

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Order No. R1-2009-0102

For

Violation of Waste Discharge Requirements
Order No. R1-2000-92 (NPDES No. CA0022721)

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

Humboldt County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) finds the following:

1. The City of Ferndale (hereinafter 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. On November 29, 2000, the Regional Water Board adopted Waste Discharge Requirement (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 and regulated the Discharger under these WDRs until July 23, 2009, when the Board adopted WDRs Order No. R1-2009-0036. Both previous Orders and the current Order 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. R1-2009-0036, it is still liable for violations of previous WDRs. This Order addresses violations associated with WDRs Order No. R1-2000-92; it does not address violations which may have occurred during the time periods covered by Order No. R1-2008-0038 or Order No. R1-2009-0036.
2. California Water Code (CWC) section 13385, subdivisions (h) and (i), require the Regional Water Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each specified violation of effluent limits.
3. CWC 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. The Complaint provided the Discharger the option of completing a CP 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.

4. CWC section 13385, subdivision (l)(1) provides that a portion of mandatory minimum penalties 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. The Complaint provided the Discharger the option of completing a SEP, in accordance with the specifications in the Enforcement Policy.
5. 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 described in CWC section 13385, subdivisions (h)(1) and (h)(2), and twenty-two were nonserious (chronic) effluent violations, as described in CWC section 13385, subdivision (i)(1). The total mandatory minimum penalty amount for these violations is \$45,000.
6. On May 5, 2009, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R1-2009-0019 (Complaint) to the City of Ferndale assessing a civil liability penalty of \$45,000 for violations described in Finding 5, above. The Discharger waived its right to a public hearing and requested to pay the sum of \$10,000 to the State Water Pollution Cleanup and Abatement Account (CAA) and to spend the remaining balance of \$35,000 on a Compliance Project (CP). The Discharger paid the sum of \$10,000 into the CAA on July 16, 2009; subsequently, Regional Water Board staff confirmed with the State Water Board that the Discharger is eligible to conduct a CP. The Discharger submitted a draft CP proposal on May 19, 2009. On June 16, 2009, Regional Water Board staff approved the general concept of the CP and requested additional information, which the City provided on July 15, 2009 and July 21, 2009. The proposed CP will cost more than \$35,000.
7. The Discharger is currently completing the pre-construction phase of a new WWTF project with construction planned to begin at the end of 2009. Among other problems with the current WWTF, the polishing pond is dysfunctional, causing violations of suspended solids removal and, consequently, coliform exceedances. As part of the planned construction, the polishing pond will be removed. To provide adequate suspended solids removal, the Discharger is proposing a CP that includes acquiring and installing a disc filter in the tertiary treatment process. The acquisition and installation of the disc filter is expected to cost more than \$35,000. The proposed CP should enable the Discharger to adequately remove suspended solids, and to comply with its WDRs, specifically those requirements associated with suspended solids removal and coliform limits.
8. 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 7 is a fair settlement of the Complaint and is in the interest of the public. The proposed settlement has been properly noticed for public review, and the Regional Water Board has considered all comments.

9. 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 (Pub. Resources Code, §§ 21000-21177) pursuant to title 14, California Code of Regulations, sections 15308 and 15321, subdivision (a)(2).
10. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control 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 Resources Control 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 shall be assessed a total civil liability of \$45,000. The Discharger has paid the sum of \$10,000 to the CAA. The Discharger shall spend at least the remaining sum of \$35,000 on a CP. The CP consists of acquiring and installing a disc filter and will provide adequate suspended solids removal in the tertiary wastewater treatment process, and subsequently bring the Discharger back into compliance.
2. The Discharger shall submit progress reports and final reports describing the planning and construction of the project, and shall complete the project according to the following time schedule:

TASK	DUE DATE
Acquire and complete the installation of the disc filter.	No later than September 1, 2011; submit a report of compliance by October 1, 2011.
Demonstrate that the disc filter will achieve its intended objective.	No later than November 1, 2011; submit a final report of compliance by December 1, 2011. The report shall certify the completion of the CP and include a post-project accounting of expenses. The report shall include an overall evaluation of the project and a determination as to the potential to meet the stated goals of the project.

3. If, given written justification from the Discharger, the Executive Officer determines that a delay in the CP implementation schedule is 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 CP will be completed.

4. The penalty amount of \$35,000 shall be permanently suspended if the Executive Officer determines that the Discharger has completed the CP satisfactorily, as described in Finding 7 of this Order. The sum of the CP and the amount paid to the CAA shall at least equal the amount of the full penalty. All payments, including money not used for the CP, must be payable to the CAA. The final report shall contain documentation of expenditures. The amount of the suspended penalty shall not exceed the Discharger's actual expenses. Completion of the CP or payment of the suspended liability amount does not relieve the Discharger of its obligation to take necessary actions to achieve compliance with WDRs.
5. Failure to meet the deadlines above, including completion of the CP, will result in the Discharger being required to pay the suspended \$35,000 penalty.
6. 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 December 10, 2009.

Catherine Kuhlman
Executive Officer