

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

In the Matter of:	)	
	)	
City of Rio Dell	)	Complaint No. R1-2012-0077
Wastewater Treatment Plant	)	for
475 Hilltop Drive	)	Administrative Civil Liability
Rio Dell, CA 95562	)	
	)	
WDID No. 1B83134OHUM	)	
	)	
Attn: Jim Stretch	)	
City Manager	)	

This Administrative Civil Liability Complaint (Complaint) is under the authority of California Water Code (CWC) 13323 to the City of Rio Dell (hereinafter Discharger) to assess administrative civil liability for discharges from its Wastewater Treatment Plant (WWTP) and late submittal of monitoring reports, 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 (Water Code) Section 13385, subdivisions (h) and (i), and 13385.1. The Complaint alleges: one hundred twenty six (126) effluent limit violations subject to MMPs, and; four (4) mandatory minimum penalties resulting from late submissions of three (3) self-monitoring reports. The violations cited herein occurred during the period from June 16, 2006 through April 30, 2012 (hereinafter Complaint Period) and are specifically listed in Appendix A, which is incorporated into this Complaint by reference. During the Violation Period, the Discharger was subject to the waste discharge requirements established in Order No. R1-2006-0021, including subsequent modifications under Resolution R1-2011-0003, and R1-2011-0054 (National Pollution Discharge Elimination System [NPDES] Permit No. CA0022748).

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 is alleged to have violated provisions of law for which the Regional Water Board must impose mandatory minimum penalties under Water Code section 13385 subdivision (h) and (i). The Complaint proposes to assess \$366,000 in mandatory minimum penalties for the violations described herein.
2. A hearing concerning this Complaint will be held before the Regional Water Board within ninety (90) days of the date of issuance of this Complaint, unless, pursuant to Water Code 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 23, 2012 at 5550 Skylane Blvd, Suite 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_meetings/ not less than 10 days before the hearing date.

3. 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. 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.
4. 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.

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

5. Order No. R1-2006-0021, effective June 16, 2006, subsequently revised and effective on April 1, 2007, (Effluent Limitations and Discharge Specifications IV.A.1.a) includes, in part, the following effluent limitations:

Effluent Limitations – Discharge Point 001:

- a. Order No. R1-2006-0021 (Final Effluent Limitations for Discharge Point 001) states that the discharge of treated wastewater shall maintain compliance with the following effluent limitations for secondary treatment at Discharge Point 001, with compliance measured at Monitoring Location M-001.

Parameter	Units	Average Monthly	Average Weekly	Maximum Daily
Biochemical Oxygen Demand 5-day @ 20°C	mg/L	30	45	60
	lbs/day	225	340	450
Total Suspended Solids (TSS)	mg N/L	30	45	60
	lbs/day	225	340	450
Coliform Bacteria	MPN/100 ml	23	-	320

- b. Order No. R1-2006-0021 (Effluent Limitations and Discharge Specifications IV.A.1.c) states that the average monthly percent removal of BOD 5-day 20°C and TSS shall not be less than 85 percent.

- c. Order No. R1-2006-0021 (Interim Effluent Limitations Discharge Point 001, Direct Discharge to Eel River IV.A.2.a) states that interim priority pollutant effluent limitations shall be effective until May 18, 2010. Based on the current performance of the WWTF, during periods of discharge to the Eel River, representative samples of treated wastewater collected at Monitoring Location M-001 shall not contain constituents in excess of the following limits:

Parameter	Unit	Average Monthly	Maximum Daily
Copper	µg/L	---	27
Cyanide	µg/L	---	8.5 ₅
Dichlorobromomethane	µg/L	---	1.13 ₅

6. On January 27, 2011, the Board adopted Resolution Order No. R1-2011-0003 modifying the effluent limitations in Order No. R1-2006-0021 to remove effluent limitations for copper based on the development of a discharger-specific water effects ratio (WER). That Resolution made the following modifications to priority pollutant effluent limitations:

- a. Priority and non-priority toxic pollutant effluent limitations (Priority and non-priority toxic pollutant effluent limitations IV.A.1.f.) states that during periods of discharge to the Eel River, representative samples of treated wastewater from Discharge Point 001, with compliance measured at Monitoring Location M-001 shall not contain constituents in excess of the following limits:

Parameter	Unit	Average Monthly	Maximum Daily
Cyanide	µg/L	4.3	8.5
Dichlorobromomethane	µg/L	0.56	0.13
Methyl tertiary butyl ether (MtBE)	µg/L	13	26

7. Order No. R1-2011-0054, adopted September 29, 2011 and effective on December 1, 2011 (Effluent Limitations and Discharge Specifications IV.A.1.a), includes, in part, the following effluent limitations:

Parameter	Units	Average Monthly	Average Weekly	Maximum Daily
Biochemical Oxygen Demand 5-day @ 20°C	mg/L	30	45	60
	lbs/day	225	340	450
Total Suspended Solids (TSS)	mg N/L	30	45	60
	lbs/day	225	340	450
Chlorine, Total Residual	mg/L	0.01	--	0.02
Settleable Solids	mL/L	0.1	--	0.2
Total Coliform Organisms	MPN/100L	23	--	230

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

8. The Discharger's self-monitoring reports for the Complaint Period document one hundred twenty-six effluent limit exceedences, identified in Appendix A, Table A1, of which one hundred eighteen (118) are subject to mandatory minimum penalties. During the Complaint Period, the Discharger also submitted three self-monitoring reports after their due dates, resulting in four (4) mandatory minimum penalties, as shown in Appendix A, Table A2.

FACTUAL BASIS FOR THE ALLEGED VIOLATIONS

The following evidence supports the alleged violations described above:

9. The Discharger owns and operates the City of Rio Dell WWTP located at 475 Hilltop Drive, Rio Dell, California. The WWTP serves the City of Rio Dell located in Humboldt County in California. The WWTP discharges secondary treated municipal wastewater into the Eel River, a water of the United States.
10. On May 17, 2006, the Regional Water Board adopted Order No. R1-2006-0021 to regulate discharges from the Discharger's WWTP to the Eel River. Order No. R1-2006-0021 became effective on June 16, 2006. On February 8, 2007, Regional Water Board revised Order No. R1-2006-0021, effective April 1, 2007. On January 27, 2011 the Regional Water Board adopted Resolution Order No. R1-2011-0003 modifying Order No. R1-2006-0021, effective on January 27, 2011. On September 28, 2011 the Regional Board adopted Order No. R1-2011-0054, which became

effective on December 1, 2011. Order R1-2011-0054 rescinded Order No. R1-2006-0021 upon the effective date of the new Order, except for enforcement purposes.

11. In its monitoring reports submitted for the Complaint Period, the Discharger self-reported one hundred twenty six (126) exceedances of the effluent limitations set forth in Orders No. R1-2006-0021, R1-2011-0003 and R1-2011-0054. Of the 126 effluent violations, 118 are for Biochemical Oxygen Demand 5-day @ 20°C (BOD), Total Suspended Solids (TSS), Coliform Bacteria, and BOD and TSS percent removal, Group I pollutants; 2 are for Dichlorobromomethane and Total Recoverable Copper, Group II pollutants; and 10 are for Total Coliform Organisms and Coliform Bacteria, Over Effluent Violations (OEVs), subject to MMPs. These violations are shown in Appendix A, Table A1.
12. During the Complaint Period, the discharger failed to submit three self-monitoring reports (SMRs) by the due date. The October 2006 SMR was due on December 1, 2006 and was received on February 2, 2007, sixty-three days late. The November 2006 SMR was due on January 1, 2007 and was received on February 2, 2007, thirty-two days late. The April 2007 SMR was due on June 1, 2007 and was received on July 30, 2007, fifty-nine days late. A summary of these violations is included in Appendix A, Table A2.

WATER CODE PROVISIONS UPON WHICH LIABILITY IS BEING ASSESSED DUE TO NONCOMPLIANCE WITH APPLICABLE REQUIREMENTS

13. Water Code section 13385(h) requires the Regional Water Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation. Pursuant to Water Code section 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.
14. Water Code section 13385(i) requires the Regional Water 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.

15. Water Code section 13385.1 clarifies that a “serious violation” also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report. Dischargers that fail to file quarterly monitoring reports or annual monitoring reports on time are assessed one mandatory minimum penalty for each 30 day that the report is missing.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

16. The Assistant Executive Officer of the Regional Water Board proposes that mandatory minimum penalties be assessed against the Discharger in the amount of \$366,000 for the violations specifically identified in this Complaint, including \$354,000 for effluent limitation exceedances, and \$12,000 for late-reporting violations.
17. 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.)
18. 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.
19. 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