on the east shore of Humboldt Bay. The power plant uses about 76 million gallons per day of Humboldt Bay water for once-through cooling purposes and returns that water to the Bay via a discharge canal. Other waste streams are combined with the cooling water in the canal prior to discharge at Discharge Serial No. 001.
2. Since February 28, 2001, the Discharger's Humboldt Bay Power Plant has been regulated by WDRs Order No. R1-2001-45, which serves as the National Pollutant Discharge Elimination System (NPDES) Permit under the Clean Water Act (NPDES No. CA0005622).
3. This Complaint covers effluent limit violations of WDRs Order No. R1-2001-45 that occurred between February 28, 2001 through December 31, 2008. These effluent limitations violations are subject to the mandatory minimum penalties as specified in California Water Code section 13385 subdivisions (h) and (i). Finding 11 includes a summary of the effluent limit violations.
4. WDRs Order No. R1-2001-45 include provisions requiring the Discharger 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 Water Code section 13383. These reports are designed to document compliance with effluent limitations contained in the WDRs.
5. California Water Code section 13385 subdivision (h)(1) establishes a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation of NPDES permit effluent limitations. California 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 California Water Code 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). Office of Administrative Law approved the Enforcement Policy and it became effective on July 30, 2002. The Enforcement Policy addresses, among other enforcement subjects, issues related to assessing mandatory minimum penalties.
8. For the purpose of determining a discharger's compliance with effluent limitations in its WDRs, 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 determinations 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. WDRs Order No. R1-2001-45 includes the following effluent limitations:

A. EFFLUENT LIMITATIONS

1. Representative samples from the following outfalls shall not contain constituents in excess of the following limits:

Outfall No. 001B, 001H

<u>Constituent</u>	<u>Units</u>	<u>Daily Maximum</u>	<u>30-Day Average</u>
Suspended Solids	mg/l	100	30
Grease and Oil	mg/l	20	15

2. There shall be no acute toxicity in the discharge to Humboldt Bay. Effluents are considered acutely toxic when less than 90 percent survival 70 percent of the time based on any monthly median or less than 70 percent survival 100 percent of the time.
10. The Enforcement Policy states that for the purpose of determining serious violations, Total Suspended Solids (TSS) and Grease and Oil are identified as Group I pollutants in title 40 Code of Federal Regulations, section 123.45, Appendix A. Acute Toxicity is neither a Group I nor Group II pollutant; therefore, exceedances of effluent limitations for Acute Toxicity do not count as serious violations.
11. Effluent Limitation Violations

According to self-monitoring reports submitted by the Discharger from February 28, 2001 through December 31, 2008, the Discharger exceeded effluent limitations seven times. Five violations are considered “chronic violations” as described in Water Code section 13385 subdivision (i)(1). Two violations are considered “serious” violations as described in California Water Code section 13385, subdivisions (h)(1) and (h)(2). The mandatory minimum penalty amount for the violations as show in the table below is \$6,000:

**Table 1: Effluent Limitation Exceedances
 February 28, 2001 through December 31, 2008**

Date	Parameter	Units	Reported Value	Permit Limit	Violation Type	Mandatory Penalty
09/30/01	Monthly TSS Limit	mg/l	36	30	1 st Chronic	\$0
10/22/04	Acute Toxicity Limit	%	50	≥70	1 st Chronic	\$0
07/07/05	Monthly TSS Limit	mg/l	34	30	1 st Chronic	\$0
08/14/08	Daily Grease and Oil Limit	mg/l	33.3	20	Serious, 1 st	\$3,000
08/26/08	Daily Grease and Oil Limit	mg/l	20.1	20	2 nd Chronic	\$0
08/31/08	Monthly Grease and Oil Limit	mg/l	17	15	3 rd Chronic	\$0
10/09/08	Daily Grease and Oil Limit	mg/l	30	20	Serious	\$3,000
Total →						\$6,000

12. Regional Water Board staff costs associated with this administrative civil liability complaint for effluent limit violations are estimated to be a minimum of \$5,000. This includes staff time to tally violations and prepare this Complaint, public notices, public hearing, and response to comments.

THE PACIFIC GAS AND ELECTRIC COMPANY IS HEREBY GIVEN NOTICE THAT:

1. Based on a review of the above facts and legal requirements, the Assistant Executive Officer proposes that the Discharger be assessed mandatory minimum penalties in the amount of \$6,000 for effluent limit violations that occurred from February 28, 2001 through December 31, 2008.
2. The Regional Water Board will conduct a hearing on this Complaint on March 24, 2010, unless the Discharger waives the right to a hearing pursuant to California 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 remit a check for the total assessed penalty of \$6,000 made payable to the "State Water Pollution Cleanup and Abatement Account" (CAA) by February 1, 2010.
3. If the Discharger waives the right to hearing and agrees to pay the total proposed administrative civil liability of \$6,000 in mandatory minimum penalties, the resulting settlement may become effective after the thirty-day public comment period for this Complaint ends, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Assistant Executive Officer may withdraw the Complaint, reissue it as appropriate, 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 involving violations 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. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) Pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

Luis G. Rivera
Assistant Executive Officer

December 31, 2009