

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2016-0041

IN THE MATTER OF

CRUISER HAVEN, INC.
DELTA WATERWAYS LLC

HOLLAND RIVERSIDE MARINA
CONTRA COSTA COUNTY

This Order is issued to Cruiser Haven, Inc. and Delta Waterways LLC (hereafter collectively Dischargers) pursuant to California Water Code (Water Code) section 13268, which authorizes the imposition of Administrative Civil Liability (ACL) and Water Code section 13323, which authorizes the issuance of this Order. This Order is based on allegations that the Dischargers violated provisions of Waste Discharge Requirements (WDRs) Order 5-01-093 and an Order issued under the authority of Water Code section 13267.

The Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds:

BACKGROUND

1. The Dischargers own and/or operate a wastewater collection, treatment, and disposal system, referred to as a Wastewater Treatment Facility (WWTF) that serves the Holland Riverside Marina. The marina and associated wastewater system are at 7000 Holland Tract Road in Brentwood, California on the Sacramento – San Joaquin Delta, near Knightsen, in Section 24, T2N, R3E, MDB&M.
2. Domestic wastewater from restrooms, showers, and laundry facilities, as well as wastewater from boat holding tanks, is discharged to a 1,300-square foot lined aeration basin. The waste then flows by gravity to 900-square foot lined facultative pond, and then into a two-celled percolation pond, which is used for effluent disposal.
3. On 27 April 2001, the Central Valley Water Board issued Waste Discharge Requirements (WDRs) Order 5-01-093 to Western Waterways, Inc., which prescribes requirements for the discharge of domestic wastewater to the WWTF. On 27 May 2010, the Central Valley Water Board issued Name Change Order R5-2010-0078 naming Delta Waterways LLC as the new owner and Cruiser Haven, Inc. as the new owner and operator of the facility.

PREVIOUS ENFORCEMENT

4. The facility has had a history of non-compliance with WDRs 5-01-093. On 6 April 2004, ACL Complaint R5-2004-0512 was issued to the previous owner and operator of the marina, Western Waterways, Inc. The Complaint was issued in the amount of \$40,000 for the failure to replace the badly damaged pond liners, install groundwater monitoring wells, and submit monthly and quarterly groundwater monitoring reports per the requirements in the WDRs. The matter was heard at the 4 June 2004 meeting of the Central Valley Regional Water Board. Based on testimony at the hearing, the Board adopted ACL Order R5-2004-0063 in the amount of \$60,000.
5. On 29 June 2004, Western Waterways, Inc. petitioned the ACL Order to the State Water Resources Control Board. The petition was denied in a letter dated 18 November 2004. On 17 December 2004, Western Waterways, Inc. filed a petition with the Superior Court of California, County of Contra Costa. Following confidential settlement negotiations, the ACL Order was settled with payment in the amount of \$60,000 on 26 December 2006.
6. Western Waterways Inc. subsequently complied with its WDRs and replaced the pond liners and installed two groundwater monitoring wells, and submitted monitoring reports.

CURRENT VIOLATIONS: A. FAILURE TO SUBMIT MONITORING REPORTS

7. The current Dischargers, Cruiser Haven, Inc. and Delta Waterways, LLC assumed control of the facility in 2010. This Order assesses liability for the failure of the current Dischargers to comply with the WDRs.
8. The WDRs contain a Monitoring and Reporting Program (MRP), which specifies monitoring and reporting requirements to be implemented by the Dischargers. The MRP requires the submittal of monthly, quarterly, and annual monitoring reports. The MRP requires that monthly monitoring reports are to be submitted by the first day of the second month following the sampling, quarterly monitoring reports by the first day of the second month after the sampling quarter, and annual reports by 1 February of each year.
9. The Dischargers have a history of failure to submit monitoring reports. Between June 2012 and January 2015, the Dischargers have been issued six Notices of Violation (NOVs) for failure to submit monitoring reports and for other violations of the WDRs. This Order only assesses civil liability for the failure to submit technical and monitoring reports, but the other violations are described to provide context.

10. On 15 June 2012, the Dischargers were issued an NOV for the non-submittal of two monitoring reports (2011 Annual and First Quarter 2012). The NOV informed the Dischargers that the maximum liability to date for the two delinquent monitoring reports was \$178,000. In addition, the NOV required the Dischargers to either submit the delinquent monitoring reports, or if the reports were not available, submit a report identifying actions to be taken to ensure future monitoring reports were submitted on time and complete. The Dischargers responded in a 20 June 2012 letter, and submitted the two missing monitoring reports. However, the reports did not include all of the information required by the MRP, and were therefore materially deficient.
11. On 3 August 2012, Board staff issued a second NOV to Dischargers following a site inspection. The inspector found that vegetation was floating in pond 2, in violation of Discharge Specification B.6 of the WDRs, which states: *"Ponds shall be managed to prevent breeding of mosquitos. In particular,... Dead algae, vegetation, and debris shall not accumulate on the water surface..."* The NOV required the Dischargers to provide a report showing that the vegetation had been removed from the pond. On 17 September 2012, the Dischargers provided a response stating that the vegetation had been removed.
12. On 3 August 2012, the Dischargers were issued a third NOV 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. The NOV required the Dischargers to submit a report describing how the violations would be corrected, and the name of the qualified professional that would prepare the reports. In a letter dated 12 September 2012, the Dischargers indicated that they had increased the aeration time to reduce the ammonia concentrations in the pond, and that they were trying to obtain the services of a professional geologist to ensure that future monitoring reports included all of the information required by the MRP.
13. On 24 September 2013, a fourth NOV was issued to the Dischargers for the non-submittal of five monitoring reports, and the submittal of four late monitoring reports during the reporting period from June 2012 through July 2013. The delinquent reports included the April through July 2013 monthly reports, and Third Quarter 2013 report. The NOV informed the Dischargers that the maximum liability for the five delinquent monitoring reports was \$620,000. The NOV was also issued for three exceedances of the ammonia effluent limit, and for violation of Discharge Specification B. 9 of the WDRs for vegetation observed in wastewater ponds. The NOV indicated that because of the history of violations, an ACL Complaint of up to \$1,000 per day for late or inadequate reports would be proposed. The NOV informed the Dischargers to contact Board staff to discuss how they would get back into compliance, to avoid additional violations, and immediately begin submitting complete monitoring reports in accordance with the MRP. Following issuance of the NOV, Board staff discovered that the Second

Quarter 2013 monitoring report was also delinquent. The Dischargers did not provide a response to the NOV, nor begin submitting monitoring reports as required by the WDRs and MRP.

14. On 15 August 2014, Board staff met with the Dischargers to discuss the history of non-compliance. The Dischargers were informed that the following monitoring reports had not been received: April 2013 through June 2014 monthly reports, Second Quarter through Annual 2013/Fourth Quarter 2013, and First Quarter 2014. 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 stated that continued failure to submit monitoring reports would result in the issuance of an ACL Complaint.
15. In follow-up to the 15 August 2014 meeting, Board staff issued a fifth NOV on 27 August 2014 for delinquent monitoring reports. The NOV stated that the Dischargers were subject to maximum liability penalties of \$3,779,000 to date, 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 included actions that would be taken to assure future monitoring reports would be submitted on time and complete. In addition, the NOV informed the Dischargers that they must immediately begin submitting monitoring reports, beginning with the September 2014 monthly monitoring report and the Third Quarter 2014 groundwater monitoring report.
16. 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 7000 Holland Tract Rd Brentwood, Ca 94548. 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."*
17. The Dischargers continued to fail to submit reports, and therefore on 14 January 2015, Board staff issued a sixth NOV for the non-submittal of the September 2014 through November 2014 monthly reports and the Third Quarter 2014 report. This NOV informed the Dischargers that the maximum liability for non-submittal of these monitoring reports to date was \$205,000, with liability continuing to accrue on a daily basis. The NOV informed the Dischargers that Board staff would be preparing an ACL Complaint for up to \$1,000 per day for late or inadequate reports. The NOV also informed the Dischargers to immediately submit the delinquent monitoring reports to minimize the accrual of liability penalties, and that all future monitoring reports were to be submitted in

accordance with the WDRs and MRP. Board staff did not receive a response to the NOV.

18. 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.
19. On 18 September 2015, Board's Prosecution Team met with the Dischargers to discuss the Dischargers' prolonged non-compliance with the WDRs and the accruing administrative civil liabilities for failure to submit the required monitoring reports.
20. In follow-up to the meeting, on 24 September 2015 a Water Code Section 13267 Order was issued to the Dischargers for 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 for future expansion, 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, he was responsible for complying with the WDRs and submitting monitoring reports.
21. 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. The Dischargers stated in a follow-up email dated 15 October 2015 that "...Alpha Analytical is coming out on Tuesday to perform the annual testing requirements and we are back on schedule for the testing regiment..." In addition, the Dischargers stated "...I'm upgrading the Pond 1 Aeration pump from 5 HP 3 phase pump to a 7.5 HP 3 phase pump and upgrading the Pond 2 aeration pump from 1 HP single phase pump to a 5 HP 3 phase pump which should reduce ammonia buildup considerable..." Board staff sent additional email reminders on 23 and 28 October 2015; however, to date Board staff has not received any monitoring reports, the technical report, or any information pertaining to upgrading the aeration system.
22. As of 25 January 2016, the date of ACL Complaint R5-2016-0501, Board staff had not received the forty-two (42) delinquent monitoring reports shown in the table below. The table below outlines the date by which each monitoring report, as required by the WDRs, was to have been submitted.

| Delinquent Monitoring Reports | Due Date | Days of Violation¹ |
|--------------------------------------|--------------------|--------------------------------------|
| April 2013 Monitoring Report | 1 June 2013 | 968 |

| Delinquent Monitoring Reports | Due Date | Days of Violation¹ |
|--|-------------------------|--------------------------------------|
| May 2013 Monitoring Report | 1 July 2013 | 938 |
| June 2013 Monitoring Report | 1 August 2013 | 907 |
| Second Quarter 2013 Monitoring Report | 1 August 2013 | 907 |
| July 2013 Monitoring Report | 1 September 2013 | 876 |
| August 2013 Monitoring Report | 1 October 2013 | 846 |
| September 2013 Monitoring Report | 1 November 2013 | 815 |
| Third Quarter 2013 Monitoring Report | 1 November 2013 | 815 |
| October 2013 Monitoring Report | 1 December 2013 | 785 |
| November 2013 Monitoring Report | 1 January 2014 | 754 |
| December 2013 Monitoring Report | 1 February 2014 | 723 |
| Annual 2013/ Fourth Quarter 2013 Monitoring Report | 1 February 2014 | 723 |
| January 2014 Monitoring Report | 1 March 2014 | 695 |
| February 2014 Monitoring Report | 1 April 2014 | 664 |
| March 2014 Monitoring Report | 1 May 2014 | 634 |
| First Quarter 2014 Monitoring Report | 1 May 2014 | 634 |
| April 2014 Monitoring Report | 1 June 2014 | 603 |
| May 2014 Monitoring Report | 1 July 2014 | 573 |
| June 2014 Monitoring Report | 1 August 2014 | 542 |
| Second Quarter 2014 Monitoring Report | 1 August 2014 | 542 |
| July 2014 Monitoring Report | 1 September 2014 | 511 |
| August 2014 Monitoring Report | 1 October 2014 | 481 |
| September 2014 Monitoring Report | 1 November 2014 | 450 |
| Third Quarter 2014 Monitoring Report | 1 November 2014 | 450 |
| October 2014 Monitoring Report | 1 December 2014 | 420 |
| November 2014 Monitoring Report | 1 January 2015 | 389 |
| December 2014 Monitoring Report | 1 February 2015 | 358 |

| Delinquent Monitoring Reports | Due Date | Days of Violation¹ |
|---|-------------------------|--------------------------------------|
| Annual 2014/Fourth Quarter 2014 Monitoring Report | 1 February 2015 | 358 |
| January 2015 Monitoring Report | 1 March 2015 | 330 |
| February 2015 Monitoring Report | 1 April 2015 | 299 |
| March 2015 Monitoring Report | 1 May 2015 | 269 |
| First Quarter 2015 Monitoring Report | 1 May 2015 | 269 |
| April 2015 Monitoring Report | 1 June 2015 | 238 |
| May 2015 Monitoring Report | 1 July 2015 | 208 |
| June 2015 Monitoring Report | 1 August 2015 | 177 |
| Second Quarter 2015 Monitoring Report | 1 September 2015 | 146 |
| July 2015 Monitoring Report | 1 September 2015 | 146 |
| August 2015 Monitoring Report | 1 October 2015 | 116 |
| September 2015 Monitoring Report | 1 November 2015 | 85 |
| Third Quarter 2015 Monitoring Report | 1 November 2015 | 58 |
| October 2015 Monitoring Report | 1 December 2015 | 55 |
| November 2015 Monitoring Report | 1 January 2016 | 24 |
| | | Total: 20,808 days |

As of 25 January 2016

23. Following issuance of the ACL Complaint, on 24 February 2016, the Dischargers submitted the September 2015, October 2015, and November 2015 monthly reports¹. The third quarter 2015 monitoring report was submitted but was substantially deficient.

CURRENT VIOLATIONS:

B. FAILURE TO COMPLY WITH WATER CODE SECTION 13267 ORDER

24. Water Code section 13267, subdivision (b)(1) states, in part,:

In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or

¹ It is noted that the number of days of violation calculated in Finding 22 does not change with the submittal of these three reports, because the days of violation were calculated as of 26 January 2015 and the reports were submitted on 24 February 2016.

is suspected of having discharged or discharging or who proposed to discharge waste within its region ... that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

25. As discussed in Finding 20, on 24 September 2015 a Water Code section 13267 Order was issued to the Dischargers requiring the submittal of a technical report by 16 October 2015 describing which of the three options they would commit to. Those 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 for future expansion, 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, he was responsible for complying with the WDRs and submitting monitoring reports.
26. The Dischargers have not submitted the technical report required by the Water Code section 13267 Order that was due on 16 October 2015. Board staff reminded the Dischargers in a 15 October 2015 email that the technical report was due by 16 October 2015. In addition, Board staff indicated in emails dated 23 and 28 October 2015 that the information provided in the Dischargers' 27 October 2015 email which stated "...I have found an engineer who indicated he can meet the permit requirement and am scheduling to meet with the engineer... I will have the permit fees caught up and work on getting the required reports submitted..." did not meet the requirements of the Water Code section 13267 Order. The emails also informed the Dischargers that they were accruing penalties of up to \$1,000 per day for not submitting the information required by the Water Code section 13267 Order, in addition to those penalties associated with not submitting the monitoring reports required by the WDRs. As of 25 January 2016, the technical report is 101 days late.

REGULATORY CONSIDERATIONS

27. As described above, the Dischargers have failed to conduct the monitoring and reporting, and have failed to submit the monitoring and technical reports as required by the WDRs and the Water Code section 13267 Order. The WDRs require that monitoring reports be submitted pursuant to Water Code section 13267.

28. The Regional Board relies on the submission of technical and monitoring reports required by the WDRs and MRP to assure compliance with WDRs, to protect the beneficial uses of waters of the state, to protect against nuisance, and to protect human health and the environment.
29. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board. Surface water drainage from the facility is the Sacramento San Joaquin Delta. The designated beneficial uses of the Sacramento San Joaquin Delta are municipal and domestic supply; agricultural supply (excluding stock watering); water contact recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; migration of aquatic organisms; spawning, reproduction and/or early development; wildlife habitat; and navigation.
30. The beneficial uses of the groundwater are municipal and domestic supply, agricultural supply, industrial service supply and industrial process supply.
31. The Central Valley Regional Water Board may impose administrative civil liabilities for violations of a discharger's WDR permit and/or applicable Board orders pursuant to the procedures described in Water Code section 13323. This Complaint alleges the Dischargers violated WDRs 5-01-093 and the 24 September 2015 Water Code section 13267 Order, and seeks the imposition of administrative civil liability in accordance with Water Code section 13268.
32. Pursuant to Water Code section 13327, in determining the amount of civil liability, the regional board shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on the ability to continue in 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 as justice may require.
33. Issuance of this Order to enforce Division 7, Chapter 5.5 of the Water Code is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, 15321, subdivision (a)(2) and all applicable law.

CALCULATION OF CIVIL LIABILITIES UNDER WATER CODE SECTION 13268

34. Water Code section 13268, subdivision (a)(1) states: *Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor, and may be liable civilly in accordance with subdivision (b).*
35. Water Code section 13268, subdivision (b)(1) states: *Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.*
36. As outlined in Finding 22, the Dischargers failed to submit 42 monitoring reports. As of 25 January 2016, each report is delinquent between 1 and 945 days, and the total number of days that all reports are delinquent is 20,808 days.
37. As outlined in Finding 25, the Dischargers failed to submit the technical report required by the 24 September 2015 Water Code section 13267 Order. The report was due by 16 October 2015. As of 25 January 2016, the technical report is 101 days delinquent.
38. **Maximum Civil Liability:** Per Water Code section 13268, subdivision (b)(1) the maximum administrative civil liability that may be assessed for not submitting the monitoring reports required by the WDRs and the technical report required by the Water Code section 13267 Order is **twenty million nine hundred and nine thousand dollars (\$20,909,000).**
39. **Minimum Civil Liability:** Pursuant to the State Water Board Enforcement Policy, the minimum civil liability should be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations. The Regional Board Prosecution Team calculates that the economic benefit of non-compliance plus 10% is **twenty-six thousand nine hundred and sixty-three dollars (\$26,963).**

ADMINISTRATIVE CIVIL LIABILITY

40. On 17 November 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 20 May 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 Water Code sections 13327 and 13385, subdivision (e). The entire Enforcement Policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11179.pdf.

41. The recommended administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, and Water Code sections 13327 and 13268, as explained in detail in Attachment A to this Order. The proposed civil liability takes into account such factors as the Dischargers' culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
42. As described above, the maximum penalty for the violations is \$20,909,000 and the minimum penalty is \$26,963. Based on consideration of the above facts, and after applying the penalty methodology, civil liability will be imposed administratively on the Dischargers in the amount of **\$26,963**. The specific factors considered in this penalty are detailed in Attachment A.
43. Notwithstanding the issuance of this Order, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Dischargers' WDRs for which penalties have not yet been assessed or for violations that may subsequently occur.

IT IS HEREBY ORDERED that Cruiser Haven, Inc. and Delta Waterways, LLC shall pay a civil liability of \$26,963 as follows:

Within 30 days of adoption of this Order, the Dischargers shall pay twenty six thousand nine hundred sixty-three dollars (\$26,963) by check made payable to the *State Water Resources Control Board, State Water Pollution Cleanup and Abatement Account*. The check shall have written upon it the number of this ACL Order.

I, Pamela C. Creedon, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region on 24 June 2016.

Original signed by

PAMELA C. CREEDON, Executive Officer

Attachment A – ACL Order R5-2016-0041
Specific Factors Considered for Administrative Civil Liability
Cruiser Haven, Inc.,
Delta Waterways LLC
Holland Riverside Marina, Contra Costa County

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13327. Each factor of the ten-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

Category 1: Violations of WDR Order 5-01-093 for Failure to Submit Monitoring Reports

WDRs Order 5-01-093, issued by the Central Valley Water Board on 27 April 2001, requires the Dischargers to submit monitoring reports on a monthly, quarterly, and annual basis. Our records show that the Dischargers have a long history of delinquent monitoring report submittals, and most recently have not submitted the November 2015 monitoring report. The reports are required to be submitted pursuant to Water Code section 13267. Water Code section 13268 authorizes a liability of up to \$1,000 per day for each missing or incomplete report required pursuant to Water Code section 13267. Because each reporting requirement is similar in nature, they have been considered together instead of individually.

Step 1 – Potential for Harm for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, the evaluation of this factor has been omitted from the following calculation.

Step 2 – Assessment for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, the evaluation of this factor has been omitted from the following calculation.

Step 3 – Per Day Assessment for Non-Discharge Violations

The “per day” factor is calculated for each non-discharge violation considering the (a) potential for harm and (b) the extent of the deviation from the applicable requirements.

Potential for Harm

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses. In this case, the failure to submit monitoring reports as required by WDRs Order 5-01-093 prevents Board staff from evaluating compliance with the WDRs. The violation represents a “substantial threat to beneficial uses” because the Water Board is deprived of the essential technical evaluations, monitoring, and data reporting to determine the extent and severity of the water quality impacts. A value of “Moderate” is therefore warranted.

Deviation from Requirement

The Enforcement Policy requires determination of whether the violation represents either a minor, moderate, or major deviation from the applicable requirements. For the Deviation from

Requirement, a “Major” factor is appropriate in this case because the Dischargers’ repeated failure to conduct monitoring and reporting as required by the WDRs shows the Dischargers’ complete disregard for compliance with regulatory requirements.

Using Table 3 in the Enforcement Policy, the Per Day Factor of **0.55** is assigned. This value is to be multiplied by the days of violation and the maximum per day penalty, as shown in the Initial Liability table below.

Days of Violation

The Enforcement Policy provides that, for violations lasting more than 30 days, the Central Valley Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation. In order to adjust the per-day basis, the Central Valley Water Board must make express findings that the violation: (1) is not causing daily detrimental impacts to the environment or the regulatory program; or (2) results in no economic benefit from the illegal conduct that can be measured on a daily basis; or (3) occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation. If one of these findings is made, an alternate approach to penalty calculation for multiple day violations may be used. The Prosecution Team finds that the failure to submit monitoring reports results in no economic benefit that can be measured on a daily basis. Therefore, the Prosecution Team recommends compressing the days of violation.

Following the Enforcement Policy, for violations lasting more than 30 days, the days are counted as follows: first day of violation, every fifth day of violation until the 30th day, and every 30 days thereafter. For example, a violation lasting 62 days would be compressed to 8 days (counting days 1, 5, 10, 15, 20, 25, 30, 60).

The following table shows the actual days of violation and the compressed days of violation. The days of violation are calculated from the due date of the reports through 25 January 2016, the date the Complaint was issued.

| Delinquent Monitoring Reports | Actual Days of Violation¹ | Compressed Days of Violation |
|---------------------------------------|---|-------------------------------------|
| April 2013 Monitoring Report | 968 | 38 |
| May 2013 Monitoring Report | 938 | 37 |
| June 2013 Monitoring Report | 907 | 36 |
| Second Quarter 2013 Monitoring Report | 907 | 36 |
| July 2013 Monitoring Report | 876 | 35 |

¹ Calculated from the day after the report was due through 25 January 2016.

| Delinquent Monitoring Reports | Actual Days of Violation¹ | Compressed Days of Violation |
|---|---|-------------------------------------|
| August 2013 Monitoring Report | 846 | 34 |
| September 2013 Monitoring Report | 815 | 33 |
| Third Quarter 2013 Monitoring Report | 815 | 33 |
| October 2013 Monitoring Report | 785 | 32 |
| November 2013 Monitoring Report | 754 | 31 |
| December 2013 Monitoring Report | 723 | 30 |
| Annual 2013/Fourth Quarter 2013 Monitoring Report | 723 | 30 |
| January 2014 Monitoring Report | 695 | 29 |
| February 2014 Monitoring Report | 664 | 28 |
| March 2014 Monitoring Report | 634 | 27 |
| First Quarter 2014 Monitoring Report | 634 | 27 |
| April 2014 Monitoring Report | 603 | 26 |
| May 2014 Monitoring Report | 573 | 25 |
| June 2014 Monitoring Report | 542 | 24 |
| Second Quarter 2014 Monitoring Report | 542 | 24 |
| July 2014 Monitoring Report | 511 | 23 |
| August 2014 Monitoring Report | 481 | 22 |
| September 2014 Self Monitoring Report | 450 | 21 |
| Third Quarter 2014 Monitoring Report | 450 | 21 |
| October 2014 Self Monitoring Report | 420 | 20 |

| Delinquent Monitoring Reports | Actual Days of Violation¹ | Compressed Days of Violation |
|--|---|-------------------------------------|
| November 2014 Self Monitoring Report | 389 | 19 |
| December 2014 Self Monitoring Report | 358 | 18 |
| Annual 2014/Fouth Quarter 2014 Monitoring Report | 358 | 18 |
| January 2015 Monitoring Report | 330 | 17 |
| February 2015 Monitoring Report | 299 | 16 |
| March 2015 Monitoring Report | 269 | 15 |
| First Quarter 2015 Monitoring Report | 269 | 15 |
| April 2015 Monitoring Report | 238 | 14 |
| May 2015 Monitoring Report | 208 | 13 |
| June 2015 Monitoring Report | 177 | 12 |
| Second Quarter 2015 Monitoring Report | 146 | 11 |
| July 2015 Monitoring Report | 146 | 11 |
| August 2015 Monitoring Report | 116 | 10 |
| September 2015 Monitoring Report | 85 | 9 |
| Third Quarter 2015 Monitoring Report | 85 | 9 |
| October 2015 Monitoring Report | 55 | 8 |
| November 2015 Monitoring Report | 24 | 24² |
| Total: | 20,808 | 961 days |

² Per the 20 May 2010 State Water Resources Control Board Water Quality Enforcement Policy, violations that last less than 30 days are not eligible to be compressed.

Using the reduced days of violation:

Initial Liability Amount

The initial liability amount for the violations calculated on a per-day basis is as follows:

$$961 \text{ days} \times \$1,000/\text{day} \times 0.55 = \$528,550$$

Total Initial Liability = \$528,550

Step 4: Adjustment Factors

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for intentional or negligent behavior. The Dischargers were assigned a multiplier value of 1.4. The Discharger is responsible for the failure to submit the required reports, as follows:

The Dischargers have been regulated by the Central Valley Water Board under WDRs Order 5-01-093 since being named as the owner and/or operator on the WDRs on 27 May 2010 (over five years ago), and have been issued several NOVs, as described in the Complaint for the non-submittal of monitoring reports. In addition, the Dischargers met with Board staff on 15 August 2014 to discuss the non-compliance issues and the civil liability penalties associated with the non-submittal of reports. Since the August 2014 meeting with Dischargers, two additional NOVs were issued for delinquent monitoring reports, with the most recent issued on 14 January 2015.

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, the Board's Prosecution Team met with the Dischargers to discuss settlement. Despite the multiple NOVs and meetings, the Dischargers continue to not submit monitoring reports as required by the WDRs.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperates in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. Despite multiple notifications of the violations, the Dischargers have not cooperated or returned to compliance with the WDRs. As noted above, the Dischargers failed to submit monitoring reports after receiving NOV letters for past due reports, and failed to submit monitoring reports after multiple meetings with Board staff. Therefore, it is appropriate to use a cleanup and cooperation factor of 1.2.

History of Violation

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1, with higher values as appropriate. Since 27 May 2010, when the Dischargers were named as the owner and/or operator on the WDRs, Board staff has issued several NOVs for failure to submit monitoring reports as required by the WDRs and MRP. Board staff has also issued NOVs for failure to comply with the ammonia effluent limit and failure to maintain the wastewater ponds. In addition, our records show that the Discharger has not paid its annual

permit fees of \$970 and \$1,044 for fiscal years 2013 and 2014. Despite the above, a History of Violation multiplier of 1.0 was used for this factor because the Board has not assessed a formal enforcement action against the Dischargers.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount.

| |
|---|
| <p><u>Total Base Liability Amount: Violation 1</u></p> <p>Total Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability</p> <p>\$528,550 x 1.4 x 1.2 x 1.0 = \$887,964</p> <p style="text-align: right;">Total Base Liability = \$887,964</p> |
|---|

| |
|---|
| <p>Category 2: Failure to Submit Technical Report Required by Water Code Section 13267 Order</p> |
|---|

On 24 September 2015, following a meeting with the Board’s Prosecution Team, a Water Code section 13267 Order was issued to the Dischargers. The Order required the Dischargers to submit a technical report by 16 October 2015 committing to one of three options in order to comply with Water Board requirements: Those 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 for future expansion, 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, he was responsible for complying with the WDRs and submitting monitoring reports. The Dischargers failed to submit the technical report required by the Water Code section 13267 Order.

Step 1 – Potential for Harm for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, the evaluation of this factor has been omitted from the following calculation.

Step 2 – Assessment for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, the evaluation of this factor has been omitted from the following calculation.

Step 3 – Per Day Assessment for Non-Discharge Violations

The “per day” factor is calculated for each non-discharge violation considering the (a) potential for harm and (b) the extent of the deviation from the applicable requirements.

Potential for Harm

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses. In this case, the failure to submit the technical report required by the Water Code section 13267 Order

prevents Board staff from evaluating compliance with the WDRs. The violation represents a “substantial threat to beneficial uses” because the Dischargers have not submitted the technical report describing how they plan to comply with Water Board requirements. A value of “Moderate” is therefore warranted.

Deviation from Requirement

The Enforcement Policy requires determination of whether the violation represents either a minor, moderate, or major deviation from the applicable requirements. For the Deviation from Requirement, a “Major” factor is appropriate in this case because the Dischargers’ failure to submit the technical report required by the Water Code section 13267 Order shows the Dischargers’ complete disregard for compliance with regulatory requirements.

Using Table 3 in the Enforcement Policy, the Per Day Factor of **0.55** is assigned. This value is to be multiplied by the days of violation and the maximum per day penalty, as shown in the Initial Liability table below.

Days of Violation

As mentioned above, the Enforcement Policy provides that, for violations lasting more than 30 days, the Central Valley Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation. The Prosecution Team finds that the failure to submit the technical report results in no economic benefit that can be measured on a daily basis, and has reduced the days of violation accordingly.

The table below shows the actual days of violation and the reduced days. The days of violation are calculated from a due date for the technical report of 16 October 2015 through 25 January 2016.

| Delinquent Technical Report | Actual Days of Violation | Compressed Days of Violation |
|------------------------------------|---------------------------------|-------------------------------------|
| Technical Report | 101 | 9 |

Using the reduced days of violation:

| <u>Initial Liability Amount</u> |
|--|
| The initial liability amount for the violations calculated on a per-day basis is as follows: |
| 9 days x \$1,000/day x 0.55 = \$4,950 |
| Total Initial Liability = \$4,950 |

Step 4: Adjustment Factors

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for intentional

or negligent behavior. The Dischargers were given a multiplier value of 1.5. The Dischargers are fully responsible for the failure to submit the technical report.

On 18 September 2015, Board's Prosecution Team met with the Dischargers to discuss the Dischargers' prolonged non-compliance with the WDRs and the accruing administrative civil liabilities for failure to submit the required monitoring reports. During the meeting, the Dischargers were informed of a forthcoming Water Code Section 13267 Order and the three options that would be included in the Order: (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 for future expansion, 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, they were responsible for complying with the WDRs and submitting monitoring reports. In follow-up to the meeting, on 24 September 2015 a Water Code section 13267 Order was issued to the Dischargers for submittal of a technical report committing to one of the three options. The Dischargers did not submit the required technical report despite subsequent email reminders that the Dischargers' attempts to respond to the Water Code section 13267 Order were deficient and that the Dischargers still needed to comply with the Water Code section 13267 Order.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperates in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The Dischargers have not cooperated in submitting the technical report required by the Water Code section 13267 Order. As explained above, the Dischargers made two attempts to respond to the Water Code section 13267 Order via email. However, these attempts were deficient and the Dischargers have yet to comply despite multiple reminders from Board staff. Therefore, it is appropriate to use a cleanup and cooperation factor of 1.3.

History of Violation

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1, with higher values as appropriate. The Dischargers did not comply with the Water Code section 13267 Order, even after the Dischargers were reminded of the need to submit a response by Board staff in emails dated 15, 23, and 28 October 2015. Despite the above, a History of Violation multiplier of 1.0 was used for this factor because the Board has not assessed a formal enforcement action against the Dischargers.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount.

Total Base Liability Amount: Violation 2

Total Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

$$\$4,950 \times 1.5 \times 1.3 \times 1.0 = \$9,652$$

Total Base Liability = **\$9,652**

COMBINED TOTAL BASE LIABILITY FOR ALL VIOLATIONS

The combined base liability for both categories of violation is \$887,964 + \$9,652, which is equal to **\$897,616**.

Step 6 – Ability to Pay and Continue in Business

The ability to pay and to continue in business must be considered when assessing administrative civil liability. The Prosecution Team conducted a preliminary asset search of publicly available information. The Prosecution Team finds that the Dischargers have the ability to pay the proposed liability because they own the property located at 7000 Holland Tract Road in Brentwood, California that has an assessed total value of \$2,434,662.

Step 7 – Other Factors as Justice May Require

The costs of investigation and enforcement are “other factors as justice may require”, and could be added to the liability amount. The Central Valley Water Board Prosecution Team has incurred over \$15,000 (100 hours at a statewide average of \$150/hour) in staff costs associated with the investigation and enforcement of the violations alleged herein. While this amount could be added to the penalty, the Prosecution Team, in its discretion, is not adding this amount to the total proposed liability.

If the Central Valley Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for “other factors as justice may require” but only if express findings are made to justify this.

In this case, application of the Enforcement Policy results in a liability of \$897,616. The amount, while quite large, is the result of the application of the Enforcement Policy to multiple years of failure to submit monitoring reports. WDRs Order 5-01-093 allows an average monthly discharge of 7,500 gallons per day of domestic wastewater to a pond system. A penalty of \$897,616 is disproportionate to the volume of the permitted discharge. The Board asserts that the goals of the Water Code and Enforcement Policy can be met here with a smaller, though still substantial, final liability in the amount of \$26,963. This application of discretion is a result of the specific circumstances peculiar to this case.

Step 8 – Economic Benefit

The economic benefit of noncompliance is any savings or monetary gain derived from the act or omission that constitutes the violation. In other words, the Dischargers realized a gain by not expending the resources to comply with water quality laws, including completing the monitoring and reporting as required by MRP 5-01-093. In addition, the Enforcement Policy states that the total liability shall be at least 10% higher than the economic benefit, “so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations.”

The Dischargers incurred an economic benefit by not conducting the monitoring and reporting requirements as required by the MRP. In addition, the Dischargers incurred an economic benefit by having the wastewater ponds in place, and charging fees for boaters to pump out their wastewater tanks.

While the economic benefit for accepting waste from boaters is not known, it is possible to determine the economic benefit accrued by not conducting the required monitoring and

reporting activities. This determination can be made using the U.S. Environmental Protection Agency's BEN computer model, which calculates the economic benefit a discharger derives from delaying and/or avoiding compliance with environmental regulations. As shown in the attached Exhibit 1, the State Water Board's Economist used the BEN model and the estimates provided by staff for the costs to monitor the wastewater ponds and groundwater, and to compile and submit the reports. These estimated costs are based on actual billed work, bid proposals, and/or estimated costs provided by other dischargers for completing similar type work and/or consulting firms that complete similar work at other treatment facilities.

Using the BEN model, the economic benefit for not completing the required monitoring and submitting the required monitoring and technical reports is estimated to be \$24,512. As stated above, the Dischargers also received an economic benefit from having the wastewater ponds in place, and charging the public to pump out their wastewater holding tanks. Board staff does not have an estimate of the economic benefit from this activity at this time; however, pending the subpoena response, the economic benefit of noncompliance may be modified. Pursuant to the Enforcement Policy, the total proposed liability amount should be at least 10% higher than the calculated economic benefit. Therefore, the minimum liability is \$26,963.

Step 9 – Maximum and Minimum Liability Amounts

The maximum and minimum amounts for discharge violation must be determined for comparison to the amounts being proposed. These values are presented in the ACL Order, and the values are repeated here.

Maximum Liability Amount: \$20,909,000

Minimum Liability Amount, based on economic benefit of noncompliance: \$26,963

Step 10 – Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided amounts are within the statutory minimum and maximum amounts. Based on the foregoing analysis, and consistent with the Enforcement Policy, the final proposed Administrative Civil Liability is **\$26,963**.

Attachment: Exhibit 1: BEN model

Exhibit 1

| Cruiser Haven, Inc., Delta Waterways, LLC, Holland Riverside Marina, Contra Costa County | | | | | | | | | | |
|---|-------------------------------------|-------------------|-----------------------|----------------------|-------------------|---------------------------------------|---------------------|----------------------------|---------------------------|--|
| Compliance Action The actions required to have prevented the violation. | One-Time Nondepreciable Expenditure | | | Annual Cost | | Cost Index for Inflation ⁵ | Non-Compliance Date | Compliance or Hearing Date | Benefit of Non-compliance | |
| | Amount | Date ¹ | Delayed? ² | Amount | Date ¹ | | | | | |
| 1 - Monthly Monitoring and Reporting, Annualized, 2013, 7 reports | \$3,829 | 8/26/2015 | n | | | ECI | 9/15/2013 | 4/22/2016 | \$2,323 | |
| 2 - Monthly Monitoring and Reporting, Annualized, 2014, 12 reports | \$6,564 | 8/26/2015 | n | | | ECI | 6/30/2014 | 4/22/2016 | \$3,818 | |
| 3 - Monthly Monitoring and Reporting, Annualized, 2015, 11 reports | \$6,017 | 8/26/2015 | n | | | ECI | 6/15/2015 | 4/22/2016 | \$3,333 | |
| 4 - Quarterly Monitoring and Reporting, Annualized, 2013, 3 reports | \$6,531 | 8/26/2015 | n | | | ECI | 9/1/2013 | 4/22/2016 | \$3,973 | |
| 5 - Quarterly Monitoring and Reporting, Annualized, 2014, 4 reports | \$8,708 | 8/26/2015 | n | | | ECI | 7/1/2014 | 4/22/2016 | \$5,097 | |
| 6 - Quarterly Monitoring and Reporting, Annualized, 2015, 3 reports | \$6,531 | 8/26/2015 | n | | | ECI | 5/15/2015 | 4/22/2016 | \$3,648 | |
| 7 - Annual Report, 2013 | \$2,000 | 8/26/2015 | n | | | ECI | 2/1/2014 | 4/22/2016 | \$1,189 | |
| 8 - Annual Report, 2014 | \$2,000 | 8/26/2015 | n | | | ECI | 2/1/2015 | 4/22/2016 | \$1,131 | |
| Totals | \$42,180 | | | \$0 | | | | | \$24,512 | |
| | | | | | | | Date of run: | 12/10/2015 10:46 | | |
| Hearing Date: | 4/22/2016 | | | Penalty Payment Date | 4/22/2016 | | | | | |
| Income Tax Schedule: | For-Profit | | | | | | | | | |
| Source: USEPA BEN Model: | Version 5.5.0 | | | | | | | | | |
| Analyst: | MM Ransom | | | | | | | | | |
| ¹ This is the Date the cost estimate was made. ² Enter "y" if delayed, and "n" if avoided. ³ ECI is the Employment Cost Index. ⁴ The Non-Compliance Date is the midpoint of the non-compliance time interval annualized. For example, when there are 12 months of non-compliance for Monthly Reports, then the annualized mid-point is mid-June. | | | | | | | | | | |