California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2009-0101

For

Violation of Waste Discharge Requirements
Order No. R1-2008-0002 (NPDES No. CA0024333)

In the Matter of
University of California, Davis
Bodega Marine Laboratory
WDID No. 1B84035OSON

Sonoma County

This Complaint, to assess Administrative Civil Liability for penalties pursuant to Water Code section 13385, is issued to the University of California, Davis (hereinafter Discharger) for violations of Waste Discharge Requirements (WDRs) Order No. R1-2008-0002 (NPDES Permit No. CA0024333). Mandatory minimum penalties are assessed for violations of effluent limitations that occurred during the period from March 1, 2008 through March 31, 2009.

The Assistant Executive Officer of the Regional Water Quality Control Board, North Coast Region (Regional Water Board), finds the following:

1. The Discharger owns and operates the Bodega Marine Laboratory. The Bodega Marine Laboratory discharges waste seawater to the Pacific Ocean near Horseshoe Cove (Discharge Point 001). The Bodega Marine Laboratory also discharges waste freshwater through a separate system, which is kept isolated from the seawater system, to a groundwater recharge area in the sand dunes adjacent to the laboratory (Discharge Point 002).

2. Since April 25, 2008, the Discharger's Bodega Marine Laboratory has been regulated by WDRs Order No. R1-2008-0002, which serves as a National Pollutant Discharge Elimination System (NPDES) Permit under the Federal Clean Water Act (NPDES No. CA0024333).

3. This Complaint covers violations of effluent limitations for Discharge Serial No. 001 and 002 that occurred from March 1, 2008 through March 31, 2009. Details of effluent limitation violations subject to mandatory minimum penalties are summarized in Finding 11. Details of effluent limitations subject to discretionary penalties are summarized in Finding 12. The effluent limitations violations are subject to the mandatory minimum penalties provision contained in Water Code section 13385, subdivisions (h) and (i). Violations of discretionary effluent limitations are subject to penalties contained in Water Code section 13350, subdivisions (e).

4. Among the provisions in the WDRs are requirements to implement a discharge monitoring program and to prepare and submit monthly and annual NPDES self-monitoring reports to the Regional Water Board pursuant to Water Code section

13383. These reports are designed to ensure compliance with effluent limitations contained in the WDRs.

5. Water Code section 13385, subdivision (a) provides for the imposition of civil liability by the Regional Water Board. Section 13385, subdivision (c) provides the maximum amount of civil liability that may be imposed by the Regional Water Board. The amount may be up to $10,000 for each day in which the violation occurs, plus up to $10 per gallon of waste discharge in excess of 1,000 gallons that is not susceptible to cleanup or is not cleaned up.

6. Water Code section 13385, subdivision (h)(1) establishes a mandatory minimum penalty of three thousand dollars ($3,000) for each serious violation of an NPDES permit effluent limitation. Water Code section 13385, subdivision (h)(2) states that a serious violation occurs if the discharge from a facility regulated by an NPDES permit exceeds the effluent limitations 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, or 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.

7. Water Code 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, not counting the first three violations, if the discharger 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.

   Violations under section 13385, subdivision (i)(1) of the Water Code are referred to as chronic violations in this Complaint.

8. On February 19, 2002, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2002-0040 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on July 30, 2002. The Enforcement Policy addresses, among other enforcement subjects, issues related to assessing mandatory minimum penalties.

9. For the purpose of determining a discharger's compliance with effluent limitations in its WDRs, the 30-day average is equivalent to the monthly average, which is defined as the arithmetic mean of all daily determinations made during a calendar month. Where less than daily sampling is required, the average shall be determined by the sum of all the measured daily determinations divided by the number of days during the calendar month when the measurements were made. If only one sample is collected during that period of time, the value of the single sample shall constitute the monthly average.

Order No. R1-2008-0002 includes the following effluent limitations:

IV. EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

A. 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 attached Monitoring and Reporting Program (MRP).

Table 7. Effluent Limitations – Discharge Point 001

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum	6-month Median
Total Residual Chlorine	mg/L	Non Detect[b]				

[b] As defined in the Monitoring and Reporting Program

B. Land Discharge Specifications – Discharge Point 002

1. Water, of freshwater origin, to be discharged from the Salmon Research Facility, shall be discharged to a groundwater recharge area in the sand dunes adjacent to the laboratory, and not to adjacent marsh / wetlands or to the Ocean.

2. The discharger shall maintain compliance with the following effluent limitations at Discharge Point 002, with compliance measured at Monitoring Location EFF-002 as described in the attached Monitoring and Reporting Program (MRP).

Table 8. Effluent Limitations – Discharge Point 002

Parameter	Units	Effluent Limitations	
		Average Monthly	Maximum Daily
Settleable Solids	mL/L-hr	0.1 [a]	0.2 [a]

[a] Limitations reflect a net increase above influent concentrations.

10. Effluent Limitation Violations

According to monitoring reports submitted by the Discharger for the period from March 1, 2008 through March 31, 2009, the Discharger exceeded effluent limitations five times while discharging through Discharge Point 001. All five of the exceedances are serious effluent violations, as described in Water Code section 13385, subdivisions (h)(1) and (h)(2). The mandatory minimum penalty amount for all violations is $15,000 as shown in the following table:

Table 1: Effluent Limitation Exceedances
March 1, 2008 through March 31, 2009

Date	Parameter	Units	Reported Value	Permit Limit	Violation Type	Mandatory Penalty
5/27/08	Total Chlorine Residual	mg/L	0.740	Non-detect[1]	Serious	$3,000
7/31/08	Total Chlorine Residual	mg/L	0.130	Non-detect	Serious	$3,000
9/2/08	Total Chlorine Residual	mg/L	0.95	Non-detect	Serious	$3,000
12/6/08	Total Chlorine Residual	mg/L	0.2	Non-detect	Serious	$3,000
1/26/09	Total Chlorine Residual	mg/L	0.199	Non-detect	Serious	$3,000
					TOTAL	$15,000

11. According to monitoring reports submitted by the Discharger for the period between March 1, 2008 and March 31, 2009, the Discharger exceeded effluent limitations subject to discretionary penalties once while discharging effluent to discharge point 002. The maximum potential penalty amount for these violations is $5,000 as shown in the following table:

Table 2: Violations of Effluent Limitations
While Discharging to 002
(Subject to Discretionary Penalties)
March 1, 2008 through March 31, 2009

Date	Parameter	Reported Value	Permit Limit	Units	Maximum Penalty
1/31/09	Monthly Settleable Solids	0.2	0.1	mL/L	$5,000
				Total	$5,000

12. In considering the potential liability for the one discretionary violation listed above, the Regional Water Board considered the factors set forth in Water Code section 13350(f).

    i. Nature, Circumstances, Extent and Gravity of the Violation

    Settleable solids are defined as those solids that will settle to the bottom of an Imhoff cone in a 60-minute period. Used most commonly in wastewater treatment applications, the settleable solids test, expressed as mL/L, is an approximate measure of the quantity of sludge that will be removed by primary

[1] The method detection limit for Total Chlorine Residual is 0.1 mg/L.

sedimentation. The test is frequently used in discharge permits as a measure of performance for the removal of particulates in effluent samples.

Order No. R1-2008-0002 contains an effluent limitation for settleable solids of 0.1 mL/L as an average of monthly results and 0.2 mL/L as a maximum of all daily results for discharges of freshwater to a groundwater recharge area (Discharge Point 002). These limitations represent an allowable increase in the concentration of settleable solids above the concentration in the influent groundwater. Influent and effluent settleable solids are measured at least once a month. The settleable solids violation, a concentration of 0.2 mL/L, measured on January 13, 2009, exceeded the average monthly limitation of 0.1 mL/L based on a single sample collected over the 31-day monitoring period. The reported daily result was otherwise in compliance with the daily maximum limitation. Because Discharge Point 002 is an authorized discharge to a ground water recharge area, the water quality impact of the settleable solids violation is negligible. Consequently, the extent and gravity of this violation are very minor.

ii. Whether the Discharge is Susceptible to Cleanup or Abatement

The discharge associated with the reported violation was not susceptible to cleanup or abatement.

iii. The Degree of Toxicity of the Discharge

Settleable solids discharged from the Bodega Marine Laboratory primarily consist of biological material. When discharged to water, these solids settle to the bottom and become sediment. Because of the biological composition, the solids undergo continued degradation resulting in an increased sediment oxygen demand, which in turn depletes dissolved oxygen concentrations in the water column. The settleable solid violation on January 31, 2009 occurred during discharge to land and not to Waters of the State. Therefore, the environmental impact is not significant.

iv. The Ability to Pay, and Continue Business

Given the current uncertainty with the State budget, it is unclear how the proposed penalty will impact the Discharger's budget or its ability to continue business. The Discharger has not provided any information at this time regarding its ability or inability to pay.

v. Any Voluntary Cleanup Efforts Undertaken

As noted above, the discharge associated with this violation was not susceptible to cleanup or abatement; cleanup efforts would not have been effective.

vi. Any Prior History of Violations, the Degree of Culpability

The Discharger has been in consistent compliance with the effluent limitations for settleable solids, having exceeded the average monthly effluent limitation at

Discharge Point 002 only three times from January 2000 through March 2009 (97% compliance).

vii. Economic Benefit or Savings

There are no tangible economic benefits or savings from this violation.

viii. Other Matters that Justice May Require

There are no additional matters to consider as justice requires.

After consideration of these factors, staff recommends that the Board not assess a penalty for the one discretionary violation.

THE UNIVERSITY OF CALIFORNIA, DAVIS IS HEREBY GIVEN NOTICE THAT:

1. Based on a review of the above facts and legal requirements, the Assistant Executive Officer proposes that the Discharger be assessed mandatory minimum penalties in the amount of $15,000 for effluent violations that occurred from March 1, 2008 through March 31, 2009. No assessment of Administrative Civil Liability is recommended for the discretionary violation.

2. A hearing will be conducted on this Complaint by the Regional Water Board on December 10**,** 2009, unless the Discharger waives the right to a hearing by signing and returning the waiver form attached to this Complaint within thirty days of the date of this Complaint. By doing so, the Discharger agrees to pay the total assessed penalty of $15,000 in full to the State Water Pollution Cleanup and Abatement Account (CAA) by October 26, 2009.

3. If the Discharger waives the hearing and pays the liability, the resulting settlement may become effective on October 27, 2009. If there are significant public comments, the Assistant Executive Officer may withdraw the Complaint, reissue it as appropriate, or take other appropriate action.

4. If a hearing is held, the Regional Water Board may impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability; or refer the matter to the Attorney General to have a Superior Court consider enforcement.

5. 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, including NPDES permit violations. Accordingly, interested persons will be given thirty days to comment on any proposed settlement of this Complaint.

6. Notwithstanding the issuance of this Complaint, the Regional Water Board shall retain the authority to assess additional penalties for violations of the Discharger's WDRs.

7. The issuance of this Complaint is an enforcement action to protect the environment, and is therefore exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321, subsection (a) (2).

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Luis G. Rivera
Assistant Executive Officer

September 24, 2009

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