

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

In the Matter of
Lean Green Industries-Ins, LLC
Riverside County,
WDID No. 7_33CC403337

**ADMINISTRATIVE CIVIL LIABILITY
COMPLAINT NO R7-2020-0025**

The Administrative Civil Liability Complaint (Complaint) is issued to Lean Green Industries-Ins, LLC (Discharger) by the Regional Water Quality Control Board, Colorado River Basin (Regional Water Board) Assistant Executive Officer pursuant to California Water Code (Water Code) section 13350, which authorizes the imposition of administrative civil liability, and Water Code section 13323, which authorizes the Executive Officer to issue this Complaint and Water Code section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case, the Assistant Executive Officer. The Discharger is alleged to have violated waiver conditions of the State Water Resources Control Board's (State Water Board) *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities*, Order No. WQ-2017-0023-DWQ (General Order), as amended by Order No. WQ-2019-0001-DWQ.¹

THE ASSISTANT EXECUTIVE OFFICER OF THE REGIONAL WATER BOARD
ALLEGES THE FOLLOWING:

BACKGROUND

1. The Discharger operates an indoor cannabis cultivation facility on Riverside County Assessor Parcel Number (APN) 687-162-004-4, located at 68721 Summit Drive in Cathedral City, California (Site). The Site is owned by FWBC Inc. The Discharger pretreats its irrigation supply water by reverse osmosis (RO) prior to irrigating their cannabis plants. The RO process creates two outflows: one stream containing reduced constituent concentrations (clean irrigation water) and a second stream containing increased constituent concentrations, including salts, minerals, and other dissolved solids (RO brine). The stream containing increased constituent concentrations is mineralized waste. An onsite wastewater treatment system for domestic waste disposal exists on the Site.
2. The Site is located within the Indio Subbasin of the Coachella Hydrologic Subunit of the Whitewater Hydrologic Unit. The Indio Subbasin is the highest use and highest priority basin within the Colorado River Basin Region². The Regional Water Board's Water Quality Control Plan (Basin Plan), last amended in 2019, designates beneficial uses for groundwater in the Coachella Hydrologic Subunit of the

¹ Available at: [General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities](#)

² November 2018 [Coachella Valley Salt Management Plan Status Report](#), Colorado River Basin Regional Water Quality Control Board

Whitewater Hydrologic Unit as Municipal and Domestic Supply (MUN), Industrial Service Supply (IND), and Agricultural Supply (AGR).

3. On October 17, 2017, the State Water Board adopted the General Order, Order No. WQ-2017-0023-DWQ, which went into effect on December 18, 2017 after approval by the Office of Administrative Law (OAL). The purpose of the General Order is to regulate discharges of waste associated with cannabis cultivation activities. The General Order contains requirements and provisions necessary to protect the beneficial uses of waters within the State. On February 5, 2019, the State Water Board adopted Order No. WQ-2019-0001-DWQ, amending the General Order, effective April 16, 2019.³
4. The *Cannabis Cultivation Policy Principles and Guidelines for Cannabis Cultivation* (Cannabis Policy) establishes requirements to ensure that the diversion of water and discharge of waste associated with cannabis cultivation does not have a negative impact on water quality, aquatic habitat, riparian habitat, wetlands, and springs. The Cannabis Policy is included as Attachment A to the General Order. The General Order implements the Cannabis Policy requirements, specifically those requirements that address waste discharges associated with cannabis cultivation activities.
5. The General Order provides conditional exemptions for certain cultivation activities. Commercial cannabis cultivation activities are conditionally exempt if they occur within a structure with a permanent roof, a permanent relatively impermeable floor (e.g. concrete or asphalt paved), and comply with the Cannabis Policy and all applicable Requirements in Attachment A, and either:
 - a. Discharge all industrial wastewaters generated to a permitted wastewater treatment collection system and facility that accepts cannabis cultivation wastewater; or
 - b. Collect all industrial wastewater in an appropriate storage container to be stored and properly disposed of by a permitted wastewater hauler at a permitted wastewater treatment facility that accepts cannabis cultivation wastewater.
6. Conditionally exempt dischargers, such as those engaging in indoor commercial cannabis cultivation activities, are required to obtain coverage under the *Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities* (Conditional Waiver) contained in the General Order.
7. Dischargers covered under the Conditional Waiver must comply with the terms and conditions contained in the General Order. Paragraph 4.a of the General Order

³ Order No. WQ-2019-0001-DWQ did not amend General Requirements and Prohibitions, Terms 12, 26, or 27 contained in Attachment A, Section 1 of the Cannabis Policy, which are the basis of the violation alleged in this Complaint.

(page 1) requires the Discharger to comply with all requirements described in Attachment A of the Cannabis Policy.

8. On January 9, 2019, the Discharger submitted an application via the State Water Board online portal for its indoor cannabis cultivation facility. On its application, the Discharger stated wastewater from indoor cannabis cultivation activities would be discharged to an onsite wastewater treatment system (such as a septic tank and leach field) or to land.
9. Following receipt of its application fees on February 7, 2019, Regional Water Board staff emailed the Discharger on February 19, 2019 to clarify the requirements for discharging cannabis cultivation wastewater. Regional Water Board staff stated in that email that the Discharger's plan to discharge industrial wastewater to an onsite wastewater treatment system (e.g. septic tank) was prohibited and that cannabis wastewater needs to be discharged to a sewer system or hauled for proper disposal.
10. In response to staff's February 19, 2019 email, Beatriz Treu, a member of the Discharger's compliance team, emailed Regional Water Board staff on March 1, 2019 to state the Discharger would no longer use the septic tank for cannabis wastewater disposal and that it was already storing wastewater in tanks. Ms. Treu further stated that the Discharger would hire a licensed hauler to properly dispose of the waste.
11. Based on the information submitted by the Discharger and its compliance team, the Executive Officer of the Regional Water Board issued a Notice of Applicability (NOA) on March 25, 2019, confirming the Discharger's enrollment in the Conditional Waiver under Order No. WQ-2017-0023-DWQ. The NOA reiterated the requirement that all hydroponic and industrial wastewaters generated from cannabis cultivation be contained within a sealed tank or recirculated system, with all final waste products properly hauled offsite.
12. On June 5, 2019, Regional Water Board staff inspected the Site. Marc Lebanoff, a representative for the Discharger, was present for the inspection. During the inspection, Regional Water Board staff observed that RO brine and irrigation tailwater (collectively referred to as cannabis industrial wastewater) was being discharged to plumbing, which Mr. Lebanoff stated flowed to the onsite wastewater treatment system, which was a septic tank. During the inspection, Mr. Lebanoff also showed staff a Site diagram dated December 3, 2018 that had modifications to the existing plumbing to intercept cannabis industrial wastewater and divert it to a sealed holding tank. Mr. Lebanoff did not provide an explanation as to why the proposed modifications had not been made. Mr. Lebanoff also provided staff a copy of a receipt dated June 4, 2019 for permitting review of a sealed holding tank with Cathedral City. Regional Water Board staff notified Mr. Lebanoff that discharging cannabis industrial wastewater to an onsite wastewater treatment system was a violation of their Conditional Waiver.

13. On June 7, 2019, Regional Water Board staff emailed Mr. Lebanoff and reiterated that discharging RO brine to the onsite wastewater treatment system is a violation of the terms of the Discharger's Water Board permit and that all discharges of RO brine to the onsite wastewater treatment system should cease immediately. Mr. Lebanoff replied later that day, stating the RO treatment system had been bypassed and RO brine was no longer being discharged to the onsite wastewater treatment system. Mr. Lebanoff further stated he would investigate an interim solution to containing the cannabis industrial wastewater while Cathedral City was in the process of permitting a permanent storage tank.
14. On June 18, 2019, Mr. Lebanoff submitted photographs confirming the plumbing from the RO system to the onsite wastewater treatment system had been disconnected and rerouted to a sealed aboveground storage tank for hauling.
15. On August 1, 2019, Regional Water Board staff emailed the Discharger to request additional information, including how much cannabis industrial wastewater it was generating and how it was disposing of its non-RO brine industrial wastewater (irrigation runoff, washout water, etc.). On August 8, 2019, Mr. Lebanoff emailed Regional Water Board staff, stating the Discharger was producing about 250 gallons of RO brine each day based on the amount they were hauling. Mr. Lebanoff did not provide an estimate for the volume of non-RO brine industrial wastewater. Regional Water Board staff replied to the email on the same day, stating that no industrial wastewater of any kind may be discharged to the onsite wastewater treatment system.
16. On August 27, 2019, Regional Water Board staff emailed Mr. Lebanoff about the status of the non-RO brine cannabis industrial wastewater being discharged to the onsite wastewater treatment system. On August 28, 2019, Mr. Lebanoff provided an update about the purchase of additional holding tanks, profiling of wastewater, and the status of wastewater hauling; however, he did not address how non-RO brine cannabis industrial waste was being diverted from the onsite wastewater treatment system. That same day, Regional Water Board staff replied to Mr. Lebanoff's email, requesting the Discharger stop its discharge of all cannabis industrial wastewater to the onsite wastewater treatment system, including irrigation runoff and water used to clean its cultivation equipment.
17. On August 30, 2019, Mr. Lebanoff emailed Regional Water Board staff photos showing that all industrial discharges to the Discharger's onsite wastewater treatment system had been eliminated by collecting irrigation tailwater in five-gallon buckets below the grow tables and installing stoppers in floor drains.
18. On September 20, 2019, following OAL's adoption of the State Water Board's amendments to the General Order, the State Water Board issued a notice to the Discharger, informing him the Site was subject to the amended Cannabis Policy, and the amended Cannabis Cultivation General Order No. WQ-2019-0001-DWQ as of April 16, 2019.

19. On October 22, 2019, the Regional Water Board issued a Notice of Violation (NOV) to the Discharger for the unauthorized discharge of cannabis cultivation wastewater (brine wastewater from RO filtration system, irrigation tailwater, and other miscellaneous industrial wastewater) to an onsite wastewater treatment system. The NOV requested that by November 15, 2019, the Discharger submit, among other things, laboratory analysis characterizing the waste discharge, waste hauling records, and information regarding when discharges to the onsite wastewater treatment system began.
20. On November 4, 2019, Tanner Osborn, another member of the Discharger's compliance team, contacted Regional Water Board staff to request an extension to the November 15, 2019 deadline in the NOV. Regional Water Board staff granted the extension and provided the Discharger until December 23, 2019 to respond to the NOV.
21. On December 9, 2019, Mr. Osborn submitted analytical results for samples of its irrigation runoff and RO brine, as requested in the NOV.
22. On December 19, 2019, Mr. Osborn submitted invoices and manifests from wastewater hauling as well as receipts for the purchase of additional holding tanks, as requested in the NOV. Hauling records show that the average rate of RO brine production between June and August 2019 was about 170 gallons per day.
23. On December 22, 2019, Mr. Lebanoff emailed Regional Water Board staff and provided hauling invoices, information about the onsite wastewater treatment system, and the status of permitting and installing permanent plumbing infrastructure to capture cannabis industrial wastewater including contractor quotes. Mr. Lebanoff did not provide the date on which the Discharger began discharging cannabis industrial wastewater to its onsite wastewater treatment system, as requested in the NOV.
24. On December 23, 2019, Regional Water Board staff exchanged several emails with Mr. Lebanoff regarding the date that discharges of cannabis industrial wastewater to the onsite wastewater treatment system began. In response to staff's request for this information, Mr. Lebanoff stated it was his belief that cultivation started earlier in the year (2019), but that he did not recall the precise date. In a subsequent email, Mr. Lebanoff expressed curiosity as to why staff were interested in the date and inquired whether this information was being requested for administrative records or for the purpose of calculating a penalty. Additionally, Mr. Lebanoff stated he would need until the end of January 2020 to review his records to determine when unauthorized discharges of cannabis cultivation industrial wastewater began. Regional Water Board staff granted the Discharger an additional three weeks, until January 13, 2020, to provide the requested information.
25. On January 13, 2020, Mr. Osborn emailed Regional Water Board staff, stating that cultivation and discharges of cannabis industrial wastewater to the onsite wastewater treatment system began on November 1, 2018.

26. On May 14, 2020 Regional Water Board staff requested and received 2020 wastewater hauling records from Mr. Osborn.
27. On May 15, 2020 Regional Water Board staff contacted the Discharger's representative, Mr. Osborn, to clarify why cannabis industrial wastewater hauling volumes in 2020 were roughly half of the volumes being hauled in 2019.
28. On May 28, 2019 Regional Water Board staff were notified via email by Mr. Osborn that irrigation tailwater was no longer being collected in 5-gallon buckets for disposal by hauling but was being discharged to the onsite wastewater treatment system. On May 28, 2020 Regional Water Board staff notified Mr. Osborn and the Discharger via email that discharging cannabis industrial wastewater to the onsite wastewater treatment system was a violation of its Conditional Waiver, requested that discharges cease immediately, and also requested the dates that discharges of irrigation tailwater resumed to the onsite wastewater treatment system. As of the date of this ACLC, the Discharger has not responded with the requested information.

LEGAL AND REGULATORY CONSIDERATIONS

Water Code

29. Pursuant to Water Code section 13350, subdivision (a), a discharger shall be subject to civil liability for the discharge of waste into waters of the state in violation of a waste discharge requirement, waiver condition, or other order or prohibition issued by the State Water Board or the Regional Water Board.
30. Pursuant to Water Code section 13350, subdivision (e), civil liability may be imposed administratively by the Regional Water Board in an amount not to exceed five thousand dollars (\$5,000) for each day in which the violation occurs, or an amount not to exceed ten dollars (\$10) per gallon discharged, but not both.
31. Pursuant to Water Code section 13327, in determining the amount of any civil liability, the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on ability to continue business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require.

Basin Plan

32. Chapter 3 of the Basin Plan contains, under the authority of Water Code Section 13243, enforceable Waste Discharge Prohibitions that apply to the entire Colorado River Basin Region. The Basin Plan is available at: [Colorado River Region Basin Plan](#).
33. Chapter 3, IV. D of the Basin Plan states, "[d]ischarges of water softener regeneration brines, other mineralized wastes, and toxic wastes to disposal facilities

which ultimately discharge in areas where such wastes can percolate to ground waters usable for domestic and municipal purposes are prohibited.”

Cannabis Policy

34. Cannabis Policy, Attachment A, Section 1, General Requirements and Prohibitions, Term 26:

Except as allowed and authorized in this Policy, cannabis cultivators shall not discharge:

- Irrigation runoff, tailwater, sediment, plant waste, or chemicals to surface water or via surface runoff;
- Waste classified as hazardous (California Code of Regulations, title 23, section 2521(a)) or defined as designated waste (Water Code section 13173); or
- Waste in violation of, or in a manner inconsistent with, the appropriate Water Quality Control Plan(s).

35. Cannabis Policy, Attachment A, Section 1, General Requirements and Prohibitions, Term 27:

Unless authorized by separate waste discharge requirements, the Cannabis Cultivation General Order, or a CWA section 404/401 permit, the following discharges are prohibited:

- Any waste that could affect the quality of waters of the state; or
- Wastewater from cannabis manufacturing activities defined in Business and Professions Code section 25100, indoor grow operations, or other industrial wastewater to an onsite wastewater treatment system (e.g. septic tank and associated disposal facilities), to surface water, or to land.

36. Cannabis Policy, Attachment A, Section 1, General Requirements and Prohibitions, Term 12:

The cannabis cultivator shall comply with all applicable requirements of the State Water Board and Regional Water Board’ (collectively Water Boards) water quality control plans and policies.

Water Quality Enforcement Policy

37. On April 4, 2017, the State Water Board adopted Resolution No. 2017-0020, which adopted the 2017 Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on October 5, 2017. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the

factors identified in Water Code section 13327 that are required to be considered when imposing civil liability.

California Environmental Quality Act

38. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Control Act (Pub. Res. Code § 21000 et seq.) in accordance with title 14, California Code of Regulations sections 15308 and 15321 subsection (a)(2).

ALLEGED VIOLATION

39. The Prosecution Team alleges that between March 25, 2019 and August 30, 2019, the Discharger violated waiver conditions by discharging irrigation runoff and brine waste from its reverse osmosis filtration system to its onsite wastewater treatment system (septic tank), thereby discharging waste or causing or permitting this waste to be deposited where it is discharged to waters of the State. As detailed in Attachment A to this Complaint, the Prosecution Team estimates that the waste reached groundwater approximately 200 days after being discharged into the Site's onsite wastewater treatment system. Therefore, the Prosecution Team alleges that between October 11, 2019 and March 17, 2020, for a total of 159 days, the Discharger discharged waste into waters of the state in violation of the Conditional Waiver.

PROPOSED ADMINISTRATIVE LIABILITY AMOUNT

40. The Prosecution Team proposes an administrative civil liability amount of **\$237,167.10** for the violation identified herein, and as detailed in Attachment A to this Complaint. The proposed administrative civil liability is calculated on a per day basis, as authorized under Water Code section 13350, and takes into account the factors cited in Water Code section 13327.

MAXIMUM LIABILITY

41. The maximum liability under Water Code section 13350 is \$5,000 per day of violation. The Prosecution Team alleges 159 days of violation. Therefore, the statutory maximum liability amount is \$795,000.00.

MINIMUM LIABILITY

42. The Enforcement Policy requires the Regional Water Board to recover, at a minimum, the economic benefit plus ten percent. The economic benefit for the alleged violation is approximately \$10,605.00. Therefore, the minimum liability that may be imposed in accordance with the Enforcement Policy is \$11,665.50.

THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:

43. The Assistant Executive Officer of the Colorado River Basin Regional Water Board proposes an administrative civil liability amount of **\$237,167.10**.

44. A hearing on this matter will be conducted by the Regional Water Board on September 3, 2020, unless the Discharger selects one of the options in the Hearing Waiver Form and submits the completed form to the Regional Water Board by the deadline identified in the Hearing Procedure.
45. If this matter proceeds to a hearing, it will be governed by the attached Proposed Hearing Procedure. During the hearing, the Regional Water Board will hear testimony and arguments and affirm, reject, or modify the proposed administrative civil liability amount. The Assistant Executive Officer, or designated lead prosecutor, reserves the right to amend the proposed amount of civil liability to conform to the evidence presented.
46. Notwithstanding issuance of this Complaint, the Regional Water Board retains authority to assess additional penalties for violations of the Discharger's Conditional Waiver for which penalties have not yet been assessed or for violations that may subsequently occur.

Original Signed by Cassandra Owens

6/5/2020

Cassandra Owens
Assistant Executive Officer
Colorado River Basin Regional Water Quality Control Board

Date

Attachment: Attachment A - Administrative Civil Liability Methodology