

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

**STAFF SUMMARY REPORT
(Michelle Rembaum-Fox)
MEETING DATE: September 10, 2008**

ITEM: 10

SUBJECT: Domaine Mumm, 8445 Silverado Trail, Rutherford – Adoption of Administrative Civil Liability Order for Late Submittal of Annual Report Required Under the Statewide NPDES General Permit for Discharges of Storm Water Associated with Industrial Activities

CHRONOLOGY: The Board has not previously considered this item.

DISCUSSION: We have prepared a Tentative Order (Appendix A) for the Board's consideration that would impose an administrative civil liability (ACL) of \$11,125 on Domaine Mumm (the discharger) for delinquent submittal of the annual report required by its NPDES permit to discharge industrial storm water. The discharger submitted its annual report 304 days past the July 1, 2007, deadline.

The discharger operates a winery. The winery is an industrial activity that requires a federal Clean Water Act NPDES permit for discharge of storm water. Accordingly, the facility is covered by the state Industrial Storm Water General Permit (Permit). The Permit requires implementation of: a storm water pollution prevention plan to manage sources and activities at the facility that may pollute storm water discharges; a monitoring program; and an annual comprehensive site compliance evaluation that is part of an annual report.

The permit requires submittal of the annual report by July 1 of each year. The report must certify that the storm water pollution prevention plan has been implemented and summarize the compliance evaluation, monitoring observations, and sampling results. The annual report must be signed and certified by a responsible corporate officer who performs decision-making functions for the facility.

The discharger did not submit its 2006/07 annual report by July 1, 2007. Consequently, we issued two notice of noncompliance letters and contacted the discharger by telephone on April 28, 2008. The discharger finally submitted the annual report on May 1, 2008, 304 days late. Because of the delinquent submittal of the annual report, which is the primary means of ensuring that the facility is in compliance with permit requirements, the Assistant Executive Officer issued an ACL Complaint to the discharger in the amount of \$11,125 (Appendix B).

The proposed penalty accounts for cost savings by the discharger, Water Board staff costs, and accounts for the eventual submittal of the required report as

compared to other dischargers that failed to submit a report. It does not account for our staff costs associated with preparing documents and testimony for the hearing.

The discharger did not submit a written or other response to the ACL Complaint. However, in follow-up phone calls to the discharger, they acknowledged receipt of the ACL Complaint, and we explained the Board hearing process.

**RECOMMEN-
DATION:**

Prosecution staff recommends adoption of the Tentative Order. The Executive Officer, who has had no involvement with the prosecution of this case, will advise the Board at the hearing.

ATTACHMENTS Appendix A - Tentative Order
Appendix B - Administrative Civil Liability Complaint

File No. 2138.16 (MRF)

APPENDIX A

Tentative Order

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

TENTATIVE ORDER

ORDER SETTING ADMINISTRATIVE CIVIL LIABILITY FOR:

**Domaine Mumm
8445 Silverado Trail
Rutherford, Napa County, CA**

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter called the Water Board), finds with respect to Domaine Mumm (hereinafter called the Discharger), that:

1. The Discharger operates the facility, which discharges storm water associated with industrial activity. In 1992, the Discharger submitted a Notice of Intent (NOI) to obtain coverage under the State Water Resources Control Board's discharge permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order NO. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The Discharger's Waste Discharge ID No. is 2 28I006028.
2. The General Permit states, in part:

“Section B. Monitoring Program and Reporting Requirements

“14. All facility operators shall submit an Annual Report by July 1 of each year to the Executive Officer of the Regional Water Board responsible for the area in which the facility is located and to the local agency (if requested).”
3. The Discharger violated Section B of the General Permit by failing to submit its 2006/2007 annual report by July 1, 2007.
4. On August 6, 2007, the Executive Officer issued a Notice of Noncompliance (NNC) letter to the Discharger. The Discharger was notified of its obligation to submit an annual report and to comply with the General Permit. The Discharger was required to respond by September 8, 2007, but failed to do so.
5. By certified mail dated November 13, 2007, the Executive Officer issued a second NNC letter to the Discharger. This letter was to inform the Discharger that it was in violation of the General Permit and that the Executive Officer would recommend enforcement actions if an annual report was not submitted. No written or verbal response to the letter was provided by the Discharger.

6. Board staff discussed the matter with the Discharger via telephone on April 28, 2008.
7. On May 1, 2008, the Discharger submitted to the Water Board's office the 2006-2007 annual report, 304 days past the July 1, 2007 deadline.
8. California Water Code (CWC) Section 13385 states, in part:

“(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(2) Any waste discharge requirements or dredge and fill material permit.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.”

(2) [subsection 2 is not pertinent to this ACL]

9. CWC Section 13385 authorizes Administrative Civil Liability not exceeding \$10,000 for each day in which the violation occurs. The 2006/2007 annual report was submitted on May 1, 2008, 304 days past the July 1, 2007, deadline.
10. The Discharger's late submittal of its Annual Report is a violation of CWC Section 13385 for which the Board may impose administrative civil liability.
11. On July 11, 2008, the Assistant Executive Officer issued a Complaint (R2-2008-0047) to the Discharger proposing an \$11,125 Administrative Civil Liability for the violation of the General Permit, and CWC Section 13385. The Discharger has not contested the Complaint's allegations.
12. The Water Board, after hearing all testimony, determined the Discharger is subject to civil liabilities. In determining the amount of civil liability the following factors have been taken into consideration:

“...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup and abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and other matters of justice may require.”

13. The Board determined, with respect to the factors required in the Findings, the following:

- a. Nature, circumstances, extent, and gravity of the violation
Late submittal of the annual report is a significant violation because the Water Board relies on the report to determine the Discharger's compliance with the General Permit.
- The Discharger was given a number of warnings, including two Notices of Noncompliance and was contacted once by telephone. These annual reports are a key means of determining the quality of stormwater runoff from the Discharger's site and ensuring the Discharger is implementing appropriate control measures at its site. In addition, the annual report eventually submitted past the deadline indicated that requirements of the General Permit, including implementation of the Surface Water Pollution Prevention Plan (SWPPP) and site monitoring, were not met.
- b. Toxicity of Discharge and Susceptibility to Cleanup
The violation for which liability is proposed is late submittal of a required report. Civil liability is not proposed for a specific discharge.
- c. Prior history of violations
The discharger has submitted its annual reports from previous years in a timely manner.
- d. Degree of culpability
The storm water regulations are applicable to all industrial sites on a nationwide basis. All dischargers are required to comply with the General Permit. The Discharger is fully culpable for violating the terms and conditions of the General Permit, which implements the Clean Water Act.
- e. Savings resulting from the violation
The Discharger has realized cost savings by: failure to perform required sampling and analyses, and failure to implement and/or document its SWPPP. Assuming an average-sized site, the minimum economic savings for not submitting an annual report is approximately \$1000/year.
- f. Discharger's ability to pay and ability to continue business
The Discharger has not demonstrated an inability to pay the proposed amount. There is no evidence that Discharger can not pay the civil liability or that payment will prevent its ability to continue business.
- g. Other matters that justice may require
Staff time to prepare a Complaint and supporting information is estimated to be 20 hours. Based on an average cost to the State of \$125 per hour, the total cost is \$2,500.

14. An \$11,125 Administrative Civil Liability is appropriate based on the determinations in Findings. This amount includes staff costs of \$2,500, and estimated economic savings of \$1,000.
15. This action is an Order to enforce the laws and regulations administered by the Water Board. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.), in accordance with Section 15321(a) (2), Title 14, of the California Code of Regulations.
16. The Discharger may petition the State Board to review this action. The State Board must receive the petition within 30 days of the date this order was adopted by the Water Board. The petition will be limited to raising only the substantive issues or objections that were raised before the Water Board at the public hearing or in a timely submitted written correspondence delivered to the Water Board.

IT IS HEREBY ORDERED that Domaine Mumm is civilly liable for the violation of the General Permit cited in Complaint No. R2-2008-0047, and shall pay the administrative civil liability in the amount of \$11,125. The liability shall be paid to the State Water Pollution Cleanup and Abatement Account within 30 days of the date of this Order.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on September 10, 2008.

Bruce H. Wolfe
Executive Officer

APPENDIX B

Administrative Civil Liability Complaint

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

In the Matter of:)	
)	COMPLAINT NO. R2-2008-0047
)	for
Domaine Mumm)	ADMINISTRATIVE
8445 Silverado Trail)	CIVIL LIABILITY
Rutherford, Napa County)	
_____)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Domaine Mumm (hereinafter the Discharger) is alleged to have violated provisions of the law for which the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Water Board) may impose civil liability pursuant to Section 13385 of the California Water Code (CWC).
2. The Water Board will hold a hearing on this matter on September 10, 2008, in the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California, 94612. You or your representatives(s) will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Water Board. You will be mailed an agenda no less than ten days before the hearing date. You must submit any written evidence concerning this complaint to the Water Board no later than 5 pm on August 11, 2008, so that such comments may be considered. Any written evidence submitted to the Water Board after this date and time will not be accepted or responded to in writing.
3. At the hearing the Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

ALLEGATIONS

4. The following facts are the basis of the alleged violations in this matter:
 - a. The Discharger submitted a Notice of Intent (NOI) to obtain coverage under the State Water Resources Control Board's discharge permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order NO. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The Waste Discharge Identification Number is 2 28I006028.
 - b. The General Permit requires the Discharger to submit an annual report documenting its sampling and analyses, observations, and an annual comprehensive site compliance evaluation, by July 1 of each year.
 - c. The Discharger violated its waste discharger requirements by submitting its 2006-2007 annual report on May 1, 2008, 304 days past the July 1, 2007, deadline. This is a violation of CWC Section 13385(a)(1), for which administrative civil liability may be imposed.
 - d. On August 6, 2007, the Executive Officer issued a Notice of Noncompliance (NNC) letter to the Discharger. The Discharger was notified of its obligation to submit an annual report and to comply with the General Permit. The Discharger was required to respond by September 24, 2007, but failed to do so.

- e. By certified mail dated November 13, 2007, the Executive Officer issued a second NNC letter to the Discharger. This letter informed the Discharger that it was in violation of the General Permit and that the Executive Officer would recommend enforcement actions, including administrative civil liability up to \$10,000 per day, if an annual report was not submitted. No written or verbal response to the letter was provided by the Discharger.

Board staff discussed the matter with the Discharger's representative on April 28, 2008.

- f. The Discharger submitted the 2006/2007 annual report on May 1, 2008. Based on the late submittal of the annual report, the Discharger was in violation of the General Permit for a total of 304 days (July 2, 2007 through April 30, 2008).

PROPOSED CIVIL LIABILITY

5. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code 21000 et seq.) in accordance with Section 15321 of Title 14, California Code of Regulations.
6. Under CWC Section 13385(c)(1), the Water Board can impose a maximum civil liability of \$10,000 per day of violation. This Complaint addresses violations for the 304 day period from July 2, 2007, through April 30, 2008.
7. Under CWC Section 13385(e), the Water Board shall consider the following factors in determining the amount of civil liability to be imposed:

- a. The nature, circumstances, extent, and gravity of the violation:

These annual reports are a key means of determining the quality of stormwater runoff from the Discharger's site and ensuring the Discharger is implementing appropriate control measures at the site. Additionally, they are one of the Discharger's primary tools to self-evaluate site compliance with the permit and to identify any needed improvements.

The Discharger was sent two Notice of Noncompliance letters and was contacted once via telephone. Also, the Discharger, by submitting an NOI, indicated its intent to comply with all requirements of the General Permit, including the requirement to submit an annual report.

- b. Toxicity of Discharge and Susceptibility to Cleanup

The violation for which liability is proposed is late submittal of a required report. Civil liability is not proposed for a specific discharge.

- b. Discharger's ability to pay:

The Discharger has not demonstrated an inability to pay the proposed amount.

- c. Prior history of violations:

The discharger has submitted its annual reports from the previous years in a timely manner.

- d. Degree of culpability:

The storm water regulations are applicable to all specified industrial sites on a nationwide basis. All dischargers are required to comply with the Clean Water Act. The Discharger is fully culpable for violating the terms and conditions of the General Permit, which implements the Clean Water Act.

e. Savings resulting from the violation:

The Discharger has realized cost savings by: failure to perform required sampling and analyses, late submittal of the annual report, and failure to implement and/or document its Stormwater Pollution Prevention Plan (SWPPP). Assuming an average-sized site, Board staff estimates the minimum economic savings for submitting a late and incomplete annual report to be \$1000/year.

f. Other matters that justice may require:

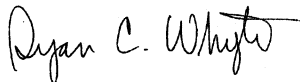
Staff time to prepare a Complaint and supporting information is estimated to be 20 hours. Based on an average cost to the State of \$125 per hour, the total cost is \$2,500.

Basis for Liability Amount

8. Per CWC Section 13385(e) the following factors in determining an appropriate civil liability amount were considered: the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and with respect to the violator, the ability to pay, the effect on the ability to continue in business, any voluntary cleanup efforts undertaken, and prior history of violations, the degree of culpability, economic benefit or saving, if any, resulting from the violation, and such other matters as justice may require. Using this section as a guide as well as the monetary assessment guidance set forth State Water Resources Control Board's Enforcement Policy, the proposed liability was derived.
9. The Assistant Executive Officer of the Water Board proposes that an administrative civil liability be imposed in the amount of \$11,125. Of this amount, \$2,500 is for recovery of staff costs.

Claims of inability to pay must be substantiated by adequate proof of financial hardship (e.g., two years of income tax returns or an audited financial statement).

10. Further failure to comply with the General Permit or amendments thereof beyond the date of this Complaint may subject the Discharger to further administrative civil liability, and/or other appropriate enforcement actions(s), including referral to the Attorney General.



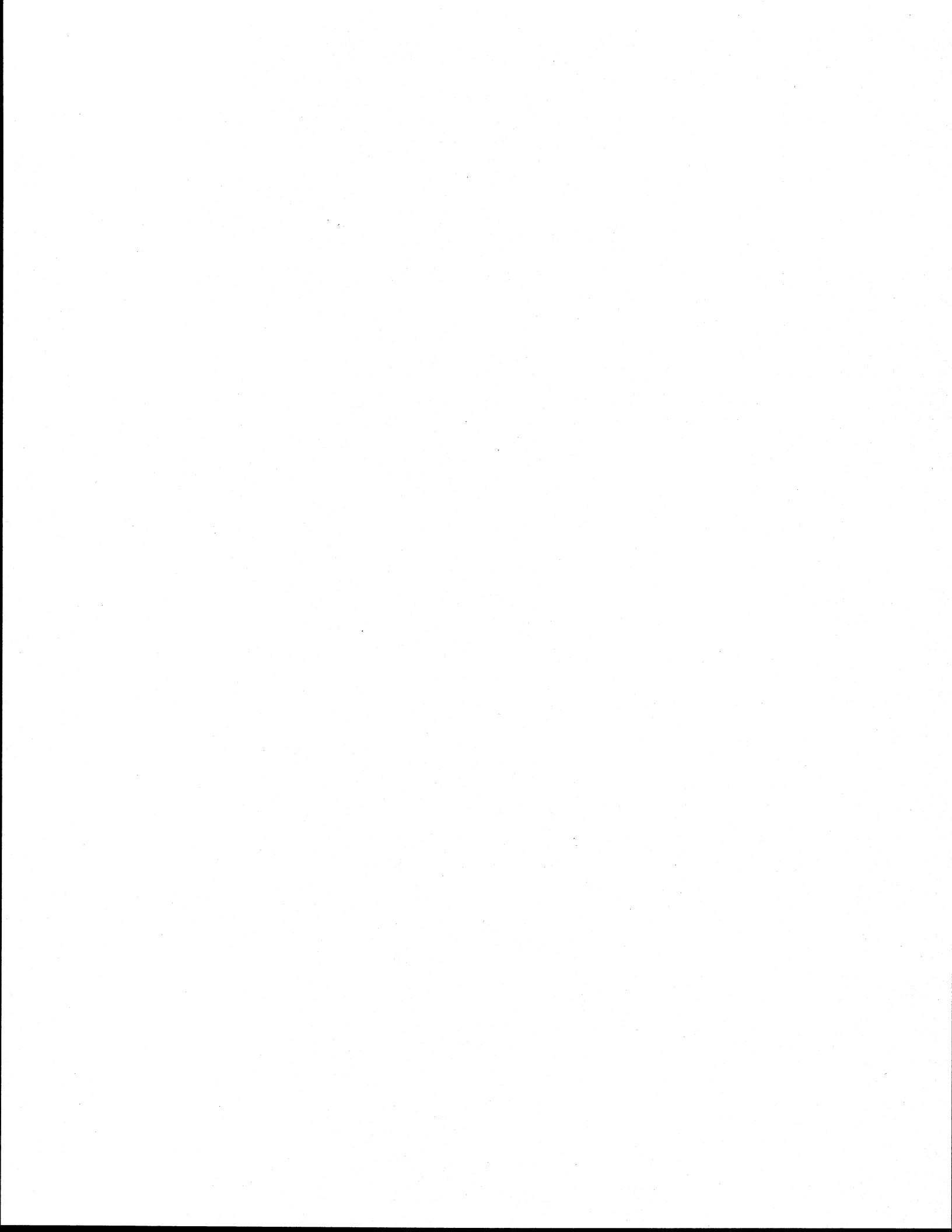
Dyan C. Whyte
Assistant Executive Officer

July 11, 2008

Date

WAIVER OF HEARING

You may waive the right to a hearing. If you wish to waive the hearing, an authorized person must check and sign the waiver below and return it to the Regional Water Quality Control Board, San Francisco Bay Region, at 1515 Clay Street, Suite 1400, Oakland, CA 94612. Payment of the civil liability must be made by August 11, 2008. Any waiver will not be effective until August 11, 2008, to allow other interested persons to comment on this action.



In the Matter of:)
)
)
Domaine Mumm)
8445 Silverado Trail)
Rutherford, Napa County)
_____)

COMPLAINT NO. R2-2008-0047
for
ADMINISTRATIVE
CIVIL LIABILITY

WAIVER OF HEARING

If you waive your right to a hearing, the matter will be included on the agenda of a Water Board meeting but there will be no hearing on the matter, unless a) the Water Board staff receives significant public comment during the comment period, or b) the Water Board determines it will hold a hearing because it finds that new and significant information has been presented at the meeting that could not have been submitted during the public comment period. If you waive your right to a hearing but the Water Board holds a hearing under either of the above circumstances, you will have a right to testify at the hearing notwithstanding your waiver. Your waiver is due no later than August 11, 2008.

- Waiver of the right to a hearing and agreement to make payment in full.
By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in Complaint No. R2-2006-0047 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the Water Board meeting for which this matter is placed on the agenda. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Assistant Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability.

- Waiver of right to a hearing and agree to make payment and undertake an SEP.
By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in Complaint No. R2-2006-0047, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$5,500 and paying the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the Water Board meeting for which this matter is placed on the agenda. The SEP proposal shall be submitted no later than August 11, 2008. I understand that the SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, and be subject to approval by the Assistant Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Assistant Executive Officer, I agree to pay the suspended penalty amount within 30 days of the date of the letter from the Assistant Executive Officer rejecting the proposed/revised SEP. I also understand that I am giving up my right to argue against the allegations made by the Assistant Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability. I further agree to satisfactorily complete the approved SEP within a time schedule set by the Assistant Executive Officer. I understand failure to adequately complete the approved SEP will require immediate payment of the suspended liability to the CAA.

Name (print)

Signature

Date

Title/Organization