

California Regional Water Quality Control Board  
North Coast Region

Administrative Civil Liability Complaint No. R1-2009-0019  
(Revised on May 5, 2009)

For

Violation of Waste Discharge Requirements  
Order No. R1-2000-92

In the Matter of  
City of Ferndale  
Wastewater Treatment Facility  
WDID No. 1B83136OHUM  
NPDES No. CA0022721

Humboldt County

This Complaint assesses administrative civil liability for mandatory minimum penalties pursuant to Water Code section 13385(h) and (i) and is issued to the City of Ferndale (hereinafter Discharger) for violations of effluent limitations set forth in Waste Discharge Requirements (WDRs) Order No. R1-2000-92 (NPDES No. CA0022721) that occurred during the period May 1, 2005 through June 11, 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 the Ferndale Wastewater Treatment Facility (WWTF). The WWTF serves Ferndale and surrounding unincorporated areas. The WWTF discharges secondary treated domestic wastewater to Francis Creek. The sanitary sewer system associated with the WWTF consists of thirteen miles of sewer mains serving an area of approximately 1.25 square miles.
2. On November 29, 2000, the Regional Water Board adopted WDRs Order No. R1-2000-92, and regulated the Discharger under these WDRs until June 12, 2008. On June 12, 2008, the Regional Water Board issued WDRs Order No. R1-2008-0038, which is currently in effect. Both the current and previous Order also serve(d) as National Pollution Discharge Elimination System (NPDES) Permits under the Federal Clean Water Act (NPDES No. CA0022721). Although the Discharger is currently subject to the requirements imposed by WDRs Order No. R1-2008-0038, it is still liable for violations of previous WDRs. This Complaint addresses violations associated with WDRs Order No. R1-2000-92; it does not address violations of R1-2008-0038.
3. In adopting the WDRs Order No. R1-2000-92, the Regional Water Board allowed the Discharger equivalent-to-secondary limits for Suspended Solids, requiring 95 mg/l, which is consistent with effluent limits for pond systems, however, the Order also required that the Discharger achieve 85% removal of both BOD and TSS, a higher level of removal than is expected with equivalent-to-secondary requirements, as set forth in Title 40 of section 133.105 of the Code of Federal Regulations. Regional Water Board staff assigned to this facility since adoption of

WDRs Order No. R1-2000-92 operated with the assumption that the 85% requirement imposed under this Order was a typographical error and that the intended removal level was 65%.

4. On September 12, 2005, the Regional Water Board issued Administrative Civil Liability Complaint (ACLC) R1-2005-0093 imposing mandatory minimum penalties for effluent violations associated with WDRs Order No. R1-2000-92 for the period January 1, 2000 to April 30, 2005. Consistent with the internal assumption regarding the correct BOD and TSS removal limits described in Finding No. 3, above, ACLC No. R1-2005-0093 only includes those BOD and TSS removal violations where the percent removed was less than 65%.
5. On June 12, 2008, the Regional Water Board adopted WDRs Order No. R1-2008-0038 specifying a 65% removal limit for both BOD and TSS. Attachment F to those WDRs includes a discussion about the change from 85% to 65%, noting, in part, that:

The 85 percent removal requirement is consistent with the minimum level of effluent quality attainable by secondary treatment, established at title 40, section 133.102; whereas the 65 percent removal requirement is consistent with the minimum level of effluent quality attainable by facilities meeting criteria for "treatment equivalent to secondary," established at title 40, section 133.105. In establishing a 65 percent removal requirement, the Regional Water Board is correcting a mistaken interpretation of title 40, section 133.105 and satisfies the anti-backsliding exception at CWA section 402 (o) (2) (B) (ii), which allows a permit to contain a less stringent effluent limitation when the Regional Water Board "determines that technical mistakes or mistaken interpretations of law were made" in issuing the previous permit."

Therefore, because the Regional Water Board believes 85% removal limit for TSS and BOD in WDRs Order no. 2000-92 was a mistake; this ACLC only identifies as violations those instances where reported BOD and/or TSS removal levels were less than 65%.

6. This Complaint covers violations of effluent limitations subject to mandatory minimum penalties that occurred from May 1, 2005 through June 11, 2008. During that period, there were also discharges from the facility that resulted in violations of receiving water limitations and discharge prohibitions, and effluent limitations for waste discharged to land, all of which may be subject to discretionary penalties pursuant to Water Code section 13350(e) and/or 13385(c). This Complaint does not cover any of those violations; Regional Water Board staff will review those violations at a future date as resources and priorities dictate.
7. The WDRs include 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.

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 penalties and discretionary penalties for violations of WDRs.
11. 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 (POTW) serving a small community be directed to a compliance project (CP) in accordance with the requirements set forth in 13385(k) and Section X of the Enforcement Policy. Mandatory minimum penalties for late reports may not be directed to a CP. This Complaint includes provisions allowing for the implementation of a CP in lieu of paying the entire amount of the penalty into the Cleanup and Abatement Account, subject to the State Water Board's determination that the Discharger meets the definition of a POTW serving a small community and consistent with the specifications in the Enforcement Policy.
12. 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 provisions allowing for the implementation of a SEP in lieu of paying the entire amount of the penalty into the Cleanup and Abatement Account, subject to the proposed SEP being consistent with the requirement for SEPs as specified in the Enforcement Policy.

13. 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.

14. WDRs Order No. R1-2000-92 included the following effluent limitations:

**B. EFFLUENT LIMITATIONS**

1. Representative samples of waste discharged to the Eel River and its tributaries shall not contain constituents in excess of the following limits:

<u>Constituent</u>	<u>Unit</u>	<u>Monthly Average<sup>a</sup></u>	<u>Daily Maximum</u>
Suspended Solids	mg/l	95	---
	lb/day	792	---
Coliform Organisms (Total)	MPN/100ml	23 <sup>b</sup>	230

3. A minimum total chlorine residual of 1.5 mg/l shall be maintained at the end of the disinfection process.
5. 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 15 percent of the arithmetic mean of the values, by weight, for influent samples collected at approximately the same times during the same period (i.e. requires 85 percent removal of BOD and Suspended Solids from influent).<sup>1</sup>

15. The Enforcement Policy states that for the purpose of determining serious violations, BOD and Total Suspended Solids are identified as Group I pollutants in title 40 Code of Federal Regulations, section 123.45, Appendix A. Fecal Coliform is neither a Group I nor a Group II pollutant; therefore, exceedances of effluent limitations for fecal coliform bacteria do not count as serious violations.

<sup>1</sup> Regional Water Board staff are interpreting this to mean 65%, per discussion in Findings 5.

## 16. Effluent Limitations Violations

According to monitoring reports submitted by the Discharger for the period from May 1, 2005 through June 11, 2008, the Discharger exceeded effluent limitations twenty-four times while discharging to Francis Creek. Of those twenty-four exceedances, two were serious effluent violations, as defined in Finding 8 above, and twenty-two were nonserious (chronic) effluent violations, as defined in Finding 9 above. The residual mandatory minimum penalty amount for violations during this time period is \$ 45,000. A summary of the effluent limitation violations is contained in the following table:

**Table 1: Effluent Limitation Exceedances**  
(Subject to Mandatory Minimum Penalties)  
May 1, 2005 through June 11, 2008

Date	Parameter	Reported Value	Permit Limit	Units	Violation Type	Mandatory Penalty
01/19/2006	Total Suspended Solids Monthly Average	59%	65% Removal	mg/l	Chronic (first violation within 6 mo.)	\$0
01/31/2006	Coliform, daily maximum	1600	230	MPN/100ml	Chronic (second violation within 6 mo.)	\$0
02/14/2006	Coliform, daily maximum	1600	230	MPN/100ml	Chronic (third violation within 6 mo.)	\$0
02/28/2006	Coliform, daily maximum	1600	230	MPN/100ml	Chronic (fourth violation within 6 mo.)	\$3,000
02/28/2006	Coliform, monthly median	865	23	MPN/100ml	Chronic (exceeds four violations within 6 mo.)	\$3,000
02/28/2006	Total Suspended Solids Monthly Average	23%	65% Removal	mg/l	<b>Serious</b>	\$3,000
03/28/2006	Coliform, daily maximum	1600	230	MPN/100ml	Chronic (exceeds four violations within 6 mo.)	\$3,000
05/30/2006	Total Suspended Solids Monthly Average	48%	65% Removal	mg/l	Chronic (exceeds four violations within 6 mo.)	\$3,000
10/30/2006	Total Suspended Solids	41%	65% Removal	mg/l	Chronic (second)	\$0

Date	Parameter	Reported Value	Permit Limit	Units	Violation Type	Mandatory Penalty
	Monthly Average				violation within 6 mo.)	
12/31/2006	Total Suspended Solids Monthly Average	-72%	65% Removal	mg/l	<b>Serious (second violation within 6 mo.)</b>	\$3,000
01/31/2007	Total Suspended Solids Monthly Average	52%	65% Removal	mg/l	Chronic (third violation within 6 mo.)	\$0
04/30/2007	Coliform, monthly median	37	23	MPN/100ml	Chronic (third violation within 6 mo.)	\$0
10/30/2007	Coliform, Daily Maximum	300	230	MPN/100ml	Chronic (first violation within 6 mo.)	\$0
11/06/2007	Coliform, Daily Maximum	1600	230	MPN/100ml	Chronic (second violation within 6 mo.)	\$0
11/13/2007	Coliform, Daily Maximum	1600	230	MPN/100ml	Chronic (third violation within 6 mo.)	\$0
11/30/2007	Coliform, monthly median	824	23	MPN/100ml	Chronic (fourth violation within 6 mo.)	\$3,000
12/04/2007	Coliform, Daily Maximum	1600	230	MPN/100ml	Chronic (exceeds four violations within 6 mo.)	\$3,000
12/11/2007	Coliform, Daily Maximum	1600	230	MPN/100ml	Chronic (exceeds four violations within 6 mo.)	\$3,000
12/31/2007	Coliform, monthly median	801	23	MPN/100ml	Chronic (exceeds four violations within 6 mo.)	\$3,000
01/31/2008	Total Suspended Solids Monthly Average	46%	65% Removal	Removal	Chronic (exceeds four violations within 6 mo.)	\$3,000
03/30/2008	Coliform, monthly	70.5	23	MPN/100ml	Chronic	\$3,000

Date	Parameter	Reported Value	Permit Limit	Units	Violation Type	Mandatory Penalty
	median				(exceeds four violations within 6 mo.)	
04/30/2008	Total Suspended Solids Monthly Average	61%	65% Removal	mg/l	Chronic (exceeds four violations within 6 mo.)	\$3,000
05/06/2008	Coliform, Daily Maximum	900	230	MPN/100ml	Chronic (exceeds four violations within 6 mo.)	\$3,000
05/30/2008	Coliform, monthly median	490	23	MPN/100ml	Chronic (exceeds four violations within 6 mo.)	\$3,000
<b>TOTAL</b>						<b>\$45,000</b>

17. 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, subdivision (a)(2).

THE CITY OF FERNDALE IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board is issuing this Complaint for \$45,000 to the Discharger for violations of WDRs, subject to mandatory minimum penalties, that occurred from May 1, 2005 through June 11, 2008.
2. The Regional Water Board will conduct a hearing on this complaint on July 23, 2009, unless the Discharger waives the right to a hearing by signing and returning the waiver form attached to this Complaint. By doing so, the Discharger agrees to either:

Option 1

Pay the total assessed penalty of \$45,000 to the State Water Pollution Cleanup and Abatement Account (CAA) by June 5, 2009.

Option 2: Compliance Project (CP)

Submit a conceptual proposal for a CP, as described in paragraph 10 above, that is designed to correct within five years the cause of the effluent limitation violations, that will cost at least \$35,000, and the supporting information described in paragraph 3, below, to the Assistant Executive Officer by June 5, 2009. 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. In addition, you must pay \$10,000 to the CAA by June 5, 2009 (or in compliance with a payment schedule issued in writing by the Assistant Executive Officer).

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 (\$35,000), or pay at least \$5,000 to the CAA and submit to the Assistant Executive Officer a proposal for a SEP, as defined in paragraph 11 above, 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)

By June 5, 2009, remit \$15,000 to the CAA (or in compliance with a payment schedule issued in writing by the Assistant Executive Officer) and, submit to the Assistant Executive Officer, a proposal for a SEP. Satisfactory completion of the SEP will result in suspension of the civil liability in an amount equivalent to that spent on the SEP, up to \$30,000; if the amount proposed to be spent on completion of the SEP is less than \$30,000, the Discharger must remit payment of the balance of the total assessed penalty to the CAA by June 5, 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 help the State Water Board make this determination, 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 Discharger. 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 finalized 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 an additional 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 liability, the resulting settlement may become effective on June 5, 2009, 30 days after this Complaint is issued. 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 civil liabilities 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 the Complaint, the Regional Water Board shall retain the authority to assess additional penalties for violation of the Discharger's WDRs.

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Luis Rivera  
Assistant Executive Officer

May 5, 2009