



North Coast Regional Water Quality Control Board

April 21, 2023

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

Certified Mail No. 7021-0950-0001-6500-0981

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

Certified Mail No. 7021-0950-0001-6500-0998

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 011-320-005-000

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

Dear Kiryl Mikhailkevich, 3900 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 (APN) 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

HECTOR BEDOLLA, CHAIR | VALERIE QUINTO, EXECUTIVE OFFICER

Background

As of August 13, 2021, Operation H, LLC and Kiryl Mikhalevich (Dischargers) are enrolled under the Cannabis General Order. On April 20, 2022, Flowra Environmental Services Team (Flowra) submitted a Site Management Plan (SMP) for the Property on behalf of the Dischargers.

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 the Dischargers 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 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, 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 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

¹ Available for download here:

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

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. No comments on the draft Order were received.

On September 30, 2022, on behalf of the Dischargers, attorney Tom Ballanco submitted a Site Investigation and Remediation Workplan (SIRW) for the Property, prepared by Bajada Geosciences, and dated September 28, 2022. The scope of the SIRW was limited to identification and removal of hazardous waste from the Property.

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 informed Staff that 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.

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

² Available for download here:

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

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, e) the proper disposal of excess potting soil stock-piles, 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 Dischargers and their consultants 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 reminding the Discharger 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 for lab results to determine disposal options, and the excavation workplan would be submitted thereafter. On November 11, 2022, Bajada Geosciences clarified that they were not working on the project. Therefore, no consultant was contracted to implement the Investigation and Remediation Workplan for the Property, dated September 28, 2022.

On November 29, 2022, Staff requested a meeting to discuss the project status. Flowra responded that they were not contracted to assist the Dischargers 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 several of his consultants including 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 soil would be prohibitive if sampling results determine it to be 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. Staff reviewed the SHN Soil Excavation Workplan and responded to

that submission with a letter dated December 12, 2022. Notably, the workplan did not include a proposal to backfill the excavated area. Additionally, the workplan did not include methodology to treat the soil onsite if such treatment was needed.

On December 19, 2022, Staff issued the Dischargers a Notice of Violation³ for failure to comply with the Order, the Cannabis General Order, the Basin Plan, and the Water Code. On December 20, 2022, Staff received a phone call from the Discharger confirming receipt of the Notice of Violation and stating that SHN was hired to do everything required by the Order and that winterization measures were planned on the Property. On December 21, 2022, Staff provided Mr. Hess of SHN with links to guidance documents for the required technical reports beyond the RAP.

On January 19, 2023, Mr. Hess sent an email update that Operation H, LLC had winterized the spill area with plastic sheeting and straw wattles prior to significant precipitation associated with recent atmospheric rivers that impacted the north coast region. He did not provide a winterization plan or proof that measures had been implemented. He indicated that SHN was preparing the RAP, including a topographic map. He indicated that he had waited for laboratory analytical results before knowing how to handle the contaminated soil. He indicated that as of then, the soil was hazardous material and could not be taken to a landfill and thus they would propose onsite remediation of the soil. He anticipated that a revised workplan would be submitted before the end of January.

On January 30, 2023, Staff emailed Mr. Hess reiterating the need to make submissions required by the CAO.

On March 16, 2023, SHN submitted a Remedial Action Work Plan (RAWP) to GeoTracker on behalf of Operation H, LLC. The RAWP includes a summary of completed compliance activities, including a photograph of the diesel spill area with plastic tarps and straw wattles, an NMP, and a scope of work to address remaining erosion issues, wastewater management issues, and excavation and remediation of the diesel contaminated soil.

On April 5, 2023, Mr. Hess emailed staff expressing desire to begin sampling the unlined pond and to begin the permitting process for the construction of the on-site remediation cell.

On April 12, 2023, Staff attended a conference call with Mr. Mikhalevich, his consultant Lisa Wright, and Trinity County staff Jeff Dickey, Aida Tavakoli, Steven Swisley, Daniel Marvel, Colton Trent, and Drew Plebani. Mr. Mikhalevich expressed concern about how violations on several of his properties would impact his ability to cultivate cannabis.

³ Available for download here:

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

Staff emphasized the severity of the violations on the Property, and Trinity County staff stated that Operation H's cannabis license would not be renewed until violations on the Property were resolved.

On April 14, 2023, Staff issued a letter concurring with the diesel contaminated soil portion of the RAWP. The scope of work approved was excavating diesel impacted soil and placing it in a soil-remediation cell built onsite. Staff requested a five-day notice prior to excavation starting. Staff have not received a notice of intent to start work.

Also on April 14, 2023, Staff emailed Mr. Hess and Mr. Mikhalevich to request an update on the diesel fuel stored in plastic poly tanks, proof of the compliance activities that were stated to have been completed in the RAWP, and additional information on wastewater disposal to meet the requirements of the NMP. Staff have not received a response to this email.

As of the date of this letter, Mr. Mikhalevich has not completed Required Action No. 2: 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, c) the capping of waste discharge pipes for domestic waste and nutrient management, d) improvement of water storage to prevent overflow, e) the proper disposal of excess potting soil stock-piles, f) actions to fulfill recommendation identified in Staff's August 3, 2022 inspection report, and g) actions identified in the SMP as submitted on April 22, 2022.

Non-Compliance

Table 1 provides a summary of the violations of requirements of the Order, as of the date of this letter. 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. Violations of Required Action No. 2 are ongoing and will accrue additional days of violation until the required actions are satisfied. The current total potential maximum liability associated with the violations is \$2,634,000.

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	Implement water quality protection actions	13304	October 27, 2022	175
2	Submit evidence of the implementation actions	13267	October 27, 2022	175
3	Submit for approval a	13267	October	144

	complete Remedial Action Plan (RAP) to achieve compliance with Groundwater Water Quality Objective in Attachment 3 and management measures to meet performance standards in Attachment 4		22, 2022	
4	Fully implement the approved RAP	13304	Within 30 days after RAP approval	Not started
5	Submit a Nitrogen Management Plan (NMP)	13267	October 22, 2022	144
5	Implement the NMP	13304	October 22, 2022	144

If you have any questions about this letter or the actions required under the Order, please contact Kate Hawken at 707-445-6127 or Katherine.Hawken@waterboards.ca.gov or myself at 707-576-2835 or Jeremiah.Puget@waterboards.ca.gov.

Sincerely,

Jeremiah Puget
Senior Environmental Scientist
Enforcement Unit

Cc:

North Coast Regional Water Quality Control Board

Northcoast.Cannabis@waterboards.ca.gov

Claudia Villacorta, Claudia.Villacorta@waterboards.ca.gov

Kason Grady, Kason.Grady@waterboards.ca.gov

Mona Dougherty, Mona.Dougherty@waterboards.ca.gov

Katherine Hawken, Katherine.Hawken@waterboards.ca.gov

Adona White, Adona.White@waterboards.ca.gov

Cody Walker, Cody.Walker@waterboards.ca.gov

State Water Resources Control Board Office of Chief Counsel

Nathan Jacobsen, Nathan.Jacobsen@waterboards.ca.gov

State Water Resources Control Board Office of Enforcement

Andrew Tauriainen, Andrew.Tauriainen@waterboards.ca.gov

Department of Fish and Wildlife

R1lsaredding@wildlife.ca.gov

R1cepredding@wildlife.ca.gov

Dyana Judnick, Dyana.Judnick@wildlife.ca.gov

Helen Bowman, Helen.Bowman@wildlife.ca.gov

Madison Boynton, Madison.Boynton@wildlife.ca.gov

Trinity County

Bella Hedtke, bhedtke@trinitycounty.org

Cody Smith, csmith@trinitycounty.org

Kristy Anderson, kanderson@trinitycounty.org

Rikki Townzen, rtownzen@trinitycounty.org

Daniel Marvel, dmarvel@trinitycounty.org

Department of Cannabis Control

Erin Wonder, erin.wonder@cannabis.ca.gov

Robert Hogan, robert.hogan@cannabis.ca.gov

Flowra

Lisa Wright, lisa@theflowraplatform.com

SHN

Robert Hess, PG, rhess@shn-engr.com

Ballanco Law Group, APC

Tom Ballanco, harmonicengineering@gmail.com