

Correction to Proposed Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R7-2021-0030

In the Proposed Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order, the date that the alleged discharge of combined cannabis irrigation runoff and mineralized wastewater from the reverse osmosis filtration system ended under Violation 1 was incorrectly listed as June 8, 2019 in Paragraph 9 of the Recitals. The total days of violation was correctly listed as 75 days of violation; however, the date that the alleged violation ended was June 7, 2019. Additionally, the date that the alleged discharge of cannabis irrigation tailwater ended under Violation 2 was incorrectly listed as August 31, 2019 in Paragraphs 9 and 10 of the Recitals. The total days of violation was correctly listed as 84 days of violation; however, the date that the alleged violation ended was August 30, 2019.

Therefore, the following changes are made to Section II, Paragraphs 9 and 10:

9. Based on information provided by the Discharger, the Parties have agreed to separate the violation alleged in the ACL Complaint into two violations to better account for the nature of the waste that is alleged to have been discharged during the relevant time periods. Accordingly, Violation 1 encompasses the period between March 25, 2019 and ~~June 8, 2019~~ June 7, 2019 (a total of 75 days), when the Discharger is alleged to have discharged a combination of cannabis irrigation runoff and mineralized wastewater from the reverse osmosis filtration system into its OWTS. Violation 2 encompasses the period between June 8, 2019 and ~~August 31, 2019~~ August 30, 2019 (a total of 84 days), when the Discharger is alleged to have discharged only cannabis irrigation runoff into its OWTS.
10. For purposes of resolving this matter through settlement, the Parties agree to a Degree of Toxicity score of 2 for the discharges alleged in Violation 1 given the likelihood that lead detected in the RO brine would fall below the primary maximum contamination level (MCL) when comingled with the cannabis irrigation runoff. Additionally, for purposes of settlement, the Parties agree to a Degree of Toxicity score of 1 for the discharges alleged in Violation 2 due to the absence of lead in the cannabis irrigation runoff but an exceedance of manganese beyond the secondary MCL. The scores for Actual Harm or Potential Harm to Beneficial Uses and Susceptibility to Cleanup or Abatement are a 1 for both alleged violations. Additionally, both alleged violations have been categorized as major Deviations from Requirement. In considering the Discharger's conduct prior to the alleged violations, the Parties agree to a Culpability score of 1.4 for Violation 1 and a score of 1.3 for Violation 2. Although staff were clear in their communications regarding the disposal requirements for RO brine prior to the Discharger receiving its NOA, those communications did not specifically address the disposal of cannabis irrigation runoff; however, it is the Prosecution Team's position that the Discharger should have been aware of and operating in compliance with all requirements of the Conditional Waiver. The Parties also agree to a Cleanup and Cooperation score of 1.0 for Violation 1 to account for the Discharger ceasing the alleged discharges of the RO brine shortly after staff inspected the site on June 5, 2019. For Violation 2, the Parties agree to a Cleanup and Cooperation score of 1.3 to account for the alleged discharges of cannabis irrigation runoff continuing until ~~August 31, 2019~~ August 30, 2019. The score for History of Violations is a 1.0 for both alleged violations.