

California Regional Water Quality Control Board  
North Coast Region

Administrative Civil Liability Complaint No. R1-2009-0018

For

Violation of Waste Discharge Requirements  
Order No. R1-2004-0055 (NPDES No. CA0022870)

In the Matter of  
Mendocino City Community Services District  
Wastewater Treatment Facility  
WDID No. 1B831290MEN

Mendocino County

This Complaint assesses administrative civil liability for penalties and is issued to Mendocino City Community Services District (hereinafter Discharger) for violations of Waste Discharge Requirements (WDRs) Order No. R1-2004-0055, for the period July 27, 2007 to January 31, 2009. The penalties are for both discretionary and mandatory minimum penalties, issued pursuant to Water Code section 13385, subdivisions (c), (h) and (i).

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 the wastewater collection, treatment, reclamation, and disposal facilities which serve the community of Mendocino on the Mendocino County coast. Treatment facilities consist of an extended aeration activated sludge system, secondary clarification, filtration, chlorination and dechlorination. Tertiary treated effluent is discharged to the Pacific Ocean via an ocean discharge structure located approximately 996 feet away from the shoreline (Discharge Serial No. 001, Latitude (39<sup>0</sup> 18.35'N), Longitude (123<sup>0</sup> 48.50'W)). The discharge structure is designed to provide a 100:1 minimum initial dilution.
2. The Regional Water Board adopted Waste Discharge Requirements Order No. R1-2004-0055 on August 25, 2004. The Order serves as a National Pollution Discharge Elimination System Permit (NPDES) under the Federal Clean Water Act.
3. The State Water Resources Control Board adopted Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Wastewater Collection Agencies on May 2, 2006, which became effective on January 2, 2007. The Discharger enrolled in the General WDRs on August 22, 2006.
4. Sanitary sewer overflows (SSOs) are discharges from sanitary sewer systems of domestic, industrial, and commercial wastewater. SSOs contain high levels of suspended solids, pathogenic organisms, nutrients, oxygen-demanding

organic compounds, oil and grease, and other pollutants. SSOs may cause a public nuisance when untreated wastewater is discharged to areas with high public exposure, such as streets or surface waters used for drinking, fishing, or body contact recreation. SSOs may pollute surface or ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters.

5. This Complaint covers violations of effluent limitations and discharge prohibitions contained in WDRs that occurred between July 27, 2007 and January 31, 2009. Details of these violations are summarized in Findings 12 and 13 of this Complaint. These violations are subject to the mandatory minimum penalties and civil liability provisions contained in California Water Code section 13385, subsections (c), (e), (h) and (i).
6. Among the provisions in the WDRs are requirements to implement a discharge monitoring program and to prepare and submit timely 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 (a), provides for the imposition of civil liability by the Regional Water Board. Section 13385, subdivision (c), provides the maximum amount of civil liability that may be imposed by the Regional Water Board. The maximum amount is \$10,000 dollars per day in which the violation occurs, plus \$10 per gallon of waste discharged in excess of 1,000 gallons that is in violation of the NPDES permit and not susceptible to cleanup or is not cleaned up.
8. 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.
9. 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.

10. 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 and discretionary penalties for violations of WDRs.

11. 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 single sample shall constitute the monthly average.

12. Portions of Order No. R1-2004-0055 that have been violated are as follows:

A. DISCHARGE PROHIBITIONS

4. The discharge of untreated waste or partially treated waste from anywhere within the collection, treatment, or disposal facility, except as provided for bypasses under the conditions in General Provision I.13 of this Order, is prohibited.

C. EFFLUENT LIMITATIONS FOR TOXIC POLLUTANTS

1. Waste discharged to the Pacific Ocean (Discharge Serial No. 001) shall not contain toxic constituents in excess of the following limits (constituents are as described and defined in the 2001 Ocean Plan):

Constituent	Units	30-Day Average <sup>4</sup>	6-Month Median	Daily Maximum	Instantaneous Maximum
TCDD Equivalent	Pg/l lb/day	0.4 10 e <sup>-10</sup>	-----	-----	-----

13. Effluent Limitation Violations:

According to monitoring reports submitted by the Discharger for the period July 27, 2007 through January 31, 2009, the Discharger exceeded effluent limitations one time while discharging to the Pacific Ocean. The one exceedance is a serious violation, as described in Water Code section 13385, subdivisions (h)(1) and (h)(2) and Finding 8, above. The mandatory minimum penalty amount for this violation is \$3,000 as shown in the following table:

Effluent Limitation Exceedances  
 July 27, 2007 to January 31, 2009

Date	Parameter	Reported Value	Permit Limit	Units	Violation Type	Mandatory Penalty
12/19/07	TCDD Equivalents	.81	.4	Pg/l	Serious	\$3,000
					Total	\$3000

14. Discharge Prohibitions Violations

During the period July 27, 2007 through January 31, 2009, the Discharger reported one spill from its sanitary sewer system (also referred to as a “sanitary system overflow” or “SSO”) in violation of the discharge prohibition in the WDRs, which prohibits the discharge of untreated waste or partially treated waste from anywhere within the collection, treatment, or disposal facility. The spill event did not result in a discharge to receiving waters or tributaries of the Pacific Ocean. A summary of the spill, together with the applicable maximum potential penalty, follows:

Summary of Spills July 27, 2007, though January 31, 2009			
Date	Event	Estimated Volume Discharged (gallons)	Maximum Potential Penalty, \$10,000 /day
08/15/08	Sanitary sewer overflow	480 gallons	\$10,000
<b>Maximum Potential Civil Penalty</b>			<b>\$10,000</b>

15. In determining the amount of any civil liability, pursuant to Water Code section 13385, subdivision (e), the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violation, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may

require. The Regional Water Board is also required to consider the requirement in this section that states that, at a minimum, liability shall be assessed at a level that recovers the economic benefit, if any derived from the acts that constitute the violation(s).

16. The minimum liability mandated by the Water Code is \$3,000 for the effluent limitation violation described in Finding 13. The Regional Water Board has the discretion to increase the liability up to the daily maximum. Here, however, the Regional Water Board has determined, after applying the factors set forth in Water Code section 13385(e), that the assessment of additional penalties for the effluent violation is not merited.
17. The Enforcement Policy states that for purposes of determining serious violations TCDD is identified as a Group II pollutant in title 40 Code of Federal Regulations, section 123.45, Appendix A. The mandatory minimum penalty (MMP) for this violation is \$3,000.
18. The August 15, 2008 incident report that the Discharger submitted to the Regional Water Board describes the circumstances of the SSO, and identifies ongoing storm drain replacement activities as the cause. Specifically, on August 15, 2008, Mendocino County Department of Transportation broke an 8-inch sewer main underlying the storm drain that they were replacing. Approximately 480 gallons of wastewater discharged from the broken sewer main into a dry drainage ditch 15 feet from the storm drain. The discharged sewage was contained and soaked into the ground before it could be recovered. The Discharger responded immediately upon notification of the SSO and cleaned-up (mitigated effects of the spill) within 24 hours (Saturday morning, August 16, 2008).
19. In considering the potential liability for the SSO, the Regional Water Board considered the factors set forth in Water Code section 13385(e).

- i. Nature, Circumstances, Extent and Gravity of the Violation

Although the incident was clearly unintentional, it likely could have been avoided. However, the spilled waste did not reach or enter surface water, so likely posed little or no threat to water quality or beneficial uses.

- ii. Susceptibility to Cleanup, Cleanup Activities Taken, and Toxicity of the Discharge

The spilled sewage was contained at the scene of the spill and absorbed into the ground so was relatively easy to mitigate when the Discharger arrived on scene the next morning. Untreated wastewater can contain pathogens, but the Discharger's prompt response and containment and

cleanup efforts likely helped to minimize or prevent any adverse impacts to beneficial uses.

iii. Culpability and Prior History of Violations

Although unintentional, the spill could likely have been avoided with additional care. The Discharger's collection system does not have a chronic pattern of spill events.

iv. Ability to Pay and Effect on Ability to Continue its Business

The Discharger serves a small community with a low per capita income, so it may have difficulty paying a significant penalty.

v. Economic Benefit to Discharger

The Discharger's reported spill history suggests that the Discharger is maintaining its collection system adequately and has an effective spill response program. Further, the reported spill history does not suggest that the Discharger is deferring necessary costs for operation and maintenance nor otherwise deriving an economic benefit from the acts that constituted the violation.

After consideration of these factors, staff recommends that the Board not assess a penalty for the August 15, 2008 incident.

20. The issuance of this Complaint is an enforcement action to protect the environment, and is therefore exempt from provisions of the California Environmental Quality Act (Public Resources Code sections 21000 et seq.) pursuant to title 14, California Code of Regulations, sections 15308 and 15321, subsection (a)(2).

**MENDOCINO CITY COMMUNITY SERVICES DISTRICT IS HEREBY GIVEN NOTICE THAT:**

1. Based on a review of the above facts and required factors, the Assistant Executive Officer proposes that the Discharger be assessed an administrative civil liability in the amount of \$3,000, for the mandatory minimum penalties for effluent violations. No assessment of administrative civil liability is recommended for the SSO.
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, subdivision (b) by signing and returning the waiver form attached to this Complaint by March 27, 2009. By doing so, the Discharger

agrees to pay the mandatory minimum penalty of \$3,000 in full to the State Pollution Cleanup and Abatement Account (CAA) by March 27, 2009.

3. If the Discharger waives the hearing and pays the liability, the resulting settlement may become effective on March 28, 2009 without any further action by the Regional Water Board. If there are significant public comments within the comment period that begins with the issuance of this Complaint, 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 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 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.
6. 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.

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Luis G. Rivera  
Assistant Executive Officer

February 25, 2009