

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2010-0018

For

Violation of Waste Discharge Requirements
R1-2006-0001

In the Matter Of
City of Crescent City
Wastewater Treatment Facility
WDID No. 1A84006ODN

Del Norte County

This administrative civil liability complaint (hereinafter Complaint) is issued under authority of California Water Code section 13323 to the City of Crescent City (hereinafter Discharger) to assess administrative civil liability pursuant to Water Code section 13385 for violations of Waste Discharge Requirements Order No. R1-2006-0001 (hereinafter Order) that occurred from June 1, 2007 through June 30, 2009.

The Executive Officer of the Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), hereby gives notice that:

1. The Discharger owns and operates the City of Crescent City Wastewater Treatment Facility (WWTF) located at 210 Battery Street, Crescent City, California. The WWTF serves the City of Crescent City and the County Service Area #1; both are located in Del Norte County in California. The WWTF discharges secondary treated municipal wastewater into the Pacific Ocean.
2. On January 25, 2006, the Regional Water Board adopted the Order for the Discharger's WWTF, which became effective on February 24, 2006. The Order serves as a National Pollutant Discharge Elimination System (NPDES) Permit under the Federal Clean Water Act (NPDES No. CA0022756). The WWTF is currently regulated under the Order.
3. The Order sets forth requirements to implement a discharge monitoring program and to prepare and submit monthly and annual NPDES self-monitoring reports to the Regional Water Board as authorized under Water Code section 13383. These reports are designed to ensure the Discharger's compliance with the effluent limitations contained in the Order.
4. This Complaint alleges that the Discharger exceeded effluent limitations, failed to timely submit monitoring reports, and violated discharge prohibitions, as it exceeded receiving water limitations, in violation of the Order from June 1, 2007 through June 30, 2009. Findings 13 and 14 summarize the effluent limitation violations and the late reporting violations, respectively, which are subject to mandatory minimum penalties pursuant to Water Code sections 13385,

subdivisions (h) and (i), and section 13385.1. Finding 15 summarizes of the discharge prohibitions violations, which are subject to penalties pursuant to Water Code section 13385, subdivision (c).

STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED

5. Water Code section 13385, subdivision (h)(1) establishes a mandatory minimum penalty (hereinafter MMP) of three thousand dollars (\$3,000) for each “serious violation” of an NPDES permit effluent limitation. These penalties apply to violations that occur on or after January 1, 2004. 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. Pursuant to Water Code section 13385.1, subdivision (a)(1) the failure to timely file a discharge monitoring report required pursuant to Water Code section 13383 for each complete period of thirty days following the deadline for submitting the report, if that report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations, such as the Order, is a “serious violation”.
6. Water Code section 13385, subdivision (i)(1) requires the Regional Water Board to assess a MMP 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.

In this Complaint, violations under section 13385, subdivision (i)(1) of the Water Code are referred to as chronic violations. For ease, the first three effluent limitation violations that occur during a six-month period prior to a fourth effluent limitation violation are referenced in this Complaint as 1st Chronic, 2nd Chronic, and 3rd Chronic, respectively.

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). 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 pursuant to Water Code section 13385, subdivisions (h) and (i).

8. Water Code section 13385, subdivision (a)(3) authorizes the Regional Water Board to impose civil liability for violations of any requirements established pursuant to Water Code section 13383. Pursuant to section 13385, subdivision (c), the maximum amount of civil liability that may be imposed by the Regional Water Board is \$10,000 for each day in which the violation occurs, plus up to \$10 per gallon of waste discharged in excess of 1,000 gallons that is not susceptible to cleanup or is not cleaned up.

ALLEGED VIOLATIONS OF WASTE DISCHARGE REQUIREMENTS ORDER NO. R1-2006-0001

9. The Order includes the following effluent limitations and discharge prohibitions:

IV. EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

A. Effluent Limitations – Discharge Point 001

1. Final Effluent Limitations – Discharge Point 001

- a) The discharge of secondary treated municipal wastewater shall maintain compliance with the following effluent limitations at Discharge Point 001, with compliance measured at Monitoring Location M-001 as described in the attached Monitoring and Reporting Program (Attachment E):

Parameter	Units	Effluent Limitations			
		Average Monthly	Average Weekly	Maximum Daily	Six-month Median
Biochemical Oxygen Demand 5-day @ 20°C	mg/L	30	45		
Total Chlorine Residual	mg/L			0.24	0.06
Oil and Grease	mg/L	25	40		
Ammonia	mg N/L			72	18
Copper	mg/L			0.3	0.032
Zinc	mg/L			2.2	0.37
Chloroform	mg/L	3.9			
bis(2-chloroethyl)ether	ug/L	1.4			
bis(2-chloroethoxy)methane	ug/L	130			
N-nitrosodimethylamine	ug/L	220			

- d) Most Probable Number (MPN) of Fecal Coliform Organisms per 100 milliliters: The monthly median shall not exceed 14 and not more than ten percent of the samples collected in any calendar month shall exceed 43.

V. Receiving Water Limitations

A. Surface Water Limitations

1. Bacterial Characteristics

a. Body-Contact Standards

Within a zone bounded by the shoreline and a distance of 1000 feet from the shoreline or the 30-foot depth contour, whichever is farther from the shoreline, and in areas outside the zone used for body-contact sports, as determined by the Regional Water Board, but including all kelp beds, the following bacterial objectives shall be maintained throughout the water column:

- ii. The fecal coliform density based on a minimum of five samples for any 30-day period shall not exceed a geometric mean of 200 per 100 mL nor shall more than 10 percent of the total samples during any 60-day period exceed 400 per 100 mL.

3. Chemical Characteristics

- a. The dissolved oxygen concentration shall not at any time be depressed more than ten percent from that which occurs naturally as a result of the discharge of oxygen-demanding waste material.
- b. The pH shall not be changed at any time more than 0.2 units from that which occurs naturally.

10. The Enforcement Policy states that for the purpose of determining serious violations, BOD, Total Suspended Solids, and Oil and Grease 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, but do count as chronic violations.
11. For the purpose of determining the Discharger's compliance with the effluent limitations set forth in the Order, 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.
12. For the purpose of determining the Discharger's compliance with the effluent limitations set forth in the Order, the 7-day average is equivalent to the weekly

average, which is defined as 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 sum of all the measured daily determinations 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.

Effluent Limitation Violations

13. According to monitoring reports submitted by the Discharger for the period from June 1, 2007 through June 30, 2009, the Discharger exceeded effluent limitations fifty-one times while discharging through Discharge Point 001. Twenty of the exceedances are chronic violations, as described in Water Code section 13385, subdivision (i)(1). Thirty of the exceedances are serious effluent violations, as described in Water Code section 13385, subdivisions (h)(1) and (2). The BOD violation that occurred on June 30, 2007 is the third effluent violation occurring within the previous six-month period and as such, is not assessed as a mandatory minimum penalty pursuant to Water Code section 13385, subdivision (i)(1). The two previous violations were included in ACLC R1-2007-0061. The mandatory minimum penalty amount for those violations is \$150,000 as shown in Table 1 below:

**Table 1: Effluent Limitation Violations
 June 1, 2007 through June 30, 2009**

Date of Violation	Description of Violation	Units	Limits	Reported Values	MMP Violation Type	Mandatory Penalty
6/30/07	BOD, Monthly	mg/L	30	41	3rd Chronic	\$0
7/31/07	BOD, Monthly	mg/L	30	33	Chronic	\$3,000
7/31/07	Fecal Coliform, 10% samples exceeded 43 MPN	%	10%	40%	Chronic	\$3,000
8/31/07	Fecal Coliform, 10% samples exceeded 43 MPN	%	10%	20%	Chronic	\$3,000
8/31/07	Coliform, Monthly	MPN/100 mL	14	23	Chronic	\$3,000
9/30/07	Coliform, Monthly	MPN/100 mL	14	17	Chronic	\$3,000
11/19/07	Chlorine (TRC Daily)	mg/L	0.24	0.46	Serious	\$3,000
12/14/07	Daily chlorine residual (TRC Daily)	mg/L	0.24	0.85	Serious	\$3,000

Date of Violation	Description of Violation	Units	Limits	Reported Values	MMP Violation Type	Mandatory Penalty
12/16/07	Daily chlorine residual(TCR Daily)	mg/L	0.24	4.25	Serious	\$3,000
12/18/07	Daily Chlorine Residual (TCR daily)	mg/L	0.24	0.34	Serious	\$3,000
12/28/07	Daily Chlorine Residual (TCR daily)	mg/L	0.24	0.97	Serious	\$3,000
4/30/08	BOD, Monthly average	mg/L	30	32	Chronic	\$3,000
4/30/08	Fecal Coliform, 10% samples exceeded 43 MPN	MPN/100 mL	10%	33%	Chronic	\$3,000
5/24/08	BOD, Weekly	mg/L	45	46	Chronic	\$3,000
5/31/08	BOD, Weekly	mg/L	45	49	Serious	\$3,000
5/31/08	BOD, Monthly	mg/L	30	44	Chronic	\$3,000
6/7/08	BOD, Weekly	mg/L	45	47	Chronic	\$3,000
6/12/08	Chlorine residual daily	mg/L	0.24	1.28	Serious	\$3,000
6/14/08	BOD, Weekly	mg/L	45	58	Chronic	\$3,000
6/21/08	BOD, Weekly	mg/L	45	47	Chronic	\$3,000
6/28/08	BOD, Weekly	mg/L	45	76	Serious	\$3,000
6/30/08	BOD, Monthly	mg/L	30	57	Serious	\$3,000
6/30/08	Fecal Coliform, 10% samples exceeded 43 MPN	MPN/100 ml	10%	16.7%	Chronic	\$3,000
7/5/08	BOD, Weekly	mg/L	45	80	Serious	\$3,000
7/12/08	BOD, Weekly	mg/L	45	95	Serious	\$3,000
7/19/08	BOD, Weekly	mg/L	45	58	Chronic	\$3,000
7/31/08	BOD, Monthly	mg/L	30	66	Serious	\$3,000
7/31/08	Fecal Coliform, 10% samples exceeded 43 MPN	MPN/100 ml	10%	50%	Chronic	\$3,000
7/31/08	Coliform, Monthly	mg/L	14	96.5	Chronic	\$3,000
8/4/08	TRC, daily	mg/L	0.24	0.61	Serious	\$3,000
8/5/08	Ammonia, 6 months	mg/L	18	19	Serious	\$3,000
8/31/08	Coliform, Monthly	mg/L	30	35	Serious	\$3,000

Date of Violation	Description of Violation	Units	Limits	Reported Values	MMP Violation Type	Mandatory Penalty
9/2/08	Chlorine	mg/L	0.24	1.66	Serious	\$3,000
9/5/08	Ammonia, 6-month median	mg/L	18	28	Serious	\$3,000
9/30/08	Fecal Coliform, 10% samples exceeded 43 MPN	MPN/100 ml	10%	20%	Chronic	\$3,000
10/10/08	TRC, daily	mg/L	0.24	0.35	Serious	\$3,000
10/14/08	Ammonia, 6-month median	mg/L	18	28	Serious	\$3,000
11/04/08	TRC, daily	mg/L	0.24	0.79	Serious	\$3,000
11/18/08	Ammonia, 6-month median	mg/L	18	25.5	Serious	\$3,000
11/30/08	Fecal Coliform, 10% samples exceeded 43 MPN	MPN/100 ml	10%	20%	Serious	\$3,000
12/4/08	Ammonia, 6-month median	mg/L	18	28.5	Serious	\$3,000
12/28/08	TRC, daily	mg/L	0.24	0.70	Serious	\$3,000
1/5/09	Ammonia, 6-month median	mg/L	18	25.5	Serious	\$3,000
2/3/09	Ammonia, 6-month median	mg/L	18	25.5	Serious	\$3,000
2/28/09	BOD, Monthly	mg/L	30	32	Chronic	\$3,000
3/4/09	Ammonia, 6-month median	mg/L	18	24	Serious	\$3,000
4/1/09	Ammonia, 6-month median	mg/L	18	24	Serious	\$3,000
5/10/09	BOD, Weekly	mg/L	45	45.5	Chronic	\$3,000
5/24/09	BOD, Weekly	mg/L	45	47	Chronic	\$3,000
5/31/09	BOD, Monthly	mg/L	30	43	Serious	\$3,000
6/30/09	BOD ,Monthly	mg/L	30	41	Serious	\$3,000
					Total	\$150,000

Reporting Violations:

14. As stated above, Water Code section 13385.1, subdivision (a)(1) specifies that if a monitoring report required pursuant to Section 13383 is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations, failure to file that report by the due date is considered a “serious violation” for each complete period of 30 days following the deadline for submitting the report. The Discharger is required to test samples for bis(2-chloroethoxy)ether, bis(2-chloroethoxy)methane, and N-nitrosodimethylamine once a year and to report the results of those tests in its annual report. During the period covered by this Complaint, the Discharger was late submitting two of its annual reports. As shown below, the total amount of the mandatory minimum penalties for the two late reports is \$24,000:

**Table 2: Late Annual Reports
 June 1, 2007 through June 30, 2009**

Report Due	Due Date	Date Received	Total Days Late	MMP
Annual Report for 2007	January 1, 2008	March 10, 2008	69 days	\$6,000
Annual Report for 2008	January 1, 2009	July 7, 2009	187 days	\$18,000
			Total	\$24,000

Discharge Prohibitions Violations

15. From June 1, 2007 through June 30, 2009, the Discharger documented seventeen prohibited discharges, as shown in Tables 3, 4, and 5 below, and failed to sample/test for required constituents five times, as shown in Table 6 below:

Table 3: Summary of prohibited discharges for pH

Date of Violation	Description of Violation	Receiving Water R-001	Background R-002	Difference	Penalty
6/7/07	pH more than 0.2 units change	8.2	7.4	0.8	\$10,000
8/20/07	pH more than 0.2 units change	8.1	7.7	0.4	\$10,000
10/23/07	pH more than 0.2 units change	7.3	7.6	0.3	\$10,000
11/7/07	pH more than 0.2 units change	7.3	7.6	0.3	\$10,000
4/24/08	pH more than 0.2 units change	7.6	7.9	0.3	\$10,000

Date of Violation	Description of Violation	Receiving Water R-001	Background R-002	Difference	Penalty
5/14/08	pH more than 0.2 units change	8.2	7.6	0.6	\$10,000
7/8/08	pH more than 0.2 units change	8.2	7.6	0.6	\$10,000
9/8/08	pH more than 0.2 units change	7.5	7.9	0.4	\$10,000
11/19/08	pH more than 0.2 units change	8.6	8.2	0.4	\$10,000
6/23/09	pH more than 0.2 units change	8.1	7.8	0.3	\$10,000
				Total	\$100,000

Table 4: Summary of prohibited discharges for Dissolved Oxygen

Date of Violation	Description of Violation	Receiving Water R-001	Background R-002	Percentage Depressed	Penalty
3/13/08	Dissolved Oxygen depressed not more than 10%	9.5	13.5	31%	\$10,000
8/13/08	Dissolved Oxygen depressed not more than 10%	7.0	10.0	30%	\$10,000
12/30/08	Dissolved Oxygen depressed not more than 10%	10.6	13.4	31%	\$10,000
				Total	\$30,000

Table 5: Summary of prohibited discharges for Fecal Coliform

Date of Violation	Description of Violation	Number of samples taken in 60 days	Number of samples with more than 400 MPN in 60 days	Percentage	Penalty
1/9/09	Fecal Coliform, exceeded 400 MPN by 10%	9	1	11%	\$10,000
1/15/09	Fecal Coliform, exceeded 400 MPN by 10%	9	1	11%	\$10,000

Date of Violation	Description of Violation	Number of samples taken in 60 days	Number of samples with more than 400 MPN in 60 days	Percentage	Penalty
1/25/09	Fecal Coliform, exceeded 400 MPN by 10%	9	1	11%	\$10,000
1/29/09	Fecal Coliform, exceeded 400 MPN by 10%	9	1	11%	\$10,000
				Total	\$40,000

Table 6: Summary of Missed Monitoring Event

Date of Violation	Description of Violation	Penalty
4/30/08	Failed to conduct monthly sampling for copper	\$10,000
4/30/08	Failed to conduct monthly sampling for zinc	\$10,000
4/30/08	Failed to conduct monthly sampling for ammonia	\$10,000
4/30/08	Failed to conduct monthly sampling for Chloroform	\$10,000
4/30/08	Failed to conduct monthly effluent monitoring for oil & grease	\$10,000
	Total	\$50,000

CONSIDERATION OF FACTORS:

16. Pursuant to Water Code section 13385, subdivision (e), in determining the amount of any civil liability the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violation(s), 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 for the violation, and other matters that justice may require. These factors do not need to be considered for the assessment of MMPs, as the Regional Water Board is required to impose MMPs.
17. Factors Considered in Determining Recommended Penalty:
 - (a) **The nature, circumstances, extent, gravity of the violations, and the degree of toxicity of the discharge**
 - 1) Failure to Meet pH requirements at Discharge Point R-001

The Order requires that pH levels in surface water at the effluent discharge point not be altered by more than 0.2 units from the background/naturally-occurring levels. Compliance is determined by

comparing test results from samples collected at sampling points R-001 and R-002. R-001 is located at the point of discharge and R-002 is located in an area that is unaffected by the waste discharge, also called the background area. From June 1, 2007 through June 30, 2009, the Discharger documented ten sampling events in which the WWTF's effluent exceeded the pH limitations. Of these ten pH violations, the highest reported exceedance was 0.8 units above the pH reading at R-002.

The allowable 0.2 difference in pH is based on the water quality objectives in the California Ocean Plan¹ for protection of beneficial uses and avoidance of any adverse impacts. However, the impact of the discharge is localized to the point of discharge and would reach equilibrium within a small zone of dilution, whereas dissolved oxygen would equalize within a larger zone of dilution.

2) Exceedances of Dissolved Oxygen Limitations at Discharge Point R1-001

The Order requires that the Discharger's effluent not depress dissolved oxygen levels in receiving waters by more than 10 percent from naturally-occurring dissolved oxygen levels. Compliance is determined by comparing test results from sampling points R-001 and R-002. From June 1, 2007 through June 30, 2009, the Discharger documented three dissolved oxygen limit violations, one in which dissolved oxygen was depressed by 30 percent and two in which dissolved oxygen was depressed by 31 percent.

Low dissolved oxygen levels are potentially lethal to aquatic species; dissolved oxygen is critical to sustaining aquatic life and the marine ecosystems. There are three main sources of oxygen in the aquatic environment: 1) direct diffusion from the atmosphere; 2) wind and wave action; and 3) photosynthesis. When the levels of dissolved oxygen decrease, marine life can be adversely affected. The reported violations are few, but there is some potential that marine life in the vicinity of the discharge could have been adversely affected.

3) Exceedances of Fecal Coliform at Discharge Point R1-001

During the period from June 1, 2007 through June 30, 2009, the Discharger documented four occasions when its effluent test results showed violations of the fecal coliform 60-day requirements. Compliance with this limitation is determined by calculating the percentage of weekly samples with coliform levels exceeding 400 mL per 100 mL over a rolling 60-day period ending on the day that each weekly sample is collected. For the four occasions in which the Discharger documented a violation during this review period, the violation was based on the coliform

¹ The 2005 Ocean Plan is available at http://www.waterboards.ca.gov/water_issues/programs/ocean/docs/oplans/oceanplan2005.pdf

exceedance measured in the sample collected on December 12, 2008; this specific exceedance, one of nine (or 11 percent) of the samples bracketed within four successive 60-day periods, resulted in four successive violations.

Fecal coliform limits are intended to protect human health. Weather and water temperature in the Crescent City coastal area tend to limit the amount of human use of receiving waters in this area, reducing the potential for human exposure to effluent from the Crescent City WWTP; winter temperatures would likely limit human use even further, so the potential for human exposure and adverse impacts associated with this particular series of violations is fairly low.

4) Failed to Sample/Test for Required Constituents Five Times During One Sampling Period

In April 2008, the Discharger failed to sample/test its effluent for copper, zinc, ammonia, chloroform, and oil and grease, as required by the Monitoring and Reporting Program. The absence of monitoring results makes it impossible to assess compliance with effluent limitations for these constituents during this monitoring period and also resulted in an incomplete data set for assessing compliance with the six-month median effluent limitations for copper, zinc, ammonia, and chloroform.

Based on analytical results reported in monitoring periods before and after April 2008 it does not appear likely that concentrations of the omitted parameters exceeded permitted limits during the April 2008 monitoring period; accordingly, the potential for adverse impacts to receiving waters is quite low. However, the lack of test results from this period may have affected the outcome of the six-month median determination in a manner of benefit to the Discharger. In addition, by omitting these tests, the Discharger realized a direct economic savings in lab costs.

(b) Whether the discharge is susceptible to cleanup or abatement

The violations described above occurred periodically and/or infrequently and are not of a nature that would be easily susceptible to cleanup once identified, however, minimization or prevention of future similar violations may be possible through modifications to the WWTF and/or the treatment process.

The Discharger upgraded the WWTF's existing influent pumps and also upgraded its chlorine effluent disinfection system to a new ultraviolet disinfection system. The ultraviolet disinfection system is not yet operational. The City is waiting until it has completed its membrane bio-reactor (MBR) construction project and this part of the system is operational, which would result in higher quality secondary effluent sent through the ultraviolet disinfection system. The Discharger expects to be able to complete and bring all improved components of the treatment system online within approximately six months, at which time the Discharger expects full and consistent

compliance with effluent limits for BOD, ammonia, total residual chlorine and total coliform bacteria.

(c) The ability to pay

The Discharger serves a small, low income community—Crescent City. At the time of the 2000 census, the per capita income in Crescent City was \$12,833, compared with \$21,587 nationally. The Discharger's 2009 sewer rates are \$56.70 per month or \$680.40 per year. Thus, Regional Water Board staff expect that extreme financial penalties would put an excessive burden on this low-income community.

(d) Any voluntary cleanup efforts undertaken

The violations are not conducive to cleanup, but improvements underway at the treatment facility, described in section (b), above, should help to minimize the potential for future such violations, once all improvements are completed and operational.

(e) Any prior history of violations

The Discharger has been operating under a Cease and Desist Order (CDO) for existing and threatened violations of its NPDES permit since 1997. In 2008, the Regional Water Board assessed an administrative civil liability for \$125,000 for effluent limitation violations subject to mandatory minimum penalties. The Discharger is currently completing an upgrade to its biological secondary treatment process, the effect of which will be a significant reduction in biochemical oxygen demand (BOD) loading into receiving waters. Staff expect that the improved effluent quality will result in compliance with receiving water limitations for dissolved oxygen in the vicinity of the outfall. As stated in section (b) above, the Discharger is also installing an ultraviolet disinfection system, which combined with the MRB system, will allow City to more reliably meet coliform effluent limits and receiving water objectives for bacteria.

(f) The degree of culpability, economic benefit or savings, if any, resulting for the violations, and other matters that justice may require

Discussion in (a), (b), and (e) above includes consideration of these factors.

Further, as a matter that justice may require, costs incurred by the Regional Water Board staff associated with this enforcement action are estimated to be a minimum of \$10,000 based on an average rate of \$150 per hour. This includes staff time to tally violations and prepare this Complaint and public notices.

PROPOSED CIVIL LIABILITY FOR DISCHARGE PROHIBITIONS VIOLATIONS:

18. In determining the appropriate penalty for discharge prohibitions violations alleged in Finding 15, staff used the penalty methodology in the State Water Resource Control Board’s Draft Water Quality Enforcement Policy, adopted November 17, 2009, (hereinafter WQEP) and considered the factors set forth in Finding 17. According to Tables 3, 4, 5, and 6, above, the maximum penalty for each violation is \$10,000. Using the WQEP methodology, staff derived a penalty of \$1,000 per violation. Based on the following reasons, a total penalty amount of \$11,000, summarized in Table 7 below, is recommended for these violations:
- a. Given the potential adverse impacts to aquatic life associated with depressed dissolved oxygen levels, staff believe that the \$1,000 penalty per violation is appropriate, and recommends assessing a penalty of \$1,000 for each of the three alleged violations.
 - b. Based on the facts that fecal coliform limits are intended to protect human health and that there is a limited potential for human exposure in this instance, and that one sample resulted in four violations, staff believe that these violations warrant a lower penalty, and therefore, staff recommend assessing a penalty of \$750 for each of these four violations.
 - c. Given the low potential for direct adverse impacts to beneficial uses associated with the failure to sample/test for required constituents five times relative to the potential for adverse impacts associated with the dissolved oxygen and coliform violations discussed in 1) and 2) of Finding 17 of this section, staff believe that these violations warrant a lower penalty, and therefore, staff recommend assessing a penalty of \$600 for each violation.
 - d. As noted above, the zone of water quality impact associated with the alleged pH violations is likely to be smaller than that associated with the dissolved oxygen violations. In addition, given the uncertainty as to whether the pH at sampling point R-002 is truly representative of the background conditions in the vicinity of the discharge location, it is possible that the effluent did not cause the reported difference in pH readings between the two sampling locations. For both these reasons, staff believe that the penalties for these violations should be lower relative to those for the effluent limit violations and the failure to test for violations. Accordingly, staff recommends assessing a penalty of \$300 for each of the ten pH violations.

Table 7: Recommended Civil Penalty for Discharge Prohibitions Violations

Violation Type	Number of Violations	Recommended Penalty per Violation	Total
pH	10	\$300	\$3,000

Violation Type	Number of Violations	Recommended Penalty per Violation	Total
Dissolved Oxygen	3	\$1,000	\$3,000
Fecal Coliform	4	\$1,000	\$3,000
Failed to sample/test for required constituents	5	\$600	\$3,000
		Total	\$11,000

TOTAL PROPOSED CIVIL LIABILITY:

19. The total proposed civil liability is \$185,000 as shown in Table 8.

Table 8: Total Proposed Civil Liability

Violation Type	Total
MMP – Table 1	\$150,000
MMP late reports – Table 2	\$24,000
Discretionary – Table 7	\$11,000
Total	\$185,000

THE CITY OF CRESCENT CITY 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 \$185,000, for the reasons stated above, plus \$10,000 for staff costs associated with this enforcement action for a total of \$195,000.
2. The Regional Water Board will conduct a hearing on this Complaint on April 29, 2010, unless the Discharger waives the right to a hearing by signing and returning the waiver form attached to this Complaint March 5, 2010.
3. 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.
4. If the Discharger waives the right to a hearing and complies with the terms set forth in the attached waiver, the resulting settlement may become effective on March 5,

2010. If there are significant public comments, the Assistant Executive Officer may withdraw the Complaint, reissue it as appropriate, or take other appropriate action.

5. 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. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this administrative civil liability complaint through hearing. The enforcement costs can be considered as a factor which justice may require.
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 waste discharge requirements.
7. Any person affected by this action of the Board may petition the State Water Resources Control Board to review the action in accordance with Section 13320 of the California Water Code and Title 23, California Code of Regulations, Section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.
8. 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, subsection (a) (2).

Luis Rivera
Assistant Executive Officer

February 3, 2010