

California Regional Water Quality Control Board  
North Coast Region

Administrative Civil Liability Complaint No. R1-2008-0056

For  
Violation of Waste Discharge Requirements  
Order No. R1-2000-23

In the Matter of  
University of California, Davis  
Bodega Marine Lab  
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. R1-2000-23. Mandatory minimum penalties are assessed for violations of effluent limitations that occurred during the period from January 1, 2000 through February 29, 2008.

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 Serial No. 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 Serial No. 002).
2. Since March 23, 2000, the Discharger's Bodega Marine Laboratory has been regulated by WDRs Order No. R1-2000-23, 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 that occurred from January 1, 2000 through February 29, 2008. This is consistent with the implementation date of Water Code section 13385, subdivisions (h) and (i). NPDES permits for discharges to waters of the United States are subject to mandatory minimum penalties, while land discharges are not. Therefore, only violations from Discharge Serial No. 001 are covered in this complaint. The effluent limitations violations are subject to the mandatory minimum penalties provision contained in Water

Code section 13385, subdivisions (h) and (i). Details of effluent limitations violations are summarized in Finding 12.

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 (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.
6. 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.

7. 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.
8. The Enforcement Policy provides that the Regional Water board may elect to allow a discharger to satisfy some or all of the monetary assessment imposed in an administrative civil liability complaint or order by completing or funding one or more supplemental environmental projects (SEPs). The

SEPs must be completed in accordance with Section IX of the Enforcement Policy. This Complaint includes requirements for SEPs as specified in the Enforcement Policy.

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.

10. Order No. R1-2000-23 includes the following effluent limitations:

**B. EFFLUENT LIMITATIONS**

1. Circulated seawater discharged to the Pacific Ocean (Discharge Serial 001) shall not contain constituents in excess of the following limits:

<u>Constituent</u>	<u>Units</u>	<u>30-Day Average</u>	<u>7-Day Average</u>	<u>Daily Maximum</u>
Suspended Solids	mg/l	---	---	---
Settleable Solids	ml/l	---	---	---
Total Chlorine Residual	mg/l	---	---	Non-Detect <sup>2</sup>

<sup>1</sup> The discharge shall not contain concentrations of solids higher than those found in the influent and shall not cause nuisance or adversely affect beneficial uses.

<sup>2</sup> For the purposes of this order, the method detection limit for Total Chlorine Residual shall be 0.1 mg/l.

11. The Enforcement Policy states that for the purpose of determining serious violations, Settleable Solids, Suspended Solids, and Chloride are identified as Group I pollutants in title 40 Code of Federal Regulations, section 123.45, Appendix A, while Total Residual Chlorine is identified as a Group II pollutant in title 40 Code of Federal Regulations, section 123.45, Appendix B.

12. Effluent Limitation Violations

According to monitoring reports submitted by the Discharger for the period from January 1, 2000 through February 29, 2008, the Discharger exceeded effluent limitations thirty-five times while discharging through Discharge

Serial No. 001. Twenty-one exceedances are not serious (chronic) effluent violations, as described in Water Code section 13385, subdivision (i)(1). Fourteen 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 \$63,000 as shown in the following table:

Table 1: Effluent Limitation Exceedances  
January 1, 2000 through February 29, 2008

Date	Parameter	Units	Reported Value	Permit Limit	Violation Type	Mandatory Penalty
06/21/00	Suspended Solids	mg/l	68	65	1 <sup>st</sup> Chronic	\$0
07/20/00	Suspended Solids	mg/l	57	52	2 <sup>nd</sup> Chronic	\$0
07/24/01	Suspended Solids	mg/l	50	39	1 <sup>st</sup> Chronic	\$0
08/14/01	Suspended Solids	mg/l	49	47	2 <sup>nd</sup> Chronic	\$0
09/17/01	Suspended Solids	mg/l	53	47	3 <sup>rd</sup> Chronic	\$0
03/19/02	Suspended Solids	mg/l	44	31	Serious	\$3,000
04/23/02	Suspended Solids	mg/l	45	42	2 <sup>nd</sup> Chronic	\$0
08/26/02	Suspended Solids	mg/l	54	53	3 <sup>rd</sup> Chronic	\$0
08/27/02	Total Chlorine Residual	mg/l	0.1	Nondetect <sup>1</sup>	Chronic	\$3,000
09/24/02	Suspended Solids	mg/l	51	47	Chronic	\$3,000
11/20/02	Suspended Solids	mg/l	66	45	Serious	\$3,000
01/27/03	Suspended Solids	mg/l	63	45	Serious	\$3,000
05/14/03	Suspended Solids	mg/l	51	41	3 <sup>rd</sup> Chronic	\$0
10/20/03	Suspended Solids	mg/l	59	56	2 <sup>nd</sup> Chronic	\$0
02/24/04	Total Chlorine Residual	mg/l	0.3	Nondetect	Serious	\$3,000
02/25/04	Total Chlorine Residual	mg/l	0.2	Nondetect	Serious	\$3,000
03/29/04	Suspended Solids	mg/l	79	62	Chronic	\$3,000
06/04/04	Total Chlorine Residual	mg/l	0.1	Nondetect	Chronic	\$3,000
06/14/04	Total Chlorine Residual	mg/l	0.2	Nondetect	Serious	\$3,000
07/22/04	Suspended Solids	mg/l	13	9	Serious	\$3,000
08/02/04	Total Chlorine Residual	mg/l	0.2	Nondetect	Serious	\$3,000
08/03/04	Total Chlorine Residual	mg/l	0.2	Nondetect	Serious	\$3,000
09/13/04	Total Chlorine Residual	mg/l	0.2	Nondetect	Serious	\$3,000
10/15/04	Total Chlorine Residual	mg/l	0.2	Nondetect	Serious	\$3,000
10/29/04	Total Chlorine Residual	mg/l	0.2	Nondetect	Serious	\$3,000

<sup>1</sup> The method detection limit for Total Chlorine Residual is 0.1 mg/l.

12/23/04	Total Chlorine Residual	mg/l	0.2	Nondetect	Serious	\$3,000
01/27/05	Suspended Solids	mg/l	25	22	Chronic	\$3,000
03/25/05	Suspended Solids	mg/l	32	29	Chronic	\$3,000
07/28/05	Suspended Solids	mg/l	21	18	2 <sup>nd</sup> Chronic	\$0
08/30/05	Suspended Solids	mg/l	37	33	3 <sup>rd</sup> Chronic	\$0
8/30/05	Settleable Solids	ml/l	0.3	0.2	Serious	\$3,000
10/27/05	Suspended Solids	mg/l	14	13	Chronic	\$3,000
05/25/07	Settleable Solids	ml/l	0.1	< 0.1	1 <sup>st</sup> Chronic	\$0
09/28/07	Suspended Solids	mg/l	20	15	2 <sup>nd</sup> Chronic	\$0
11/14/07	Suspended Solids	mg/l	13	9	3 <sup>rd</sup> Chronic	\$0
					TOTAL	\$63,000

13. Regional Water Board staff costs associated with this administrative civil liability complaint for effluent limit violations are estimated to be a minimum of \$10,000. This includes staff time to tally violations and prepare this Complaint, public notices, public hearing, response to comments, and evaluation and tracking of a SEP, if any, through to completion.
14. 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).

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 \$63,000 for effluent violations that occurred from January 1, 2000 through February 29, 2008.
2. A hearing will be conducted on this Complaint by the Regional Water Board on July 23 and 24, 2008, 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:
  - a. Pay the total assessed penalty of \$63,000 in full to the State Water Pollution Cleanup and Abatement Account (CAA) within thirty days of the date of this Complaint or,

- b. In lieu of paying the full amount of the penalty for violations of discharge prohibitions, propose a SEP in an amount up to \$39,000 and pay the balance of the penalty, which is \$24,000, to the CAA within thirty days from the date of the Complaint (or in compliance with a payment schedule issued in writing by the Executive Officer). The sum of the proposed SEP amount and the amount of the fine to be paid to the CAA shall equal the full penalty.
3. If the Discharger chooses to propose a SEP, it must submit a proposal within thirty days of the date of this Complaint to the Assistant Executive Officer for conceptual approval. Any SEP proposal shall conform to the requirements specified in the Enforcement Policy. Each proposal must include a time schedule, for concurrence by the Executive Officer, to address implementation and completion of the projects. If the proposed projects and/or implementation schedules are not acceptable, the Executive Officer may allow the discharger thirty days to submit a new or revised proposal, or may demand that, during the same thirty-day period the Discharger remit all or a portion of the assigned penalties. All payments, including money not used for the projects, must be payable to the CAA.
4. The Executive Officer shall maintain oversight over approved SEP implementation time schedules throughout the life of the projects. If, given written justification from the Discharger, the Executive Officer determines that a delay in the project implementation schedule was beyond reasonable control of the Discharger, the Executive Officer may revise the implementation schedule as appropriate.
5. If the Discharger waives the hearing and pays the liability, the resulting settlement may become effective on the next day after the thirty-day public comment period on this Complaint ends. If there are significant public comments, the Assistant Executive Officer may withdraw the Complaint, reissue it as appropriate, or take other appropriate action.
6. 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.
7. 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.

8. 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.

---

Luis G. Rivera  
Assistant Executive Officer

May 1, 2008