

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION**

In the Matter of:)	
)	
Rief, Dieter J. and R. Living Trust)	Complaint No. R1-2012-0017
3195 Regional Parkway)	
Santa Rosa, CA 95409)	For
WDID No. 1B11053CNSO)	
)	Administrative Civil Liability
Attn: Dieter Rief)	

This Administrative Civil Liability Complaint (Complaint) is issued to Rief, Dieter J. and R. Living Trust (Discharger) to assess administrative civil liability for an unpermitted discharge of well development wastewater from the Discharger's property into a watercourse that is tributary to Matanzas Creek in the Santa Rosa Creek watershed in violation of provisions of law for which the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) may impose civil liability pursuant to California Water Code (CWC) Section 13385. The Complaint alleges that Regional Water Board staff (Staff) observed an unpermitted discharge of waste into waters of the State and of the United States on December 3, 2010.

The Assistant Executive Officer of the Regional Water Board alleges that:

1. The Discharger violated provisions of law for which the Regional Water Board may impose administrative civil liability under CWC section 13385. The Complaint proposes to assess \$5,600.00 in administrative civil liability for the violation cited based on considerations described herein.
2. This Complaint is issued under authority of CWC section 13323.
3. A hearing concerning this Complaint may be held before the Regional Water Board within ninety (90) days of the date of issuance of this Complaint, unless, pursuant to CWC section 13323, the Discharger waives the right to a hearing. The waiver procedures are specified in the attached Waiver Form. The hearing in this matter is scheduled for the Regional Water Board's regular meeting on March 15, 2012, at the Regional Water Quality Control Board Office, 5550 Skylane Blvd. Suite A, Santa Rosa, California. The Discharger or its designated representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Water Board. An agenda for the meeting will be available at www.waterboards.ca.gov/northcoast/board_info/board_meetings/ not less than 10 days before the hearing date.
4. If a hearing is held on this matter, the Regional Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability up to the maximum penalty provided for by law, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the

issuance of this Complaint through hearing. The enforcement costs can be considered as an additional factor as justice may require.

STATEMENT OF PROHIBITIONS, PROVISIONS, AND/OR REQUIREMENTS APPLICABLE TO THE DISCHARGER:

The Discharger is required to comply with the following:

5. CWC section 13260 requires that any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of waters of the state shall file with the appropriate regional board a report of the discharge.
6. CWC section 13376 provides that a person who discharges pollutants or proposes to discharge pollutants to navigable waters of the United States shall file a report of waste discharge in compliance with CWC section 13260.
7. The Federal Water Pollution Control Act (hereinafter Clean Water Act) Section 301 (33 U.S.C. § 1311) prohibits all discharges of pollutants to navigable waters of the United States unless such discharges are in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.
8. It is the responsibility of person(s) discharging low threat wastewater to receiving waters to file a report of waste discharge and to obtain coverage under an applicable general permit or site-specific Waste Discharge Requirements and/or an NPDES permit prior to commencement of any discharge to surface waters.
9. CWC section 13263(g) states "All discharges of waste into waters of the state are privileges, not rights."

ALLEGED VIOLATION OF PROHIBITIONS, PROVISIONS, AND/OR REQUIREMENTS APPLICABLE TO THE DISCHARGER

10. This Complaint addresses a violation of CWC section 13376 and Clean Water Act Section 301, which may be subject to discretionary administrative civil liability pursuant to CWC section 13385.
11. Violation: On December 3, 2010, the Discharger and/or his agent(s) discharged well development wastewater to surface water without obtaining coverage under the General Permit and/or filing a report of waste discharge pursuant to Water Code sections 13260 and/or 13376.

FACTUAL BASIS FOR THE ALLEGED VIOLATION

The following evidence supports the alleged violation described above:

12. On December 3, 2010, Staff received a complaint alleging turbid water discharge from a well drilling operation run by Petersen Well Drilling on real property owned by Dieter Rief at 4232 Grange Road near Bennett Valley in Sonoma County, California.

13. On December 3, 2010, at approximately 1330 hours, Staff responded to the alleged complaint and initiated an investigation of the alleged discharge to surface waters. At 4200 Grange Road, Regional Water Board staff observed the active discharge of turbid water from an upland source into a watercourse later confirmed to be a tributary to Matanzas Creek. Regional Water Board staff observed that the water in the watercourse below the point of discharge was highly turbid.
14. During the December 3, 2010 inspection of 4200 Grange Road, Staff observed several workers ditching the adjacent field at 4232 Grange Road, in an apparent effort to direct overland wastewater flows away from the watercourse.
15. Upon inspecting the property located at 4232 Grange Road, Staff observed that workers had been drilling a well, but at the time of the inspection, work was stopped. Staff observed turbid water and drilling mud from the well site at 4232 Grange Road flowing, as sheet flow, over a couple of acres and draining to the watercourse observed at 4200 Grange Road. At the request of Regional Water Board Staff, the well was briefly pumped, allowing Staff to confirm that the well was indeed the source of the turbid water and mud observed in the field down slope, and was subsequently discharging to the watercourse observed at 4200 Grange Road.
16. The watercourse observed at 4200 Grange Road is tributary to Matanzas Creek, which drains to Santa Rosa Creek and, thence, to the Laguna de Santa Rosa; all are waters of the State (CWC § 13050(e)) and navigable waters of the United States (40 CFR § 230.3(s)).

WATER CODE PROVISIONS UPON WHICH LIABILITY IS BEING ASSESSED DUE TO NON COMPLIANCE WITH APPLICABLE REQUIREMENTS

17. Pursuant to CWC section 13385(a)(1), any person who violates CWC section 13376 shall be liable civilly in accordance with this section. CWC section 13385(a)(1) subjects a discharger to administrative civil liability for violating CWC section 13376. CWC section 13376 requires a person who discharges pollutants or proposes to discharge pollutants to navigable waters of the United States to file a report of waste discharge in compliance with CWC section 13260. Thus, the Discharger's failure to file a report of waste discharge in accordance with CWC section 13260 is a violation of CWC section 13376, and therefore a violation of CWC section 13385(a)(1).
18. Pursuant to CWC section 13385(a)(5), any person who violates any requirements of Clean Water Act sections 301, 202, 306, 307, 308, 318, or 405, shall be liable civilly in accordance with this section. Section 13385(a)(5) subjects a discharger to administrative civil liability for violating Clean Water Act section 301. Clean Water Act section 301 prohibits all discharges of pollutants to navigable waters of the United States unless such discharges are in compliance with an NPDES permit. Thus, the discharge of well development wastewater without coverage under the General Permit is a violation of Clean Water Act section 301, and therefore a violation of CWC section 13385(a)(5).

19. CWC section 13385(c)(1) provides that the amount of civil liability that may be imposed by the Regional Water Board may be up to ten thousand dollars (\$10,000) for each day in which the violation occurs. 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.
20. CWC section 13385(e) requires that, at a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

21. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in CWC section 13385(e). The entire Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

22. The specific factors required by the Enforcement Policy are: the potential harm to beneficial uses; the physical, chemical, biological or thermal characteristics of the discharge; the discharge's susceptibility to cleanup; the violation's deviation from requirements; the discharger's culpability; cleanup and the discharger's cooperation; the history of violations; the discharger's ability to pay; other factors as justice may require; and economic benefit from the avoidance or delay of implementing requirements. These factors address the statute-required factors and also are used to calculate penalties consistent with both the CWC and the Enforcement Policy.
23. The required factors have been considered using the methodology in the Enforcement Policy, as explained in detail in Attachment A, which is incorporated herein by this reference.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

24. Based on consideration of the above facts and after applying the Enforcement Policy methodology, the Assistant Executive Officer of the Regional Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of \$5,600 for the violation of CWC section 13385.
25. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees'*

Retirement System (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)

26. Notwithstanding the issuance of this Complaint, the Regional Board retains the authority to assess additional penalties for violations of the California Water Code and the Clean Water Act for which penalties have not yet been assessed or for violations that may subsequently occur.
27. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a)(2).

January 4, 2012

Date

Luis G. Rivera
Assistant Executive Officer
Regional Water Board Prosecution Team