

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

WORK SHEET FOR ASSESSMENT OF ADMINISTRATIVE CIVIL LIABILITY

**DAN MILLIGAN / COASTAL BOATWORKS
261 MAIN ST., MORRO BAY
SAN LUIS OBISPO COUNTY**

I. MAXIMUM ALLOWABLE CIVIL LIABILITY

Dan Milligan, doing business as Coastal Boatworks, (hereafter “Discharger”) violated the General Industrial Storm Water Permit for 2,016 days by failing to pay the Annual Fee. California Water Code Section 13261 allows assessment of up to \$1,000 per day for each day the violation occurs. The Discharger also violated the General Industrial Storm Water Permit by failing to submit the 2002-2003 Annual Report in a timely manner. California Water Code Section 13399 requires an assessment of at least \$1,000 for failure to submit the Annual Report in the required time frame. Therefore, the maximum liability is \$2,016,000 (Two Million, Sixteen Thousand Dollars).

II. FACTORS TO CONSIDER IN ASSESSMENT OF ADMINISTRATIVE CIVIL LIABILITY (ACL)

A. VIOLATIONS

When imposing civil liability, California Water Code Section 13327 requires the Regional Board to consider the nature, circumstance, extent, and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, and the degree of toxicity of the discharge. These factors are considered below:

The Nature, Circumstance, Extent, and Gravity of the Violations; Susceptibility to Cleanup; and Toxicity of the Discharge.

The Discharger violated the General Industrial Storm Water Permit, the Federal Clean Water Act, and the California Water Code by failing to submit the 2002-2003 Annual Report in a timely manner and by failing to submit the 2001-2002, 2002-2003, and 2003-2004 Annual Fees. The period of violation covered by this order is May 6, 2001 to March 8, 2004, during which eleven Notice of Violation letters were issued concerning the fees, and two Notice of Violation letters were issued concerning the annual report.

Failure to submit fees and Annual Reports in a timely manner impacts the Regional Water Quality Control Board's ability to effectively administer its water quality programs. These impacts include, but are not limited to, additional RWQCB staff costs beyond the normally required effort and the potential consequences of delayed clean-up, coordination, mitigation and enforcement response by the RWQCB due to late or omitted reports. Timely follow-up on these violations acts as a deterrent to the violator and others and supports those dischargers who readily commit the resources necessary to comply with similar requirements.

For late or missing reports, the Regional Board may also consider impacts to water quality caused by the delay or failure. Regional Board staff does not have enough information without

the Annual Report to know if storm water discharged from the site contained contaminants that require cleanup, if there were pollutant discharges and if so, the toxicity of any discharges.

Considering the length of the violation period and the number of notices the Discharger received, as well as the lack of evidence of any water quality impacts, these factors support liability that is more than minimum but less than maximum.

B. VIOLATOR

California Water Code section 13327 also requires the Regional Board to consider the violator's ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts, any prior history of violations, the degree of culpability and economic benefit or savings, and other matters as justice may require.

1. Ability to pay;

The Discharger has not provided financial data to the Regional Board to show an inability to pay.

2. Any voluntary clean up efforts undertaken by the violator;

There is no evidence of voluntary clean up efforts having taken place, or the need for them. Therefore this factor does not affect consideration of the appropriate amount of penalty.

3. Prior history of violations;

Prior to the period of violations for this order, eight Notice of Violation letters, from 1995 to 2002, were sent to the Discharger for failure to submit the Annual Report on time. Consideration of this factor does not support liability less than maximum.

4. Degree of culpability;

As the permitted party, the Discharger is directly responsible for permit compliance, and was aware of permit requirements. During the period of violations, two Notice of Violation letters were sent to the Discharger for failure to submit the Annual Report, and eleven Notice of Violation letters were sent to the Discharger for failure to submit the Annual Fees, two of which were sent certified mail and one of which was hand delivered.

The Discharger's level of culpability is high. However, the violations in question are reporting violations only; there is no evidence of impacts to water quality. To Regional Board staff's knowledge, Best Management Practices are in place at the facility and water quality violations have not been found during Regional Board staff's inspections of the facility. Consideration of this factor does not support maximum liability.

- 5. Economic savings resulting from the violation; and,

The Discharger did enjoy some economic savings by failing to pay the Annual Fees, and economic benefit from interest earned on the unpaid amounts. The unpaid fees for fiscal years 2001-2002, 2002-2003, 2003-2004 total \$1,700 (One Thousand Seven Hundred Dollars). Interest on these amounts at an assumed rate of 5% would be \$165 (One Hundred and Sixty-five Dollars).

- 6. Other matters as justice may require.

Regional Board staff have spent time responding to the situation and preparing the administrative civil liability complaint. Estimated staff costs for preparation of this complaint are \$1,125.

A CONSERVATIVE ESTIMATE OF STAFF COSTS FOR THIS ENFORCEMENT ORDER			
	Hours	Rate (\$/hr)	Amount (\$)
Regional Board Staff time	15	75	\$1,125

III. RECOMMENDATION AND ASSESSMENT

Staff recommends assessment of **Five Thousand Seven Hundred and Twenty-five Dollars (\$5,725)** in administrative civil liability.