

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
NORTH COAST REGION**

In the Matter of:	)	
	)	
City of Ferndale	)	Complaint No. R1-2011-0068
Wastewater Treatment Plant	)	for
P.O. Box 1095	)	Administrative Civil Liability
Ferndale, CA 95536	)	
	)	
Attn: Mr. Jay Parrish	)	
City Manager	)	

---

This Administrative Civil Liability Complaint (Complaint) is issued to the City of Ferndale Municipal Wastewater Treatment Plant (hereinafter Discharger) to assess administrative civil liability for discharges from its Wastewater Treatment Plant (WWTP) in violation of provisions of law for which the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) must impose mandatory minimum penalties (MMPs) pursuant to California Water Code (CWC) Sections 13385 subdivision (h) and (i). The Complaint alleges: (1) 14 effluent limit violations of Waste Discharge Requirements (WDRs) Order No. R1-2008-0038 and R1-2009-0036 subject to MMPs. The violations cited herein occurred during the period from June 12, 2008 through February 28, 2011 and are specifically listed in Attachment A, which is incorporated into this Complaint by reference. During this period, the Discharger was subject to the waste discharge requirements established in Waste Discharge Requirements Order No. R1-2008-0038, NPDES Permit No. CA 0022721 (Order No. R1-2008-0038) until August 31, 2009 when this Order was replaced with Waste Discharge Requirements Order No. R1-2009-0036 (Order No. R1-2009-0036), effective on September 1, 2009.

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

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, a water of the United States.
2. Discharger is alleged to have violated provisions of law for which the Regional Water Board must impose mandatory minimum penalties under CWC sections 13385 subdivisions (h) and (i). The Complaint proposes to assess \$42,000 in mandatory minimum penalties for the violations described in Attachment A.
3. This Complaint is issued under authority of CWC section 13323.
4. A hearing concerning this Complaint may be held before the Regional Water Board within ninety (90) days of the date of issuance of this Complaint, unless, pursuant to CWC section 13323, the Discharger waives its right to a hearing. The waiver procedures are specified in the attached Waiver Form. The hearing in this matter is scheduled for the Regional Water Board's regular meeting on

August 11, 2011 at the Regional Water Quality Control Board Office, 5550 Skylane Blvd, Ste A, Santa Rosa, California. The Discharger or its designated representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Water Board. An agenda for the meeting will be available at [http://www.waterboards.ca.gov/northcoast/board\\_info/board](http://www.waterboards.ca.gov/northcoast/board_info/board) meetings/ not less than 10 days before the hearing date.

5. If a hearing is held on this matter, the Regional Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability. 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 Complaint through hearing.

#### **STATEMENT OF PROHIBITIONS, PROVISIONS, AND REQUIREMENTS APPLICABLE TO THE DISCHARGER:**

The Discharger is required to comply with the following:

6. Order No. R1-2008-0038 includes the following effluent limitations:

<b>Parameter</b>	<b>Units</b>	<b>Average Monthly</b>	<b>Average Weekly</b>	<b>Daily maximum</b>
Total Coliform	MPN/100ml	23	---	230

- a. **Percent Removal.** The average monthly percent removal of BOD5 and TSS shall not be less than 65 percent. Percent removal shall be determined from the 30-day average value of influent wastewater concentration in comparison to the 30-day average value of effluent concentration for the same constituent over the same time period as measured at Monitoring Locations M-INF and EFF-001, respectively.

7. Order No. R1-2009-0036 includes the following effluent limitations for the existing WWTF when discharging at Discharge Point 001:

<b>Parameter</b>	<b>Units</b>	<b>Average Monthly</b>	<b>Average Weekly</b>	<b>Daily maximum</b>
Total Coliform	MPN/100ml	23	---	230

Parameter	Units	Average Monthly	Average Weekly	Daily maximum
Chlorine Residual	mg/L	0.01	---	0.02

- a. **Percent Removal.** The average monthly percent removal of BOD5 and TSS shall not be less than 85 percent. Percent removal shall be determined from the 30-day average value of influent wastewater concentration in comparison to the 30-day average value of effluent concentration for the same constituent over the same time period as measured at Monitoring Locations M-INF and EFF-001, respectively.

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

8. **Violation Group No. 1:** According to quarterly monitoring reports submitted by the Discharger for the Complaint Period, the Discharger had three effluent limitation exceedances, detailed in Attachment A, Table A1 that are subject to Mandatory Minimum Penalties (MMPs) under CWC section 13385 (h) for serious violations.
9. **Violation Group No. 2:** According to quarterly monitoring reports submitted by the Discharger for the Complaint Period, the Discharger had eleven effluent limitation exceedances, detailed in Attachment A, Table A1 that are subject to MMPs under CWC section 13385 (i)(1)(A) for chronic violations.

### FACTUAL BASIS FOR THE ALLEGED VIOLATIONS

The following evidence supports the alleged violations described above:

10. The Discharger owns and/or operates a municipal wastewater treatment facility and associated wastewater collection, reclamation, and disposal facilities that serve a population of 1,457 residential and commercial users. The existing treatment system includes headworks with an influent lift station, an oxidation pond, a polishing pond, a chlorine contact basin, a dechlorination system, and effluent pumping. The existing facility is designed to treat an average dry-weather flow (ADWF) of 0.576 mgd. The average annual flow at the existing WWTF between January 2007 and March 2009 was 0.43 mgd.
11. The Discharger plans to construct a new WWTF within the effective period of Order No. R1-2009-0036. The new WWTF system will provide tertiary wastewater treatment. The new WWTF will include a wet-weather flow equalization basin, headworks with an influent lift station, three surge pumps

(one used for redundancy), a bar screen and comminutor, a selector tank, two extended aeration basins, two rectangular clarifiers, two aerobic sludge digesters, disc filtration, an ultraviolet disinfection system, and a holding basin for temporary storage of treated effluent. From October 1 through May 14, treated wastewater is discharged at Discharge Point 001 to Francis Creek near its confluence with the Salt River; both are waters of the United States and tributary to the Lower Eel River. From May 15 through September 30, treated wastewater is applied to agricultural land via Discharge Point 002.

12. From August 1, 2008 to August 31, 2009, the Discharger was discharging pursuant to Order No. R1-2008-0038. The Discharger submitted a Report of Waste Discharge, dated January 15, 2009, and applied for an NPDES permit renewal proposing construction of a new wastewater treatment facility (WWTF) that will discharge an Average Dry Weather Flow (ADWF) up to 0.55 million gallons per day (mgd) and a Peak Wet Weather Flow (PWWF) up to 0.95 mgd of treated wastewater. Until the new WWTF is constructed and operational, the Discharger will continue to operate the existing WWTF under the terms set out in IV.B of Order No. R1-2009-0036. Regional Water Board staff deemed the application complete on February 12, 2009.
13. The Regional Water Board adopted Waste Discharge Requirements Order No. R1-2008-0038 for the WWTF on June 12, 2008 and replaced it with Order No. R1-2009-0036 on July 23, 2009. The Discharger was regulated under Order No. R1-2008-0038 from August 1, 2008 to August 31, 2009, and Order No. R1-2009-0036 from September 1, 2009 to present. Order No. R1-2009-0036 serves as a NPDES permit under the Federal Clean Water Act. Order No. R1-2009-0036 contains effluent limitations and discharge specifications for the existing and new WWTF.
14. The Discharger is subject to requirements contained in Orders R1-2008-0038 and R1-2009-0036 which include effluent limitations.
15. During the time period covered in this Complaint, the Discharger's monthly self monitoring reports documented 14 effluent limit violations (detailed in Attachment A, Table A1).

#### **WATER CODE PROVISIONS UPON WHICH LIABILITY IS BEING ASSESSED DUE TO NON COMPLIANCE WITH APPLICABLE REQUIREMENTS**

16. CWC section 13385(h) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation. Pursuant to CWC § 13385(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 the Group I and II pollutants.

17. CWC section 13385(i) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation whenever the Discharger does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:
  - 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 effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
18. The maximum amount of discretionary administrative civil liability pursuant to CWC section 13385 subdivision (c) is \$10,000 per day of violation plus \$10 times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
19. The Regional Water Board may choose to assess discretionary penalties pursuant to CWC section 13385 subdivision (c) in lieu of assessing mandatory minimum penalties.
20. If the Regional Water Board decides to impose discretionary penalties, the Prosecution Team reserves the right to seek an increase in the civil liability amount, at the very least, to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

### **PROPOSED ADMINISTRATIVE CIVIL LIABILITY**

21. The Assistant Executive Officer of the Regional Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of \$42,000 for the violations of CWC section 13385 (h) and (i).
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 Water 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).

\_\_\_\_\_  
Date

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

11\_0068\_ACLC\_Ferndale\_CNM