

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401**

**ADMINISTRATIVE CIVIL LIABILITY
ORDER NO. R3-2004-0086**

[Waste Discharger Identification No. 3 271017509]
Proposed for Consideration at the July 9, 2004 Meeting

Issued To

**Sonoma Pacific Company
261 Rianda Circle, Salinas
Monterey County**

The California Regional Water Quality Control Board, Central Coast Region, finds that:

1. The State of California has adopted a General Permit for Storm Water Discharges Associated with Industrial Activity, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The General Permit requires facilities to submit a Notice of Intent (NOI) to comply with the General Permit if the facility presents an exposure threat to storm water runoff as prescribed by the General Permit.
2. On September 25, 2002, Sonoma Pacific Company (hereafter, Discharger) filed a Notice of Intent to comply with the terms of the General Permit for Storm Water Discharges Associated with Industrial Activity (General Permit). By filing an NOI, the Discharger agrees to comply with all terms and conditions of this General Permit, which includes submittal of an annual report.
3. Sonoma Pacific Company was involved in industrial activity during the reporting period, which requires coverage under the General Permit.
4. The General Permit requires that an Annual Report for Storm Water Discharges Associated with Industrial Activity (Annual Report) be submitted on or before July 1 of each year. On

August 5, 2003, the Regional Board issued a Notice of Violation for failure to submit this report as required by California Water Code (CWC) Section 13399.31. On September 9, 2003, the Regional Board issued a second Notice of Violation to the Discharger as required by CWC Section 13399.31.

5. The Discharger has violated the General Permit by not submitting the 2002-2003 Annual Report by July 1, 2003, for which the Regional Water Quality Control Board, Central Coast Region (Regional Board) may impose civil liability under Section 13399.33 and 13385 of the California Water Code.
6. 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 in an amount not less than \$1,000.
7. Section 13385 of the CWC provides that a person who violates Section 13383 may be civilly liable for up to \$10,000 for each day in which the violation occurs. The discharger has been in violation for 307 days (July 1, 2003 to May 3, 2004) and is civilly liable for 307 days of violation. The total maximum liability that may be assessed for this violation is \$3,070,000.

8. In determining any liability to be imposed, CWC Section 13385 requires the Regional Board to consider the following factors:

- a. Nature, circumstances, extent, and gravity of the violations:

The Discharger is aware of the General Permit's monitoring and reporting requirements because the Discharger signed a Notice of Intent to Comply with the terms of the permit and a Notice of Termination form which requires the discharge to certify that they are still responsible for the submittal of the annual report. The Discharger violated the General Industrial Storm Water Permit, the Federal Clean Water Act, and the California Water Code by failing to submit the 2003-2004 Annual Report.

Failure to submit Annual Reports 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.

The Regional Board may also consider impacts to water quality caused by late or missing reports. 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 lack of evidence of any water quality impacts, these factors support liability that is more than minimum but less than maximum.

- b. Ability to pay;

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

- c. 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. This factor does not affect consideration of the appropriate amount of penalty.

- d. Prior history of violations;

Sonoma Pacific Co. has no history of prior violations of the General Permit. Consideration of this factor does support liability less than maximum.

- e. 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.

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. Consideration of

this factor does not support maximum liability.

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

Without the Annual Report, Regional Board staff does not have enough information to calculate economic benefit.

- g. 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.

- 9. This enforcement action is taken for the protection of the environment and as such is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) in accordance with

sections 15307 and 15308, Title 14, California Code of Regulations.

- 10. A hearing on this matter was held before the Regional Board on July 9, 2004, in Watsonville, California. The Discharger, or the Discharger's representative(s), had the opportunity to be heard and to contest the allegations in the Complaint No. R3-2004-0086, which recommended the imposition of civil liability by the Regional Board.

- 11. At the hearing, the Regional Board considered whether to affirm, reject or modify the proposed administrative liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

IT IS HEREBY ORDERED, pursuant to Section 13399 and 13385 of the California Water Code, the Discharger is assessed a total civil liability of \$3,000, to be paid as follows:

- 1. The sum of Three Thousand Dollars (\$3,000.00) to be paid to the Regional Water Quality Control Board by August 9, 2004. The check is to be made payable to the State Water Resources Control Board.

I, Roger W. Briggs, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the Regional Water Quality Control Board on July 9, 2004.

Roger W. Briggs
Executive Officer

Date