

Regional Water Quality Control Board
North Coast Region

Executive Officer's Summary Report
August 4, 2022

ITEM: 5

SUBJECT: Public Hearing on Administrative Civil Liability Complaint No. R1-2022-0023 issued to Szagora LLC, Toshko Toshkoff and Rudy Chacon, Humboldt County, Assessor's Parcel Number 208-054-003-000.

BOARD ACTION: The Regional Water Board will consider evidence and testimony from the Dischargers and Prosecution Team and consider whether to impose penalties against the Dischargers.

BACKGROUND: On May 10, 2022, the Executive Officer of the North Coast Regional Water Quality Control Board (Regional Water Board) was notified that Regional Water Board Prosecution Team staff had issued an Administrative Civil Liability Complaint (ALCLC or Complaint) to Szagora LLC, Toshko Toshkoff, and Rudy Chacon (Dischargers). The Dischargers were allegedly engaged in cannabis cultivation activities in Humboldt County on the parcel identified above and had failed to obtain appropriate regulatory coverage with the Regional Water Board authorizing the activity.

The Prosecution Team's Complaint seeks penalties of \$209,687 for alleged violations of a Cleanup and Abatement and Water Code section 13267 Order No. R1-2021-0031 (Cleanup and Abatement Order) issued to the Dischargers. Pursuant to Water Code section 13323 subdivision (c), the Regional Water Board is required to hold a hearing on the Complaint within 90 days of service of the Complaint. The Dischargers did not waive their right to a hearing within 90 days. Accordingly, the Board has scheduled a hearing to consider the matter at its upcoming public meeting scheduled for August 4, 2022. At the public hearing the Regional Water Board will consider whether to issue an order requiring payment of the full amount recommended in the Complaint, to issue an order requiring payment of a reduced amount or a higher amount, decide not to impose penalties, or it may refer the matter to the Attorney General's Office. The Regional Water Board may also elect to continue the hearing to a later date or take the matter under submission.

DISCUSSION: According to the Complaint, on July 20, 2020, Regional Water Board staff participated in a joint inspection of the site located at Assessor's Parcel Number 208-054-003-000 (Site) with staff from the California Department of Fish and Wildlife and Humboldt County. The Complaint alleges that undersized, misaligned and failed stream crossings were present on the site as well as hydrologically connected road segments. These features threatened to discharge earthen waste to unnamed tributaries of the Mad River.

Law enforcement officials eradicated the cannabis plants present on the site. On October 19, 2020, Regional Water Board staff issued a Notice of Violation to the Dischargers providing recommendations for correcting the crossings and road segments on the site. The Notice of Violation also directed the Dischargers to obtain regulatory coverage for cannabis cultivation activities.¹ Staff alleges the Dischargers did not respond and did not obtain appropriate regulatory coverage for cannabis operations. On April 8, 2021, staff issued a draft Cleanup and Abatement Order to the Dischargers. According to the Complaint, the Dischargers did not respond. On June 2, 2021, the Executive Officer issued a final Cleanup and Abatement Order to the Dischargers. The Dischargers did not challenge the final Cleanup and Abatement Order through the petition process with the State Water Resources Control Board (State Water Board). Following the issuance of the Cleanup and Abatement Order, Prosecution staff asserts they had multiple communications with the Dischargers and the Dischargers made no attempt to comply with the directives contained in the Order. On March 16, 2022, staff transmitted a Notice of Violation for failure to comply with certain directives in the Cleanup and Abatement Order. According to the Complaint, the Dischargers to date have not complied with the Order directives.

The Complaint seeks penalties for two alleged violations of the Cleanup and Abatement Order: 1) The Dischargers failed to submit a Cleanup, Restoration and Monitoring Plan as required by the Order, and 2) The Dischargers failed to implement an approved Cleanup Restoration and Monitoring Plan, as required by the Order.

The proposed penalty for Violation 1, the failure to submit a Cleanup, Restoration and Monitoring Plan, is subject to a maximum penalty of \$312,000 pursuant to Water Code section 13268. (The Complaint alleges noncompliance for 312 days with a statutory maximum penalty of \$1,000 per day for failure to submit the Plan.) Applying the penalty methodology set forth in the 2017 State Water Board Enforcement Policy, and as set forth in Attachment A to the Complaint, the Prosecution Team proposes a penalty of \$37,812 for this violation.

The proposed penalty for Violation 2, the failure to implement an approved Cleanup, Restoration and Monitoring Plan, is subject to a maximum penalty of \$1,030,000 and a minimum penalty of \$20,600 pursuant to Water Code section 13350. (The Complaint alleges noncompliance for 206 days with a statutory maximum of \$5,000 per day, and minimum penalty of \$100 per day). Applying the penalty methodology set forth in the Enforcement Policy and detailed in Attachment A, the Prosecution Team proposes a penalty of \$171,875 for this violation. Accordingly, the total proposed penalty is \$209,687.

The Advisory Team provided a Notice of Public Hearing and Draft Hearing Procedures to the Prosecution Team and Dischargers on June 7, 2022. Neither the Prosecution Team nor Discharger had comments on the Hearing Procedures.

¹ The Complaint is not seeking liability for failure to obtain regulatory coverage for cannabis cultivation as the existing cannabis plants were destroyed and new operations were not recommenced.

The Hearing Procedures and Public Hearing Notice were finalized and on July 6, 2022, copies were provided to the parties.

The Prosecution Team timely submitted its Case in Chief on July 6, 2022, which includes all supporting evidence it relies on to support the Complaint. The Dischargers' supporting evidence, witness information and any legal, technical arguments to contest the Complaint were due on July 18, 2022. The Advisory Team did not receive any submissions from the Dischargers apart from a single email communication from Tosho Toshkoff, one of the named Dischargers. Mr. Toshkoff contacted Advisory counsel and submitted an email communication on June 18, 2022. That communication is part of the record for the case.

No written comments were received from interested parties.

As stated in the Hearing Procedures, on August 1, 2022, the Prosecution Team is required to submit a proposed Order for the Board to consider at the conclusion of the hearing. The Dischargers also have an opportunity to submit a proposed Order for the Board's consideration by this date. Proposed Orders will be provided to Board members when they are received.

RECOMMENDATION: At this time, the Executive Officer does not have a proposed recommendation. At the conclusion of the hearing and any deliberations, the Executive Officer may provide a recommendation.

SUPPORTING DOCUMENTS:

1. Administrative Civil Liability Complaint
2. Notice of Public Hearing and Hearing Procedures
3. Prosecution Team Case in Chief (link to FTP site will be provided to view exhibits and evidence)
4. Email communication received from Discharger (link to FTP site will be provided)
5. Proposed Order(s) (Will be provided to Board members when received)