

Note: This document has been prepared by the Central Valley Water Board's Prosecution Team

ITEM: **22**

SUBJECT: Cruiser Haven, Inc., Delta Waterways, LLC, Holland Riverside Marina, Contra Costa County

BOARD ACTION: *Consideration of an Administrative Civil Liability Order (ACLO)*

FACILITY BACKGROUND: Cruiser Haven, Inc. and Delta Waterways, LLC (collectively Dischargers) own and operate the Holland Riverside Marina located at 7000 Holland Tract Road in Brentwood. The marina is served by a wastewater collection, treatment, and disposal system, which is referred to as a Wastewater Treatment Facility (WWTF).

The WWTF is regulated under Waste Discharge Requirements (WDRs) Order 5-01-093. The WDRs allow a maximum of 7,500 gallons per day of wastewater to enter a wastewater treatment system consisting of two lined treatment ponds followed by two percolation basins. In addition, two shallow groundwater monitoring wells are located on either side of the percolation basins.

The WDRs Monitoring and Reporting Program (MRP) require the Dischargers to monitor the ponds influent and effluents, groundwater, and submit monthly, quarterly and annual reports. These MRP requirements are consistent with other Dischargers regulated for similar discharges and regulated by this Board.

In May 2010, the Dischargers assumed ownership of the marina, and began submitting monitoring reports. However, beginning in 2012, the Dischargers' submittal of monitoring reports became erratic, and submittal ceased as of April 2013. Board staff then initiated progressive enforcement. From 15 June 2012 to 14 January 2015, Board staff sent six Notice of Violation (NOV) letters and had several meetings with the Dischargers in an effort to try and gain voluntary compliance. A summary of the NOVs and those discussions are presented both in the Order, and below.

FAILURE TO SUBMIT MONITORING REPORTS:

The Dischargers were issued the first NOV on 15 June 2012 for failure to submit the Annual 2011 and First Quarter 2012 reports. The NOV stated that the maximum liability was \$178,000. Although the Dischargers later submitted these two reports, they did not contain all of the information required by the MRP and were therefore materially deficient. Inadequate reports are considered violations of the WDRs.

On 3 August 2012, the Dischargers were issued the second and third NOVs: one for failure to maintain the wastewater ponds (as documented during an inspection), and the second for submitting incomplete monthly and quarterly monitoring reports for the period of January 2010 through May 2012, as well as exceedances of the

ammonia daily maximum limit on seven occasions. In response, the Dischargers stated the vegetation had been removed and the aeration time in the pond was increased to reduce the ammonia concentration. The Dischargers also stated that they were trying to obtain the services of a professional geologist to help with future monitoring reports.

On 24 September 2013, the fourth NOV was issued for the non-submittal of the April 2013 through July 2013 monthly reports, and the Third Quarter 2013 groundwater monitoring report, as well as the delinquent submittal of four other reports. The NOV informed the Dischargers that the potential maximum liability was \$620,000, and that Board staff would propose an ACL Complaint if the Dischargers did not begin submitting monitoring reports. Because the continuing issues with non-compliance, the NOV requested that the Dischargers contact Board staff to discuss how to return to compliance. The Dischargers did not respond.

On 15 August 2014, Board staff met with the Dischargers to discuss the long history of non-compliance. The Dischargers were informed that the monthly monitoring reports from April 2013 through June 2014, Second Quarter through Annual 2013/Fourth Quarter 2013, and First Quarter 2014 groundwater monitoring reports had not been received. The Dischargers indicated that the monitoring and reporting had not been conducted since August 2013 because of financial problems, and stated that monitoring reports would be submitted in the future. Board staff reminded the Dischargers that continued failure to submit monitoring reports would result in the issuance of an ACL Complaint. In follow-up to the meeting, Board staff issued the fifth NOV on 27 August 2014, stating that the Dischargers were subject to a maximum liability of \$3,779,000, but that Board staff would not recommend the issuance of an ACL Complaint if a report was submitted by 30 September 2014 explaining why the monitoring and reporting was not performed and what actions would be taken to assure future compliance. To clarify the matter, the NOV clearly informed the Dischargers that they must immediately begin submitting monitoring reports, beginning with the September 2014 monthly, and Third Quarter 2014 groundwater monitoring report. On 24 August 2014, Board staff received an e-mail from the Dischargers which stated: *"From January 2013 through August 2014, medical and financial difficulties combined with divorce proceedings affected my ability to adhere to the permit regulating the testing requirements of the pond system at the Holland Riverside Marina... We are currently back on track with Robbie Phillips at Alpha Analytical Labs Dublin Ca for the required testing. A detailed accounting of the events from January 2013 through August 2014 are available upon your request. Thank you for seeing me regarding this matter and for your patience with*

resolving this matter.”

Because of the Dischargers' continued disregard of the monitoring and reporting requirements in the WDRs, on 14 January 2015, Board staff issued the sixth NOV for the non-submittal of the September 2014 through November 2014 monthly reports and the Third Quarter 2014 groundwater monitoring report. The NOV informed the Dischargers that the maximum liability for non-submittal of these four reports was \$205,000, with liability continuing to accrue on a daily basis. The NOV also informed the Dischargers that Board staff would be preparing an ACL Complaint for up to \$1,000 per day for late or inadequate reports. As stated in the previous NOVs, this NOV also required that the Dischargers immediately submit the delinquent monitoring reports to minimize the accrual of liability penalties, and to submit monitoring reports in accordance with the WDRs and MRP. The Dischargers did not submit a response to the NOV.

On 1 September 2015, Board staff sent the Dischargers a letter containing an offer to enter into settlement negotiations prior to issuance of an administrative civil liability complaint. On 18 September 2015, Board's Prosecution Team met with the Dischargers to again discuss the prolonged non-compliance with the WDRs and the accruing administrative civil liabilities. During the meeting, the parties discussed options to change the wastewater treatment system and therefore reduce or minimize the need for WDRs.

WATER CODE
SECTION 13267
ORDER FOR
TECHNICAL
REPORTS:

On 24 September 2015, in follow-up to the meeting, the Dischargers were issued a Water Code section 13267 Order for the submittal of a technical report committing to one of three options which would result in compliance with Water Board requirements. The options were: (a) complying with the existing WDRs and submitting monitoring reports, (b) tanking and hauling the wastewater to a permitted facility while keeping WDRs in place to allow for future expansion of the marina, or (c) tanking and hauling the wastewater, decommissioning the ponds and monitoring wells, and requesting rescission of the WDRs. The Dischargers were also informed that unless the WDRs were rescinded, that monitoring and reporting submittals, as well as WDR fees are still required.

In a 15 October 2015 email, Board staff reminded the Dischargers that the technical report required by the Water Code section 13267 Order was due on 16 October 2015. Board staff continued to attempt to have the Dischargers commit to one of the three options by sending additional e-mails on 23 and 28 October 2015; however, as of the date of issuance of the ACL Complaint, Board staff had not received any

monitoring reports or a response the Water Code section 13267 technical report.

ADMISTRATIVE
CIVIL LIABILITY
COMPLAINT:

On 25 January 2016, the ACL Complaint was issued by the Assistant Executive Officer in the amount of \$100,000 based on the State Water Board's Enforcement Policy. The Complaint alleges that the Dischargers failed to submit 42 monitoring reports from April 2013 through November 2015 as required by the WDRs.

The maximum penalty for not submitting the reports is now at \$20,909,000. The minimum penalty is the economic benefit plus 10%, and has been estimated to be \$26,963. The Enforcement Policy's Penalty Calculation method resulted in a liability of \$897,616. However, the Prosecution Team asserts that this penalty is disproportionate to the volume of the permitted discharge (i.e, 7,500 gallons per day), and that that the goals of the Water Code and Enforcement Policy can be met with a smaller, though still substantial, final liability in the amount of \$100,000.

ISSUE:

The Dischargers have stated during multiple meetings and in e-mail correspondence that they do not have the ability to pay the proposed liability and continue in business.

However, the Prosecution Team determined that based on 2014 and 2015 financial data that the Dischargers provided to the State Water Resources Control Board's Office of Enforcement economist that the Dischargers have the ability to pay the proposed \$100,000 penalty amount and continue to operate the marina.

RECOMMENDATION:

The Prosecution Team recommends that the Board adopt the ACLO for \$100,000 as proposed.

Mgmt. Review WW

Legal Review KE

23/24 June 2016

Central Valley Water Board
11020 Sun Center Drive
Rancho Cordova, California