
North Coast Regional Water Quality Control Board

July 3, 2019

Kim Comet
Humboldt State University
Telonicher Marine Laboratory
1 Harpst Street
Arcata, CA 95521

Dear Ms. Comet:

Subject: Tentative Administrative Civil Liability Order, Order No. R1-2019-0033,
OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM
RELATING TO VIOLATIONS OF NPDES PERMIT Order No.
R1-2013-0006

File: Humboldt State University, Telonicher Marine Laboratory, Humboldt
County, WDID No. 1B12187NHUM, NPDES Permit **No. CA0025151**

This letter is a follow-up to recent communications between you and Regional Water Boards staff and counsel regarding resolution of mandatory minimum penalties resulting from effluent violations and late reports, without the inclusion of a supplemental environmental project or enhanced compliance action. This letter provides the opportunity for the Telonicher Marine Laboratory and Humboldt State University (hereinafter "Permittee") to participate in the North Coast Regional Water Quality Control Board's (Regional Water Board) Expedited Payment Program (EPP). The EPP provides notice of alleged violations of the California Water Code identified in the State Water Resources Control Board's (State Water Board) water quality data system and provides the Permittee the opportunity to settle the violations through payment of \$9,000 in mandatory minimum penalties pursuant to Water Code sections 13385 and 13385.1. Please reply by **August 5, 2019**.

NOTICE OF VIOLATION:

Based on information in the California Integrated Water Quality System (CIWQS) from **August 2, 2013, through December 31, 2018**, the Regional Water Board alleges that the Permittee has violated the effluent limitations, reporting violations, or Water Code provisions identified in the Compilation of Violations attached as Attachment A.

VALERIE L. QUINTO, CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

The Permittee will have the opportunity to address the alleged violations as discussed below.

STATUTORY LIABILITY:

Subdivisions (h) and (i) of California Water Code section 13385 require the assessment of a MANDATORY MINIMUM PENALTY of **\$9,000** for specified serious and chronic effluent limit violations. The Permittee is subject to discretionary administrative civil liabilities of up to TEN THOUSAND DOLLARS (\$10,000) for each day in which the violation occurs, plus TEN DOLLARS (\$10) for each gallon discharged but not cleaned up in excess of 1,000 gallons. These mandatory minimum penalties and discretionary administrative civil liabilities may be assessed by a Regional Water Board or the State Water Board (collectively “the Water Boards”), beginning with the date that the violations first occurred.¹ The formal enforcement action which the Water Boards use to assess such liability is an administrative civil liability complaint, although the Water Boards may instead refer such matters to the Attorney General’s Office for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000) per violation. In addition, the Superior Court may assess up to TWENTY-FIVE DOLLARS (\$25) per gallon discharged but not cleaned up in excess of 1,000 gallons.

OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM:

The Permittee can avoid the initiation of a formal enforcement process, and settle the alleged violations identified in the Attachment A, by participating in the EPP. Details of the proposed settlement are described below and addressed in the enclosed documents.

To promote resolution of these violations, the Regional Water Board makes this conditional offer (Offer). The Permittee may accept this Offer, waive the Permittee’s right to a hearing, and pay the mandatory minimum penalty as indicated in Attachment A.

If the Permittee elects to do so, subject to the conditions below, the Regional Water Board will accept that payment in settlement of any enforcement action that would otherwise arise out of the violations identified in the Attachment A.

¹ Please note that there are no statutes of limitation that apply to administrative proceedings to assess mandatory minimum penalties. See *City of Oakland v. Public Employees’ Retirement System*, (2002) 95 Cal.App.4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.

Accordingly, the Regional Water Board will forego issuance of a formal administrative complaint, will not refer the violations to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in Attachment A. The EPP does not address or resolve liability for any violation that is not specifically identified in Attachment A regardless of the date that the violation occurred.

PERMITTEE'S OPTIONS FOR RESPONSE TO CONDITIONAL OFFER:

1. **Accept the Expedited Payment Program Offer:** If you accept this Offer, please complete and return the enclosed "Acceptance of Conditional Resolution and Waiver of Right to Hearing, (proposed) Order" (Acceptance and Waiver) on or before thirty (30) days from the date of this letter (due date). The Acceptance and Waiver will be held, pending a 30-day public notice period, and then will be counter-signed by the Executive Officer and returned to you with an invoice for payment.
2. **Contest the alleged violations:** If you choose to contest any of the violations alleged in the Attachment A, please identify the specific violation(s) and the basis for the challenge (factual error, affirmative defense, etc.) on or before the due date. The Regional Water Board staff will evaluate the contested violation(s) and take one of two actions:
 - a. If the Regional Water Board staff accept your contest and evidence, staff will expunge the alleged violation from the CIWQS data base, take no further action against the Permittee for the alleged violation, and notify the Permittee of that determination; **or**
 - b. If the Regional Water Board staff determine that the alleged violation is meritorious, staff will notify the Permittee of that determination. The Permittee will be given thirty (30) days from the date of receipt of the Regional Water Board staff determination to submit the Acceptance and Waiver.

If the Permittee does not respond in a manner described in the above options, the Permittee should expect to be contacted regarding formal enforcement action that will be initiated with regard to the alleged violation(s). In a formal enforcement action, the liability amount sought and/or imposed may exceed the liability amount set forth in this Offer. Moreover, the cost of enforcement is a factor which can be considered in assessing the liability amount.

CONDITIONS FOR REGIONAL WATER BOARD ACCEPTANCE OF RESOLUTION:

Federal regulations require the Regional Water Board to publish and allow the public thirty (30) days to comment on any settlement of an enforcement action addressing NDPEs permit violations (40 C.F.R. section 123.27(d)(2)(iii)). Upon receipt of the Permittee's Acceptance and Waiver, the Regional Water Board staff

will post a notice of the proposed resolution of the violations at:

https://www.waterboards.ca.gov/northcoast/public_notices/notice_of_proposed_settlement/

If no comments are received within the 30-day period and no new material facts become available to the Regional Water Board, the Executive Officer will execute the Acceptance and Waiver as a stipulated order assessing the uncontested mandatory minimum penalty amount pursuant to Water Code section 13385.

If, however, significant comments are received in opposition to the settlement, this Offer may be withdrawn. In that case, the Permittee's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. The unresolved violations will be addressed in an administrative civil liability hearing. At the hearing the Permittee will be free to make arguments as to any of the alleged violations, and the Permittee's agreement to accept this Offer will not in any way be binding or used as evidence against the Permittee. If this occurs, the Permittee will be provided with further information on the administrative civil liability hearing.

In the event the Acceptance and Waiver is executed by the Executive Officer, payment of the assessed amount shall be due and payable to the Regional Water Board as specified on the invoice that will accompany the Permittee's receipt of the notice of the Executive Officer's execution. The payment period is thirty (30) days. Failure to pay the penalty within the required time period may subject the Permittee to further liability.

Should you have any questions about the Attachment A or the Offer, please contact Diana Henriouille at Diana.Henriouille@waterboards.ca.gov or (707) 576-2350 regarding this matter.

Sincerely,

Claudia Villacorta, P.E.
Assistant Executive Officer

190703_TelonicherEPLRequest

Enclosures:

1. Attachment A – Compilation of Violations
2. Acceptance of Conditional Resolution and Waiver of Right to Hearing

Certified-Return Receipt Requested

Attachment A

Mandatory Penalty Administrative Civil Liability
 Humboldt State University
 Telonicher Marine Laboratory (NPDES)
 WDID No. 1B12187NHUM; NPDES No. CA0025151

Effluent Limitation and Late Reporting Violations Requiring Mandatory Minimum Penalties Violation Period August 2, 2013, through December 31, 2018

#	Violation Number	Violation Date	Constituent/Description	Pollutant Group	Limitation Period	Limit	Result/Average	Units	Exempted from MMP?	Exempt Reason	% Over Limit	Date 180 Days Prior	Serious or Chronic Violation?	No. of Violations within 180 days	Mandatory Fine?	Water Code	Penalty
1	1054982	9/2/2013	Report past due	N/A	Due 9/1/13; submitted 10/7/13	N/A	N/A	N/A	Y	a	36 days late	3/6/13	Chronic	Ct. 1	N	13385.1	\$0
2	973650	6/27/2014	Total Suspended Solids (TSS)	Group I	Instantaneous Maximum	60	180	mg/l	N	N/A	200%	12/29/13	Serious	Ct. 1	Y	13385(i)	\$3,000
3	998815	8/31/2015	TSS	Group I	Instantaneous Maximum	60	77	mg/l	Y	b	28%	3/4/15	Chronic	Ct. 1	N	13385(i)	\$0
4	1054997	7/2/2016	Report past due	N/A	Due 7/1/16; submitted 8/3/16	N/A	N/A	N/A	N	N/A	34 days late	1/4/16	Serious	Ct. 1	Y	13385.1	\$3,000
5	1043800	3/9/2018	TSS	Group I	Instantaneous Maximum	60	70	mg/l	Y	b	17%	9/10/17	Chronic	Ct. 1	N	13385(i)	\$0
6	1054998	12/2/2018	Report past due	N/A	Due 12/1/18; submitted 1/10/19	N/A	N/A	N/A	N	N/A	40 days late	6/5/18	Serious	Ct. 1	Y	13385.1	\$3,000

Summary: Group I violations assessed MMP: 1; Group II violations assessed MMP: 0; other violations assessed MMP: 2; violations exempt from MMP: 3; total violations assessed MMP:3

Mandatory Minimum Penalty = (3 Serious Violations + 0 Non-Serious Violations) x \$3,000 = Total Penalty: \$9,000

Notes/explanation

- Exempt reason a - Discharger provided timely written notification of circumstances contributing to late report. There were no discharges to waters of the US during the reporting period relevant to the monitoring report. Pursuant to Water Code section 13385.1(a), this violation was not serious.
- Exempt reason b - The first three violations in a six month period shall not receive MMP assessment unless serious.
- No. of Violations code Ct. - Count - The number that follows represents the number of exceedances in the past 180 days, including this violation. A count of more than three (>Ct. 3) means that a penalty applies pursuant to Water Code section 13385(i).
- Violations occur on the sample date or the last date of the averaging period.
- For Group I pollutants, a violation is serious when the limit is exceeded by 40% or more.
- When a serious violation occurs on the same day as a chronic, the serious violation is only assessed an MMP once and is counted last for the day when determining the number of chronic violations to be assessed a penalty.

North Coast Regional Water Quality Control Board

**ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING
RELATING TO VIOLATIONS OF NPDES PERMIT NO. CA0025151**

Order No. R1-2019-0033

Telonicher Marine Laboratory
Order No. R1-2013-0006
NPDES No. CA0025151
WDID No. 1B12187NHUM

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the North Coast Regional Water Quality Control Board (Regional Water Board), the Telonicher Marine Laboratory and Humboldt State University (collectively "Permittee") hereby accept the Expedited Payment Program offer and waive the right to a hearing before the Regional Water Board with jurisdiction over the facility to dispute the allegations of violations described in the Compilation of Violations, which is attached hereto as Attachment A and incorporated herein by reference.

The Permittee agrees that this Acceptance and Waiver shall serve as an Administrative Civil Liability (ACL) Order pursuant to Article 2.5 of the Water Code and that no separate ACL Complaint is required for the Regional Water Board to assert jurisdiction over the alleged violations. The Permittee agrees to pay the penalties authorized by California Water Code section 13385, as calculated in Attachment A, which shall be deemed payment in full of any civil liability pursuant to the Water Code sections 13385 and 13385.1 that otherwise might be assessed for the violations described in Attachment A.

The Permittee understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in Attachment A.

Upon execution by the Permittee, the Acceptance and Waiver shall be returned to:

Claudia Villacorta, Assistant Executive Officer
California Regional Water Quality Control Board
North Coast Region
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403

The Permittee understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27, subdivision (d)(2)(iii) require the Regional Water Board to publish notice of and provide at least 30 days for public comment on any proposed resolution of an enforcement action. Accordingly, this Acceptance and Waiver, prior to execution by the Executive Officer of the Regional Water Board, will be published as required by law for public comment.

If no comments are received within the notice period which causes the Executive Officer of the Regional Water Board to reconsider the settlement, the Executive Officer will execute the Acceptance and Waiver.

The Permittee understands that if significant comments are received in opposition to the settlement, the offer to resolve the violations set forth in the Attachment A may be withdrawn. In that circumstance, the Permittee will be advised of the withdrawal and an administrative civil liability complaint may be issued and the matter may be set for a hearing before the Regional Water Board. For such a hearing, the Permittee understands that this Acceptance and Waiver executed by the Permittee will be treated as a settlement communication and will not be used as evidence in that hearing.

The Permittee understands that once the Acceptance and Waiver is executed by the Executive Officer of the Regional Water Board, the full payment required by the deadline indicated in the invoice to follow is a condition of this Acceptance and Waiver. The payment period is thirty (30) days.

The Permittee shall pay the Expedited Payment amount of **\$9,000.00** by check payable to the SWRCB Cleanup and Abatement Account referencing "R1-2019-0033" and send to the State Water Resources Control Board, Division of Administrative Services, Accounting Branch, in full. The payment shall be submitted to:

State Water Resources Control Board
Division of Administrative Services, Accounting Branch
1001 I Street, 18th Floor
Sacramento, CA, 95814

I hereby affirm that I am duly authorized to act on behalf of and to bind the Permittee in the making and giving of this Acceptance and Waiver.

Telonicher Marine Laboratory/Humboldt State University
(Name of Permittee)

By: _____ (Signed Name) _____ (Date)

(Printed or typed name)

(Title)

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385

By: _____
Matthias St. John
Executive Officer