

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Order No. R1-2010-0040

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

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), has received from the Bodega Marine Laboratory (hereinafter Discharger), a waiver of the right to a public hearing in the matter of civil penalties issued pursuant to CWC section 13385, subdivisions (a), (h) and (i) for Administrative Civil Liability Complaint No. R1-2009-0101 (the Complaint). The proposed civil penalties issued pursuant to subdivisions (h) and (i) are for discharges of waste seawater effluent during the period from March 1, 2008 through March 31, 2009 that violated effluent limitations contained in the Discharger's waste discharge requirements (WDRs). The Regional Water Board finds the following:

1. The Discharger owns and operates the Bodega Marine Laboratory, 2099 Westside Road, Bodega Bay, Sonoma County, California. 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). On April 25, 2008, the Regional Water Board issued WDR Order No. R1-2008-0002 (WDR Order), that serves as a National Pollution Discharge Elimination System (NPDES) Permit under the federal Clean Water Act (NPDES No. CA0024333).
2. California Water Code (CWC) 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 violation of effluent limits. CWC section 13385, subdivision (l) (1) provides that a portion of the mandatory minimum penalty imposed under subdivisions (h) and (i) may be expended on a supplemental environmental project (SEP).
3. According to monitoring reports submitted by the Discharger for the period from March 1, 2008 through March 31, 2009, the Discharger exceeded effluent limitations six times. Of those six exceedances, five are subject to mandatory minimum penalty provisions and one to discretionary penalties. The mandatory minimum penalty for the five violations subject to sections 13385(h) and (i) is

\$15,000. In considering the potential liability for the one discretionary violation, the Regional Water Board considered the factors set forth in CWC section 13385(e) and is not assessing a penalty for the one discretionary violation. The Regional Water Board's consideration of these factors is based upon information obtained by Regional Water Board staff in investigating the allegations in the Complaint or otherwise provided to the Regional Water Board.

4. On September 24, 2009, the Assistant Executive Officer issued the Complaint assessing a civil liability penalty of \$15,000 for effluent violations of the WDR Order. On December 2, 2009, the Discharger waived its right to a public hearing within 90 days and requested to pay the sum of \$5,000 to the Cleanup and Abatement Account (CAA) and to apply the remaining balance of \$10,000 towards a Supplemental Environmental Project (SEP). The Discharger paid \$5,000 to the State Water Resources Control Board (State Water Board) CAA on December 2, 2009. On January 29, 2010, the Discharger submitted the final SEP proposal, approved by the Prosecution Team, which will cost the Discharger more than \$10,000.
5. The proposed SEP consists of upgrading and refurbishing the tidepool mesocosm display. The University of California, Davis, Bodega Marine Laboratory is a research and educational facility. Approximately 10,000 visitors tour the facility each year. Tour highlights include the research wetlabs, the aquaria with native invertebrates and fish, and the tidepool mesocosm display or tidepool touch tank, a replica of a local intertidal pool where visitors can view and touch native species. Due to lack of funding, the Discharger has taken the tidepool touch tank off line. To reopen this display to the public, the Discharger will need to perform extensive work on the tank, including repairing/replacing existing equipment on the system. The Discharger proposes to complete the SEP by September 30, 2010, at a total cost of \$10,802. Once the tank is operational, the Discharger will commit to seeking outside funding to support the display. Attachment A, incorporated herein, includes a description of the proposed SEP and a time schedule for implementation.

a. Definitions for the SEP:

- i. "Cleanup and Abatement Account" – the State Water Pollution Cleanup and Abatement Account.
- ii. "Designated Regional Water Board Representative" – the representative from the Regional Water Quality Control Board responsible for oversight of the supplemental environmental project (SEP).
- iii. "Enforcement Coordinator" - the person on the Regional Water Quality Control Board staff who is responsible for enforcement coordination.
- iv. "Milestone Requirement" – a requirement with an established time schedule for meeting/ascertaining certain identified measurements of completed work. Upon the timely and successful completion of each milestone

- requirement, an amount of liability will be permanently suspended or excused as set forth in the Description of the SEP below.
- v. "SEP Completion Date" – the date on which the SEP will be completed in its entirety.
 - b. As a material consideration for the Regional Water Board's acceptance of this Order, the Discharger represents that it will utilize the funds outlined in Attachment A, page 4, to implement the SEP in accordance with its budget and timeline. The Discharger understands that its promise to implement the SEP, in its entirety and in accordance with the schedule for implementation, is a material condition of this settlement of liability between the Discharger and the Prosecution Team.
 - c. The Discharger has represented that: 1) it will spend the SEP amount as described in this Order; 2) it will provide a certified, written report to the Regional Water Board consistent with the terms of this Order detailing the implementation of the SEP, and 3) within 30 days of the completion of the SEP, it will provide written certification, under penalty of perjury, that the Discharger followed all applicable environmental laws and regulations in implementing the SEP. The Discharger agrees that the Regional Water Board has the right to require an audit of the funds expended by it to implement the SEP.
 - d. Whenever the Discharger or its agents or subcontractors publicizes one or more elements of the SEP, they shall state in a **prominent manner** that the project is being undertaken as part of the settlement of an enforcement action by the Regional Water Board against the Discharger.
 - e. On or before September 30, 2010, the Discharger shall submit a report, under penalty of perjury under the laws of the state, stating that the SEP has been completed in accordance with the terms of this Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the SEP and the costs incurred by the Discharger.
 - f. On or before November 30, 2010, the Discharger shall submit a certified statement by a responsible official representing the Discharger documenting the expenditures by the Discharger during the completion period for the SEP. The expenditures may be external payments to outside vendors or contractors implementing the SEP. In making such certification, the official may rely upon normal University project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The Discharger shall provide any additional information requested by the Regional Water Board staff that is reasonably necessary to verify the Discharger's SEP expenditures. The

certification need not address any costs incurred by the Regional Water Board for oversight.

- g. In addition to the certification in Paragraph 5.f., upon completion of the SEP and at the discretion of the Designated Regional Water Board Representative, the Discharger, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Regional Water Board staff providing such party(ies)'s professional opinion that the Discharger has expended money in the amounts claimed by the Discharger. Such information shall be provided to the Designated Regional Water Board Representative within three (3) months of the completion of the Discharger's SEP obligations. The audit need not address any costs incurred by the Regional Water Board for oversight.
- h. Upon the Discharger's satisfaction of its obligations under this Order, the completion of the SEP and any audits, the Designated Regional Water Board Representative, with notice to the regional Enforcement Coordinator, shall request that the Regional Water Board issue a "Satisfaction of Order." The issuance of the Satisfaction of Order shall terminate any further obligations of the Discharger under this Order.
- i. In the event that Discharger is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that it has spent the entire SEP Amount for the completed SEP, Discharger shall either 1) undertake an additional SEP acceptable to the Regional Water Board; or 2) pay the difference between the Suspended Administrative Civil Liability and the amount the Discharger can demonstrate it actually spent on the SEP, as an administrative civil liability. If the Discharger undertakes an additional SEP, it shall reimburse the Regional Water Board for its costs of evaluating, memorializing, and overseeing such work. Such costs are in addition to the SEP Amount. The Discharger shall advise the Designated Regional Water Board Representative within thirty days of a request, whether it elects to propose an additional SEP or pay the additional administrative civil liability within 15 days of its response. A new SEP proposal shall be made within 60 days of its response. If the new SEP proposal is not accepted, the Discharger shall pay its additional administrative liability within 30 days of its receipt of the notice that the SEP proposal is not accepted.
- j. If the SEP is not fully implemented within the SEP Completion Period required by this Order, the Designated Regional Water Board Representative shall issue a Notice of Violation. As a consequence, the Discharger shall be liable to pay the entire Suspended Liability or some portion thereof, or require the remaining implementation of the SEP.

6. 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).
7. 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 CWC 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.

IT IS HEREBY ORDERED, pursuant to CWC section 13385, that:

1. The Discharger was assessed a total civil liability of \$15,000. The Discharger has paid the sum of \$5,000 to the CAA. The Discharger shall spend at least the remaining sum of \$10,000 on the SEP described in Attachment A. The \$10,000 shall remain suspended pending completion of the SEP. The SEP outlined in Attachment A shall be incorporated into the Order and satisfies the State Water Board's Enforcement Policy.
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. Clean and evaluate the condition of the equipment	<u>Progress Reports</u> Once a month a brief report will be sent to the Regional Water Board identifying work in progress, work completed, and any problems associated with the project.
2. Replace and/or restore equipment	
3. Collect organisms to populate the tank	<u>Project Completion</u>
4. Fill and return organisms to tank	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 November 30, 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 \$10,000 shall be permanently suspended if the Executive Officer determines that the Discharger has completed the SEP satisfactorily, as described in Attachment A 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. The Discharger shall provide evidence in the Project Completion Report to the Regional Water Board of payment in full supporting the SEP by November 30, 2010. Failure to pay the full amount by November 30, 2010, will result in the Discharger being required to pay the suspended \$10,000 penalty immediately due and payable to the Regional Water Board for deposit in the CAA.
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.
7. Fulfillment of the Discharger's obligations under the Order constitutes full and final satisfaction of any and all liability for each claim in the Complaint in accordance with the terms of the Order.

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 June 10, 2010.

Catherine Kuhlman
Executive Officer