

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

In the Matter of:)	
)	
The City of Arcata)	Complaint No. R1-2013-0034
735 F Street)	for
Arcata, CA 95521)	Administrative Civil Liability
)	
Attn: Robert Class,)	
Director of Public Works)	

This Administrative Civil Liability Complaint (Complaint) is issued to the City of Arcata (Discharger) to assess administrative civil liability for discharges from its West End Road culvert maintenance activities on Janes Creek (Project) in violation of provision 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: (1) The Discharger failed to submit a Report of Waste Discharge (ROWD) or apply for a 401 Water Quality Certification for the project in violation of CWC section 13376; and (2) The project activities resulted in sediment discharges to Janes Creek tributary to Humboldt Bay and waters of the United States, from October 2, 2012 through October 3, 2012 (Complaint Period) in violation of CWC section 13243 and the North Coast Regional Water Quality Control Board Basin Plan (Basin Plan).

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

1. Discharger is alleged to have violated provisions of law for which the Regional Water Board may impose administrative civil liability under CWC section 13385. The Complaint proposes to assess \$10,880 in administrative civil liability for the violations 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 its 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 August 22, 2013, at the Regional Water Board, 5550 Skylane Blvd., 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 http://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 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.

STATEMENT OF PROHIBITIONS, PROVISION, AND REQUIREMENT APPLICABLE TO THE DISCHARGER:

The Discharger is required to comply with the following:

5. The CWC section 13376 requires any person discharging pollutants or proposing to discharge pollutants or any person discharging dredged or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a ROWD in compliance with the procedures set forth in section 13260.
6. The CWC section 13243 allows the Regional Water Board in its Basin Plan to specify certain conditions where the discharge of waste, or certain types of waste, will not be permitted. The Basin Plan contains the following prohibitions (Section 4-26) and water quality objectives (Section 3) for logging, construction and associated activities:

Prohibitions

- a. *The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.*
- b. *The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.*

Water Quality Objectives

- c. *Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.*
- d. *Turbidity shall not be increased more than 20 percent above naturally occurring background levels.*
- e. *Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.*

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

Violation No. 1: The Discharger failed to submit a Report of Waste Discharge (ROWD) or apply for a 401 Water Quality Certification for the project in violation of CWC section 13376.

Violation No. 2: The Discharger engaged in project activities which resulted in sediment discharges to Janes Creek tributary to Humboldt Bay, Waters of the State and the United States, from October 2, 2012 to October 3, 2012 in violation of CWC section 13243 and prohibition and criteria contained in the Basin Plan.

FACTUAL BASIS FOR THE ALLEGED VIOLATIONS

The following evidence supports the alleged violations described above:

7. The Discharger owns and maintains public roads within its jurisdiction including areas along West End Road. During the Complaint Period, the Discharger implemented a maintenance project (project) to dredge and remove sediment from two culverts along West End Road crossing Janes Creek. For this work as well as six other road maintenance projects, the Discharger filed and obtained a 1600 agreement with the California Department of Fish and Game, but failed to submit a ROWD or an application for 401 Certification to the Regional Water Board.
8. On October 1, 2012 and on October 2, 2012, the Regional Water Board received a complaint from the Department of Fish and Game and a Caltrans employee, respectively, regarding excessive turbidity and sediment discharges from the project into Janes Creek. On October 2, 2012, Regional Water Board staff followed-up the complaints with an investigation of the project work site (site) observing sediment discharges into Janes Creek from the Discharger's activities. Regional Water Board staff observed clear water in Janes Creek upstream and heavily turbid water downstream of the project site. On October 2, 2012, Regional Water Board staff collected water samples from Janes Creek approximately 25 feet downstream of the site confirming a turbidity of 11,000 NTU.
9. For the project, the Discharger installed a sheet-pile dam upstream and another dam downstream of the site providing clear-water bypass around and isolating the site. The Discharger utilized this system for several days during the dredging and sediment removal activities. In addition to the clear-water bypass, the Discharger installed a temporary sediment basin constructed of hay bales in an upland area for turbid water pumped from the site. During project activities, the upstream dam was undermined by the dredging operations and creek water began entering the site. The Discharger abandoned the clear-water bypass and began utilizing the temporary sediment basin in order to dewater the site. The temporary sediment basin was inadequate for the volume of turbid creek water and sediment removal required to dewater the project site.
10. From October 2, 2012 through October 3, 2012, the Discharger allowed turbid water to discharge into Janes Creek tributary to Humboldt Bay, Waters of the State and the United States. The discharge of turbid construction dewatering water into Janes Creek violates the CWC and the Basin Plan, the specifics of which are discussed in more detail above.
11. In addition, the Discharger has applied for and received from the Regional Water Board at least 8 individual 401 Certifications and 3 General 401 Certifications for Small Habitat Restoration. The 401 application summarizes the dredge/fill regulations and authorities, so the Discharger is fully aware of Regional Water Board requirements and its obligation to submit a ROWD or apply for a 401 Water Quality Certification for this project or a project of this nature, but failed or neglected to comply with this requirement for this project.

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

12. Pursuant to CWC section 13385(a)(1) and (4), a discharger is subject to civil liability for violating any reporting requirements imposed pursuant to CWC section 13375, or orders or prohibitions of the Regional Board issued pursuant to CWC section 13243 and forward. The Regional Water Board may impose civil liability administratively 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:
 - a. \$10,000 for each day in which the violation occurs, and
 - b. \$10 for each gallon of discharge that is not susceptible to cleanup or is not cleaned up in excess of 1,000 gallons.
13. The maximum amount of administrative civil liability assessable pursuant to CWC section 13385 is \$10,000 per day of violation plus \$10 times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

14. On November 17, 2010, 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

The specific required factors in CWC section 13385(e) are the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, and the degree of toxicity of the discharge. With respect to the violator, the required factors are the ability to pay, the effect on the violator's 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, resulting from the violation and other matters that justice may require.

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.

The required factors have been considered for violations 1 and 2 using the methodology in the Enforcement Policy, as explained in detail in Attachment A.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

15. Based on consideration of the above facts and after applying the penalty methodology, the Assistant Executive Officer of the Regional Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of \$10,880 for the violations of CWC section 13376 and 13243. The proposed liability includes \$1,200 for staff costs.
16. 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.)
17. Notwithstanding the issuance of this Complaint, the Regional 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.
18. 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).

May 24, 2013 _____

David F. Leland, P.E.
Assistant Executive Officer (Acting)
Regional Water Board Prosecution Team