

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2011-0013

For

Violation of Waste Discharge Requirements
Order Nos. R1-2005-0096 and R1-2009-0030 (NPDES No. CA0023078)

And

State Water Resources Control Board Order No. 2006-0003-DWQ

In the Matter of

Fort Bragg Municipal Improvement District No. 1
Wastewater Treatment Facility
WDID No. 1B84083OMEN

Mendocino County

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

This administrative civil liability complaint (Complaint) is issued under the authority of California Water Code (CWC) 13323 to the Fort Bragg Municipal Improvement District No. 1 (Discharger) to assess administrative civil liability pursuant to CWC section 13385 for violations of Waste Discharge Requirements Order Nos. R1-2005-0096 and R1-2009-0030 (WDRs), National Pollution Discharge Elimination System (NPDES) No. CA 0023078 and State Water Resources Control Board (State Water Board) Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (General Order) that occurred between November 1, 2007 and October 31, 2010.

1. Unless waived, the Regional Water Board will hold a hearing on this Complaint at the March 24, 2011, Board meeting located at Trinity PUD, Community Room, 26 Ponderosa Lane, Weaverville, CA. The Discharger or its representative will have an opportunity to be heard and contest the allegations in this Complaint and the imposition of the civil liability. Not less than 10 days before the hearing date, an agenda for the meeting will be available on the Regional Water Board's website: http://www.waterboards.ca.gov/northcoast/board_info/board_meetings/.
2. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed civil liability, or refer the matter to the Attorney General to have a Superior Court consider enforcement. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by submitting a signed waiver and paying the civil liability in full or by taking other actions as described in the attached waiver form. 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 an additional factor as justice may require.

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. Accordingly, interested persons will be given thirty days to comment on any proposed settlement of this Complaint.

The Assistant Executive Officer alleges:

STATEMENT OF REGULATORY AUTHORITY

4. The Discharger owns, operates, and maintains a municipal wastewater treatment facility (WWTF), located in the City of Fort Bragg to collect, treat, and dispose of wastewater generated within the sewerage district. The WWTF has a design capacity of 1.0 million gallons per day (mgd) (average dry weather treatment capacity) and 2.2 mgd (average wet weather treatment capacity). The WWTF provides secondary treatment, disinfects the wastewater using chlorine, dechlorinates with sulfur dioxide, and then discharges the treated effluent to the Pacific Ocean through an ocean outfall. Associated with the WWTF is a sanitary sewer system consisting of 30 miles of gravity pipeline, pressure mains, and six pump stations, interceptor lines, collection lines, cleanouts, and manholes. Sewage lateral lines connected to the public sewer serving buildings on private property are not within the jurisdiction of the City and are the responsibility of the land owner.
5. 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
6. On May 2, 2006, the State Water Board adopted the General Order, which prescribes Statewide General Waste Discharge Requirements for Sanitary Sewer Systems. The General Order establishes minimum requirements to prevent SSOs from publicly owned and operated sanitary sewer systems. As owner and operator of a collection system, the Discharger is required to comply with the requirements of the General Order. The Discharger filed a Notice of Intent for coverage under the General Order with the Regional Water Board on November 3, 2006. The General Order became effective on January 2, 2007.
7. Prohibition C.1 of the General Order states that any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.

8. Section 301 of the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. § 1311) and CWC section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a NPDES permit. The WDRs serve as a NPDES Permit under the Federal Clean Water Act. From October 12, 2005 to June 3, 2009, the Discharger's WWTF was regulated by WDRs Order No. R1-2005 - 0096. On June 4, 2009, the Regional Water Board adopted current WDRs Order No. R1- 2009-0030 which became effective on July 24, 2009.
9. The discharge prohibitions and effluent limitations set forth in the WDRs include, but are not limited to, the following:
 - The discharge of untreated or partially treated waste from anywhere within the collection, treatment, or disposal facility is prohibited. (Section III.D)
10. Effluent Limitations – Discharge Point 001
 1. Final Effluent Limitations – Discharge Point 001
 - a. The Discharger shall maintain compliance with the following effluent limitations at Discharge Point 001, with compliance measured at Monitoring Location EFF-001 as described in the Monitoring and Reporting Program (MRP).

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum	6-Month Median
BOD ₅	mg/L	30	45	---	---	---
	lbs/day ²	250	375	---	---	---
	lbs/day ³	550	825	---	---	---
TSS	mg/L	30	45	---	---	---
	lbs/day ²	250	375	---	---	---
	lbs/day ³	550	825	---	---	---
Total Residual Chlorine	µg/L	---	---	408	3,060	102
	lbs/day ²			3.40	25.5	0.85
	lbs/day ³			7.49	56.1	1.87

- b. **Percent Removal.** The average monthly percent removal of BOD₅ and TSS shall not be less than 85 percent. Percent removal shall be determined by comparing the average monthly influent concentration to the average monthly effluent concentration for the same constituent over the same time period, as measured at Monitoring Locations INF-001 and EFF-001.
- c. **Total Coliform Bacteria.** The disinfected effluent shall not contain concentrations of total coliform bacteria exceeding the following limitations:
 - i. The monthly median concentration shall not exceed a Most Probable Number (MPN) of 70 per 100 milliliters, using bacteriological results from the calendar month for which analyses have been completed.
 - ii. No more than 10 percent of the samples shall exceed an MPN of 230 per 100 milliliters, using bacteriological results from ten consecutive samples.

11. Furthermore, all NPDES permits must specify requirements for recording and reporting monitoring results. (40 C.F.R. § 122.48). CWC section 13383 authorizes the Regional Water Board to establish monitoring and reporting requirements. The WDRs require the Discharger to implement a discharge monitoring program and to prepare and submit timely monthly and annual NPDES self-monitoring reports to the Regional Water Board, which are designed to ensure compliance with effluent limitations contained in the WDRs.

STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED

12. An administrative civil liability may be imposed pursuant to the procedures described in CWC section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
13. Pursuant to CWC section 13385(a), any person who violates CWC section 13376, any waste discharge requirements issued pursuant to Chapter 5.5 of the Porter-Cologne Water Quality Control Act (Compliance with the Provisions of the Clean Water Act), any requirements established pursuant to CWC section 13383, or any requirements of section 301 of the Clean Water Act is subject to administrative civil liability pursuant to CWC section 13385(c).
14. CWC section 13385(c), provides for the imposition of civil liability by the Regional Water Board in an amount not to exceed the sum of both of the following: (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
15. CWC section 13385, subdivision (h)(1), requires the Regional Water Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation. Pursuant to CWC section 13385, subdivision (h)(2) a "serious violation" is defined as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant by 20 percent or more, or for a Group I pollutant by 40 percent or more. Appendix A of Part 123.45 of Title 40 of the Code of Federal Regulations specifies Group I and II pollutants.
16. CWC 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 whenever the permittee 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.

The requirement to assess a mandatory minimum penalty pursuant to CWC section 13385, subdivision (i)(1) shall not be applicable to the first three violations within that six-month time period.

ALLEGED VIOLATIONS

Effluent Limitation Violations, Mandatory Minimum Penalties

- 17. Between November 1, 2007 and October 31, 2010, the Discharger exceeded effluent limits and reported four chronic violations for BOD and two chronic violations for total suspended solids, as summarized in Table 1 below.

Table 1

Date month/day/year	Description of Violation	Limits Mg/l	Reported Values	Comments	Mandatory Minimum Penalty
4/30/08	BOD, Monthly Average	30	35	1 st Violation	\$0
5/10/08	BOD, Weekly Average	45	49	2 nd Violation	\$0
5/31/08	BOD, Monthly Average	30	31	3 rd Violation	\$0
5/31/08	TSS, Monthly Average	30	34	Chronic	\$3,000
6/30/08	TSS, Monthly Average	30	31	Chronic	\$3,000
9/8/10	BOD, Weekly Average	45	61	1 st Violation	\$0
				Total Penalties	\$6,000

SSOs /Discharge Prohibition Violations Reported by the Discharger:

- 18. Between November 1, 2007 and October 31, 2010, the Discharger reported three discharges of untreated wastewater from its wastewater collection system (SSOs) and one prohibited discharge event (un-chlorinated effluent) from the WWTF that violate the General Order, the General WDRs, section 301 of the Clean Water Act, and CWC section 13376. The discharge of partially treated effluent went directly into the Pacific Ocean. Two discharges of untreated wastewater went into the Noyo River. The other discharge reached Cedar Creek, a tributary of Pudding Creek. Both the Noyo River and Pudding Creek are waters of the United States

tributary to the Pacific Ocean. These discharges are summarized in Tables 2 and 3 below:

Table 2

Date (month/day/ year)	Location	Volume Discharged (gallons)	Volume Recovered (gallons)	Volume to Receiving Waters (gallons)	SSO Cause	Maximum Potential Civil Liability (CWC § 13385(c))
11/16/2007	Cedar St. And Nancy Way	500	20	300 (Cedar Creek to Pudding Creek to Pacific Ocean)	FOG ¹	\$10,000
5/6/2009	19400 S. Harbor Drive	470	0	470 (Noyo River to Pacific Ocean)	FOG/Rags/fish process waste	\$10,000
9/23/2010	19400 S. Harbor Drive	805	0	805	FOG/Rags/fish process waste	\$10,000
TOTAL \$						\$30,000

Table 3

Date (month/day/ year)	Location	Volume Discharged (gallons)	Volume Recovered (gallons)	Volume to Receiving Waters (gallons)	Prohibited Discharge Event - Cause	Maximum Potential Civil Liability (CWC § 13385(c))
8/6/2009	WWTF	13,833	0	13,833 (Pacific Ocean)	Release un- chlorinated effluent/chlorine system failure/ Chlorine supply ran out	\$138,330
TOTAL \$						\$138,330

¹ Blockage caused by Fats, Oils, and Grease

SUMMARY OF ALLEGED VIOLATIONS OF PROHIBITIONS, PROVISIONS, AND REQUIREMENTS APPLICABLE TO THE DISCHARGER

- a. **Violation No. 1:** The Discharger's self monitoring reports for the Complaint Period document 6 effluent limit exceedances, detailed in Table 1 above, that are subject to MMPs under CWC section 13385 (h).
- b. **Violation No. 2:** Discharger reports an SSO discharge in violation of Prohibitions in WDRs, Order Nos. R1-2005 – 0096 and R1-2009-0030 and Prohibition C. 1 of the General Order, as detailed in Table 2 above.
- c. **Violation No. 3:** Discharger reports an SSO discharge in violation of Prohibitions in WDRs, Order Nos. R1-2005 – 0096 and R1-2009-0030 and Prohibition C. 1 of the General Order, as detailed in Table 2 above.
- d. **Violation No. 4:** Discharger reports an SSO discharge in violation of Prohibitions in WDRs, Order Nos. R1-2005 – 0096 and R1-2009-0030 and Prohibition C. 1 of the General Order, as detailed in Table 2 above.
- e. **Violation No. 5:** Discharger reports a prohibited discharge of treated-unchlorinated wastewater in violation of Prohibitions in WDRs, Order Nos. R1-2005 – 0096 and R1-2009-0030, as detailed in table 3 above.

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

19. Pursuant to CWC section 13385, subdivision (e), in determining the amount of any civil liability imposed under CWC section 13385(c), the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, 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 violations, and other matters that justice may require. CWC section 13385, subdivision (e) also requires 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). The Regional Water Board is not required to consider these factors prior to the imposition of penalties under CWC section 13385, subsections (h) and (i).
20. On November 17, 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in CWC section 13385(e). The entire Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

The required factors have been considered for three SSO violations and one prohibited discharge violation using the methodology in the Enforcement Policy, as explained in detail in Attachment B.²

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

21. Based on consideration of the above facts and after applying the penalty methodology, the Assistant Executive Officer of the Regional Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of \$31,069 for the violations of CWC section 13385. The proposed liability includes \$6,000 in MMPs for effluent limit violations detailed above.
22. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)
23. Notwithstanding the issuance of this Complaint, the Regional Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
24. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

Luis G. Rivera
Assistant Executive Officer
Regional Water Board Prosecution Team

January 14, 2011

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² The liability being proposed for the mandatory minimum penalties is statutorily required and therefore no consideration of the 13385 factors or the Enforcement Policy methodology is required.