

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

STAFF REPORT FOR REGULAR MEETING OF JULY 9, 2004

Prepared on May 24, 2004

ITEM: 17

SUBJECT: ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R3-2004-0088; Dan Milligan/Coastal Boatworks, 261 Main St., Morro Bay, California

KEY INFORMATION

Discharger: Dan Milligan/Coastal Boatworks
Location: 261 Main St., Morro Bay
Discharge Type: Storm Water
Existing Order: NPDES No. CAS000001, State Board Order No. 97-03-DWQ, WDID No. 3 40I010949

SUMMARY

Dan Milligan, doing business as Coastal Boatworks (hereinafter, Discharger), is required to submit an Annual Report each year in accordance with the General Storm Water Permit for Industrial Activity (General Permit). Two Notice of Violation letters were sent regarding submittal of the Annual Report and the possible enforcement actions for failure to do so. The discharger failed to submit the Annual Report on time. Section 13399.33(c) directs the Regional Board to impose a mandatory minimum \$1,000 penalty for failure to submit a Storm Water Annual Report in a timely manner.

The Discharger is also required to pay an Annual Fee each year in associated with the General Storm Water Permit for Industrial Activity (General Permit). At least two letters were sent each year regarding the need for payment of the Annual Fee and the possible enforcement actions for failure to do so. The discharger has failed to pay the Annual Fee for three years.

As a result of these violations, Regional Board staff is recommending a civil liability of \$5,725.

DISCUSSION

Background

On March 9, 1994, Dan Milligan, doing business as Coastal Boatworks, filed a Notice of Intent (NOI) to comply with the terms of the General Permit. By filing an NOI, the Discharger is agreeing to comply with all terms and conditions of this General Permit, which includes submission of an Annual Report and payment of an Annual Fee.

On September 25, 1995, October 8, 1996, October 22, 1996, July 17, 1997, September 1, 2000, September 4, 2001, August 1, 2001, and August 1, 2002, Notice of Violation letters were sent to the Discharger for failure to submit the annual report due on July 1 of 1995, 1996, 1997, 2000, 2001 and 2002. In each case, the Annual Report was received after the Notice of Violation letter was issued.

On June 5, 1998, June 8, 1999, and June 7, 2000, State Board staff sent Demand Letters for unpaid Annual Fees for Fiscal Year 1998/99, Fiscal Year 1999/2000, and Fiscal Year 2000/01. On July 7, 1998, July 8, 1999, and July 11, 2000, State Board staff sent Notice of Violation Letters for unpaid Annual Fees for the same three years. These fees were never paid, however they are not included in this

order (except as culpability) because the statute of limitations has run out. Enforcement action for the failure to submit these fees was not pursued due to a previous history of paid fees on the part of the discharger and compliance with the permit otherwise.

Annual Report Violation Timeline

July 2002 – June 2003 – The Discharger was covered under the General Permit during the entire reporting period (July 2002 to June 2003). The General Permit requires that an Annual Report be submitted to the Regional Board by July 1 following the reporting period.

August 2003 – September 2003 - On August 5, 2003, and September 9, 2003, Regional Board staff issued Notice of Violation (NOV) letters for failure to submit the Annual Report as required by CWC Section 13399. Both Notice of Violation letters warned of potential penalties pursuant to provisions of the CWC.

March 2004 - Administrative Civil Liability Complaint No. R3-2004-0026 was sent to the Discharger by certified mail on March 9, 2004. The United States Postal Service attempted to deliver the Complaint on March 13, 2004 at 12:59 PM. A notice was left.

On March 15, 16 and 17, Regional Board staff attempted to deliver the Complaint to the Discharger.

On March 24, 2004, the Complaint was sent to the Sheriff to serve to the Discharger.

April 2004 – The San Luis Obispo Sheriff's Department served the Complaint to Dan Milligan on April 6, 2004 at 10AM.

May 2004 – On May 4, 2004, the Executive Officer called the Discharger's attorney granting the request to postpone the hearing until the next regularly scheduled meeting of the Board, July 9, 2004.

A Notice of Termination for Coastal Boatworks was received on May 13, 2004.

The 2002-2003 Annual Report for Coastal Boatworks was received on May 18, 2004.

Administrative Civil Liability Complaint No. R3-2004-0026 was rescinded and Administrative Civil Liability Complaint No. R3-2004-0088 was sent to the Discharger's address of record by certified mail on May 18, 2004. Sullivan & Corcoran signed for the Complaint on May 20, 2004 at 12:02 PM.

Sullivan & Corcoran sent a letter on May 24, 2004 explaining that they were not authorized to accept service on behalf of Mr. Milligan.

On May 28, 2004 staff sent a letter to the San Luis Obispo County Sheriff's Department asking for the Complaint to be served to Mr. Milligan at his home address.

The San Luis Obispo Sheriff's Department sent a letter to the Regional Board office on June 4, 2004 explaining that the sheriff had attempted to serve Mr. Milligan on June 3, 2004 but Mr. Milligan had moved.

Annual Fee Violation Timeline

April 2001 – August 2001 (State Board staff action)

- April 6, 2001 - A \$500 invoice was sent to the Discharger for the General Permit 2001/02 Annual Fee.
- June 12, 2001 - A Demand Letter was sent to the Discharger for failure to submit the 01/02 Annual Fee.
- August 8, 2001 – A Notice of Violation letter was sent to the Discharger for failure to submit the 01/02 Annual Fee.

January 2002 – February 2002 (Regional Board staff action)

- January 24, 2002 (hand delivered), January 30, 2002 (certified mail) – Notice of Violation Letters were sent to the Discharger for failure to submit the unpaid Annual Fees.
- February 6, 2002 – A Notice of Violation Letter was sent to the

Discharger for failure to submit the unpaid Annual Fees.

April 2002 – June 2003 (State Board staff action)

- April 4, 2002 - A \$500 invoice is sent to the Discharger for the General Permit 2002/03 Annual Fee.
- March 28, 2003 - A Demand Letter was sent to the Discharger for failure to submit the 02/03 Annual Fee.
- April 8, 2003 - A \$700 invoice was sent to the Discharger for the General Permit 2003/04 Annual Fee.
- June 5, 2003 - A Demand Letter was sent to the Discharger for failure to submit the 03/04 Annual Fee.
- June 5, 2003 – A Notice of Violation Letter was sent to the Discharger for failure to submit the 02/03 Annual Fee.

June 2003 – July 2003 (Regional Board staff action)

- June 13, 2003 (certified mail) - A Notice of Violation Letter was sent to the Discharger for failure to submit the unpaid Annual Fees.
- July 10, 2003 – A Notice of Violation Letter was sent to the Discharger for failure to submit the unpaid Annual Fees.

August 2003 (State Board staff action)

- August 7, 2003 – A Notice of Violation Letter was sent to the Discharger for failure to submit the 03/04 Annual Fee.

Conclusion

The Discharger failed to respond to Regional Board requests for compliance by failing to submit the 2002-2003 Annual Report in a timely manner or pay the Annual Fees for the 2001-2002, 2002-2003, 2003-2004 fiscal years; a total of 2,016 days of violation. The Discharger is in violation of the General Permit, the Federal Clean Water Act, and the California Water Code.

CIVIL LIABILITY

Section 13399.33(c) of the California Water Code provides that a person that fails to submit an Annual Report in accordance with Section 13399.31, shall be civilly liable, and civil liabilities must be imposed in an amount that is not less than \$1,000.

Section 13261 of the California Water Code provides that civil liability may be administratively imposed in an amount that may not exceed \$1,000 per day in which the violation occurs. The Discharger has been in violation of Section 13261 for 2,016 days setting the maximum liability at \$2,016,000 dollars.

ATTACHMENTS

1. Administrative Civil Liability Complaint No. R3-2004-0088
2. Administrative Civil Liability Order No. R3-2004-0088
3. Worksheet for Order No. R3-2004-0088

RECOMMENDATION

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