

**REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION**

In the matter of:)

Peter M. Ormond, Owner;)
Rocky Vandergriff, DBA)
Water Treatment Services, Operator)
Date Gardens Mobile Home Park)
Waste Water Treatment Plant)

Order R7-2011-0048

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY ORDER**

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulation") is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, Colorado River Basin Region ("Regional Water Board"), on behalf of the Regional Water Board Prosecution Team ("Prosecution Team") and Peter M. Ormond, Owner and Rocky Vandergriff, DBA Water Treatment Services, Operator of Date Gardens Mobile Home Park Waste Water Treatment Plant (collectively "Dischargers"). The Prosecution Team and the Dischargers are collectively referred to as "Parties". This Stipulation is presented to the Regional Water Board, for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

Section II: RECITALS

1. Peter M. Ormond owns the Date Gardens Mobile Home Park (MHP) Wastewater Treatment Plant (WWTP) located at 1020 W. Evan Hewes Highway, El Centro, California, 92243. At all times relevant to this matter, Rocky Vandergriff, dba Water Treatment Services, operated the Date Gardens MHP WWTP. The WWTP has a design capacity of 0.02 million gallons-per-day (MGD). Wastewater from the WWTP is discharged to a subsurface tile drain that flows to Rice Drain No. 3, tributary to the New River, and ultimately to the Salton Sea. Rice Drain No. 3, the New River, and the Salton Sea are waters of the United States.
2. On May 7, 2003, the Regional Water Board adopted Waste Discharge Requirements (WDRs) Board Order No. R7-2003-0054 (NPDES Permit No. CA0104841) for the Dischargers to regulate discharges of treated wastewater from the WWTP. On June 25, 2008, the Regional Water Board adopted WDRs Board Order No. R7-2008-0010, which superseded WDRs Board Order No. R7-2003-0054 except for enforcement purposes.
3. On December 17, 2010, the Assistant Executive Officer of the Regional Water Board issued Administrative Civil Liability Complaint No. R7-2010-0047 ("Complaint") to the Dischargers (Attachment A). The Complaint alleges that the Dischargers violated the effluent limit for copper set forth in R7-2003-0054 on two occasions and violated WDRs Board Order No. R7-2008-010 on 34 occasions from July 1, 2008 through January 30, 2009, when it used an uncertified laboratory to perform E. Coli and Enterococci analysis. The Complaint recommends imposing an administrative civil liability totaling \$43,875.00 for alleged violations of WDRs Order Nos. R7-2003-0054 and R7-2008-0010. That amount includes staff costs of \$6,000.

4. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged in the Complaint except as provided in this Stipulation and that this Stipulation is in the best interest of the public.

5. To resolve by consent and without further administrative proceedings certain alleged violations of the California Water Code ("CWC") set forth in the Complaint, the Parties have agreed to the imposition of \$8,244 against the Dischargers. This liability amount is at least 10 percent higher than the economic benefit derived from the violations of WDRs Board Order No. R7-2008-0010 for the use of an uncertified laboratory to perform E. Coli and Enterococci analysis (see Attachment B) plus \$6,000 in mandatory minimum penalties, and is within the maximum and minimum liability amounts, as required by California Water Code section 13385. The adjustment in the liability from the amount proposed in the Complaint is the result of the Prosecution Team's consideration of the litigation risks and the relative likelihood that the Regional Water Board would impose the liability proposed in the Complaint, given the history of liabilities imposed by the Regional Water Board in similar cases and considering the available evidence on the Dischargers' economic benefit and savings, culpability, and the environmental harm resulting from the Dischargers' conduct.

Section III: STIPULATIONS

The Parties stipulate to the following:

6. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.

7. **Administrative Civil Liability:** The Dischargers shall pay a total of \$8,244 in stipulated administrative civil liability by check made payable to the "State Water Resources Control Board Cleanup and Abatement Account", which includes \$6,000 in mandatory minimum penalties, no later than 30 days following the Regional Water Board executing this Order. The check shall reference the Order number listed on page one of this Stipulation. The original signed check shall be sent to the Party Contact for the Regional Water Board set forth in Paragraph 9, with a copy to: Ann Carroll, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812.

8. **Compliance with Applicable Laws:** The Dischargers understand that payment of administrative civil liability in accordance with the terms of this Order and/or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject them to further enforcement, including additional administrative civil liability.

9. **Party Contacts for Communications related to this Stipulation and Order:**

For the Regional Water Board:

Doug Wylie,
Senior Water Resource Control Engineer
Colorado River Basin
Regional Water Quality Control Board
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260
dwylie@waterboards.ca.gov
(760) 346-6585

For the Dischargers:

Peter Ormond
Date Gardens Mobile Home Park WWTP
496 Mountain Avenue
Piedmont, CA 94611
mhpbroker@aol.com
(925) 980-5087

10. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

11. **Matters Covered by this Stipulation:** Upon adoption by the Regional Water Board as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in the Complaint, or which could have been asserted against the Dischargers as of December 17, 2010 based on the specific facts alleged in the Complaint or this Stipulated Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the Dischargers' full payment of administrative civil liability by the deadline specified in Paragraph 7 herein.

12. **Denial of Liability:** In settling this matter, the Dischargers do not admit to any of the findings of the Complaint, or that they have been or are in violation of the CWC, or any other federal, state, or local law or ordinance, provided, the Dischargers agree that in the event of any future enforcement actions by the Regional Water Board, this Order may be used as evidence of a prior enforcement action consistent with CWC section 13327.

13. **Public Notice:** The Parties understand that Federal law mandates that any settlement will not become final until after a 30-day public notice and comment period expires. (40 CFR 123.27.) The Parties agree that this Stipulation shall be publicly noticed on the Regional Water Board's website on or before August 16, 2011. In the event objections are raised during the public review and comment period, the Regional Water Board may, under certain circumstances, require a public hearing regarding the Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances.

14. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

15. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.

16. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board.

17. **If the Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

18. **Waiver of Hearing:** The Dischargers have been informed of the rights provided by CWC section 13323, subdivision (b), and hereby waive their right to a hearing before the Regional Water Board prior to the adoption of the Order.

19. **Waiver of Right to Petition:** The Dischargers hereby waive their right to petition the Regional Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives their rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

20. **The Dischargers' Covenant Not to Sue:** The Dischargers covenant not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.

21. **Necessity For Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Dischargers in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Dischargers of their obligation to obtain any final written approval required by this Order.

22. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

Date Gardens Mobile Home Park WWTP
Settlement Agreement; Stipulation for Entry of Administrative Civil Liability Order;
Order R7-2011-0048

23. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

24. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Regional Water Board, which incorporates the terms of this Stipulation.

IT IS SO STIPULATED.

**California Regional Water Quality Control Board,
Colorado River Basin Prosecution Team**

Date: _____

By: _____

**Jose Angel,
Assistant Executive Officer**

**Peter Ormond, Owner
Date Gardens Mobile Home Park**

Date: _____

By: _____

**Peter Ormond, Owner
Date Gardens Mobile Home Park**

**Rocky Vandergriff, dba Water Treatment Services
Former Operator, Date Gardens Mobile Home Park**

Date: 8-16-11

By: 

**Rocky Vandergriff
Water Treatment Services**

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IT IS SO STIPULATED.

**California Regional Water Quality Control Board,
Colorado River Basin Prosecution Team**

Date: _____

By: _____
**Jose Angel,
Assistant Executive Officer**

**Peter Ormond, Owner
Date Gardens Mobile Home Park**

Date: Aug 16, 2011

By: 

**Peter Ormond, Owner
Date Gardens Mobile Home Park**

**Rocky Vandergriff, dba Water Treatment Services
Former Operator, Date Gardens Mobile Home Park**

Date: _____

By: _____
**Rocky Vandergriff
Water Treatment Services**

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Date Gardens Mobile Home Park WWTP
Settlement Agreement; Stipulation for Entry of Administrative Civil Liability Order;
Order R7-2011-0048

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IT IS SO STIPULATED.

**California Regional Water Quality Control Board,
Colorado River Basin Prosecution Team**

Date: 8/16/2011

By: Jose Angel
**Jose Angel,
Assistant Executive Officer**

**Peter Ormond, Owner
Date Gardens Mobile Home Park**

Date: _____

By: _____
**Peter Ormond, Owner
Date Gardens Mobile Home Park**

**Rocky Vandergriff, dba Water Treatment Services
Former Operator, Date Gardens Mobile Home Park**

Date: _____

By: _____
**Rocky Vandergriff
Water Treatment Services**

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Order of the Regional Water Board:

25. This Order incorporates the foregoing Stipulation, set forth in Paragraphs 1 through 24 above, by this reference, as if set forth fully herein.


26. In accepting this Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in CWC sections 13385(e). The Regional Water Board's consideration of these factors is based upon information obtained by the Prosecution Team in investigating the allegations in the Complaint, or otherwise provided to the Regional Water Board.

27. The terms of this Stipulation and Order have been properly noticed and the required public comment period has closed without comment.

28. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

29. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Dischargers fail to perform any of its obligations under the Order.

I, Robert Perdue, 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, Colorado River Basin on September 15, 2011.



Robert Perdue
Executive Officer

Date: _____

9/15/11

ATTACHMENT A
Administrative Civil Liability Complaint No. R7-2010-0047

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION**

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R7-2010-0047
IN THE MATTER OF
PETER M. ORMOND, OWNER;
ROCKY VANDERGRUFF, DBA WATER TREATMENT SERVICES, OPERATOR
DATE GARDENS MOBILE HOME PARK
WASTEWATER TREATMENT PLANT
El Centro – Imperial County

PETER M. ORMOND AND ROCKY VANDERGRUFF ARE HEREBY GIVEN NOTICE THAT:

1. Peter M. Ormond, dba Date Gardens Mobile Home Park, and Rocky Vandergriff, dba Water Treatment Services (collectively Dischargers) are alleged to have violated provisions of Waste Discharge Requirements (WDRs) Orders No. R7-2003-0054 and No. R7-2008-0010, (NPDES Permit No. CA0104426), for which the Regional Water Quality Control Board, Colorado River Basin (Regional Board) may impose civil liability pursuant to California Water Code (CWC) Section 13385.
2. CWC Section 13323 authorizes the Executive Officer of the Regional Board to issue this Administrative Civil Liability Complaint (Complaint), and CWC Section 7 authorizes the Executive Officer to delegate these powers and duties to the Assistant Executive Officer.
3. Peter M. Ormond owns the Date Gardens Mobile Home Park (MHP) Wastewater Treatment Plant (WWTP), located at 1020 W. Evan Hewes Highway, El Centro, CA 92243. Rocky Vandergriff, dba Water Treatment Services, operates the Date Gardens MHP WWTP. The WWTP has a design capacity of 0.02 million gallons-per-day (MGD). Wastewater from the WWTP is discharged to a subsurface tile drain, which flows to Rice Drain No. 3, tributary to the New River, and ultimately to the Salton Sea. Rice Drain No. 3, the New River, and the Salton Sea are waters of the United States.
4. On May 7, 2003, the Regional Board adopted WDRs Board Order No. R7-2003-0054 (NPDES Permit No. CA0104841), for the Dischargers to regulate discharges of treated wastewater from the WWTP.
5. WDRs Board Order No. R7-2003-0054 (page 5, Section A.7) contains the following effluent limitations:

“Based on the Reasonable Potential Analysis, numeric Water Quality Based Effluent Limits are required for these constituents:”

Constituents	Unit	Average Monthly Effluent Limit	Maximum Daily Effluent Limit*
Copper	µg/L	2.39	4.80

6. On June 25, 2008, the Regional Board adopted WDRs Board Order No. R7-2008-0010 for the Dischargers to regulate discharges of treated wastewater from the WWTP. WDRs Board Order No. R7-2008-0010 rescinded Board Order No. R7-2003-0054 except for enforcement purposes.

7. WDRs Board Order No. R7-2008-0010 (pages 13-14, Effluent Limitations IV.A.1) contains the following effluent limitations:
- b. **Percent Removal:** The average monthly percent removal of BOD 5-day 20°C and total suspended solids shall not be less than 85 percent.
 - d. **Bacteria:** The bacterial concentrations in the wastewater effluent discharged to Rice Drain No. 3 shall not exceed the following values, as measured by the following bacterial indicators:
 - i. ***E. coli.*** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a Most Probable Number (MPN) of 126 MPN per 100 milliliters, nor shall any sample exceed the maximum allowable bacterial density of 400 MPN per 100 milliliters.
 - ii. **Enterococci.** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a MPN of 33 MPN per 100 milliliters, nor shall any sample exceed the maximum allowable bacterial density of 100 MPN per 100 milliliters.
 - iii. **Fecal Coliform.** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a MPN of 200 MPN per 100 milliliters, nor shall more than ten percent of the total samples during any 30-day period exceed 400 MPN per 100 milliliters.
8. WDR Board Order No. R7-2008-0010 (Monitoring and Reporting Program, Attachment E, page E-3, General Monitoring Provision I.C states:
- "Unless otherwise approved by the Regional Water Board's Executive Officer, all analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services [now known as the California Department of Public Health, Environmental Laboratory Accreditation Program], in accordance with the provision of Water Code section 13176, and must include quality assurance/quality control data with their reports. All analyses shall be conducted in accordance with the latest edition of 'Guidelines Establishing Test Procedures for Analysis of Pollutants', promulgated by the United States Environmental Protection Agency (USEPA)."
9. WDR Board Order No. R7-2008-0010 (page 18, Provision B) states:
- "The Discharger[s] shall comply with the [Monitoring and Reporting Program], and future revisions thereto, in Attachment E of this Board Order."
10. WDRs Board Order No. R7-2008-0010 (page 16, Provision A.2.b.) warns:
- "The Discharger[s] shall comply with all conditions of this Board Order. Noncompliance constitutes a violation of the Federal Clean Water Act and Porter-Cologne Water Quality Control Act, and is grounds for enforcement action"

ALLEGATIONS:

11. The Dischargers are subject to mandatory minimum penalties for exceeding the effluent limitation for copper set forth in WDRs Board Order No. 2003-0054 (page 5, Section A.7) on two occasions. Exhibit "A" to this Complaint shows the specific dates on which the violations occurred. This Complaint addresses administrative civil liability for violations that are specifically identified in Exhibit "A" as subject to a mandatory minimum penalty.
12. Beginning July 1, 2008 and continuing through January 30, 2009, the Dischargers used an uncertified laboratory to perform E. coli and Enterococci analyses on thirty-four (34) occasions, in violation of Attachment E of Board Order No. R7-2008-0010, General Monitoring Provision I.C. Exhibit "B" to this Complaint shows the specific dates on which the violations occurred. This Complaint addresses administrative civil liability for violations that are specifically identified in Exhibit "B" as subject to discretionary administrative civil liability.
13. Because the Dischargers submitted effluent monitoring data for E. coli and Enterococci from a laboratory that did not possess certification for analyses of E. coli and Enterococci, the Regional Water Board is unable to determine whether the Dischargers are in compliance with the effluent limitations for E. coli and Enterococci as set forth in WDRs Board Order No. R7-2008-0010 cited in Paragraph No. 7.
14. On February 11, 2009, the Assistant Executive Officer issued Time Schedule Order (TSO) No. R7-2009-0031, requiring the Dischargers to correct the violations of Board Order No. R7-2008-0010 associated with its failure to use a certified laboratory to analyze E. coli and Enterococci data.
15. More specifically, TSO No. R7-2009-0031 required the Dischargers to comply with the as following:
 - a. The Discharger[s] must be in full compliance with WDRs Board Order No. R7-2008-0010, Monitoring and Reporting Program by July 1, 2009.
 - b. By March 14, 2009, the Discharger[s] shall submit a technical report^{*} specifying the steps it will take to ensure that bacteria data is collected and analyzed as specified in Board Order No. R7-2008-0010.
16. CWC Section 13385(c) states:

"Civil liability may be imposed administratively by the state board or a regional board 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:

 - (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.
 - (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons."

^{*} On March 13, 2009, the Regional Board received the Dischargers' technical Report.

17. CWC Section 13385(h)(1) requires the Regional Water Board to assess a Mandatory Minimum Penalty (MMP) of three thousand dollars (\$3,000) for each serious violation.
18. CWC Section 13385(h)(2) states, in part, the following; "For the purpose of this section, a 'serious violation' means any waste discharge that violates the effluent limitations ... for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more, or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more."

CIVIL LIABILITY CALCULATION

19. Pursuant to CWC Section 13385(h), the Regional Board is required to assess a mandatory minimum penalty in the amount of six thousand dollars (\$6,000) for violations of WDRs Board Order No. R7-2003-0054 incurred by exceeding the effluent limitation for copper as shown in Exhibit "A".
20. CWC Section 13385(e) requires the Regional Board, in determining the amount of liability, to consider the nature, circumstances, extent and gravity of the 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 its ability to continue its business, any voluntary cleanup efforts taken, 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. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.
21. On November 17, 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 May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in CWC Section 13385(e). Exhibit "C" is a spreadsheet that demonstrates the use of the penalty calculation methodology.

The policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

The proposed administrative civil liability is based on the use of that methodology.

PER DAY ASSESSMENT FOR NON-DISCHARGE VIOLATIONS:

The per-day factor is 0.25. This factor is determined by a matrix analysis using the potential for harm and the deviation from requirements.

- The potential for harm is minor because while the Dischargers' failure to use a certified laboratory as required by WDRs Board Order No. R7-2008-0010 undermines the Regional Board's ability to determine whether the Dischargers are in compliance with Effluent Limitation IV.A.1 for E. coli and Enterococci, there is no evidence to suggest that the results analyzed by the uncertified lab were inaccurate. However, lack of certification for the analyses performed raises the question of reliability. Environmental Laboratory Accreditation Program (ELAP) certification is

the State Department of Health Services method of verification that the Lab is qualified to perform the analyses. Without the proper certification, the quality and validity of the data is indeterminate.

- The deviation from requirements is moderate because a laboratory was used to analyze the samples, rather than no laboratory at all.

There are thirty-four (34) days of violation. Applying the per-day factor to the number of days of violation yields an initial liability of \$85,000.00 (no. of days of violation x per day factor x maximum statutory liability per day of violation).

ADJUSTMENTS TO DETERMINATION OF INITIAL LIABILITY

The Dischargers' culpability factor is 0.5. This value was based on the fact that the Dischargers had no knowledge that the laboratory it had been using was not properly certified.

The Dischargers' cleanup and cooperation factor is 0.75. This value was based on the fact that the Dischargers contracted with a certified laboratory immediately after it became aware that the laboratory it has been using was not properly certified.

The Dischargers' history violation is 1.0. This value is based on the fact that the Dischargers have not been previously issued Administrative Civil Liability Orders for noncompliance with WDRs Board Order Nos. R7-2003-0054 and R7-2008-0010. The Dischargers have been issued a Time Schedule Order for noncompliance with WDRs Board Order No. R7-2003-0054 prior to the issuance of this Complaint: R7-2003-0115.

Based on these adjustments, the amount revised from the initial liability is \$31,875.00 (Initial liability x culpability factor x cleanup and cooperation factor x history of violations factor) for this violation.

TOTAL BASE LIABILITY AMOUNT

The amount revised from the initial liability, \$31,875.00, represents the total base liability amount.

ABILITY TO PAY AND ABILITY TO CONTINUE IN BUSINESS

The Dischargers' ability to pay factor is 1 based on the following information: The 2009 tax year assessed total value of the Date Gardens Mobile Home Park, Assessor's Parcel Number (APN) 062-090-029-000, is \$955,863. The owner's home in Piedmont, California, APN 051-4713-001-004, is valued at \$1,873,463. Rocky Vandergriff's home in Seeley, California, APN 051-193-007-000, is valued at \$45,513. The total value of these three properties is over \$2.8 million, thus, the Regional Water Board Prosecution Team believes that there are adequate funds to pay the proposed civil liability.

Thus, the total base liability amount remains \$31,875.00.

OTHER FACTORS AS JUSTICE MAY REQUIRE

Costs of Investigation and Enforcement

As of the date of the issuance of this Complaint, Enforcement staff has incurred costs of investigation and enforcement in the amount of \$6,000. This is based on staff time of 40 hours, at a rate of \$150 per hour. If this matter proceeds to hearing, the Regional Board 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.

ECONOMIC BENEFIT

The economic benefit estimated for the violation(s) at issue is \$8,050.00. The economic benefit was determined as follows:

The Dischargers were in violation of WDRs Board Order No. R7-2008-0010 and the MRP beginning July 1, 2008 through January 30, 2009. During this time period, the Dischargers conducted E. coli and Enterococci sampling on 58 occasions on 34 separate days. Therefore, there would have been 34 instances when the Dischargers should have sent its samples to a certified laboratory. If the Dischargers had transported its samples to a certified laboratory in San Diego, California, that distance represents approximately 230 miles and a 4-hour roundtrip from Date Gardens MHP WWTP to San Diego, California. The United States Internal Revenue Service's standard mileage rates of reimbursement indicate that the business mileage rate was 58.5 cents in the second half of 2008. Assuming 230 miles per sampling event multiplied by 58.5 cents for mileage multiplied by 34 sampling events from July 1, 2008 through January 30, 2009 equates to \$4,574.70 in travel expenses for transporting the samples from Date Gardens MHP WWTP, California to San Diego, California.

In addition to the travel expenses explained above, there are also associated staff costs with transporting samples. One trip from, Date Gardens MHP WWTP, California to San Diego, California would take approximately four hours roundtrip. Again, this trip would have to be made 34 times during the period from July 1, 2008 through January 30, 2009. One 4-hour roundtrip commute multiplied by 34 trips is 136 hours total. Because of there is a limited time period for transporting the samples to San Diego, California, it is likely that staff would need to transport the samples directly to the laboratory rather than sending them through a courier service. If we assume a conservative staff cost of 20 dollars an hour multiplied by 136 hours, the total staff costs associated with transporting the samples is \$2,720. Therefore, the total calculated economic benefit is \$7,294.70.

The Enforcement Policy requires that the adjusted Total Base Liability Amount be at least 10% higher than the economic benefit amount, or \$8,024.17.

Because the proposed liability is \$37,875.00, the liability does not need to be adjusted for the Economic Benefit.

MAXIMUM AND MINIMUM LIABILITY AMOUNTS

The maximum liability provided for by statute is \$340,000 and the minimum liability amount required by the Enforcement Policy is \$8,024.17 (Economic Benefit + 10%).

The Enforcement Policy requires that the discretionary administrative civil liability must not exceed the maximum liability amount nor be less than the minimum liability amount.

Because the proposed liability is \$37,875.00 the liability does not need to be adjusted to fall within the maximum and minimum liability amounts.

FINAL LIABILITY AMOUNT

Based on the foregoing analysis, and consistent with the Enforcement Policy, the proposed administrative civil liability is \$37,875.00 for violations of WDRs Board Order Nos. R7-2003-0054 and R7-2008-0010 incurred by using an uncertified laboratory for E. coli and Enterococci analyses.

PROPOSED CIVIL LIABILITY ASSESSMENT:

22. The Assistant Executive Officer of the Regional Board proposes that the Dischargers be assessed administrative civil liability in the amount of \$43,875.00, which consists of a mandatory minimum penalty of \$6,000, \$31,875.00 in discretionary liability for violations of WDRs Board Order Nos. R7-2003-0054 and R7-2008-0010 incurred by using an uncertified laboratory for E. coli and Enterococci analyses, and staff costs of \$6,000 (40 hours x \$150 per hour).
23. CWC Section 13323(b) provides that the Regional Board will hold a public hearing within 90 days after service of this Complaint, unless the Dischargers choose either of the following two options:
 - a. Waive the right to a hearing before the Regional Board and pay the proposed civil liability of \$43,875.00 in full; or
 - b. Waive the right to a hearing before the Regional Board within 90 days after service of this Complaint to engage the Regional Board Prosecution Team in settlement discussions.
24. If the Discharger chooses Option 23(a) above, an authorized representative must sign the enclosed waiver and return it along with a check for the full amount of the proposed liability, made payable to the "State Water Pollution Cleanup and Abatement Account" within thirty (30) days of the date of this Complaint. Payment will be deemed settlement of this Complaint, but the settlement shall not become final until thirty (30) days from the date of Public Notice No. 7-10-45 to allow the public and other interested persons to comment on this action. The waiver and payment must be mailed to:

California Regional Water Quality Control Board
Colorado River Basin Region
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260
25. If the Discharger chooses Option 23(b) above, an authorized representative must sign the enclosed Waiver and submit it within thirty (30) days of this Complaint. The Discharger must also submit a settlement proposal to the Regional Board within sixty (60) days of this Complaint. The Waiver and settlement proposal must be mailed to the address listed above.
26. If a hearing on this matter is held, the Regional 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.

27. 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 30 days to comment on any proposed settlement of this Complaint.
28. Issuance of this Administrative Civil Liability Complaint to enforce California Water Code Division 7, Chapter 5.5, is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with Section 15321(a)(2) ("Enforcement Actions by Regulatory Agencies"), Title 14, California Code of Regulations.

for Doug Willie, P.E.
JOSE ANGEL, Assistant Executive Officer

December 17, 2010

Date

EXHIBIT "A"

**Summary of Violations of Effluent Limitations Set Forth in
 Board Order Nos. R7-2003-0054 and R7-2008-0010 Subject to Mandatory Minimum Penalties**

Assessed Violation¹ No.	Date Occurred	Description of Violation	Serious Violation Defined by CWC 13385(h)	Amount Assessed Dollars (\$)
740680	12/27/2007	Exceeded daily maximum effluent limit of 4.80 µg/L for Copper Reported value = 150 µg/L	Yes	3,000
740682	12/31/2007	Exceeded Average Monthly Effluent Limit of 2.39 µg/L for Copper Reported value = 150 µg/L	Yes	3,000
786338	8/30/2008	Exceeded monthly average effluent limit of 200 MPN/100 mL for Fecal Coliform Reported value = 1,600 MPN/100 mL	No	0 ²
819719	3/31/2009	Did not meet the minimum rate of TSS removal of 85% Reported value = 75%	No	0 ²

Accrued Mandatory Minimum Penalty: 6,000

¹ Data Source: California Integrated Water Quality System (CIWQS)

² This is a supporting violation

EXHIBIT "B"
Summary of Violations of Board Order No. R7-2008-0010

	Violation Type	Violation Date	Violation Description
1	<i>E. Coli</i>	7/1/2008	Used uncertified laboratory
2	Enterococci	7/3/2008	Used uncertified laboratory
3	Enterococci	7/10/2008	Used uncertified laboratory
4	<i>E. Coli</i>	7/10/2008	Used uncertified laboratory
5	Enterococci	7/16/2008	Used uncertified laboratory
6	<i>E. Coli</i>	7/16/2008	Used uncertified laboratory
7	Enterococci	7/23/2008	Used uncertified laboratory
8	<i>E. Coli</i>	7/23/2008	Used uncertified laboratory
9	Enterococci	7/30/2008	Used uncertified laboratory
10	<i>E. Coli</i>	7/30/2008	Used uncertified laboratory
11	Enterococci	8/6/2008	Used uncertified laboratory
12	<i>E. Coli</i>	8/6/2008	Used uncertified laboratory
13	Enterococci	8/13/2008	Used uncertified laboratory
14	<i>E. Coli</i>	8/13/2008	Used uncertified laboratory
15	Enterococci	8/15/2008	Used uncertified laboratory
16	<i>E. Coli</i>	8/15/2008	Used uncertified laboratory
17	Enterococci	8/19/2008	Used uncertified laboratory
18	<i>E. Coli</i>	8/19/2008	Used uncertified laboratory
19	Enterococci	8/27/2008	Used uncertified laboratory
20	<i>E. Coli</i>	8/27/2008	Used uncertified laboratory
21	Enterococci	10/2/2008	Used uncertified laboratory
22	<i>E. Coli</i>	10/2/2008	Used uncertified laboratory
23	Enterococci	10/10/2008	Used uncertified laboratory
24	<i>E. Coli</i>	10/10/2008	Used uncertified laboratory
25	Enterococci	10/16/2008	Used uncertified laboratory
26	<i>E. Coli</i>	10/16/2008	Used uncertified laboratory
27	Enterococci	10/23/2008	Used uncertified laboratory
28	<i>E. Coli</i>	10/23/2008	Used uncertified laboratory
29	Enterococci	10/31/2008	Used uncertified laboratory
30	<i>E. Coli</i>	10/31/2008	Used uncertified laboratory
31	Enterococci	11/7/2008	Used uncertified laboratory
32	<i>E. Coli</i>	11/7/2008	Used uncertified laboratory
33	Enterococci	11/14/2008	Used uncertified laboratory
34	<i>E. Coli</i>	11/14/2008	Used uncertified laboratory
35	Enterococci	11/18/2008	Used uncertified laboratory
36	<i>E. Coli</i>	11/18/2008	Used uncertified laboratory

EXHIBIT "B"
Summary of Violations of Board Order No. R7-2008-0010

37	Enterococci	11/24/2008	Used uncertified laboratory
38	<i>E. Coli</i>	11/24/2008	Used uncertified laboratory
39	Enterococci	11/26/2008	Used uncertified laboratory
40	<i>E. Coli</i>	11/26/2008	Used uncertified laboratory
41	Enterococci	12/3/2008	Used uncertified laboratory
42	<i>E. Coli</i>	12/3/2008	Used uncertified laboratory
43	Enterococci	12/11/2008	Used uncertified laboratory
44	<i>E. Coli</i>	12/11/2008	Used uncertified laboratory
45	Enterococci	12/15/2008	Used uncertified laboratory
46	<i>E. Coli</i>	12/15/2008	Used uncertified laboratory
47	Enterococci	12/22/2008	Used uncertified laboratory
48	<i>E. Coli</i>	12/22/2008	Used uncertified laboratory
49	Enterococci	12/30/2008	Used uncertified laboratory
50	<i>E. Coli</i>	12/30/2008	Used uncertified laboratory
51	Enterococci	01/02/2009	Used uncertified laboratory
52	<i>E. Coli</i>	01/07/2009	Used uncertified laboratory
53	Enterococci	01/09/2009	Used uncertified laboratory
54	<i>E. Coli</i>	01/13/2009	Used uncertified laboratory
55	Enterococci	01/16/2009	Used uncertified laboratory
56	Enterococci	01/19/2009	Used uncertified laboratory
57	<i>E. Coli</i>	01/21/2009	Used uncertified laboratory
58	Enterococci	01/30/2009	Used uncertified laboratory

EXHIBIT "C"	
Methodology	
Discharger Name/ID:	Date Gardens MHP WWTP; WDID: 7A 13 1057 011
Step 1	Potential Harm Factor
Step 2	Per Gallon Factor Gallons Statutory / Adjusted Max per Gallon (\$) Total
Step 3	Per Day Factor Days Statutory Max per Day Total
Step 4	Initial Amount of the ACL Culpability Cleanup and Cooperation History of Violations
Step 5	Total Base Liability Amount
Step 6	Ability to Pay & to Continue in Business
Step 7	Other Factors as Justice May Require Staff Costs
Step 8	Economic Benefit Minimum Liability Amount (Economic Benefit + 10%) Maximum Liability Amount
Step 9	Final Liability Amount
Step 10	Final Liability Amount

Violation 1

n/a

0.25
34
\$10,000.00

\$85,000.00
\$85,000.00
\$42,500.00
\$31,875.00
\$31,875.00

0.5
0.75
1.0

\$31,875.00
\$31,875.00
\$31,875.00
\$37,875.00

1.0
1.0
\$6,000.00
7,294.70

\$8,024.17
\$340,000.00

\$37,875.00

ATTACHMENT B
Economic Benefit Analysis

ECONOMIC BENEFIT ANALYSIS

The estimated economic benefit derived from the violations of Waste Discharge Requirements (WDRs) Board Order No. R7-2008-0010 for the use of an uncertified laboratory to perform E. Coli and Enterococci analysis is \$2,040. The economic benefit was determined as follows:

Peter M. Ormond, Owner and Rocky Vandergriff, DBA Water Treatment Services, Operator of Date Gardens Mobile Home Park (MHP) Waste Water Treatment Plant (WWTP) (hereinafter "Dischargers") were in violation of WDRs Board Order No. R7-2008-0010 and the MRP beginning July 1, 2008 through January 30, 2009. During this time period, the Dischargers conducted E. coli and Enterococci sampling on 58 occasions on 34 separate days. Therefore, there would have been 34 instances when the Dischargers should have sent its samples to a certified laboratory for analysis. If the Dischargers had sent its samples to a certified laboratory in San Diego, California, the Dischargers would have incurred costs for transporting those samples. The Dischargers contract with a courier to timely transport the samples to the certified laboratory in San Diego, CA at a cost of \$60 per trip. Therefore, the total calculated economic benefit is \$2,040 (\$60 X 34 trips).

The Enforcement Policy requires that the adjusted Total Base Liability Amount be at least 10% higher than the economic benefit amount, or \$2,244.

MAXIMUM AND MINIMUM LIABILITY AMOUNTS

The maximum liability provided for by statute is \$340,000 and the minimum liability amount required by the Enforcement Policy is \$2,244 (Economic Benefit).

The Enforcement Policy requires that the discretionary administrative civil liability must not exceed the maximum liability amount nor be less than the minimum liability amount.

