

ATTACHMENT A

ACL Complaint No. R1-2012- 0017
Specific Factors Considered – Civil Liability
Dieter Rief, J. and R. Living Trust
Well Drilling Wastewater Discharge (Complaint)

Violation: One day of discharge to waters of the State and United States, without coverage under a NPDES Permit and/or filing a report of waste discharge pursuant to California Water Code (CWC) sections 13260 and 13376.

Maximum Penalty: \$10,000

Specific Factors Considered: Each factor of the Enforcement Policy and its corresponding score for the violation are presented below:

Calculation of Penalty

Step 1. Potential for Harm for Discharge Violations

The potential for harm to the environment associated with the discharge of warm, very turbid well development water of unknown composition into a watercourse tributary to Matanzas Creek, tributary to Santa Rosa Creek. The potential for harm is determined by the sum of the factors for:

- a) *Harm or Potential Harm to Beneficial Uses: 4 - Above Moderate*

Discussion: Santa Rosa Creek and its tributaries are listed as impaired due to sediment, temperature, and indicator bacteria.

- b) *Physical, Chemical, Biological or Thermal Characteristics: 3 – Above Moderate Risk*

Discussion: Staff observed that water from the well was “extremely turbid,” “full of clay materials” (reported earlier in the staff inspection report as being “clay that looked very similar to bentonite, a grey clay material that is often used as drilling mud when drilling wells”), and “warm and steaming.” The combination of extreme turbidity, apparently elevated temperature, and unknown chemical composition of both the well water itself and the apparently entrained drilling mud comprises at least an above moderate risk.

- c) *Susceptibility to Cleanup: 1*

Discussion: Less than 50% of the discharge was susceptible to abatement, because it had already entered flowing surface waters and begun washing downstream.

Thus, the Potential for Harm factor is: $(4+3+1) = 8$.

Step 2. Assessment for Discharge Violations

The exact volume of well development wastewater discharged to surface water is not known. Accordingly, liability is proposed for one day of discharge only.

a) *Deviation from Requirement: Major*

Discussion: The Discharger disregarded the requirement to obtain permit coverage or to file a report of waste discharge prior to discharging to waters of the United States.

b) *Per Day Factor: 0.6* (Table 2, pg 15 of the Enforcement Policy)

c) *Days of Violations:* One (1) day. The complaint leading to the staff inspection on December 3, 2010 alleged that the discharge had started the day before; however, staff did not observe and confirm the discharge until December 3, 2010, the date of receiving the complaint. As noted in staff's inspection report, by the end of the December 3 inspection, staff observed and reported that the turbidity appeared to be abating in the watercourse downstream of the alleged discharge.

d) *Initial Liability Amount: \$6,000* (Number of days (1) X Maximum penalty (\$10,000) X Per Day Factor (0.6))

Step 3. Per Day Assessment for Non-Discharge Violations

This step is not applicable because the alleged violation is a discharge violation.

Step 4. Adjustment Factors

a) *Culpability: 0.75*

Discussion: The Discharger was given the score of 0.75, which reduces the fine, because it did not appear that the Discharger and/or its agents had intended to direct the wastewater to the watercourse, nor that the Discharger and/or its agents were intentionally disregarding the permitting requirements. .

b) *Cleanup and Cooperation: 0.8*

Discussion: The Discharger was given the score of 0.8, which reduces the fine, because the well drillers were apparently taking steps to direct flows away from the watercourse at the time that staff arrived at the site, and upon discussion with staff the well drillers took further steps to stop the discharge and to identify more suitable locations and methods of disposal.

c) *History of Violations:* 1

Discussion: The Discharger was given the neutral score of 1, which neither increases nor decreases the fine, because the Regional Water Board Prosecution Team is not aware that the Discharger has a history of violations.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

- a) *Total Base Liability Amount:* **\$3,600** (Initial Liability (\$6,000) x Adjustments (0.75)(0.8)(1).)

Step 6. Ability to Pay and Continue in Business

- a) *Adjusted Base Liability Amount:* **\$3,600**
- b) *Discussion:* Based on property ownership information researched by staff, it appears that the Discharger owns at least two properties in Sonoma County and has an interest in a property in Nevada. The value of these properties exceeds the proposed civil liability and thus staff believe the Discharger has the ability to pay.

Step 7. Other Factors as Justice May Require

- a) *Adjusted Combined Total Base Liability Amount:* $\$3,600 + \$2,000$ (Staff Costs) = **\$5,600**
- b) *Discussion:* The State and Regional Water Board has incurred at least \$2,000.00 in staff costs associated with the investigation and enforcement of the violations alleged herein. In accordance with the Enforcement Policy, this amount is added to the Combined Total Base Liability Amount.

Step 8. Economic Benefit

- a) *Estimated Economic Benefit:* **\$1,500.00-\$30,000.00**

Discussion: The economic benefit associated with this violation is the cost of preventing the discharge, by such means as capturing and infiltrating the wastewater on the site, filing a report of waste discharge for and taking the steps necessary to comply with Waste Discharge Requirements and/or a NPDES permit covering the discharge of waste to surface waters, or containing and hauling the waste water to an offsite location for appropriate, lawful disposal. Staff have investigated the cost of such scenarios, and have estimated that the cost of compliance could range from approximately \$1,500 to \$30,000, depending on the volume and characteristics of the wastewater, the method of waste containment, treatment, handling, and disposal selected by the Discharger. In absence of

specific information about the total volume of wastewater discharged and the exact characteristics of the wastewater, it is not possible to identify the appropriate level of containment and treatment that this wastewater would have needed, nor, thus, the actual economic benefit realized by the discharger. While recognizing that the economic benefit realized may have been higher, based on the available information, staff believe it is appropriate to accept the lower end of the estimated range, \$1,500.00, as the economic benefit received.

Step 9. Maximum and Minimum Liability Amounts

a) *Minimum Liability Amount:*

Discussion: Water Code Section 13385(e) states that “[a]t a minimum, liability shall be assessed at a level that recovers the economic benefits ... derived from the acts that constitute the violation.” As discussed above, the Regional Water Board Prosecution Team estimated the Discharger’s economic benefit to be at least \$1,500.00. The Enforcement Policy requires that the liability amount be at least 10 percent higher than the economic benefit derived from the violation.

b) *Maximum Liability Amount: **\$10,000***

Discussion: The maximum administrative liability amount allowed by Water Code Section 13385(c) is the sum of (1) ten thousand dollars (\$10,000) for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

Step 10. Final Liability Amount

Based on the methodology above, the Prosecution Team proposes that the Regional Water Board assess the Discharger a penalty of \$5,600.