

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2004-0512

ADMINISTRATIVE CIVIL LIABILITY

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

This Administrative Civil Liability Complaint (hereafter Complaint) 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 Executive Officer of 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 the Order.

HISTORY OF VIOLATIONS

4. Provision No. F.1.a of 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.
5. Provision No. F.1.d of the Order requires that, by 28 February 2002, the Discharger submit a *Groundwater Monitoring Workplan*. The plan 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.
6. Provision F.1.c of the Order 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. To date, that report has not been submitted. Staff issued two NOV's 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*. To date, that report has not been submitted. On 9 May 2002, staff granted an 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 this Order, no monthly monitoring reports have been received. Staff has issued two NOV's 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.
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 July 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 failing 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 33 monthly monitoring reports, six quarterly groundwater monitoring reports, and two technical reports. As of 27 April 2001, 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-three monthly monitoring reports (due dates shown on Attachment A);
 - d. Six quarterly groundwater monitoring reports (due dates shown on Attachment A).
15. As detailed in Attachment A to this Complaint, as of 6 April 2004:
 - a. The *Treatment Pond Rehabilitation Plan* is 828 days late;
 - b. The *Monitoring Well Installation Report* is 616 days late;
 - c. In aggregate, the 33 monthly monitoring reports are a total of 17,244 days late; and
 - d. The six quarterly groundwater monitoring reports are a total of 1,764 days late.
16. The maximum liability for this nonsubmittal of these technical reports is twenty million, four hundred fifty two thousand dollars (\$20,452,000). No minimum liability is required to be imposed under Section 13268(b)(1).

17. Issuance of this Complaint 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.

WESTERN WATERWAYS, INC. IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed Administrative Civil Liability in the amount of forty thousand dollars (\$40,000). The amount of the liability proposed is based upon a review of the factors set forth in Water Code Section 13327 cited in Finding No. 13 above, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing shall be held on **3/4 June 2004** unless the Discharger agrees to waive the hearing and pay the imposed civil liability in full.
3. If a hearing is held, the Regional Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. In lieu of a hearing, the Discharger may waive the right to a hearing. If you wish to waive the hearing, please sign the enclosed waiver and return it with the full amount of civil liability (in a check made payable to the *State Water Resources Control Board*), to the Regional Board's office at 11020 Sun Center Drive, Rancho Cordova, Sacramento, CA 95670, by **4 May 2004**.

THOMAS R. PINKOS, Executive Officer

(Date)

Attachment: Summary of Maximum Potential ACL Penalty

JRM/ALO: 2 September 2004

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Western Waterways, Inc. (hereinafter “Discharger”) in connection with Administrative Civil Liability Complaint No. R5-2004-0512 (hereinafter the “Complaint”);
2. I am informed of the right provided by Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint;
3. I hereby waive the Discharger’s right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of issuance of the Complaint; and
4. Without admitting liability for the matters alleged in the Complaint, I otherwise agree to remit payment for the civil liability imposed in the amount of forty thousand dollars (\$40,000) by check, which contains a reference to “ACL Complaint No. R5-2004-0512” and is made payable to the “*State Water Resources Control Board Cleanup and Abatement Account.*”
5. I understand the payment of the above amount constitutes a settlement of the Complaint that will not become final until after a public comment period.
6. I understand that the Executive Officer has complete discretion to modify or terminate this settlement during the 30-day public comment period, which began on the date of the Complaint.
7. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(Name)

(Title)

(Date)