

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2015-0096

IN THE MATTER OF

BREITBURN OPERATING LP
DOW CHANSLOR LEASE
SOUTH BELBRIDGE OIL FIELD, KERN COUNTY

This Order is issued to Breitburn Operating, LP (hereafter Discharger) pursuant to Water Code section 13350, which authorizes the imposition of Administrative Civil Liability. This Order is based on findings that the Discharger violated the Water Code by discharging waste to land without a permit.

The California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board), has held a public hearing on 30/31 July 2015, to receive evidence and comments on this Order, and having considered all of the evidence and public comments received, do hereby issue an administrative civil liability in the amount of \$85,000.

This Order is issued upon the following findings:

1. On 15 November 2013, the Central Valley Water Board issued Water Code Orders pursuant to Section 13267 (Section 13267 Orders) to multiple owners and operators of oil and gas exploration and production operations in the Central Valley Region. The Discharger was a recipient of one of the Section 13267 Orders. The Section 13267 Order sought information about the:
(1) discharges of drilling fluids to land (i.e., including sumps), and
(2) discharges of well completion and/or workover fluids to land at any company well during the reporting period from 1 January 2012 to the date the Orders were issued.
2. On 7 February 2014, the Discharger submitted a spreadsheet with the information sought in the Section 13267 Order. The spreadsheet stated that stimulation treatment fluids from 24 wells were discharged to 24 unlined sumps.
3. On 21 May 2014, Central Valley Water Board staff issued a Notice of Violation with a second Section 13267 Order to the Discharger to seek clarifying information about the reported discharges of stimulation treatment fluid from 24 wells to 24 unlined sumps.
4. In response to the 21 May 2014 Section 13267 Order, the Discharger submitted on 16 July 2014 a technical report with additional information about the fluid discharges to sumps. The report stated that six wells had positive pressure at

the surface after their final hydraulic fracture treatment stage, which caused 10 barrels (420 gallons) to 20 barrels (840 gallons) of stimulation treatment fluid to discharge into each of six unlined sumps.

5. The 16 July 2014 report also stated that the other 18 of the 24 wells initially reported in the spreadsheet as having treatment fluid discharges to sumps did **not** have positive pressure at the surface after stimulation treatment and that all treatment fluids remained in those wells. After evaluation of the 16 July 2014 report and review of additional information submitted by the Discharger to the California Division of Oil, Gas, and Geothermal Resources, Central Valley Water Board staff determined that the initial report submitted by the Discharger was inaccurate and that the Discharger discharged treatment fluids into the six unlined sumps at the six wells identified in the report for a combined total of 17 days.
6. At the public hearing, the Discharger once again contradicted previous submittals that were required by Board orders issued pursuant to Water Code section 13267. The Discharger stated that it actually only discharged fracking fluids to two unlined sumps, and that it had known this information for some time. The Discharger made these statements based on a reinterpretation of materials that it had previously analyzed, but failed to provide first hand evidence that this was, in fact, true.
7. The Central Valley Water Board staff has concluded that the Discharger has violated Water Code section 13350 for unpermitted discharges to land. The Central Valley Water Board may assess administrative civil liability based on Water Code section 13350 for such discharges.
8. Water Code section 13350(a) states:

“(a) A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of a waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state ...”
9. Water Code section 13350(e)(2) states:

“The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or a per gallon basis, but not on both. (2) The civil liability on a per gallon basis shall not exceed ten dollars (\$10) for each gallon of waste discharged.”

10. 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.”

11. Water Code section 13268 states, in relevant part:

“Any person failing or refusing to furnish technical...reports as required by subdivision (b) of Section 13267, ...is guilty of misdemeanor and may be liable civilly in accordance with subdivision (b).”

“Civil liability may be administratively imposed by a regional board... 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.”

12. The Central Valley Water Board finds, based on evidence submitted in this matter, that there are material deficiencies in the responses that the Discharger has submitted in response to the Water Code section 13267 orders that required the Discharger to submit reports detailing activities that may have resulted in discharges to waters of the State. Furthermore, these deficiencies have resulted in inaccurate or vague descriptions of the unauthorized discharges to waters of the state committed by the Discharger, and obfuscated the nature and extent of these discharges.

13. The Central Valley Water Board finds, in light of the conflicting testimony and evidence, that the Discharger discharged waste to at least two, and possibly as many as 6, unlined sumps, without a permit. These wastes were likely discharged over a period of 17 days, although waste materials may have remained in unlined sumps for a period much longer than that. Though the Discharger has contradicted these statements, the weight of the evidence indicates that these discharges occurred over 17 days.

14. In adopting this Order, the Central Valley Water Board has considered, where applicable, each of the factors prescribed in Water Code sections 13327, 13351 and 13385(e). The consideration of these factors is described in Attachment A to this Order.

15. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The method of compliance with this enforcement action consists entirely of payment of amounts for administrative civil liability. As such, the Central Valley Water Board finds that issuance of this Order is not considered subject to the provisions of the California Environmental Quality Act (CEQA) as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project" (Pub. Resources Code § 21065, 21080(a); Cal. Code Regs., tit. 14, §§ 15060(c)(2),(3); 150378(a).). In addition, the Central Valley Water Board finds that issuance of this Order is also exempt from the provisions of CEQA in accordance with California Code of Regulations, title 14, section 15321(a)(2), as an enforcement action by a regulatory agency.
16. This Order resolves violations that may have occurred as a result of the Discharger's submittal of deficient reports, signed under penalty of perjury. Should this Order be overturned by either the State Water Board or a court of competent jurisdiction, the Central Valley Water Board has the discretion to pursue enforcement of any administrative, civil, or criminal remedies that it has the legal authority to pursue for these potential violations.

IT IS HEREBY ORDERED THAT:

1. Pursuant to Water Code section 13350, Breitburn Operating LP shall be assessed administrative civil liability in the amount of eighty-five thousand dollars (\$85,000).
2. Payment shall be made in the form of a check made payable to the State Waste Discharge Permit Fund no later than thirty days from the date of issuance of this Order.

Any person aggrieved by this action of the Central Valley 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, sections 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 filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.

BreitBurn Operating LP
Dow Chanslor Lease
South Belridge Oil Field, Kern County
Order No. R5-2015-0096

I, PAMELA C. CREEDON, 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, Central Valley Region, on 31 July 2015.

Original signed by:

PAMELA C. CREEDON, Executive Officer

31 July 2015

(Date)

ATTACHMENT A to ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R5-2015-0096
BREITBURN OPERATING LP
Dow Chanslor Lease, South Belridge Oil Field
Kern County

Analysis of Enforcement Policy Penalty Methodology

BreitBurn Operating L.P. (BreitBurn or Discharger) has violated California Water Code (CWC) section 13350 for discharging unpermitted materials to sumps. The Central Valley Water Board may assess administrative civil liability based on CWC section 13350 for these violations.

CWC sections 13327 and 13385(e) require the State Water Resources Control Board (State Water Board) and Regional Water Boards consider several factors when determining the amount of civil liability to impose. These factors include in part: "...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup and 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."

On 17 November 2010, the State Water 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 20 May 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 CWC sections 13327. The Enforcement Policy is at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11179.pdf.

This attachment summarizes the Prosecution Team's selected factors reached through settlement negotiations with the Discharger.

Factor 1 – Harm or Potential Harm to Beneficial Use

For this case, the violation was for the unpermitted discharges of stimulation treatment fluid (fluid) to land. The Prosecution Team must consider where the fluid went to determine harm or potential harm to beneficial uses. The fluid was likely discharged to six unlined sumps that were used for the Discharger's drilling mud and drill cuttings when drilling the wells. The sumps were unlined and therefore discharge of the fluid had the potential to affect groundwater. However, because the discharges occurred in the South Belridge Oil Field, where the quality of the underlying groundwater is somewhat poor, the Prosecution Team balanced the existing quality of the groundwater against the State Water Board's acknowledgment that all water has the potential to be drinking water in Resolution 88-63, and selected a factor of 2, below moderate. Below moderate harm means that the potential harm is less than moderate harm to beneficial uses (i.e., impacts are observed or reasonable expected, and harm to beneficial uses is minor).

Factor 2 – Physical, Chemical, Biological or Thermal Characteristics of the Discharge

The Prosecution Team issued CWC numerous section 13267 Orders to oil producers, including BreitBurn, in November 2013 to inquire as to the nature of the fluid discharged to the sumps. The Central Valley Water Board issued a subsequent 13267 Order to the Discharger when the Discharger's initial submittal failed to contain sufficient information to ascertain the nature and extent of the alleged discharges. The Discharger's 16 July 2014 technical report, submitted in response to the second 13267 Order, stated that the originally reported fluid discharges to 24 sumps was actually only to six sumps because only six wells had positive pressure at the surface after stimulation treatment and that fluid remained in the other 18 wells. The discharged fluid had salinity levels exceeding the maximum salinity limits in the *Water Quality Control Plan for the Tulare Lake Basin*, Second Edition, revised January 2004 (Basin Plan). The Prosecution Team selected a score of 2, because the material poses a moderate risk or threat to groundwater.

Factor 3 – Susceptibility to Cleanup or Abatement

A score of 1 is assigned for this factor if less than 50% of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated by the Discharger (Enforcement Policy, pg. 13). Here, the discharge is not susceptible to cleanup because the unlined sumps allow the material to percolate into the ground. In addition, the Discharger made no effort to remove treatment fluids from the sump using vacuum trucks as soon as possible after discharging fluid to the sumps. Therefore, this factor was given a score of 1.

For the first three factors, each factor is added together for a score of 5 [2 + 2 + 1 = 5].

Deviation from Requirement The Prosecution Team considers the use of sumps to be a major deviation from requirement because all discharges to land require a report of waste discharge. Therefore, the use of sumps is a total disregard for the Central Valley Water Board's regulatory authority and an indication that the requirement has been rendered ineffective. This is especially true since there were previous enforcement actions for the use of drilling mud sumps to dispose of stimulation treatment fluids.

Using the table in the Enforcement Policy (p. 14), the Initial Liability is $0.15 \times \$5,000 \times 17$ days = \$12,750.

Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to cleanup or cooperate with regulatory authority, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for intentional or negligent behavior. The Discharger was given a neutral multiplier value of 1.0, since it timely responded to the Prosecution Team's CWC 13267 Orders, negotiated in good faith, and came forward with the information leading to settlement.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. While there was a high degree of cooperation with this Discharger during the investigation, the Prosecution Team finds that the Discharger failed to quickly remove the fluid from the sumps as soon as possible after the discharges. Therefore, the Prosecution Team considers a factor of 1.1 to be suitable.

History of Violations

The Enforcement Policy states that a minimum multiplier of 1.1 should be used when there is a history of violations. The Prosecution Team is unaware of any previous enforcement actions against BreitBurn, so this factor is neutral (1.0).

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

Total Base Liability Amount: This value is calculated as the Initial Liability Amount (\$12,750) x Adjustment Factors (1) (1.1) (1) and is equal to \$14,025.

Step 6 - Ability to Pay and Ability to Continue in Business

BreitBurn is a large oil company and the recommended penalty will not have an effect on its ability to continue in business. BreitBurn has not presented any information regarding its inability to pay.

Step 7 – Other Factors as Justice May Require

The proposed liability assessment of \$85,000 reflects a resolution based on the uncertainty of a number of factors, including material deficiencies in several of the Discharger's responses to 13267 Orders issued by the Central Valley Water Board. First, the Discharger is uncertain about the discharge volumes but roughly estimated that between 10 barrels (420 gallons) and 20 barrels (840 gallons) of fluid was discharged into each sump. Therefore, the maximum volume of fluid discharged to the six sumps is 120 barrels or 5,040 gallons. At a

maximum penalty per gallon of \$10, the maximum liability amount based on volume is \$50,400. Second, it is unclear whether the violation should be based on the combined 17 days of fluid discharge to the six sumps, or also for the additional days that liquid containing some stimulation treatment fluid remained in the sumps prior to the removal of liquid from the sumps during their closure. Third, the initial reports of discharges from 24 wells was inaccurate, and the Discharger's responses to subsequent Orders was contradicted by the Discharger's own statements at the Board hearing.

The final settlement amount, as demonstrated below, significantly exceeds the economic benefit amount plus 10%. If the Central Valley Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this.

Step 8 – Economic Benefit

The Porter-Cologne Act requires that certain civil liabilities be set at a level that accounts for any "economic benefit or savings" violators gained through their violations. To establish the amount of civil liabilities, the Office of Enforcement uses a "Penalty Calculation Methodology" that addresses the economic benefit of noncompliance.

The economic benefit was calculated as the rental of two Baker tanks from May through July 2013 and the cost of proper disposal of materials, at a total cost of approximately \$1,500.

The Enforcement Policy states (p. 21) that the total liability shall be at least 10% higher than the economic benefit, "so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations." For this case, this would result in a minimum liability of at least \$1,650.

Final Adjusted Liability Amount: The administrative liability is **\$85,000**. This significantly exceeds the assumed economic benefit plus 10% and therefore should deter future similar discharge violations.

Step 9 – Maximum and Minimum Liability Amounts

The maximum and minimum amounts for discharge violation must be determined for comparison to the amounts being proposed.

Maximum Liability Amount: \$85,000 (per Water Code section 13350)

Discussion: The maximum administrative liability amount is the maximum amount allowed by Water Code section 13367(b)(1): five thousand dollars (\$5,000) for each day in which the violation occurs. Therefore, Discharger faces a maximum liability amount for the total number of days in violation (17 total days X \$5,000 per day) of \$85,000.

Minimum Liability Amount: \$14,025

Discussion: The Enforcement Policy requires that the minimum liability amount imposed not fall below the economic benefit plus ten percent. As discussed above, the Central Valley Water Board Prosecution Team's estimate of the Discharger's economic benefit obtained from the alleged violation is \$1,650.

Step 10 – Final Liability Amount

Based on the deficiencies in the Discharger's submittals and certain evidentiary uncertainties, of the final assessment shall be **\$85,000**.