

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2009-0010

For

Mandatory Minimum Penalties for
Violation of Waste Discharge Requirements
Order Nos. 99-59 and R1-2006-0020 (NPDES No. CA0006017)

In the Matter of
Town of Scotia Company, LLC
Wastewater Treatment Facility and Cogeneration Plant
WDID No. 1B83104OHUM

Humboldt County

This Complaint, to assess administrative civil liability for penalties pursuant to Water Code section 13385 is issued to the Town of Scotia Company, LLC (hereinafter Discharger) for violations of Waste Discharge Requirements (WDRs) Order No. 99-59 and Order No. R1-2006-0020 (NPDES Permit No. CA0006017), occurring during the period January 1, 2000 through September 30, 2008.

The Assistant Executive Officer of the Regional Water Quality Control Board, North Coast Region (Regional Water Board), finds the following:

1. The Permittee operates a secondary sewage treatment plant and an associated wood-fuel steam-electric power plant (hereinafter facility) located at Main Street in Scotia, California. Facility wastewater, consisting of treated municipal wastewater, multimedia filters back flush water, cooling water blow-down, boiler blow-down, once-through cooling water, and miscellaneous process waste, discharges to a 20-acre storage pond (the log pond).. The water may contain substances which meet the definition of "pollutants" under the federal Clean Water Act, and which can degrade water quality and adversely impact beneficial uses of the Eel River.
2. From August 26, 1999 to September 29, 2006 the Regional Water Board regulated the Discharger's facility under WDRs Order No. 99-59. On June 29, 2006, The Regional Water Board adopted new WDRs, Order No. R1-2006-0020 for the Discharger; this Order became effective on September 30, 2006. Both Orders serve as National Pollutant Discharge Elimination System permits (NPDES No. CA0006017) under the federal Clean Water Act. The Order authorizes the Permittee to discharge pollutants from the log pond into the Eel River, a navigable water of the United States, through Discharge Serial No. (SN) 003 (Latitude 40° 28'45", Longitude 124° 06'27"). The Discharger is also operating under Cease and Desist Order No. R1-2006-0073, which the Board adopted on September 20, 2006. This Order exempts the Discharger from penalties for violations of the BOD and suspended solids removal limitations, pursuant to compliance with the pollution prevention plan contained in the order.

3. Order No. R1-2006-0020 identifies eight discharge monitoring locations. Seven of the locations (M-012(A/B), M-013, M-014(A/B), M-015 and M-016) are used to monitor separate waste streams which discharge into the log pond. The eighth discharge monitoring location (M-003) is used to monitor discharges from the log pond prior to final disposal to the Eel River. Between May 15th and September 30th each year, discharges to the Eel River are prohibited by the Water Quality Control Plan for the North Coast Region (Basin Plan). Effluent from the log pond may be discharged directly into the Eel River only between October 1 and May 14 each year, and only if the waste discharge flow is less than one-percent of the Eel River's flow, as measured at Scotia gauging station (USGS Station 11477000). During the prohibition period and at other times when the waste discharge flow is greater than one-percent of the Eel River's flow, effluent is either discharged to a percolation pond or retained in the log pond. Order No. R1-2006-0020 contains technology-based effluent limitations for the individual waste streams and water quality-based effluent limitations for the combined flows exiting the storage pond. Violations of both technology-based and water quality-based limitations are subject to Mandatory Minimum Penalties during the period that effluent from the storage pond discharges directly into the Eel River.
4. Order No. 99-59, Order No. R1-2006-0020 and Order No. R1-2006-0073 name "Pacific Lumber Company (PALCO)" as the Discharger. However, on January 18, 2007, the Pacific Lumber Company filed for Chapter 11 bankruptcy in Corpus Christi, Texas. The bankruptcy settlement awarded Mendocino Redwood Company, LLC and Marathon Bank Structured Finance Fund LP (MRC/Marathon) legal possession of the municipal wastewater treatment facility (WWTF), as well as the timberlands, the mill and the steam electric power plant. Subsequently, MRC/Marathon created a new company, Town of Scotia Company, LLC, to own and operate the WWTF and the steam electric power plant for the town of Scotia. On September 11, 2008, the Regional Board issued Order No. R1-2008-0100 to formalize the name change and transfer of permits. This Complaint reflects the changes made in Order No. R1-2008-0100.
5. This Complaint only covers violations of effluent limitations subject to mandatory minimum penalties that occurred from January 1, 2000 through September 30, 2008. Details of effluent limitation violations subject to mandatory minimum penalties are summarized in Finding 16. 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.
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 (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.
8. 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.

9. 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 a number of enforcement issues, including issues related to assessing mandatory minimum penalties and discretionary penalties for violations of WDRs.
10. The Enforcement Policy states that for the purpose of determining serious violations, Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS) are identified as Group I pollutants in Title 40 Code of Federal Regulations, section 123.45, Appendix A. Copper, Chloroform and Free Available Chlorine are identified as Group II pollutants in Title 40 Code of Federal Regulations, section 123.45, Appendix A. Total Coliform and pH are neither Group I nor Group II pollutants; therefore, exceedances of effluent limitations for those constituents do not count as serious violations.
11. 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.

12. 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.
13. Order No. 99-59, which governed the discharges that occurred during the period of January 2000 to September 29, 2006, includes the following effluent limitations:

B. EFFLUENT LIMITATIONS

2. The thirty day average for suspended solids discharged through SN 003 must not exceed 12.5 pounds per day per thousand board feet of lumber produced or a concentration of 30 mg/l. The daily maximum discharge of suspended solids through SN 003 must not exceed 42 pounds per day per thousand feet of lumber or a concentration of 50 mg/l.
14. Order No. R1-2006-0020, which was in effect from September 30, 2006 to the present and governed effluent limitations for all constituents, except for BOD and TSS, which were governed by CDO R1-2006-0073 from September 20, 2006, includes the following effluent limitations:

IV. EFFLUENT LIMITATIONS

A. Final Effluent Limitations

1. Final Effluent Limitations – Discharge Point 003

The Discharge of stored wastewater shall comply with the following effluent limitations at Discharge Point 003, with compliance measured at Monitoring Location 003 as described in the attached Monitoring and Reporting Program (Attachment E).

- d. The pH of all discharges shall not be below 6.5 or above 8.5.

2. Final Effluent Limitations – Discharge Point 012(A/B)

- a. The disinfected effluent, sampled at Monitoring Location 012(A) as described in the attached Monitoring and Reporting Program (Attachment E) shall not contain concentrations of Total Coliform bacteria exceeding the following concentrations:
 - i. The median concentrations shall not exceed a Most Probable Number (MPN) of 23 per 100 milliliters, using the bacteriological results of the last 30 calendar days for which analyses have been completed.
 - ii. The number of Coliform bacteria shall not exceed an MPN of 230 per 100 milliliters.
- b. The treated wastewater shall be adequately oxidized and disinfected as defined in Title 22, Division 4, Chapter 3, California Code of Regulations (CCR).
- c. The discharge of secondary treated wastewater, as defined by the WWTF’s treatment design and the numerical limitations below, shall comply with the following effluent limitations at Discharge Point 012, with compliance measured at Monitoring Location 012(B) as described in the attached Monitoring and Reporting Program (Attachment E).

Parameter	Units	Effluent Limitations 012(B)				
		Average ¹ Monthly	Average ² Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Biochemical Oxygen Demand 5-	mg/l	30	45	60	--	--
	lbs/day ^{3,4}	64	96	129	--	--

¹ 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 summation 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 single sample shall constitute the monthly average.

² The arithmetic mean of all daily determinations made during a calendar week, Sunday to Saturday. Where less than daily sampling is required, the average shall be determined by the summation of all the measured daily discharges divided by the number of days during the calendar week 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 weekly average.

Parameter	Units	Effluent Limitations 012(B)				
		Average ¹ Monthly	Average ² Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
day @ 20°C						
Total Suspended Solids	mg/l	30	45	60	--	--
	lbs/day	64	96	129	--	--

- d. Percent Removal: The average monthly percent removal of BOD (5-day 20°C) and total suspended solids shall not be less than 85 percent as measured at Monitoring Location 012(B). Percent removal shall be determined from the monthly average value of influent wastewater concentration in comparison to the monthly average value of effluent concentration for the same constituent over the same time period.

4. Final Effluent Limitations – Discharge Point 014(A/B)

- a. The discharge of recirculated cooling water blowdown as defined by 40 CFR § 423.13 shall comply with the following effluent limitations at Discharge Points Serial Number 014. Compliance shall be measured at Monitoring Location Discharge Serial Numbers 014 A and B as described in the attached Monitoring and Reporting Program (Attachment E).

Parameter	Units	Effluent Limitations 014(A/B)				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Free Available Chlorine	mg/l	0.2	--	0.5	--	--

³ Mass based effluent limitations presented here are based on an average flow rate of 0.257 MGD. During wet weather periods, when the effluent flow rate exceeds 0.257 MGD, mass limitations shall be calculated using the actual daily average effluent flow rate [mass based limitation (lbs/day) = 8.34 x C x Q, where C = the concentration based limitations (mg/l) and Q = the actual effluent flow (MGD)]. In no circumstances shall mass based limitations for BOD and TSS be based on an effluent flow greater than 0.77 MGD, which is the peak hydraulic capacity of the facility.

⁴ The mass discharge (lbs/day) shall be determined using the following equation:

$$\frac{8.34}{N} \sum_i^N Q_i C_i$$

Where N is the number of samples analyzed in the monitoring period. Q_i and C_i are the flow rate (MGD) and the pollutant concentration (mg/l), respectively, which are associated with each of the N grab samples collected in that calendar day, week or month. If a composite sample is taken, C_i is the concentration measured in the composite sample, and Q_i is the average flow rate during the period in which samples were composited.

Parameter	Units	Effluent Limitations 014(A/B)				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Chloroform	µg/l	--	--	0.5	--	--
Copper	µg/l	--	--	10	--	--

5. Final Effluent Limitations – Discharge Point 015

- a. The discharge of boiler blowdown, low volume waste, as defined by 40 CFR § 423.13 shall maintain compliance with the following effluent limitations at Discharge Point Serial Number 015. Compliance shall be measured at Monitoring Location Discharge Serial Number 015 as described in the attached Monitoring and Reporting Program (Attachment E).

Parameter	Units	Effluent Limitations 015				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
pH	Standard Units	--	--	--	6.0	9.0

15. Cease and Desist Order No. R1-2006-0073, which governed effluent limitations for BOD and TSS since September 20, 2006, contains the following finding:
 14. Compliance with this Order exempts the Discharger from mandatory penalties for violations of the BOD and suspended solids percent removal limitations.

The exemption is based on supplemental monitoring performed by the discharger which showed that excursions below the new 85% removal effluent limitation could be expected under the current operating conditions. The discharger reported fifteen occasions when removal values were below 85% between February 2005 and April 2006. Since these occurred prior to the issuance of the new permit, they are not enforceable violations of effluent limitations. However, the data can be used to justify, according to Water Code section 13301, that a discharge of waste is “taking place, or threatening to take place, in violation of requirements.” The penalty exemption is contingent on the Discharger’s compliance with the pollution prevention plan contained in the Order. The plan requires that the Discharger complete the necessary WWTF upgrades to achieve full compliance with the Final Effluent Limitations in WDRs No. R1-2006-0020. The Order requires full compliance with the Final Effluent Limitations by August 1, 2011. During the interim, the Discharger is required to operate and maintain, as efficiently as possible, all facilities and systems necessary to comply with the Final Effluent Limitations to the maximum extent practicable.

16. According to monitoring reports submitted by the Discharger for the period from January 1, 2000 through September 30, 2008, the Discharger exceeded effluent limitations set forth in Order Nos. 99-59, R1-2006-0020, and R1-2006-0073 twenty five times while discharging effluent to the Eel River. Of those twenty five exceedances, sixteen were serious and nine were nonserious (chronic) effluent violations, as described in Water Code section 13385. The mandatory minimum penalty amount for violations during this time period is \$66,000, as shown in the following table:

Table 1:
Effluent Limitation Exceedances - (Subject to Mandatory Minimum Penalties)
January 1, 2000 to September 30, 2008

Date of Violation	Constituent	Permit Limit	Reported Value	Violation Type	Monitoring Location	Mandatory Penalty
12/01/05	Daily TSS Concentration	50 mg/l	61 mg/l	Serious	003	\$3,000
12/31/05	Monthly TSS concentration	30 mg/l	61 mg/l	Serious	003	\$3,000
11/15/07	Daily pH	6.5<pH<8.5	9.4	1 st Chronic	003	\$0
11/20/07	Daily pH	6.5<pH<8.5	9.2	2 nd Chronic	003	\$0
11/29/07	Daily pH	6.5<pH<8.5	9.2	3 rd Chronic	003	\$0
12/06/07	Copper	10 µg/l	47 µg/l	Serious	014	\$3,000
12/06/07	Chloroform	0.5 µg/l	1.5 µg/l	Serious	014	\$3,000
12/20/07	Weekly BOD mass	96 lbs/day	219.2 lbs/day	Serious	012B	\$3,000
12/20/07	Daily BOD mass	129 lbs/day	219.2 lbs/day	Serious	012B	\$3,000
12/27/07	Weekly BOD concentration	45 mg/l	60 mg/l	Serious	012B	\$3,000
12/27/07	Weekly BOD mass	96 lbs/day	187.7 lbs/day	Serious	012B	\$3,000
12/27/07	Daily BOD mass	129 lbs/day	187.7 lbs/day	Serious	012B	\$3,000
12/31/07	Monthly BOD concentration	30 mg/l	38 mg/l	Serious	012B	\$3,000
12/31/07	Monthly BOD mass	64 lbs/day	122.98 lbs/day	Serious	012B	\$3,000
01/03/08	Daily pH	6.0<pH<9.0	9.1	Chronic	015	\$3,000

Date of Violation	Constituent	Permit Limit	Reported Value	Violation Type	Monitoring Location	Mandatory Penalty
01/10/08	Weekly BOD mass	96 lbs/day	116.09 lbs/day	Serious	012B	\$3,000
01/17/08	Weekly BOD mass	96 lbs/day	136.28 lbs/day	Serious	012B	\$3,000
01/24/08	Weekly BOD concentration	60 mg/l	76 mg/l	Serious	012B	\$3,000
01/31/08	Weekly BOD mass	96 lbs/day	99.80 lbs/day	Chronic	012B	\$3,000
01/31/08	Weekly TSS mass	96 lbs/day	144.87 lbs/day	Serious	012B	\$3,000
01/31/08	Daily TSS mass	129 lbs/day	144.87 lbs/day	Chronic	012B	\$3,000
01/31/08	Daily Coliform	230 MPN/100 ml	>1600 MPN/100 ml	Chronic	012A	\$3,000
1/31/08	Monthly BOD concentration	30 mg/l	34.2 mg/l	Chronic	012B	\$3,000
1/31/08	Monthly BOD mass	64 lbs/day	76.2 lbs/day	Chronic	012B	\$3,000
04/30/08	Monthly TSS concentration	30 mg/l	31 mg/l	Chronic	012B	\$3,000
TOTAL →						\$66,000

17. According to monitoring reports submitted by the Discharger for the period between September 30, 2006, and September 30, 2008, the Discharger failed to meet percent removal limits for BOD and TSS three times. These violations would normally be considered MMPs and charged a penalty of \$3,000 for each violation. However, the discharger is operating under Cease and Desist Order No. R1-2006-0073, as described in finding 15, above. The Cease and Desist Order exempts the discharger from what would be a \$9,000 penalty for three MMP violations. The following is a table with the reported violations incurring no penalty:

Table 2: Percent Removal Violations - September 30, 2006 through September 30, 2008

Date of Violation	Constituent	Permit Limit	Reported Value	Monitoring Location	Penalty
01/31/08	Monthly BOD % removal	>85%	83%	012B	\$0
02/29/08	Monthly TSS % removal	>85%	83%	012B	\$0
04/30/08	Monthly TSS % removal	>85%	78%	012B	\$0

18. Regional Water Board staff costs associated with this administrative civil liability complaint for effluent limit violations are estimated to be a minimum of \$10,000. This includes staff time to tally violations and prepare this Complaint and associated public notices, attend the public hearing, respond to comments, and evaluate and track the progress of an SEP, if any, through to completion.
19. 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 TOWN OF SCOTIA COMPANY, LLC IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board is issuing this Complaint for \$66,000 to the Discharger for violations of WDRs, subject to mandatory minimum penalties, that occurred from January 1, 2000 through September 30, 2008.
2. The Regional Water Board will conduct a hearing on this Complaint on April 23, 2009, 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 by February 26, 2009. By doing so, the Discharger agrees to:

Option 1: Pay Full Penalty

Pay the penalty of \$66,000 in full to the State Water Pollution Cleanup and Abatement Account (CAA) by February 26, 2009 or,

Option 2: Supplemental Environmental Project (SEP)

Remit \$25,500 to the CAA by February 26, 2009 (or in compliance with a payment schedule issued in writing by the Assistant Executive Officer) and, by February 26, 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 \$40,500; if the cost of the SEP is less than \$40,500, the Discharger must remit payment of the balance of the total assessed penalty to the CAA by February 26, 2009 (or in compliance with a payment schedule issued in writing by the Assistant Executive Officer).

3. 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.
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 full liability, the resulting settlement may become effective on February 27, 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.
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 for violations of the Discharger's WDRs.

Luis G. Rivera
Assistant Executive Officer

January 27, 2009

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