



North Coast Regional Water Quality Control Board

December 19, 2022

Operation H, LLC
3900 Golden LLC
Attention: Kiryl Mikhailkevich
13923 Mango Drive
Del Mar, CA 92014
operationhllc@gmail.com

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Operation H, LLC
Attention: Kiryl Mikhailkevich
PO Box 371167
San Diego, CA 92137-1167
kmikhal@gmail.com

Certified Mail No. 7021 0940 0001 6500 0189

Subject: Notice of Violation of Cleanup and Abatement and Investigative Order No. R1-2022-0047 and Cannabis General Order No. WQ 2019-0001 for Trinity County Assessor's Parcel Number (APN) 011-320-005-000

File: Cannabis Program, Trinity County, CIWQS Place ID 858299

Dear Kiryl Mikhailkevich, Golden LLC, and Operation H, LLC:

This letter is to notify you that you are in violation of requirements listed below, and cited in Attachment A, at the Property identified as Trinity County Assessor's Parcel Number 011-320-005-000 (the Property):

1. North Coast Regional Water Quality Control Board (Regional Water Board) Cleanup and Abatement and Investigative Order R1-2022-0047 (the Order)
2. State Water Resources Control Board Cannabis Cultivation Policy Order No. WQ 2019-0001-DWQ General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Cannabis General Order) various provisions
3. Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1
4. California Water Code (Water Code) Sections 13267, 13260, 13264, and 13350

GREGORY A. GIUSTI , CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

Background

As of August 13, 2021, Operation H, LLC and Kiryl Mikhalevich are enrolled under the Cannabis General Order. As of October 28, 2021, the enrollment was updated from Tier 1 Low Risk to Tier 2 Low Risk, triggering the requirement for dischargers to submit a Nitrogen Management Plan (NMP) to the Regional Water Board within ninety days. As of the date of this letter, no NMP has been submitted for the Property. On April 20, 2022, on your behalf, Flowra Environmental Services Team (Flowra) submitted a Site Management Plan (SMP) for the Property.

On August 3, 2022, by consent, Regional Water Board staff (Staff) inspected the Property, along with personnel from Trinity County Environmental Health, Trinity County Cannabis Division, California Department of Fish and Wildlife, and California Department of Cannabis Control. On August 25, 2022, the Regional Water Board transmitted the August 3, 2022 inspection report and Notice of Violation to Operation H, LLC and Kiryl Mikhalevich documenting that Staff observed that proposed treatments, as identified in the SMP, had not been completed and the features described in the SMP were still out of compliance with the Cannabis General Order and other regulatory requirements. The SMP described several features on the Property that are out of compliance with the Cannabis General Order including “One large generator was actively leaking oil onto bare native soils, or into open buckets” and provided a mitigation report with proposed treatments. Beyond the features identified in the SMP, during the August 3, 2022, inspection, Staff identified additional threats to water quality, including unauthorized discharge of domestic waste to land, an unlined wastewater pond containing water of unknown composition and cultivation waste.

As documented in the August 3, 2022 inspection report, Regional Water Board staff observed violations of the Basin Plan Section 4.2.1 Prohibition 2, and California Water Code section 13260 and 13264. In addition, staff observed violations of the State Cannabis Order Attachment A, Section 1 - General Requirements and Prohibitions Nos. 1, 12, 13, 26, 27, 29, and 37; and Section 2 – Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation Nos. 7, 8, 15, 26, 57, 59, 62, 85, 89, 92, 95, 104, 105, 113, 117, 119, 120, 123, and 124. As of the date of this letter, Staff have not received a comprehensive response to the August 25, 2022 Notice of Violation¹.

On September 21, 2022, in response to observed threatened discharges of waste associated with developed features and onsite activities on the Property, Staff sent you a draft Cleanup and Abatement and Investigative Order (draft Order) for the Property, with a request for comments on the draft order within 10 days, following which, a final Order would be issued. The draft Order identified that you would be directed to

¹ Available for download here:

https://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/2022/mikhal_NOV.pdf

remediate petroleum spills, cleanup and abate domestic and cultivation-related wastewater discharges, remove/stabilize accumulated potting soil, remove accumulated refuse, improve road drainage, improve nutrient and site management, and clean up and abate the discharge and threat of discharge of waste into groundwater and Hayfork Creek and its unnamed tributaries. Additionally, the draft Order identified that you would be required to provide monitoring and technical reports to ensure and demonstrate that you are implementing adequate cleanup, restoration, and remediation measures, and to document and report on the completed restoration's effectiveness. The draft Order identified dates and schedules for compliance with the tasks set forth in the Order, including actions to be implemented prior to the onset of heavy winter rains to remediate the fuel spill and to bring the Property into compliance with the Cannabis General Order enrollment.

On September 30, 2022, on your behalf, attorney Tom Ballanco, submitted a Site Investigation and Remediation Workplan for the Property, prepared by Bajada Geosciences, and dated September 28, 2022. Staff identified no changes beyond the inclusion of a current registration stamp by the Professional Geologist and confirmation that work plans and reports would be uploaded to Geotracker.

On October 4, 2022, Staff were contacted by Bob Hess, a professional geologist with SHN consulting firm, stating that SHN had been retained to assess the extent of the diesel spill and to prepare a plan and timeline to remove the diesel safely. Staff provided Mr. Hess a copy of the draft order and sought clarification as to roles of SHN and Bajada Geosciences. In response, on October 5, 2022, Mr. Ballanco advised the SHN was preparing a work plan specific to the spill remediation to be submitted as an addendum to the Bajada workplan by October 14, 2022.

On October 7, 2022, Staff sent an email, 1) acknowledging the understanding that SHN consultants would be providing a subsequent work plan with further details regarding the scope of work to clean up the diesel spill, and 2) summarizing review of the September 28, 2022 draft work plan by Bajada.

On October 10, 2022, Staff sent you a letter outlining the cost recovery process for regulatory oversight related to the remediation from the spill and requested the return of the Acknowledgement of Receipts form by October 24, 2022.

On October 12, 2022, the Regional Water Board issued you the finalized Cleanup and Abatement and Investigative Order R1-2022-0047² (the Order). The Order is in full effect and includes Required Actions and timelines for submission of technical reports and implementation actions necessary to protect water quality.

² Available for download here:

https://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/2022/247_mikhalkevich.pdf

Required Action 3 requires, within 10 days of the issuance of the Order (by October 22, 2022), the submission of a proposed Remediation Action Plan (RAP) for Property, for review and approval by the Executive Officer. Required Action 4 requires full implementation of the approved RAP within 30 days. Required Action 6 requires, within 30 days of full implementation of the RAP, the submission of a completion report to the Executive Officer for approval.

Required Action 2 requires, within 15 days of the effective date of the Order (by October 27, 2022), the implementation of water quality protections and submission of evidence demonstrating a) implementation of initial steps toward proper hauling and disposal of fuel from inadequate storage, b) the hiring of a consultant to conduct a site visit and prepare a remediation workplan for fuel-contaminated soil, c) the capping of waste discharge pipes for domestic waste and nutrient management, d) improvement of water storage to prevent overflow, and e) the proper disposal of excess potting soil stockpiles, f) actions to fulfill recommendation identified Staff's August 3, 2022 inspection report, and g) actions identified in the SMP as submitted on April 22, 2022. Required Action 5 requires, by November 14, 2022, the submission and implementation of an NMP.

On October 24, 2022 Staff sent an email to the group reminding them about the timelines associated with the Order. Mr. Hess responded that SHN were preparing the soil excavation workplan for submission and hoped to be onsite prior to November 15, 2022. Also on October 24, 2022, Staff sent a follow-up email request to you to sign and return the cost reimbursement Acknowledgement of Receipt form.

On November 9, 2022, Staff sent an email request seeking an update on efforts to comply with the Order. On November 10, 2022, Mr. Hess responded that SHN was waiting on lab results to determine disposal options, and the excavation workplan would be submitted thereafter. On November 11, 2022, Bajada clarified that they were not working on the project.

On November 29, 2022, Staff requested a meeting to discuss the project status. Flowra responded that they were not contracted to assist you with the cleanup, including Required Action 2 and 5, relating other conditions on the Property associated with cultivation operations, beyond the spill.

On December 9, 2022, Staff met with Mr. Mikhalkavich and operations partner Alex, along with Mr. Hess and Mr. Ballanco. Staff learned that SHN's initial sampling had identified high concentrations of fuel at the surface and that BMPs were not in place to protect the spilled fuel from stormwater transport to surface water and groundwater. During the meeting Mr. Hess discussed the cost of hauling of the excavated soils would be prohibitive if were hazardous waste.

Following the meeting, Mr. Hess provided a Soil Excavation Workplan, dated December 8, 2022. The only map provided in the workplan was originally from Bajada's workplan. The workplan summarizes the results of soil samples collected on September 20, 2022

resulting in non-hazardous waste designation and a proposal to haul the waste to a landfill for disposal. It proposes 4-point composite samples within the area identified associated with the spill. Considering the elevated constituents, SHN recommends the in-situ soil be characterized by sampling to a depth of 1.0-1.5 feet, and if accepted by a landfill, the contaminated soil could be direct-loaded into trucks. Additionally, they recommend field equipment to help inform the excavation limits in the field. The workplan estimates, based on Trinity County personnel estimated of surface size, the excavated volume will likely be 100 cubic yards. Following confirmation sampling, the hole may need backfilling with clean material, but that scope was not included in the workplan.

Staff reviewed the SHN Soil Excavation Workplan and will respond to that submission under separate cover. As of the date of this letter, the area of the Property has received nearly 25 inches of rainfall since the issuance of the Order. It is now likely infeasible to conduct the soil excavation until after the winter rains cease.

Non-Compliance

Table 1 provides a summary of the violations of requirements of the Order, as of the date of this letter. These violations are ongoing and will accrue additional days of violation until the required actions are satisfied.

Violations imposed pursuant to Water Code section 13267 may result in administrative civil liability of up to \$1,000 per day pursuant to Water Code section 13268. Violations of requirements imposed pursuant to Water Code section 13304 may result in administrative civil liability of up to \$5,000 per day pursuant to Water Code section 13350.

As of the date of this letter, Staff has not received communications by you, or on your behalf, pursuant to Required Action 2, except for hiring SHN to assist you with the Soil Excavation workplan.

The delayed and incomplete submission of the RAP (required Action 3) has led to delays in implementation of cleanup actions to address the spill. The Soil Excavation Workplan was not submitted until December 12, 2022, though samples were collected on September 20, 2022. Further, the delays in the RAP have resulted in a longer delay implementing the RAP (Required Action 4), as winter rains have occurred in earnest and now excavation will likely be delayed to next season, but the RAP does not include management measures for water quality protection to ensure that contaminated soil is not exposed to rainfall further threatening discharge to surface and groundwater.

As of the date of this letter, Staff has not received submissions describing management practices and measures to ensure compliance with the Performance standards included as Attachment 4 to the Order.

As of the date of this letter, Staff have not received communications from you about the NMP submission, required by Action 5.

Table 1. Summary of violation of Cleanup and Abatement and Investigative Order R1-2022-0047.

Required Action No.	Description	Authority, Water Code Section	Due date	No. days of Violation
2	Implementation of water quality protection actions	13304	October 27, 2022	53
2	Submission of evidence of evidence of the implementation actions	13267	October 27, 2022	53
3	Submit for approval a proposed Remedial Action Plan (RAP) in compliance with Groundwater standards in Attachment 3 and management measures to meet performance standards in Attachment 4.	13267	October 22, 2022	Partial submission
4	Fully implement the RAP	13304	Within 30 days after RAP approval	Not started
5	Submit a Nitrogen Management Plan (NMP)	13267	October 22, 2022	35
5	Implement the NMP	13267	October 22, 2022	35

If you have any questions about this letter or the actions required under the Order, please contact Adona White of my staff at 707-576-2672 or Adona.White@waterboards.ca.gov or myself at 707-576-2835 or Jeremiah.Puget@waterboards.ca.gov.

Sincerely,

Jeremiah Puget
Senior Environmental Scientist
Enforcement Unit

Cc:

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