

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Order No. R1-2009-0024

For

Discharges in Violation of Waste Discharge Requirements
Order No. R1-2000-23 (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) finds the following:

1. The University of California, Davis Bodega Marine Laboratory (hereinafter 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). The Regional Water Board adopted Waste Discharge Requirements Order No. R1-2000-23 (WDRs) for the Discharger on March 23, 2000. The Order serves as a National Pollutant Discharge Elimination System (NPDES) permit under the Federal Clean Water Act (CA0024333).
2. Water Code 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 specified violation of effluent limits.
3. Water Code section 13385, subdivision (l)(1) provides that a portion of mandatory minimum penalties imposed under section 13385, subdivisions (h) or (i) may be directed to a Supplemental Environmental Project (SEP) in accordance with Section IX of the Enforcement Policy. The Complaint provided the Discharger the option of completing a SEP, in accordance with the specifications in the Enforcement Policy.
4. During 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 nonserious (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.

5. On May 1, 2008, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R1-2008-0056 (Complaint) assessing a civil liability penalty of \$63,000 for violations described in Finding 4, above. The Discharger waived its right to a public hearing and requested to pay the sum of \$10,000 to the State Water Pollution Cleanup and Abatement Account (CAA) and to spend the remaining balance of \$53,000 on two Compliance Projects (CPs). The Discharger paid the sums of \$3,000 and \$7,000 into the CAA, on May 29, 2008 and August 7, 2008, respectively. Since that time, Regional Water Board staff determined that the Discharger does not meet the requirements to qualify for a CP. The Discharger had the option to either pay the full outstanding penalty of \$53,000 or to propose an SEP in an amount up to \$39,000 and pay the balance of the penalty to the CAA. The Discharger chose the second option, and submitted a draft SEP proposal on December 22, 2008. On January 29, 2009, Regional Water Board staff approved a revised SEP proposal for a project that will cost more than \$39,000, and the Discharger paid \$14,000 to the CAA.
6. The proposed SEP will enable the Discharger to monitor pH offshore of the Sonoma coast to document trends in ocean acidification. The Discharger will install a new pH sensor on its existing mooring at 38 18.704N and 123 05.003W. The sensor will take data measurements hourly and upload that data daily to a server at the Marine Lab. Installation of the new sensor requires significant modification of the mooring including power source, battery storage, plumbing, electrical connection to the data logger and new software code. Once deployed, the sensor will require ongoing maintenance, which will be performed at least once a month by a technician and divers to clean the sensor. The realtime data collected from the sensor will be accessible to the public via the Marine Lab's "Bodega Ocean Observing Node" (BOON) webpage (<http://bmlsc.ucdavis.edu/boon/>). The project may also include a component intended to enable public access to archived data on the BOON webpage; however, this level of data sharing requires significant additional computer programming. If the additional programming cannot be achieved, the balance of the project will still meet the requirements of the SEP. The Discharger has already begun the project by purchasing the new pH meter and integrating it with the existing mooring.
7. Government Code section 11415.60, subdivision (a) states that an agency may formulate and issue a settlement on any terms the parties determine are appropriate. The Regional Water Board and the Discharger concur that the Discharger's proposal described in Finding 6 is a fair settlement of the Complaint and is in the interest of the public. The proposed settlement has been properly noticed for public review, and the Regional Water Board has considered all comments.
8. A duly noticed public hearing on this matter was held before the Regional Water Board on April 23, 2009 at the Fortuna River Lodge Conference Center, Chinook Room, 1800 Riverwalk Drive, Fortuna, California.

The documents for the agenda item were provided to the Discharger and made available to the public prior to the hearing. The Discharger and the public were

given the opportunity to testify and present evidence regarding the proposed settlement.

9. 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).
10. 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 Water Code 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.

THEREFORE, IT IS HEREBY ORDERED, pursuant to Water Code section 13385, that:

1. The Discharger shall be assessed a total civil liability of \$63,000. The Discharger has paid the sum of \$24,000 to the CAA. The Discharger shall spend at least the remaining sum of \$39,000 on a SEP. The SEP consists of a project that will provide data about pH in the ocean offshore of the Sonoma Coast.
2. The Discharger shall submit progress reports and final reports describing the planning and construction of the project, and shall complete the project according to the following time schedule:

TASK	DUE DATE
Set up and test the oceanographic pH sensor mooring, and deliver realtime data to the Marine Lab's BOON webpage.	No later than June 1, 2009; submit a report of compliance by June 15, 2009
Complete project and attempt to provide public access to archived data on the Marine Lab's BOON webpage.	No later than January 1, 2010; submit a Final report by January 15, 2010. The report shall certify the completion of the SEP and include a post-project accounting of expenses. The report shall include an overall evaluation of the project and a determination as to the potential to meet the stated goals of the project.

3. If, given written justification from the Discharger, the Executive Officer determines that a delay in the SEP 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 \$39,000 shall be permanently suspended if the Executive Officer determines that the Discharger has completed the SEP satisfactorily, as described in Finding 6 of this Order. The sum of the SEP and the amount paid to the CAA shall at least equal the amount of the full penalty. All payments, including money not used for the SEP, must be payable to the CAA. 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. Failure to meet the deadlines above, including completion of the SEP, will result in the Discharger being required to pay the suspended \$39,000 penalty.
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.

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 April 23, 2009.

Catherine Kuhlman
Executive Officer