

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-R5-2013-0581

MANDATORY PENALTY
IN THE MATTER OF

TOWN OF DISCOVERY BAY
DISCOVERY BAY WASTEWATER TREATMENT PLANT
CONTRA COSTA COUNTY

This Order is issued to the Town of Discovery Bay Community Services District (hereafter Discharger) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL). This Order is based on finding that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2008 0179 and R5-2008-0179-01 (NPDES No. CA0078590).

The Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds the following:

1. The Town of Discovery Bay Community Services District owns the Discovery Bay Wastewater Treatment Plant (WWTP), which provides sewerage service to the Town of Discovery Bay in Contra Costa County. Treated domestic, commercial, and industrial wastewater is discharged to Old River, a water of the United States.
2. On 4 December 2008, effective 23 January 2009, the Central Valley Water Board issued WDRs Order R5-2008-0179, which contained new discharge requirements and rescinded Order R5-2003-0067, except for enforcement purposes. On 7 June 2012, the Board issued amended WDRs Order R5-2008-0179-01.
3. On 6 May 2011, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2011-0576 for mandatory minimum penalties for effluent violations (identified in Attachment A to ACLC R5-2011-0576) that occurred from 1 September 2009 through 28 February 2011. The Discharger paid the civil liability and the Board considers those effluent violations specifically listed in Attachment A to ACLC R5-2011-0576 resolved.
4. On 13 February 2013, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations (ROV) for effluent limitation violations from 1 March 2011 through 30 November 2012. On 6 March 2013, the Discharger agreed that the violations occurred and requested that the Board allow a portion of the penalties to be applied to a Supplemental Environmental Project (SEP). On 1 July 2013, the Discharger submitted a SEP, project schedule, and projected project costs (Attachment B). The final listing of violations has been extended by five months, which resulted in additional violations that were added and agreed to by the Discharger.
5. Water Code sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

Water Code section 13385(h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

Water Code section 13385 (h)(2) states:

For the purposes of this section, a “serious violation” means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements 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 or 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.

6. Water Code section 13385 subdivision (i)(1) states, in part:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person 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.

7. Water Code section 13385(l) allows a discharger to complete a Supplemental Environmental project (SEP) in lieu of paying the full amount of a mandatory penalty and states, in relevant part:

(1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or the regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).

(2) For the purposes of this section, a “supplemental environmental project” means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board that would not be undertaken in the absence of an enforcement action under this section.

8. WDRs Order R5-2008-0179 Effluent Limitations IV.A.1.e., states, in part:
 - e. Total Coliform Organisms. Effluent total coliform organisms shall not exceed:
 - i. 23 most probable number (MPN) per 100 mL, as a 7-day median;
9. WDRs Order R5-2008-0179 Effluent Limitations IV.A.1.g., states, in part:
 - g. The effluent electrical conductivity shall not exceed 2,100 µmhos/cm, as calendar annual average.
10. WDRs Order R5-2008-0179-01 Effluent Limitations IV.A.1.e., states, in part:
 - e. Total Coliform Organisms. Effluent total coliform organisms shall not exceed:
 - i. 23 most probable number (MPN) per 100 mL, as a 7-day median;
 - ii. 240 MPN/100 mL, more than once in any 30-day period.
11. WDRs Order R5-2008-0179-01 Effluent Limitations IV.A.1.g., states, in part:
 - g. The effluent electrical conductivity shall not exceed 2,100 µmhos/cm, as calendar annual average.
12. According to the Discharger's self-monitoring reports, the Discharger committed twenty three (23) non-serious violations of the above effluent limitations contained in Order R5-2008-0179 and R5-2008-0179-01 during the period beginning 1 March 2011 and ending 30 April 2013. Eighteen (18) of these non-serious violations are subject to mandatory penalties under Water Code section 13385 subdivision (i)(1) because these violations were preceded by three or more similar violations with in a 180-day period. The mandatory minimum penalty for these non-serious violations is **fifty four thousand dollars (\$54,000)**.
13. The total amount of the mandatory penalties assessed for the effluent violations is **fifty four thousand dollars (\$54,000)**. A detailed list of the effluent limitation violations subject to mandatory minimum penalties and resolved by way of this order is included in Attachment A, which is incorporated by reference and made part of this Order.
14. On 23 April 2009, the Central Valley Water Board delegated the authority to issue Administrative Civil Liability Orders, where the matter is not contested by the Discharger, to the Executive Officer, or to an Assistant Executive Officer when the Executive Officer is serving as head of the Board's Prosecution Team (Resolution R5-2009-0027). Pamela Creedon is serving as the head of the Board's Persecution Team for this matter, and therefore Assistant Executive Officer Kenneth Landau has the authority to issue this Order.
15. This Order constitutes a settlement of the violations herein mentioned. Notice of this settlement was published on the Central Valley Water Board's website, and was provided to all interested parties. The 30-day public notice and comment period mandated by Federal regulation (40 CFR 123.27) has expired. No comments were received.

16. Issuance of this Administrative Civil Liability Order to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308 and 15321(a)(2).

IT IS HEREBY ORDERED THAT:

1. The Town of Discovery Bay Community Services District, its agents, successors and assigns, shall be assessed Administrative Civil Liability in the amount of **fifty four thousand dollars (\$54,000)**.
2. The Discharger shall remit payment of **nineteen thousand and five hundred dollars (\$19,500)** of the imposed civil liability by check, which shall contain a reference to "ACL Order No. R5-2013-0581" and shall be made payable to the *State Water Pollution Cleanup and Abatement Account*. This payment must be received by the Central Valley Water Board by **10 October 2013**.
3. The remaining **thirty four thousand and five hundred dollars (\$34,500)** shall be suspended, pursuant to Water Code section 13385(l), pending completion of a Supplemental Environmental Project (SEP). The Discharger has chosen to complete the "Research on Removal of Trace Organic Compounds at Discovery Bay Pilot Wetlands". A summary of the SEP project description and deliverables that will be submitted to the Central Valley Water Board can be found in Attachment B of this Order.
4. The Discharger is ultimately responsible for ensuring that the work described in Attachment B is satisfactorily completed. In addition, the Discharger is responsible for submitting all technical reports and quarterly progress reports by the due dates listed in Attachment B. The Final Report shall also be submitted to the State Water Resources Control Board, Division of Finance.
5. If the final cost of the successfully completed SEP is less than the suspended amount of \$34,500, the Discharger must remit the difference to the *State Water Pollution Cleanup and Abatement Account* by **30 September 2014**, or within 30 days of project completion, whichever comes first.
6. As required by the State Water Board's *Policy on Supplemental Environmental Projects*, the Discharger shall reimburse the Central Valley Water Board for the full cost of staff oversight of the SEP. Staff oversight cost are not part of the direct cost of the SEP.
7. Whenever the Discharger or its agents or subcontractors, or any fiscal agent holding SEP funds publicize any element of a SEP project, it shall state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action against the Discharger.
8. The Assistant Executive Officer may extend the deadlines contained in this Order if the Discharger demonstrates that unforeseeable contingencies have created delays, provided

that the Discharger continues to undertake all appropriate measures to meet the deadlines. The Discharger shall make any deadline extension request in writing at least 30 days prior to the deadline.

9. The Discharger must obtain written approval from the Assistant Executive Officer for any significant departures from the project outlines and the time schedules shown in Attachment B. Failure to obtain written approval for any significant departures may result in the assessment of the full amount of the suspended mandatory minimum penalty.
10. If, in the judgment of the Assistant Executive Officer, the Discharger fails to complete the SEP in accordance with the due dates listed above (including any extensions approved by the Assistant Executive Officer), the Assistant Executive Officer may demand payment of the suspended liability that reflects the portion of the SEP that has not been satisfactorily completed. Payment must be made within 30 days of such a demand.
11. Should the Discharger fail to take any of the above actions, the Assistant Executive Officer may refer the matter to the State Attorney General for enforcement of the terms of this Order. The Board reserves the right to take any enforcement action authorized by law.
12. This Order is final upon signature.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.

Original Signed By

KENNETH D. LANDAU, Assistant Executive Officer

13 September 2013

DATE

Attachment A: Record of Violations
Attachment B: Supplemental Environmental Project

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2013-0581**

**Town of Discovery Bay Community Services District
Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 March 2011 – 30 April 2013) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2008-0179 and R5-2008-0179-01)

	<u>Date</u>	<u>Parameter</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
<i>Violations under NPDES Order R5-2008-0179</i>								
*	25-Jan-11	Total Coliform	MPN/100mL	23	30	7-Day Median	4	892609
*	26-Jan-11	Total Coliform	MPN/100mL	23	40	7-Day Median	4	892611
*	01-Feb-11	Total Coliform	MPN/100mL	23	35	7-Day Median	4	895468
1	16-Jun-11	Total Coliform	MPN/100mL	23	80	7-Day Median	4	905694
2	17-Jun-11	Total Coliform	MPN/100mL	23	49	7-Day Median	4	905690
3	21-Jun-11	Total Coliform	MPN/100mL	23	52	7-Day Median	4	905693
4	22-Jun-11	Total Coliform	MPN/100mL	23	30	7-Day Median	4	905692
5	24-Jun-11	Total Coliform	MPN/100mL	23	30	7-Day Median	4	905689
6	27-Jun-11	Total Coliform	MPN/100mL	23	27	7-Day Median	4	905691
7	31-Dec-11	Electrical Conductivity	µmhos/cm	2100	2167	Annual Average	3	918192
8	9-May-12	Total Coliform	MPN/100mL	23	30	7-Day Median	3	929002
<i>Violations under NPDES Order R5-2008-0179-01</i>								
9	31-Dec-12	Electrical Conductivity	µmhos/cm	2100	2173	Annual Average	3	943023
10	5-Feb-13	Total Coliform	MPN/100mL	23	32	7-Day Median	3	945800
11	6-Feb-13	Total Coliform	MPN/100mL	23	37	7-Day Median	3	945802
12	26-Feb-13	Total Coliform	MPN/100mL	23	39	7-Day Median	4	945804
13	27-Feb-13	Total Coliform	MPN/100mL	23	42	7-Day Median	4	945803
14	28-Feb-13	Total Coliform	MPN/100mL	23	30	7-Day Median	4	945801
15	1-Mar-13	Total Coliform	MPN/100mL	23	24	7-Day Median	4	947287
16	6-Mar-13	Total Coliform	MPN/100mL	23	30	7-Day Median	4	947285
17	12-Mar-13	Total Coliform	MPN/100mL	23	103	7-Day Median	4	947289
18	13-Mar-13	Total Coliform	MPN/100mL	23	115	7-Day Median	4	947288
19	19-Mar-13	Total Coliform	MPN/100mL	23	29	7-Day Median	4	947286
20	3-Apr-13	Total Coliform	MPN/100mL	23	815	7-Day Median	4	948864
21	5-Apr-13	Total Coliform	MPN/100mL	23	300	7-Day Median	4	948866
22	5-Apr-13	Total Coliform	MPN/100mL	240	300	More than once in any 30-day period	4	948862
23	5-Apr-13	Total Coliform	MPN/100mL	23	154	7-Day Median	4	948865

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2013-0581**

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violation falls within the first three violations in a 180-day period, thus is not subject to mandatory minimum penalties.
4. Non-serious violation subject to mandatory minimum penalties.

<u>VIOLATIONS AS OF:</u>	<u>4/30/13</u>
Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Violations Not Subject to MMPs:	5
Non-serious Violations Subject to MMPs:	18
<u>Total Violations Subject to MMPs:</u>	<u>18</u>

Mandatory Minimum Penalty = (18 Non-Serious Violations) x \$3,000 = \$54,000

* Supporting violations addressed in ACLC R5-2011-0576

**ATTACHMENT B
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2013-0581**

Town of Discovery Bay: SEP Project Description

Project Title: Research on Removal of Trace Organic Compounds at Discovery Bay Pilot Wetlands.

Geographic Area of Interest: Old River south of the Highway 4 Bridge, Contra Costa County.

Name of Responsible Entity: Town of Discovery Bay Community Services District (Discharger), supported by U.C. Berkeley for the research.

Estimated Cost of Project Completion: \$34,500 for graduate student to continue research. The SEP will contribute all \$34,500.

Contact Information:

Virgil Koehne
Town of Discovery Bay Community
Services District
1800 Willow Lake Road
Discovery Bay, CA 94505
(925) 634-1131
vkoehne@todb.ca.gov

Dr. David Sedlak, Professor
U.C. Berkeley
657 Davis Hall
University of California, Berkeley
Berkeley, CA 94720
(510) 643-0256
sedlak@berkeley.edu

Project Description:

In 2007, the Town of Discovery Bay Community Services District (District) constructed a 40,000 square foot pilot wetlands on District property to do research on the feasibility of using wetlands to treat the wastewater discharge into Old River for metals removal. Dr. Sedlak of U.C. Berkeley led that research effort. Since then, the District has kept the wetlands in service and Dr. Sedlak, with the assistance of graduate students, has conducted additional research funded by grants from other agencies.

The proposed project will support a graduate student to conduct research on the use of constructed wetlands to remove trace organic contaminants, including pharmaceuticals and personal care products, from municipal wastewater effluent. The graduate student will perform field measurements to assess the removal of different compounds in the pilot-scale wetland system at the District as well as laboratory experiments at UC Berkeley designed to identify reaction mechanisms and to identify ways of improving the performance of constructed wetland systems. In addition, the graduate student shall remain within good academic standing for the duration of the project.

The cost is for supporting a graduate student for nine months, including tuition and fees.

**ATTACHMENT B
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2013-0581**

Water Body, Beneficial Use and/or Pollutant Addressed by this Project:

The specific water body affected is Old River in Contra Costa County. The SEP will benefit the entire wastewater community as a whole as it pertains to the treatment of what are currently untreated contaminants of concern in most municipal wastewater systems.

Project Schedule, Budget, Deliverables:

The Discharger will be responsible for completing and submitting the below deliverables:

1. Memorandum of Understanding - The Discharger and UC Berkeley shall enter into a Memorandum of Understanding outlining the use of the funding as described in this Order.

Deliverable: Signed Memorandum of Understanding
Due Date: 30 September 2013

2. Quarterly Report #1 / Issue Funds – The first quarterly report shall include: documentation that the Discharger issued a check to UC Berkeley in the amount of \$34,500 for the completion of the SEP; identification of the graduate student, registered for independent study under Professor Sedlak’s supervision, to assist with this SEP; a summary of project expenditures; and a description of the research completed to date.

Estimated Costs: \$11,500
Deliverable: Written report documenting the above items.
Due Date: 1 November 2013

3. Quarterly Reports #2 and 3 – The second and third quarterly reports shall document the research that has been completed to date and summarize project expenditures.

Estimated Costs: \$23,000
Deliverable: Written report documenting the above items
Due Date: 1 February 2014 and 1 May 2014

4. Final Report – The Discharger will submit a final report which includes a summary of the research; copies of any journal articles or presentations related to the research; a summary the project expenditures; and certification that all applicable environmental laws and regulations have been followed during the implementation of the project. The accounting must clearly show whether the final cost of the successfully completed SEP is less than, equal to, or more than the suspended liability of \$34,500. This serves as the final report required under the SEP and the following statement must be included above the signature line of the report: “I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.”

Deliverable: Written report documenting the above items.
Due Date: 1 August 2014