

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Order No. R1-2009-0041

For

Violation of Waste Discharge Requirements
Order No. R1-2001-41 (NPDES No. CA0022730) and
Violations of Order No. 2006-003-DWQ (Sanitary Sewer Systems)

In the Matter of
City of Fortuna
Wastewater Treatment Facility
WDID No. 1B83135OHUM

Humboldt County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), has received from the City of Fortuna (hereinafter Discharger), a waiver of the right to a public hearing in the matter of civil penalties issued pursuant to Water Code section 13385, subdivisions (a), (h) and (i). The proposed civil penalties issued pursuant to subdivision (a) are for discharges of untreated municipal wastewater that occurred between July 1, 2005 and December 31, 2007 in violation of: (1) discharge prohibitions contained in Waste Discharge Requirements (WDRs) Order No. R1-2001-41, which also serves as a National Pollutant Discharge Elimination System (NPDES) permit, and (2) Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (GWDRs) as a result of Sanitary Sewer Overflows (SSOs). The proposed civil penalties issued pursuant to subdivisions (h) and (i) are for discharges of municipal effluent during the period from July 1, 2005 through December 31, 2007 that violated effluent limitations contained in the Discharger's WDRs. Having received a request for the opportunity to implement a Project in lieu of paying a portion of the penalty prescribed, the Regional Water Board finds the following:

1. The Discharger owns and operates the City of Fortuna Wastewater Treatment Facility (WWTF) that discharges secondary treated municipal wastewater into the lower Eel River during winter months (October 1 to May 14) only.
2. Water Code Section 13385, subdivision (a)(2) states, in part, that a discharger is subject to administrative civil liability for violation of any waste discharge requirement. The Discharger's wastewater collection and pumping system is regulated by GWDRs, which were adopted by the State Water Resources Control Board on May 2, 2006. The Discharger enrolled for coverage under the GWDRs on June 27, 2006. Order No. 2006-0003-

DWQ prohibits the discharge of untreated or partially treated wastewater from sanitary sewer systems to waters of the United States. The Discharger's wastewater collection and pumping system is also regulated by WDRs, which have been in effect since before January 1, 2000. The WDRs prohibit the creation of a pollution, contamination, or nuisance, the discharge of untreated waste from anywhere within the collection or treatment system and the discharge of treated waste to unauthorized locations.

3. Water Code 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. Water Code section 13385, subdivision (l)(1), provides that the Regional Water Board may, with concurrence of the discharger, direct 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 requirements for SEPs as specified in the Enforcement Policy.
4. During the period from July 1, 2005 through December 31, 2007, the Discharger exceeded effluent limitations twenty-three times. Of those twenty-three exceedances, twelve are subject to mandatory minimum penalty provisions and eleven to discretionary penalties. The amount for the discretionary portion of the penalty that was proposed in the administrative civil liability complaint was \$11,000. The mandatory minimum penalty for the twelve violations subject to sections 13385(h) and (i) is \$27,000.
5. During the period from July 1, 2005 through December 31, 2007, the Discharger reported five prohibited discharges or SSO events. Four of the five SSOs resulted in discharges of untreated wastewater to public streets, storm drains, and ultimately the Eel River; two of the four were about 30 gallons each of effluent to waters of the U.S., one was between 400 and 500 gallons, and the fourth delivered an unknown quantity. The fifth spill did not reach surface waters. All discharges pose a threat to public health and have the potential to seriously impact the beneficial uses of the Eel River. The penalty amount assessed for these prohibited discharge violations is \$20,000.
6. On April 10, 2008, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R1-2008-0046 (Complaint) assessing a civil liability penalty of \$58,000 for violations described in Findings 4 and 5 above. The Discharger waived its right to a public hearing and requested to pay the sum of \$21,500 to the State Water Pollution Cleanup and Abatement Account (CAA) and spend the sum of \$36,500 on a

Supplemental Environmental Project (SEP). The Discharger paid \$21,500 into the CAA on May 9, 2008.

7. The proposed SEP consists of developing policies, procedures, and education materials to promote the use of low impact development (LID) in Fortuna to apply to residential and commercial development projects. LID is an approach to land development that works with nature to manage storm water so that it is a resource rather than a waste product. The Discharger proposes to construct a demonstration model on public land that exhibits LID techniques; produce an educational video on the benefits, options and techniques of LID; develop a Stormwater Quality Manual that is applicable to LID projects; and upgrade and adopt zoning codes and BMP standards that include LID techniques and procedures. The Discharger proposes to complete the SEP by September 31, 2010. The proposed SEP and time schedule are described in Attachment A, incorporated herein.
8. A duly noticed public hearing on this matter will be held before the Regional Water Board on July 23, 2009 at the Regional Water Quality Control Board Hearing Room, 5550 Skylane Boulevard, Suite A, Santa Rosa, California. The documents for the agenda item were provided to the Discharger and made available to the public prior to the hearing. The Discharger and the public were given the opportunity to testify and present evidence regarding the proposed settlement.
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 \$58,000. The Discharger has paid the sum of \$21,500 to the CAA. The Discharger shall spend at least the remaining sum of \$36,500 on the SEP described in Finding 7, above.

2. The Discharger shall submit progress reports and final reports describing the planning and construction of the project according to the following time schedule:

TASKS TO BE PERFORMED	MILESTONE AND DELIVERABLE DATES
1. Construct a demonstration model using LID techniques.	<u>Meetings</u> Prior to commencing work on each task, the City will meet with Water Board staff to discuss details, desired outcomes, and timelines for that task. The first meeting will be held in August 2009. Future meeting dates will be scheduled at the discretion of Water Board staff or City staff.
2. Produce an educational video on LID benefits, options and techniques.	
3. Produce a Stormwater Quality Manual that is applicable to development projects within the city of Fortuna with focus on LID benefits, options and techniques.	<u>Progress Reports</u> City staff will provide monthly progress reports to Water Board staff either via phone or email, by the 15 th of each month through the end of the project.
4. Adopt best management practices that include the use of LID as part of the new zoning code in Fortuna.	<u>Project Completion</u> SEP project to be completed by September 30, 2010 <u>Project Completion Report</u> Submit a Report of Completion including a detailed list of expenditures no later than December 31, 2010

3. If, given written justification from the Discharger, the Executive Officer determines that a delay in the Project 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 SEP will be completed.
4. The penalty amount of \$36,500 shall be permanently suspended if the Executive Officer determines that the Discharger has completed the SEP satisfactorily, as described in Finding 7 of this Order. 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 SEP 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 completing the Project or the SEP by December 31, 2010, will result in the Discharger being required to pay the suspended \$36,500 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 July 23, 2009.

Catherine Kuhlman
Executive Officer

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