



Linda S. Adams  
Secretary for  
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# State Water Resources Control Board

## Office of Enforcement

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Arnold Schwarzenegger  
Governor

TO: Charles R. Hoppin, Chairperson  
State Water Resources Control Board

FROM: Reed Sato, Director *Reed*  
Office of Enforcement

DATE: April 8, 2010

SUBJECT: ACL Order No. R7-2010-0025 – Recommendation for SWRCB Review on  
Its Own Motion

**Recommendation:** The Office of Enforcement recommends that the State Water Resources Control Board (State Water Board) review the above-referenced order on its own motion. The order in question is attached hereto as Attachment A. The order was signed on March 18, 2010 but the Office of Enforcement did not receive a copy until April 7, 2010.

**Background:** This order was issued pursuant to Water Code section 13385. Based on the findings set forth in the order, the assessed administrative civil liability is not in conformance with law. While the amount at issue is not great, the failure of the Regional Water Quality Control Board, Colorado River Basin (Regional Board), to follow the law should not be accepted by the State Water Board. The matter should be remanded back to Regional Board to make an administrative civil liability assessment consistent with its factual findings.

The assessed liability in the order is \$1,500. However, the order contains express findings (Paragraph 16.h.) that the discharger obtained an economic benefit of \$5,289.00 from the violations.

**Basis for Recommendation:** Water Code section 13385(e) requires that any administrative civil liability be assessed at a level which recovers, at a minimum, the economic benefit derived by the discharger from the acts that constitute the violation. Therefore, on its face, the order's assessment of an administrative civil liability of \$1,500 can not be supported in light of the finding of economic benefit in the amount of \$5,289.

Moreover, not only does the order fail to comply with the requirements of Water Code section 13385(e), it contains no rationale or explanation for the assessment of \$1,500. The only analysis or liability evaluation that is referenced in the order is the analysis

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done by the Assistant Executive Officer which recommended the assessment of \$16,000. We believe that the public is entitled to a more complete explanation of the reasoning behind the Regional Board's liability assessment. As it currently stands, the penalty amount can be reasonably characterized as arbitrary.

If you have any questions regarding the recommendation, please contact me at (916) 341-5889.

cc: Robert Perdue, Executive Officer, Colorado River Basin Regional Board  
Tom Howard, Chief Deputy Director, State Water Resources Control Board  
Michael A.M. Lauffer, Chief Counsel, SWRCB  
Tom Vandenberg, SWRCB, Office of Chief Counsel  
Mayumi Okamoto, SWRCB, Office of Enforcement  
Ralph Beatty, Laguna Asset Management

Attachment A

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BASIN REGION**

**ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R7-2010-0025  
IN THE MATTER OF  
COUNTRY LIFE MOBILE HOME AND RV PARK (MHRVP)  
WASTEWATER TREATMENT FACILITY  
El Centro – Imperial County**

This Order to assess Administrative Civil Liability (ACL), pursuant to California Water Code (CWC) Section 13385, is issued to BFD Asset Partners, LLC and Country Life Mobile Home and RV Park (MHRVP) Asset Partners, LP (Owner), and Munoz Wastewater Monitoring Services (Operator) (hereinafter collectively referred to as Discharger), based on a finding of violations of Waste Discharge Requirements (WDRs) Order No. R7-2008-0011, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0104264.

The Colorado River Basin Regional Water Quality Control Board (Regional Board) finds the following:

1. BFD Asset Partners, LLC and Country Life Mobile Home and RV Park (MHRVP) Asset Partners, LP owns Country Life MHRVP and Wastewater Treatment Facility (WWTF), located at 375 East Ross Road, El Centro, CA 92243. Plant operation is under contract with Hector Munoz, Wastewater Monitoring Services. The treatment facility has a design capacity of 0.150 million gallons-per-day (MGD), and consists of an extended aeration package plant.
2. Wastewater discharged from this WWTF is discharged through Alder Drain, tributary to Central Drain before entering Alamo River, and ultimately to the Salton Sea. The Alder Drain, Central Drain, Alamo River and Salton Sea are waters of the United States.
3. The Regional Board may establish monitoring and reporting requirements, known as the Monitoring and Reporting Program (MRP), as authorized by CWC Sections 13376 and 13383.
4. CWC Section 13385(a) states, in relevant part, the following:  

"Any person who violates any of the following shall be liable civilly in accordance with this section: (1) Section 13375 or 13376; (3) Any requirements established pursuant to Section 13383."
5. CWC Section 13385(c) states:  

"Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

"(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

"(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."

6. On June 25, 2008, the Regional Board adopted WDRs Order No. R7-2008-0011 for the Discharger to regulate discharges of treated wastewater to the Alamo River.
7. In relevant part, WDRs Order No. R7-2008-0011 (Section IVB.A.1.c) contains the following effluent limitations:

**Bacteria:** The bacterial density in the wastewater effluent discharged to Alder Drain shall not exceed the following values, as measured by the following bacterial indicators:

- i. ***E. coli.*** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a Most Probable Number (MPN) of 126 MPN per 100 millimeters, nor shall any sample exceed the maximum allowable bacterial density of 400 MPN per 100 millimeters.
  - ii. **Enterococci.** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a Most Probable Number (MPN) of 33 MPN per 100 millimeters, nor shall any sample exceed the maximum allowable bacterial density of 100 MPN per 100 millimeters.
  - iii. **Fecal Coliform.** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a Most Probable Number (MPN) of 200 MPN per 100 millimeters, nor shall more than ten percent of the total samples during any 30-day period exceed 400 MPN per 100 milliliters."
8. Provision B of WDR Board Order No. R7-2008-0011 states the following:  

"The discharger shall comply with the MRP and future revisions thereto, in Attachment E of this Board Order."
  9. Attachment E, General Monitoring Provisions I.C states:  

"Unless otherwise approved by the Regional Water Board's Executive Officer, all analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services [now known as the California Department of Public Health, Environmental Laboratory Accreditation Program], in accordance with the provision of Water Code section 13176, and must include quality assurance/quality control data with their reports. All analyses shall be conducted in accordance with the latest edition of "Guidelines Establishing Test Procedures for Analysis of Pollutants", promulgated by the USEPA."
  10. Since at least August 2008, the Discharger has used an uncertified laboratory to perform *E. coli* and Enterococci analyses. Attachment "A", a part of this Order No. R7-2010-0025 by reference, shows the monitoring data in question.
  11. Because the Discharger submitted effluent monitoring data for *E. coli* and Enterococci from a laboratory that did not possess certification for analysis of bacteria constituents, the Regional Board is unable to determine whether the Discharger is in compliance with the Effluent Limitations of Special Board Order No. R7-2008-0011 for *E. coli* and Enterococci, cited above in Finding No. 7.

12. On February 11, 2009, the Assistant Executive Officer issued Time Schedule Order (TSO) No. R7-2009-0043 pursuant to CWC Section 13308, requiring the Discharger to correct the monitoring violations of Board Order No. R7-2008-0011 in accordance with a series of tasks stated in the time schedule. The TSO was issued following the discovery in Findings Nos. 10 and 11, above.
13. More specifically, TSO No. R7-2009-0043 provides in substantive relevant part for the Discharger to comply with the following:
  - a. The Discharger must be in full compliance with WDRs Board Order No. R7-2008-0011, Monitoring and Reporting Programs, by July 1, 2009.
  - b. By March 31, 2009, the Discharger shall submit a technical report specifying the steps it will take to ensure that bacteria data is collected and analyzed as specified in Board Order No. R7-2008-0011.
14. As stated above, the data indicating potential effluent limitation violations for the bacteria parameters cannot be used to assess compliance with the Effluent Limitations of Board Order No. R7-2008-0011 for E. coli and Enterococci and similarly cannot be used to impose mandatory penalties for potential effluent violations for E. coli and Enterococci. While the Discharger may not be subject to mandatory minimum penalties for these potential E. coli and Enterococci effluent limit violations, the Discharger is still liable for violating the MRP for WDRs Board Order No. R7-2008-0011 pursuant to CWC Section 13385(c). The maximum statutory liability for the MRP violations under Section 13385(c) is \$480,000 (\$10,000 per day for forty-nine violations beginning August 6, 2008 through December 22, 2008).
15. If the Regional Board assesses civil liability under CWC Section 13385(c), CWC Section 13385(e) requires the Regional Board, in determining the amount of any liability, to consider the nature, circumstances, extent and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, results from the violation, and other matters as justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the act that constitutes the violation.
16. The factors in Finding No. 15, above, are evaluated for the violations as follows:
  - a. Nature, circumstance, extent, and gravity of the violations:

Using an uncertified laboratory for compliance monitoring for specified constituents is a violation of the Discharger's Monitoring and Reporting Program for its NPDES Permit. The nature of the NPDES program relies on the Discharger self-monitoring and self-reporting violations. In order to determine whether the Discharger is in compliance with its effluent limitations, as set forth in its NPDES Permit, the Regional Board needs to have confidence that the data that is being self-reported by the Discharger is accurate and reliable. Because the analysis of the bacteria constituents was conducted by a laboratory that did not possess the requisite certification for all constituents within Field of Testing 107, the results from the bacteria analyses cannot be seen as reliable to determine compliance with effluent limitations. See Attachment "A" for a summary of the days of violations.

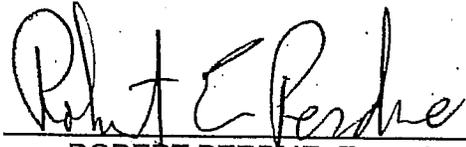
- b. Susceptibility of discharge to cleanup and abatement, and degree of toxicity discharge:  
The discharge is not susceptible to cleanup and/or abatement because it is a non-discharge violation.
- c. Discharger's ability to pay:  
There was no evidence presented that would indicate that the Discharger would be financially incapable of paying the assessed liability.
- d. Effect on Discharger's ability to continue in business:  
The proposed fine should not affect the Discharger's ability to continue operating since the penalty largely pertains to costs that the Discharger would have normally incurred if compliance with the WDRs had been properly observed.
- e. Voluntary cleanup efforts undertaken:  
There was no cleanup and abatement necessary as these violations were non-discharge violations.
- f. Prior history of violations:  
Between 2003 through 2006, the facility had multiple instances of non-compliance with the maximum daily E. coli effluent limitation and non-compliance with the 30-day log mean effluent limitation for E. coli.
- g. Degree of culpability:  
As the permittee, the Discharger is responsible for complying with all aspects of WDRs Board Order No. R7-2008-0011. The provisions of WDRs Board Order No. R7-2008-0011 and its corresponding Monitoring and Reporting Program (MRP) are clear and unambiguous regarding the requirement that all analyses be conducted at a laboratory certified for such analyses by the California Department of Public Health. It is the Discharger's responsibility to utilize certified laboratory contracts that can provide reliable results, which are representative of the discharge. The Discharger failed to do so for the period from August 2008 to December 2008, as evidenced by the monitoring results it submitted.
- h. Economic benefit and savings resulting from the violations:  
The Discharger was in violation of its Permit and MRP beginning August 2008 until December 2008. During this time period, the Discharger conducted sampling on 48 occasions, usually sampling E. Coli and Enterococci on the same day. Therefore, there would have been 24 instances when the Discharger should have sent its samples to a certified laboratory. Assuming that the Discharger transported its samples to a certified laboratory in San Diego, California, that distance represents approximately 240 miles and a 4 hour roundtrip from El Centro, California to San Diego, California. The Internal Revenue Service's standard mileage rates of reimbursement indicate that the business mileage rate was 50.5 cents in the first half of 2008 and 58.5 cents in the second half of 2008. Assuming 240 miles per sampling event multiplied by 58.5 cents for mileage multiplied by 24 sampling events during August 2008 until December 2008 equates to \$3369 in travel expenses for transporting the samples from El Centro, California to San Diego, California.

In addition to the travel expenses explained above, there are also associated staff costs with transporting samples. One trip from El Centro, California to San Diego, California would take approximately 4 hours roundtrip. Again, this trip would have to be made 24 times during the period of August 2008 until December 2008. One 4 hour roundtrip commute multiplied by 24 trips is 96 hours total. Because there is a limited time period for transporting the samples to San Diego, California, it's likely that staff would need to transport the samples directly to the laboratory rather than sending them through a courier service. If we assume a conservative staff cost of 20 dollars an hour multiplied by 96 hours, the total staff costs associated with transporting the samples is \$1,920. Therefore, the total calculated economic benefit is \$5,289.

- i. Other matters that justice may require:  
Staff time to investigate this matter and prepare the ACL complaint and supporting information is estimated to be 40 hours. Based on an average cost to the State of \$150 per hour, the total cost is \$6,000.
17. On December 21, 2009, the Assistant Executive Officer issued ACLC No. R7-2009-0081 recommending that the Discharger be assessed a penalty pursuant to CWC Section 13385(c) in the amount of sixteen thousand dollars (\$16,000) for the violations described above. The amount of the liability proposed is based upon a review of the factors cited in CWC Section 13385(e) and the State Water Resources Control Board's Water Quality Enforcement Policy.
18. The Regional Board has notified the Discharger and the general public of its intent to hold a hearing on this matter within 90 days from the date the Complaint was issued, unless the Discharger waives its right to a hearing under CWC Section 13323(b).
19. On March 18, 2010, the Regional Board considered this matter and all comments pertaining to this matter at its public meeting held in La Quinta, California.
20. Issuance of this Administrative Civil Liability Order to enforce CWC 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 Section 15321(a)(2) ("Enforcement Actions by Regulatory Agencies"), Title 14, California Code of Regulations.
21. Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with CWC Section 13320 and California Code of Regulations, Title 23, Sections 2050 and following. The State Water Board must receive the petition no later than 5:00 p.m., thirty (30) days after the date of this Order, except that if the thirtieth day following the date of this Order 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](http://www.waterboards.ca.gov/public_notices/petitions/water_quality). Copies will also be provided upon request.

**IT IS HEREBY ORDERED**, pursuant to CWC Section 13385, the Discharger is assessed one thousand five hundred dollars (\$1,500) in ACL penalties for the violations described in ACL Complaint No. R7-2009-0081 and the Complaint's corresponding Attachment A.

I, Robert Perdue, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order adopted by the California Regional Water Quality Control Board, Colorado River Basin Region, on March 18, 2010.

  
ROBERT PERDUE, Executive Officer

**ATTACHMENT "A"**  
**Summary of Violations of Board Order No. R7-2008-0011 for Country Life MHRV**

	<b>Violation Type</b>	<b>Violation Date</b>	<b>Violation Description</b>
1	Enterococci	8/6/2008	Used uncertified laboratory
2	<i>E. Coli</i>	8/6/2008	Used uncertified laboratory
3	Enterococci	8/13/2008	Used uncertified laboratory
4	<i>E. Coli</i>	8/13/2008	Used uncertified laboratory
5	Enterococci	8/20/2008	Used uncertified laboratory
6	<i>E. Coli</i>	8/20/2008	Used uncertified laboratory
7	Enterococci	8/25/2008	Used uncertified laboratory
8	<i>E. Coli</i>	8/25/2008	Used uncertified laboratory
9	Enterococci	8/26/2008	Used uncertified laboratory
10	<i>E. Coli</i>	8/26/2008	Used uncertified laboratory
11	Enterococci	9/2/2008	Used uncertified laboratory
12	<i>E. Coli</i>	9/2/2008	Used uncertified laboratory
13	Enterococci	9/9/2008	Used uncertified laboratory
14	<i>E. Coli</i>	9/9/2008	Used uncertified laboratory
15	Enterococci	9/15/2008	Used uncertified laboratory
16	<i>E. Coli</i>	9/15/2008	Used uncertified laboratory
17	Enterococci	9/22/2008	Used uncertified laboratory
18	<i>E. Coli</i>	9/22/2008	Used uncertified laboratory
19	Enterococci	9/29/2008	Used uncertified laboratory
20	<i>E. Coli</i>	9/29/2008	Used uncertified laboratory
21	Enterococci	10/1/2008	Used uncertified laboratory
22	<i>E. Coli</i>	10/1/2008	Used uncertified laboratory
23	Enterococci	10/7/2008	Used uncertified laboratory
24	<i>E. Coli</i>	10/7/2008	Used uncertified laboratory
25	Enterococci	10/15/2008	Used uncertified laboratory
26	<i>E. Coli</i>	10/15/2008	Used uncertified laboratory
27	Enterococci	10/22/2008	Used uncertified laboratory
28	<i>E. Coli</i>	10/22/2008	Used uncertified laboratory

Country Life MPRVP  
Wastewater Treatment Plant  
Administrative Civil Liability Order No. R7-2010-0025

29	Enterococci	10/29/2008	Used uncertified laboratory
30	<i>E. Coli</i>	10/29/2008	Used uncertified laboratory
31	Enterococci	11/5/2008	Used uncertified laboratory
32	<i>E. Coli</i>	11/5/2008	Used uncertified laboratory
33	Enterococci	11/11/2008	Used uncertified laboratory
34	<i>E. Coli</i>	11/11/2008	Used uncertified laboratory
35	Enterococci	11/19/2008	Used uncertified laboratory
36	<i>E. Coli</i>	11/19/2008	Used uncertified laboratory
37	Enterococci	11/24/2008	Used uncertified laboratory
38	<i>E. Coli</i>	11/24/2008	Used uncertified laboratory
39	Enterococci	12/2/2008	Used uncertified laboratory
40	<i>E. Coli</i>	12/2/2008	Used uncertified laboratory
41	Enterococci	12/8/2008	Used uncertified laboratory
42	<i>E. Coli</i>	12/8/2008	Used uncertified laboratory
43	Enterococci	12/12/2008	Used uncertified laboratory
44	<i>E. Coli</i>	12/12/2008	Used uncertified laboratory
45	Enterococci	12/18/2008	Used uncertified laboratory
46	<i>E. Coli</i>	12/18/2008	Used uncertified laboratory
47	Enterococci	12/22/2008	Used uncertified laboratory
48	<i>E. Coli</i>	12/22/2008	Used uncertified laboratory