

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

In the Matter of:	)	
	)	
University of California, Davis	)	Complaint No. R1-2012-0110
Bodega Marine Laboratory	)	for
2099 Westside Road	)	Administrative Civil Liability
Bodega Bay, CA 94923	)	
	)	
Attn: Ms. Kitty Brown	)	
WDID No. 1B840350SON	)	

The Assistant Executive Officer of the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) hereby gives notice that:

1. This Administrative Civil Liability Complaint (Complaint) is under the authority of California Water Code (Water Code) 13323 to the University of California, Davis, Bodega Marine Laboratory (hereinafter Discharger) to assess administrative civil liability for discharges from its once-through seawater system in violation of provisions of law for which the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) must impose mandatory minimum penalties pursuant to Water Code Section 13385, subdivisions (h) and (i). The Complaint alleges two (2) effluent limit violations of Waste Discharge Requirements (WDRs) Order No. R1-2008-0002 (National Pollution Discharge Elimination System [NPDES] Permit No. CA0024333). The violations cited herein occurred during the period from April 1, 2009 through July 31, 2012 (hereinafter Complaint Period) and are specifically listed in Exhibit A, which is incorporated into this Complaint by reference. During the Complaint Period, the Discharger was subject to the waste discharge requirements established in Order No. R1-2008-0002.
2. Unless waived, the Regional Water Board will hold a hearing on this Complaint at the January 24, 2013 Board meeting. The Discharger or its representative will have an opportunity to be heard and contest the allegations in this Complaint and the imposition of the civil liability. Not less than 10 days before the hearing date, an agenda for the meeting will be available on the Regional Water Board's website: [http://www.waterboards.ca.gov/northcoast/board\\_info/board\\_meetings/](http://www.waterboards.ca.gov/northcoast/board_info/board_meetings/).
3. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed civil liability, or refer the matter to the Attorney General to have a Superior Court consider enforcement. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by submitting a signed waiver and paying the civil liability in full or by taking other actions as described in the attached waiver form. 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 administrative civil liability complaint through hearing. The enforcement costs can be considered as an additional factor as justice may require.
4. 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. Accordingly, interested persons will be given thirty days to comment on any proposed settlement of this Complaint.

The Assistant Executive Officer of the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) hereby alleges that:

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

5. Order No. R1-2008-0002 (Effluent Limitations and Discharge Specifications IV.A.1.a) sets forth effluent limitations for Total Residual Chlorine:

Parameter	Units	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum	Six-Month Median
Total Residual Chlorine	mg/L	Non Detect (as defined in the Monitoring and Reporting program: ..using...a reporting limit (RL) of 50 micrograms/L or as low as technically feasible.)				

**ALLEGED VIOLATIONS OF PROHIBITIONS, PROVISIONS, AND REQUIREMENTS APPLICABLE TO THE DISCHARGER**

6. The Discharger violated the waste discharge requirement effluent limitation for Total Residual Chlorine in Order No. R1-2008-0002 by exceeding the effluent limitation by 20 percent or more. The effluent violations are identified in Exhibit A.

**FACTUAL BASIS FOR THE ALLEGED VIOLATIONS**

The following evidence supports the alleged violations described above:

7. The Discharger owns and operates the Bodega Marine Laboratory located at 2099 Westside Road, Bodega Bay, Sonoma County, California. A once-through seawater system serves the facility, discharging commingled untreated and de-chlorinated seawater into the Pacific Ocean, a water of the United States.
8. On March 6, 2008, the Regional Water Board adopted Order No. R1-2008-0002 to regulate discharges from the Discharger's once-through seawater system to the Pacific Ocean. Order No. R1-2008-0002 became effective on April 25, 2008.
9. The Discharger submitted monitoring reports for the Complaint Period which indicated two (2) exceedances of the effluent limitations for Total Residual Chlorine as set forth in Order No. R1-2008-0002. Total Chlorine Residual is a Group II pollutant. The exceedances of Total Chlorine Residual, which are identified in Exhibit A, violate effluent limitations by 20 percent or more.

**WATER CODE PROVISIONS UPON WHICH LIABILITY IS BEING ASSESSED DUE TO NONCOMPLIANCE WITH APPLICABLE REQUIREMENTS**

10. Water Code section 13385(h) requires the Regional Water Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation. Pursuant to Water Code section 13385(h)(2) a "serious violation" is defined as any waste discharge

that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant by 20 percent or more, or for a Group I pollutant by 40 percent or more. Appendix A of Part 123.45 of Title 40 of the Code of Federal Regulations specifies the Group I and II pollutants.

11. Water Code section 13385(i) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation whenever the Discharger does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:
  - 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 effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

#### **PROPOSED ADMINISTRATIVE CIVIL LIABILITY**

12. The Assistant Executive Officer of the Regional Water Board proposes that mandatory minimum penalties be assessed against the Discharger in the amount of \$6,000 for the violations specifically identified in Exhibit A to this Complaint.
13. 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.)
14. Notwithstanding the issuance of this Complaint, the Regional Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
15. 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).

October 26, 2012  
Date

Original Signed By

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