

**California Regional Water Quality Control Board
San Francisco Bay Region**

In the Matter of:)
)
SODA LLC) **Complaint No. R2-2024-1032**
Marin County) **For**
) **Administrative Civil Liability**
Failure to Submit Annual Report)
)

Discharger is hereby notified that:

1. The San Francisco Bay Regional Water Quality Control Board (Regional Water Board) alleges that SODA LLC (Discharger) has violated provisions of the Stormwater Enforcement Act. The violation requires the Regional Water Board to impose an administrative civil liability (monetary penalty), pursuant to Water Code sections 13399.31 and 13399.33.
2. This Administrative Civil Liability Complaint (Complaint) is issued pursuant to Water Code section 13323, which allows the Regional Water Board to issue a complaint based on a discharger's violation of law. In this case, Discharger has failed to submit required documentation to the Regional Water Board in violation of Water Code section 13399.33(c). As such, the Regional Water Board must issue this Complaint, which imposes a mandatory minimum penalty as well as the staff costs incurred to enforce Water Code sections 13399.33(b) and (d).
3. Discharger operates a construction project at 3825 Paradise Drive in Tiburon. On March 22, 2022, Discharger filed a Notice of Intent (attached hereto as Attachment A) to obtain permit coverage for construction activities through State Board Order No. 2009-0009-DWQ, *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities* (Construction Stormwater General Permit [Permit]). Discharger is responsible for complying with Permit requirements, which include preparing, electronically submitting, and certifying a report of stormwater monitoring and training information (Annual Report) no later than September 1 of each year (see Section XVI of the Permit).

Allegations

4. Discharger violated Section XVI of the Permit by failing to submit the required Annual Report for the 2022-2023 reporting year by September 1, 2023.
5. Pursuant to Water Code sections 13399.31 and 13399.33, the Regional Water Board must impose a monetary penalty in an amount not less than \$1,000 when the discharger fails to submit an annual report after receiving two notifications. Water Code section 13399.31(b) requires the Regional Water Board to notify the

- discharger of its noncompliance first. If a response is not received within 30 days, Water Code section 13399.31(c) requires the Regional Water Board to issue a second notice of noncompliance before assessing a penalty.
6. Based on Discharger's failure to submit the Annual Report, and as required by Water Code section 13399.31, the Regional Water Board issued, via certified mail (Certified Mail Receipts, attached hereto as Attachment B) and email, notices of noncompliance on November 15, 2023, and December 18, 2023 (Notices of Noncompliance, attached hereto as Attachment C). These notices of noncompliance instructed Discharger to submit the Annual Report within 30 days to avoid further enforcement. The notices also informed the Discharger of the mandatory minimum penalty associated with violation of Water Code section 13399.33(c) for failing to submit an annual report. However, Discharger failed to submit the required Annual Report within 60 days of the first notice (by January 14, 2024) and did not otherwise respond to the Regional Water Board.
 7. As set forth above, when a discharger fails to certify and submit an annual report via the State Water Resource Control Board's (State Water Board's) Stormwater Multiple Application and Report Tracking System (SMARTS) within 60 days from the date of the first notice of noncompliance, Water Code section 13399.33(c) requires the Water Board to impose a \$1,000 penalty and, pursuant to Water Code section 13399.33(d), recover staff costs the Regional Water Board incurs enforcing the Permit.
 8. On April 4, 2024, Regional Water Board staff issued via email a conditional offer to settle the alleged reporting violation for a minimum mandatory penalty of \$1,000 (Settlement Offer Letter and Tentative Order for Conditional Resolution and Waiver, attached hereto as Attachments D and E). This Settlement Offer required Discharger to respond by April 24, 2024, by either accepting the offer, contesting the alleged violation, or rejecting the offer.
 9. On April 5, 2024, Discharger sent an email stating the project had not yet started and was on an indefinite hold. Regional Water Board staff informed the Discharger on April 9, 2024, that an annual report must be submitted so long as an active project is covered under the Construction Stormwater General Permit, including when the project is on hold or otherwise delayed. Staff also advised Discharger of the steps it could take to terminate its permit coverage. The Regional Water Board received the Annual Report on April 09, 2024. On May 14, 2024, Discharger submitted a Notice of Termination via SMARTS and permit coverage was terminated on May 17, 2024.
 10. On May 7, 2024, after not receiving a response to the Settlement Offer, the Regional Water Board informed Discharger via email that it had 15 days from receipt of the email to accept the offer and advised that it could take additional

measures to enforce permit requirements if Discharger failed to respond.
Discharger did not respond.

Proposed Civil Liability

11. The minimum liability for the alleged violation is a mandatory penalty of \$1,000, pursuant to Water Code section 13399.33(c), and the recovery of Regional Water Board staff costs, pursuant to Water Code section 13399.99(d). Staff costs were estimated to be \$1,910.00 (Staff Cost Estimate, attached hereto as Attachment F).
12. The Regional Water Board should impose civil liability in the amount of \$2,910.00 on the Discharger for failing to submit an annual report by September 1, 2023, for the 2022-2023 reporting year, as required by the Construction Stormwater General Permit.

Ross Steenson
Assistant Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region

Date

Attachments:

- A. Notice of Intent
- B. Certified Mail Receipts
- C. Notices of Noncompliance
- D. Settlement Offer Letter
- E. Tentative Order for Conditional Resolution and Waiver
- F. Staff Costs