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BEFORE THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

In the Matter of: TRINITY DAM MOBILE HOME PARK ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R1-2013-0035	**PROSECUTION TEAM'S REBUTTAL**

I. INTRODUCTION

Administrative Civil Liability Complaint No. R1-2013-0035 alleges that Mr. and Mrs. Larry Barcellos (collectively, "Discharger") violated Cleanup and Abatement Order R1-2011-0045 ("CAO") by submitting an incomplete work plan and report of waste discharge on August 29, 2012, 456 days after the May 31, 2011, due date. Applying the Water Quality Enforcement Policy penalty methodology, the Complaint proposes an administrative civil liability of $165,900. The Discharger's Legal and Technical Arguments/Analysis ("Discharger's Brief"), submitted January 3, 2014, alleges facts not relevant to the violation period and misinterprets the Enforcement Policy to propose a penalty of no more than $21,000.

The Discharger asks the Board to credit its more recent actions against the violation period even though the Discharger's evidence shows that its recent actions were spurred only by the threat of additional Regional Board enforcement, and that those actions involve little more than arguing with the Lewiston Community Services District (CSD) about costs. The underlying sewer problems have not been solved; the outdated and crumbling sewer system remains a threat to water quality. Reducing the liability as the Discharger requests would encourage every other discharger to ignore the Board's cleanup and abatement orders until faced with additional enforcement actions. The Board should impose the full penalty proposed by the Complaint.

II. THE DISCHARGER MADE NO SIGNIFICANT ATTEMPT TO COMPLY WITH THE CAO BEFORE OR AFTER THE VIOLATION PERIOD

The Discharger asserts that "they have attempted in good faith to comply with the [CAO]." (Discharger's Brief, at 1.) The evidence shows otherwise. The Discharger's initial response to the CAO was to submit an untimely and unsubstantiated request for a 45-day delay in the deadlines. (Prosecution Team Exhibit B.[1]) The Discharger later claimed to have retained a Civil Engineer and Geologist and to have taken action to pump an onsite tank (Prosecution Team Exhibit C), but the Discharger never submitted any technical reports regarding the alleged work and never submitted any monthly progress reports required under the CAO. All indications are that the Mobile Home Park's crumbling and outdated sewer system continues to discharge and/or threaten to discharge onto adjoining property and into waters of the State and of the United States.

In September, 2011, Regional Board staff notified the Discharger that it had failed to meet the CAO deadlines and administrative civil liabilities may accrue. (Prosecution Team Exhibit D).[2] Nearly a year elapsed from that notification before the Discharger submitted the August 29, 2012, Application/Report of Waste Discharge (Prosecution Team Exhibit 1). Even that submittal was incomplete (Prosecution Team Exhibit E).

The Complaint proposes administrative civil liability only for the 456 day violation period beginning May 31, 2011, when the CAO required a workplan and Application/Report of Waste Discharge, and ending August 29, 2012, when the Discharger submitted the incomplete Application/Report of Waste Discharge. The Discharger offers no explanation as to why it took so long to submit the Application/Report of Waste Discharge. Nor does the Discharger explain why it failed to submit any monthly progress reports or comply with any of the other CAO deadlines during or after that time.

The Discharger's evidence involves only discussions with the Lewiston CSD regarding the feasibility of connecting the Mobile Home Park with the CSD. These discussions commenced no earlier

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[1] Prosecution Team Exhibits A through F are attached to the Complaint. Prosecution Team Exhibits 1 and 2 are attached to the Prosecution Team's Exhibit List.

[2] It is worth noting that by September 2011, the Discharger had failed to comply with the CAO deadlines even if the 45-day extension had been granted.

than September, 2012 (Discharger's Exhibit F), and apparently remain at impasse as the Discharger and the CSD argue about funding for the initial feasibility study and other issues (see, e.g., Discharger's Exhibits H through K [describing the outstanding issues]). Although Regional Board staff has occasionally and informally discussed the connection issues with the CSD and the Discharger, the Discharger has never submitted a formal proposal regarding the proposed CSD connection for Regional Board staff evaluation.[3]

Since August 29, 2012, the Discharger has made no progress in resolving the sewer system issues and has continued to ignore the CAO requirements. Although the Complaint could address violations accruing after August 29, 2012, the proposed $165,900 administrative civil liability amount is sufficient to punish the Discharger for its failure to comply, and to generally deter other dischargers who may be tempted to brush-off the Board's cleanup and abatement orders.

III. THE ENFORCEMENT POLICY SUPPORTS THE FULL PENALTY AMOUNT

A. The Circumstances Support Major Potential for Harm

The Complaint proposes administrative civil liability for the Discharger's failure to comply with the CAO deadlines, which is a "non-discharge violation" under the Enforcement Policy. The per-day assessment for non-discharge violations should include "Major" potential for harm where "the characteristics of the violation present a particularly egregious threat to beneficial uses, and/or the circumstances of the violation indicate a very high potential for harm. Additionally, non-discharge violations involving particularly sensitive habitats should be considered major." (Enforcement Policy, at page 16.)

The Prosecution Team disputes the Discharger's wholly unsupported assertions that it has

[3] The August 29, 2012, DJH Engineering Report provides two sewer options. "Option 1" is the LCSD connection. The Report provides no details or discussion regarding Option 1. Instead, the Report specifically focuses on "Option 2," described as "a replacement of the pond (aeration) treatment current process with an onsite wastewater disposal system using a combination of grass evapotranspiration and percolation." (Prosecution Team Exhibit 1, DJH Engineering Report, at page 2.) As described in the Regional Board's September 26, 2012, letter (Prosecution Team Exhibit E), the Report is incomplete because it does not choose a single option for evaluation. The Discharger has never formally selected an option, although it has been clear since then that the Discharger prefers the CSD connection option. The Discharger has not submitted any additional details or otherwise followed up regarding an onsite disposal system.

somehow resolved the discharge problems, because the outdated and crumbling onsite sewer system remains in place. In any event, the Discharger's failure to comply with the CAO means that the system continues to discharge or threaten to discharge untreated sewage across neighboring property and into waters of the State and the United States including into tributaries of the Trinity River, which contains sensitive habitat for threatened coho salmon and other species. The Complaint's penalty methodology properly assesses the Potential for Harm factor as "Major." (Prosecution Team Exhibit F, at page 1.)

B. The Circumstances Support Major Deviation from Requirement

The per-day assessment for non-discharge violations should include "Major" deviation from requirement where "the requirement has been rendered ineffective (e.g., the discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions)." (Enforcement Policy, at page 16.) Here, the Discharger submitted the incomplete Application/Report of Waste Discharge 456 days after the deadline, and the Discharger has not complied with <u>any</u> of the CAO's other deadlines or requirements. The outdated and crumbling onsite sewer system remains in place over two years after it should have been replaced. The Complaint's penalty methodology properly assesses the Deviation from Requirement factor as "Major." (Prosecution Team Exhibit F, at pages 1-2.)

C. The Per Day Factor is Properly 0.85

Table 3 of the Enforcement Policy provides that where both the Potential for Harm and the Deviation from Requirement for non-discharge violations are "Major," the per-day factor should generally be 0.85. (Enforcement Policy, at page 16.) The Complaint's penalty methodology properly applies the per-day factor. (Prosecution Team Exhibit F, at page 2.)

D. Multiple Day Violations

The Complaint applies the Enforcement Policy's "Multiple Day Violations" methodology as the Discharger describes. (Prosecution Team Exhibit F, at pages 2-3.)

E. Culpability

The Discharger requests a culpability factor of 1.0 based on "the limited options to rectify the underlying problem and the numerous delays caused by the LCSD." (Discharger's Brief, at page 3.) As

described above, the Discharger offers no explanation as to why it submitted the Application/Report of Waste Discharge 456 days late, and the CSD's involvement in this matter began after the violations period. Taken as a whole, the evidence shows that the Discharger has engaged in a pattern of non-response and delay following the CAO. This is not what a reasonable and prudent person would have done. The Complaint's penalty methodology properly applies a culpability factor of 1.2. (Prosecution Team Exhibit F, at page 3.)

F. Cleanup and Cooperation

The Discharger requests a cleanup and cooperation factor of 1.0 because it allegedly "promptly stopped the discharge of sewage, if any, and has subsequently prevented any further discharge of sewage." (Discharger's Brief, at page 4.) The Discharger's allegations are wholly unsupported, and the crumbling and outdated sewer system remains in a condition that discharges and/or threatens to discharge raw sewage to waters of the State and of the United States. Moreover, the Discharger's limited actions to date have happened because the Regional Board has taken enforcement action, and not out of any spirit of cooperation. The Complaint's penalty methodology properly applies a cleanup and cooperation factor of 1.5. (Prosecution Team Exhibit F, at page 4.)

G. Economic Benefit

The Enforcement Policy requires that the adjusted Total Base Liability Amount should be at least 10 percent higher than any Economic Benefit Amount derived from the violation(s). (Enforcement Policy, at pages 21-21.) The violation here is the late submittal of the Application/Report of Waste Discharge. The Complaint calculates the economic benefit based on the delayed cost of preparing the Application/Report of Waste Discharge. In accordance with the Enforcement Policy, this is done by calculating interest on the money not spent preparing the Application/Report of Waste Discharge. That interest amount is $574.32. The proposed penalty amount ($165,900) is more than 10 percent higher.

H. Minimum Penalty Amount

The Discharger argues that the penalty should be no higher than $21,000. (Discharger's Brief, at page 5.) The Discharger ignores Water Code section 13350, subdivision (e)(1)(B), which requires a penalty of at least one hundred dollars ($100) per day for this type of violation. Here, the Complaint

alleges that the violation occurred over 456 days. Thus, the penalty cannot be less than $45,000 unless the Board makes specific findings in accordance with the factors set forth in Water Code section 13327. But, as described here and in the Complaint, the proposed penalty amount of $165,900 takes Water Code section 13327 factors into account, and is therefore appropriate.

IV. CONCLUSION

The Discharger submitted the Application/Report of Waste Discharge 456 days late, and has completely disregarded the remaining CAO deadlines. The Discharger's recent discussions with the CSD have brought the situation no closer to resolution, and deserve no credit from the Regional Board. The Prosecution Team respectfully requests that the Board impose the full proposed penalty amount of $165,900.

Date: January 30, 2014

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For the Prosecution Team