

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

In the Matter of:)	
)	Order No. R1-2014-0017
JOUNG MIN YI)	
ADMINISTRATIVE CIVIL LIABILITY)	for
COMPLAINT NO. R1-2013-0085)	
MENDOCINO COUNTY)	Administrative Civil Liability
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The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) finds the following:

1. This matter comes before the Regional Water Board from an Administrative Civil Liability Complaint R1-2013-0085 dated December 18, 2013 (Complaint) issued to Joung Min Yi (hereinafter Discharger). The Complaint alleged four violations of Clean Water Act section 301 (33 U.S.C.A. §1311) and proposed an administrative civil liability in the amount of \$56,404 pursuant to California Water Code section 13385. A hearing took place on March 13, 2014, in accordance with the Hearing Notice and Procedure and California Code of Regulations, title 23, sections 648-648.8. The Regional Water Board heard relevant evidence and testimony to decide whether to issue an administrative civil liability order assessing the proposed liability, a higher or lower amount, or to reject the proposed liability.
2. To help ensure the fairness and impartiality of the proceeding, the functions of those who acted in a prosecutorial role by presenting evidence for consideration by the Regional Water Board (Prosecution Team) were separated from those who advise to the Regional Water Board (Advisory Team). Members of the Prosecution Team were subject to the prohibition on ex parte communications with the members of the Regional Water Board or the Advisory Team, just like other Parties.

BACKGROUND

3. The Discharger owns the land parcels located at 29980 and 30010 Highway 101 North, near Willits, in Mendocino County, California (hereinafter the Site). The Mendocino County Assessor Parcel Numbers for the Site are 037-120-09 and 037-120-08.
4. Enforcement staff inspected the Site eight times between September 30, 2011, and December 20, 2011. Enforcement staff observed and recorded evidence indicating the following:
 - a. September 30, 2011: Water tanks had been emptied at the Site, leading to a discharge of approximately 5,000 gallons of water and over ten cubic yards of sediment slurry to the intermittent Class III/Class II¹ stream adjacent to the Site.
 - b. October 28, 2011: Fine sediment in the stream deriving from surface erosion at the Site's access driveway.

¹ The California Forest Practice Rules defines a Class III stream as a stream capable of transporting sediment to a Class II or Class I watercourse. A Class II stream is capable of supporting non-fish aquatic species, and fish are always or seasonally present within 1,000 feet downstream. A Class I stream is a domestic water supply of any type, and/or a stream capable of providing always or seasonally habitat for fish.

- c. November 4, 2011: 13,090 gallons of sediment had discharged to a small Class III/Class II channel for approximately 2,800 feet, with an average depth of approximately 6-12 inches and an average width of 1-1.5 feet (in many areas the deposition dimensions exceeded the average).
 - d. November 10, 2011: Sediment had discharged from the Site and deposited in an unnamed tributary in Reeves Canyon.
 - e. November 22, 2011: Staff observed two sediment discharges from the Site.
 - i. Sediment had been deposited in the Northern Highway 101 culvert confluence with an unnamed tributary to Outlet Creek.
 - ii. Sediment had been deposited in the northern tributary at the base of the Site driveway directly above where the tributary crosses under Highway 101.
5. The State Water Resources Control Board (State Water Board) may impose an administrative civil liability pursuant to the procedures described in Water Code section 13323.
 6. Pursuant to Water Code section 13385, subdivisions (a)(5) and (c)(1)-(2), any person who violates the federal Clean Water Act (33 U.S.C. § 1311) by discharging pollutants to the navigable waters of the United States without complying with sections 301, 302, 306, 307, 308, 318, 401, or 405 may be liable civilly up to ten thousand dollars (\$10,000) for each day the violation occurs, and up to ten dollars (\$10) per gallon of discharge over one thousand (1,000) gallons not cleaned up.

VIOLATIONS

7. On or about September 30, 2011, the Discharger violated Water Code section 13385(a)(5) and federal Clean Water Act section 301 (33 U.S.C. §1311) when 5,000 gallons of water were dumped at the Site, causing over ten cubic yards of sediment slurry to discharge into the intermittent Class III/Class II stream adjacent to the Site without a permit.
8. On or about November 4, 2011, the Discharger violated Water Code section 13385(a)(5) and federal Clean Water Act section 301 (33 U.S.C. §1311) when 13,090 gallons of sediment discharged from the Site to a small Class III/Class II channel without a permit.
9. On or about November 10, 2011, the Discharger violated Water Code section 13385(a)(5) and federal Clean Water Act section 301 (33 U.S.C. §1311) when sediment discharged from the Site and was deposited in an unnamed tributary in Reeves Canyon without a permit.
10. On or about November 22, 2011, the Discharger violated Water Code section 13385(a)(5) and federal Clean Water Act section 301 (33 U.S.C. §1311) when sediment discharged from the Site and was deposited in the Highway 101 northern culvert confluence with an unnamed tributary to Outlet Creek without a permit.

DETERMINATION OF LIABILITY

11. Water Code section 13385, subdivision (a)(5), provides that any person who violates any requirement of section 301 of federal Clean Water Act (33 U.S.C. §1311) shall be liable civilly, and remedies may be proposed in accordance with subdivision (c).
12. Water Code section 13385, subdivision (c), provides that the state board or regional board may impose civil liability administratively pursuant to California Water Code Article 2.5 (commencing with section 13323) of Chapter 5 not to exceed the sum of both a daily basis and a per gallon basis.
13. Water Code section 13385, subdivision (c)(1), provides that the civil liability on a daily basis may not exceed ten thousand dollars (\$10,000) for each day the violation occurs.
14. Water Code section 13385, subdivision (c)(2), provides that the civil liability on a per gallon basis where there is a discharge that exceeds 1,000 gallons not cleaned up may not exceed an additional penalty of ten dollars (\$10) multiplied by the number of gallons discharged.
15. Pursuant to Water Code section 13385, subdivision (e), 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 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 its ability to continue its 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.
16. On November 17, 2009, the State Water Resources Control 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. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13327. The entire Enforcement Policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

CALCULATION OF PENALTY

17. **Maximum Penalty Amount:** The maximum liability that may be imposed under Water Code section 13385 is \$171,090. This is based on the maximum liability of \$10,000 per day for four days of violation, and for \$131,090 for the maximum \$10 per gallon over 1,000 for each discharge not cleaned up.
18. **Minimum Penalty Amount:** The minimum liability under Water Code section 13385, subdivision (e) is no less than the economic benefit derived from the violations. For this case, the minimum statutory liability is \$25,500. Additionally, the Enforcement Policy requires that the adjusted Total Base Liability Amount be, at a minimum, 10 percent higher than the economic benefit received as a result of the alleged violation. The Discharger's estimated economic benefit plus 10 percent is \$28,050.

19. The required factors have been considered for the violations alleged herein using the methodology in the Enforcement Policy, as explained in detail in Attachment A to Administrative Civil Liability Complaint R1-2013-0085, which is incorporated here by reference. As shown in Complaint R1-2013-0085 Attachment A, the total final liability amount is \$41,404 plus \$15,000 in staff costs, totaling \$56,404.

ADMINISTRATIVE CIVIL LIABILITY

20. Based on consideration of the above facts, the applicable law, and after applying the penalty methodology, the Regional Water Board finds that civil liability be imposed administratively against the Discharger in the amount of **\$56,404**.

21. Notwithstanding the issuance of this Order, the Regional Water Board retains the authority to assess additional penalties for violations for which penalties have not yet been assessed or for violations that may subsequently occur.

22. 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 (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

23. Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filling petitions will be provided upon request, and may be found on the Internet at:
http://www.waterboards.ca.gov/public_notices/petitions/water_quality/

IT IS HEREBY ORDERED, pursuant to Water Code section 13385, that:

1. Joung Min Yi shall be assessed an Administrative Civil Liability in the amount of \$56,404.
2. Payment shall be made no later than 30 days from the date on which this order is adopted. Joung Min Yi shall send the original signed check to the State Water Resources Control Board Division of Administrative Services, ATTN: Accounting, 1001 I Street, 18th Floor, Sacramento, California 95814, and shall send a copy to Stormer Feiler, North Coast Regional Water Quality Control Board, 5550 Skylane Blvd., Ste. A, Santa Rosa, CA 95403.

I, Matthias St. John, 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, North Coast Region, on March 13, 2014.

Date

Matthias St. John
Executive Officer