

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL ORDER NO. R5-2004-0063

ADMINISTRATIVE CIVIL LIABILITY ORDER

IN THE MATTER OF
WESTERN WATERWAYS, INC.
HOLLAND RIVERSIDE MARINA
CONTRA COSTA COUNTY

This order for Administrative Civil Liability (hereafter Order) is issued to Western Waterways, Inc. (hereafter known as "Discharger") based on a finding of failure to submit technical reports and monitoring reports pursuant to California Water Code (CWC) Section 13267 and based on Provisions of CWC Section 13267(b)(1) and Sections 13268(a) and (b), which authorize the imposition of an Administrative Civil Liability.

The California Regional Water Quality Control Board, Central Valley Region, (Regional Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. Western Waterways, Inc. owns and operates the Holland Riverside Marina and its related wastewater treatment and disposal system. The marina and associated wastewater system are at 7000 Holland Tract Road, Knightsen, in Section 24, T2N, R3E, MDB&M.
2. Domestic wastewater from restrooms, showers, and laundry facilities, as well as wastewater from boat holding tanks, is delivered to a 1,300-square foot lined aeration basin. The waste then flows by gravity to 900-square foot lined facultative pond. A two-celled percolation pond with a total surface area of 6,300 square feet is used for effluent disposal.
3. Waste Discharge Requirements (WDRs) Order No. 5-01-093, adopted by the Regional Board on 27 April 2001, regulates the treatment and disposal of wastewater at the marina. The Discharger did not contest adoption of the WDRs.

HISTORY OF VIOLATIONS

4. Because the pond liners are obviously damaged beyond repair, Provision No. F.1.a of WDRs Order No. 5-01-093 required that, by 30 July 2001, the Discharger submit a *Treatment Pond Rehabilitation Plan* that describes specific measures to replace the existing pond liners. The plan was not submitted until 25 March 2002 following staff's issuance of a Notice of Violation (NOV) regarding the matter on 8 March 2002. Overall, the plan was eight months late.
5. Groundwater beneath the facility is very shallow and the facility is adjacent to surface waters. Therefore, Provision No. F.1.d of the WDRs requires that, by 28 February 2002, the Discharger submit a *Groundwater Monitoring Workplan*. The workplan was not submitted until 2 May 2002 following the issuance of an NOV regarding the matter on 8 March 2002 and a follow-up letter from staff on 9 April 2002. The April letter warned the Discharger that failure to submit the workplan forthwith could result in staff's recommendation of a civil liability of up to \$1,000 per day late. When the report was submitted, it was two months late.

6. Provision F.1.c of the WDRs requires that, by 30 December 2001, the Discharger submit a report prepared by a California Registered Engineer certifying that the *Treatment Pond Rehabilitation Plan* had been fully implemented. This report has not been submitted. Staff issued two NOVs and sent two additional follow-up letters to the Discharger regarding this matter. The last NOV, issued on 12 September 2002, provided a grace period until 15 November 2002 for submittal of the report, but also clearly warned the Discharger regarding the potential for imposition of a civil liability. The NOV indicated that, if the report were submitted within the grace period, staff would not recommend issuance of a civil liability complaint. No response has been received from the Discharger since issuance of that NOV.
7. Provision F.1.e of the Order requires that, by 30 July 2002, the Discharger submit a *Monitoring Well Installation Report*. This report has also not been submitted. On 9 May 2002, staff granted an informal extension of the report due date to 30 August 2002. When that deadline was not met, staff issued an NOV on 12 September 2002, providing a grace period until 15 December 2002 for submittal of the report, but clearly warning the Discharger regarding the potential for imposition of civil liability. The NOV indicated that, if the report was submitted within the grace period, staff would not recommend issuance of a civil liability complaint. No response has been received from the Discharger since issuance of that NOV.
8. Monitoring and Reporting Program No. 5-01-093 requires that the Discharger conduct monitoring of the wastewater facility and submit monthly wastewater monitoring reports and quarterly groundwater monitoring reports. Since the adoption of the WDRs in April 2001, no monthly monitoring reports have been received. Staff has issued two NOVs and has sent two additional follow-up letters to the Discharger regarding this matter. The last NOV, issued on 12 September 2002, clearly informed the Discharger regarding the potential for imposition of a civil liability, but, still no monitoring reports have been submitted by the Discharger. The Discharger has failed to submit a total of 35 monthly monitoring reports and seven quarterly monitoring reports.
9. For almost three years, staff has attempted to work with the Discharger and has allowed additional time for the Discharger to submit the required technical reports and monitoring reports. If the Discharger had complied with the schedule set forth in the WDRs, monthly monitoring reports would have been submitted since May 2001, the pond liners would have been replaced by December 2001, the *Monitoring Well Installation Report* would have been submitted by July 2002, and groundwater monitoring could have commenced during the third quarter of 2002. Instead, the Discharger's failure to submit monthly monitoring reports has prevented staff from evaluating compliance with the flow limits, effluent limits, and pond requirements contained in the WDRs. The Discharger's failure to replace the failed pond liners may have caused or exacerbated groundwater degradation. The Discharger's failure to construct a monitoring network and submit groundwater monitoring reports has prevented staff from evaluating water quality issues and determining whether the Discharger is in compliance with its Groundwater Limitations.

REGULATORY CONSIDERATIONS

10. By the acts and omissions cited above, the Discharger has violated Provisions of Section 13267 (b)(1) of the California Water Code, which reads, in part, as follows: "...the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters within its region, shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires...."
11. Water Code Section 13268 (a) states: "Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b)."
12. Water Code Section 13268(b)(1) states: "Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs."
13. Water Code Section 13327 states: "In determining the amount of civil liability, the regional board ... shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require."
14. Water Code Section 13268(b)(1) authorizes Administrative Civil Liability not exceeding one thousand dollars (\$1,000) for each day of failure to submit technical reports as required by subdivision (b) of Section 13267. The Discharger has failed to submit 35 monthly monitoring reports, seven quarterly groundwater monitoring reports, and two technical reports. As of 4 June 2004, the Discharger has failed to submit the following:
 - a. A report certifying implementation of the *Treatment Pond Rehabilitation Plan* (due on 30 December 2001);
 - b. *Monitoring Well Installation Report* (due on 30 July 2002);
 - c. Thirty-five monthly monitoring reports (due dates shown on Attachment A);
 - d. Seven quarterly groundwater monitoring reports (due dates shown on Attachment A).
15. As detailed in Attachment A of this Order, as of 4 June 2004:
 - a. The *Treatment Pond Rehabilitation Plan* is 887 days late;
 - b. The *Monitoring Well Installation Report* is 675 days late;
 - c. In aggregate, the 35 monthly monitoring reports are a total of 19,191 days late; and

- d. The seven quarterly groundwater monitoring reports are a total of 2,118 days late.
16. The maximum liability for this nonsubmittal of these technical reports is twenty-two million, nine hundred sixty-nine thousand dollars (\$22,969,000). No minimum liability is required to be imposed under Section 13268(b)(1).
 17. The Regional Board determined, with respect to the factors in Finding 13, the following:
 - a. The nature of the violation is that the Discharger was required by WDRs Order No. 5-01-093 to submit monthly monitoring reports, quarterly groundwater monitoring reports, and certain technical reports pursuant to CWC Section 13267 but has failed to do so. The Discharger has received several written warnings regarding the need to submit the reports, but has continued to fail to submit them. The circumstances are such that the Discharger was aware of the necessity to provide the required reports, but failed to do so.
 - b. The extent of the violation is that the Discharger was required, pursuant to CWC Section 13267, to submit certification that the treatment ponds have been rehabilitated, a Monitoring Well Installation Report, 35 monthly monitoring reports, and seven quarterly monitoring reports. As of 4 June 2004, the reports will be a total of 22,969 days late.
 - c. The gravity of the violation is that the Discharger's failure to implement the treatment pond rehabilitation project has threatened, and continues to threaten, groundwater quality. Additionally, the Discharger's failure to submit the Monitoring Well Installation Report and self-monitoring reports has prevented staff from evaluating water quality issues and determining whether the Discharger is in compliance with the WDRs.
 - d. With respect to the Discharger, it has not been demonstrated that there is an inability to pay the liability and continue operating.
 - e. The Discharger is responsible for submittal of certain technical and monitoring reports and is culpable for the violations cited. The Discharger had ample opportunity to submit the reports and was informed by staff regarding the seriousness of the matter and the potential that enforcement action could be taken should noncompliance continue.
 - f. The Discharger received an unfair economic advantage relative to other dischargers by refusing to complete the required reports in a timely fashion. Staff estimates that the Discharger accrued approximately \$43,000 in savings because of noncompliance.
 - g. Staff expended approximately 40 hours, or \$3,200, preparing the ACL Complaint. It is estimated that staff will spend an additional 60 hours (an additional \$4,800) to prepare this ACL Order and to prepare for the Board hearing.

18. A \$60,000 Administrative Civil Liability is appropriate based on the determinations in Findings No. 13 through 17.
19. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321 (a)(2), Title 14, of the California Code of Regulations.
20. Any person affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with Section 2050 through 2068, Title 23, California Code of Regulations. The petition must be received by the State Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions are available at http://www.swrcb.ca.gov/water_laws/cawtrcde/wqpetition_instr.html and will also be provided upon request.

IT IS HEREBY ORDERED that the Regional Water Quality Control Board, Central Valley Region, imposes upon Western Waterways, Inc. administrative civil liability in the amount of \$60,000 in accordance with California Water Code Section 13268 and Section 13323. Payment shall be made within 30 days of the date of this Order, and shall be in the form of a certified check made payable to the *State Water Resources Control Board Cleanup and Abatement Account*. The check shall have written upon it the number of this Order.

I, THOMAS R. PINKOS, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 4 June 2004.

THOMAS R. PINKOS, Executive Officer

Attachment A Maximum Civil Liability Calculation

AMENDED 4 June 2004