

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

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

ITEM: 8

SUBJECT: **Storybook Mountain, Calistoga, Napa County – Hearing to Consider Administrative Civil Liability for Late Submittal of Annual Monitoring 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 \$24,200 on Storybook Mountain (the discharger) for late submittal of an annual report required by its NPDES permit to discharge industrial storm water.

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 June 18, 2008. 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 \$24,200 (Appendix B).

The discharger submitted a letter (Appendix C) in response to the Complaint requesting an appeal of the ACL complaint. The letter acknowledges the reporting delinquency and claims that the annual report was sent on August 21, 2007, to the State Water Board at its Sacramento address. The discharger also claims that after

receiving the second notice of noncompliance, they sent the annual report to the North Coast Santa Rosa Regional Water Board in Santa Rosa. The discharger finally submitted its 2006/2007 annual report to our Water Board on August 11, 2008, 406 days after the due date and after the subject ACL Complaint was issued. While a number of Annual Reports each year are misdirected to other Regional Water Boards or the State Water Board, standard practice is to forward them to the correct Region. We did not receive a copy of the discharger's annual report from the North Coast Regional Water Board or the State Water Board. The discharger did not submit information, beyond the comment letter demonstrating the report was misdirected. The Annual Report Form clearly states the report should be submitted to the discharger's Regional Water Board, as did the two letters we mailed to the discharger. The discharger has submitted past annual reports to our office.

The proposed penalty is reasonable and accounts for cost savings by the discharger. It also accounts for our staff costs to prepare the Complaint and supporting information. It does not account for our staff costs associated with preparing documents and testimony for the hearing.

The proposed penalty is also consistent with other recent ACL Complaints issued to and accepted by other dischargers for annual reports that were delinquent by more than a year.

RECOMMEN-  
DATION:

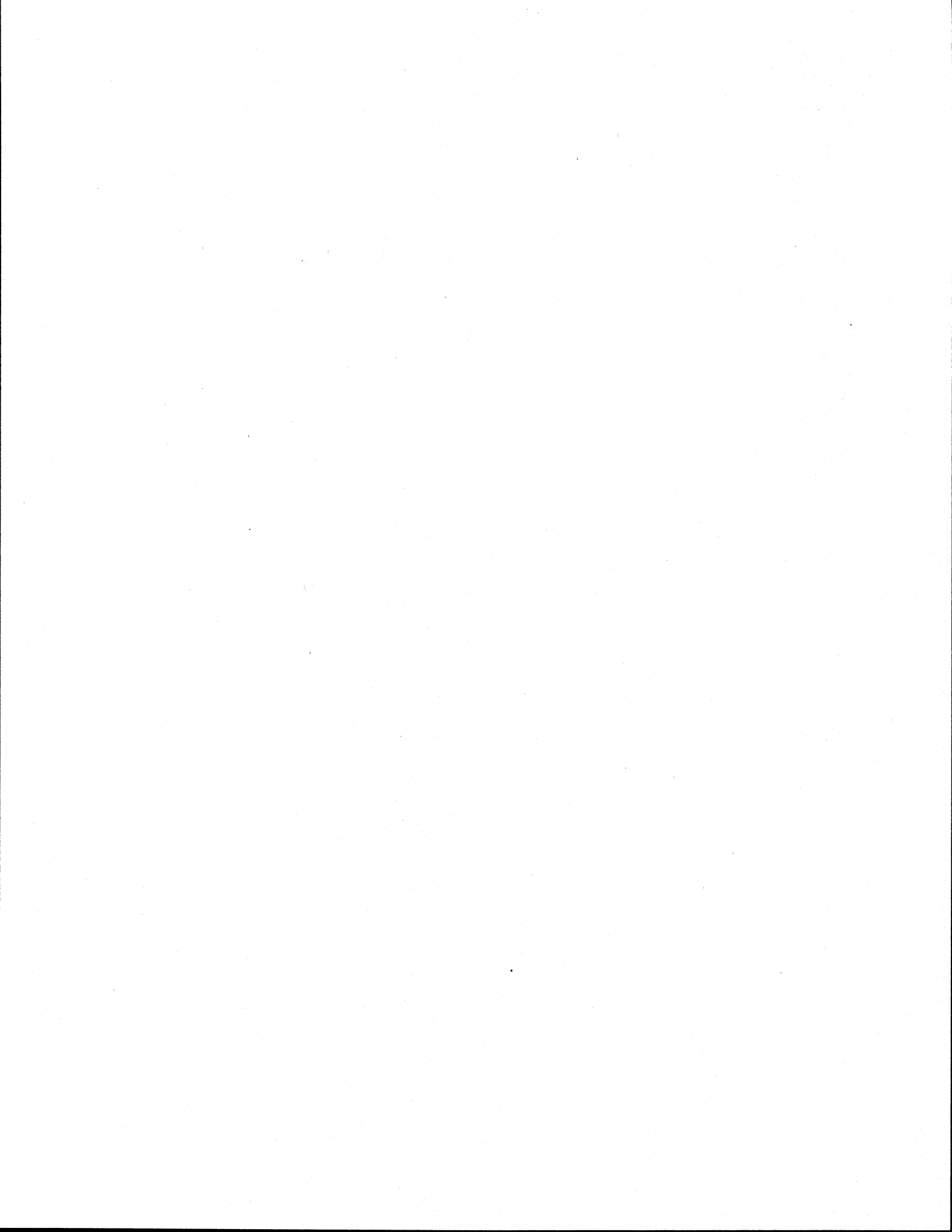
Prosecution staff recommends adoption of the Tentative Order. The Executive Officer, who has had no involvement with the prosecution of this case, will advise the Board at the hearing.

ATTACHMENTS Appendix A - Tentative Order  
Appendix B - Administrative Civil Liability Complaint  
Appendix C - Comment Letter

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:**

**Storybook Mountain  
3835 Highway 128  
Calistoga, Napa County, CA**

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

1. The Discharger operates the facility, which discharges storm water associated with industrial activity. In 1998, 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 28I014091.
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 confirmed that the facility was still in business at the above address via telephone on May 28, 2008.
7. As of June 15, 2008, the Discharger has failed to submit its 2006/2007 annual report. The Discharger has been in violation of the General Permit for a total of 350 days (July 2, 2007 through June 15, 2008).
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 ultimately submitted as part of the Complaint response on August 5, 2008.
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 (R2-2008-0043) to the Discharger proposing a \$24,200 Administrative Civil Liability for the violation of the General Permit, and CWC Section 13385.
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 timely 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

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 \$24,200 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 Storybook Mountain is civilly liable for the violation of the General Permit cited in Complaint No. R2-2008-0043 and shall pay the administrative civil liability in the amount of \$24,200. 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.

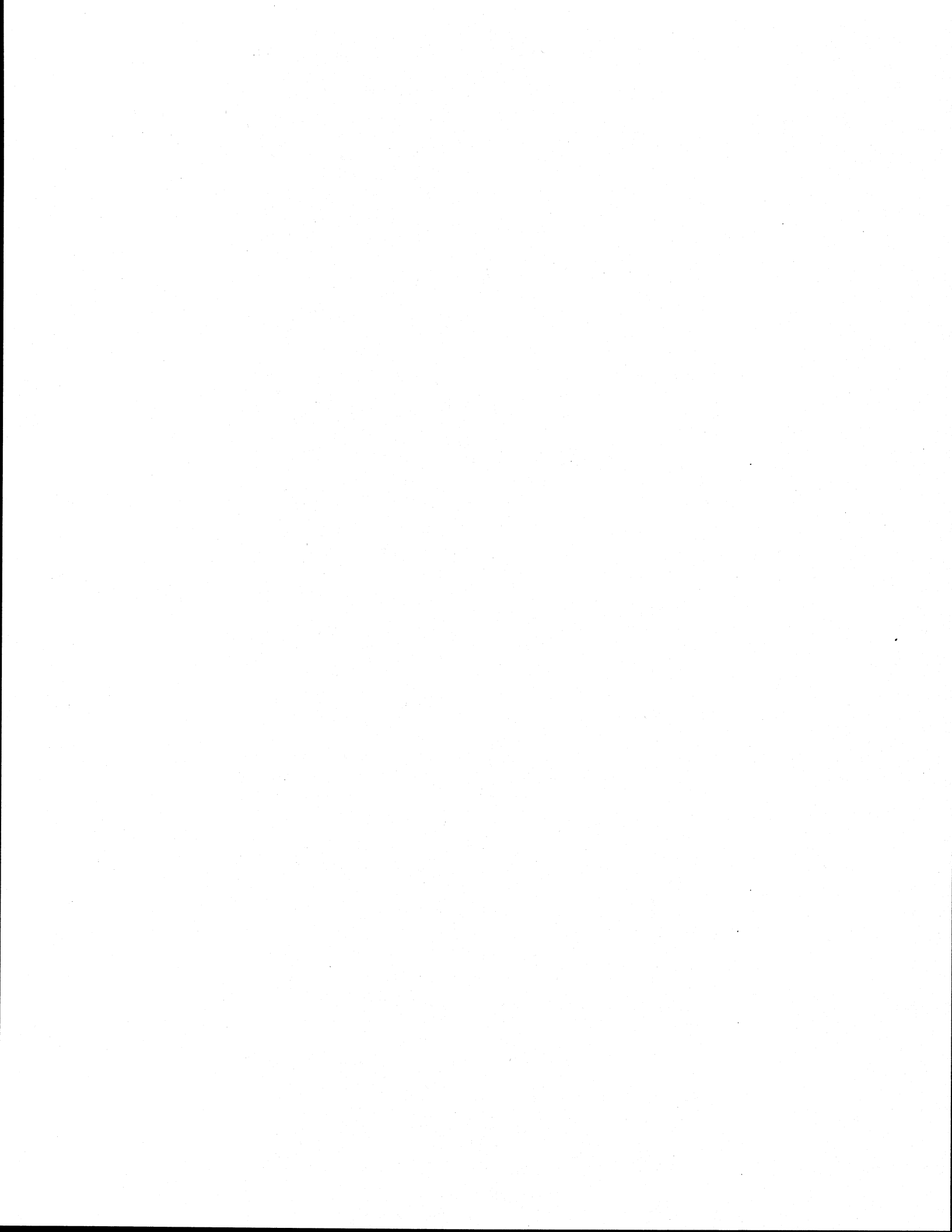
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Bruce H. Wolfe  
Executive Officer



# 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. R2-2008-0043
	)	for
Storybook Mountain	)	ADMINISTRATIVE
3835 Highway 128	)	CIVIL LIABILITY
Calistoga, Napa County	)	
_____	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Storybook Mountain (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 not 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 28I014091.
  - 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 failing to submit its 2006-2007 annual report by the July 1, 2007, deadline. This is a violation of CWC Section 13385, 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 confirmed that facility was still in business at the above address via telephone on May 28, 2008.

- f. As of June 15, 2008, the Discharger has failed to submit its 2006/2007 annual report. The Discharger has been in violation of the General Permit for a total of 350 days (July 2, 2007 through June 15, 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 350 day period from July 2, 2007, through June 15, 2008.
7. Under Section 13385(e) of the CWC, 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 a failure to submit a required report. The report is required to include quantitative and qualitative information on the amounts and/or presence of certain pollutants in discharges from the subject facility, as well as information on remedial actions taken by the Discharger to halt or minimize polluted discharges from its facility. In the absence of this information, it is not possible to make a more specific determination on this factor, and civil liability is not proposed for a specific discharge.

- c. Discharger's ability to pay:

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

- d. Prior history of violations:

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

- e. 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.

f. 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.

g. Other matters that justice may require:

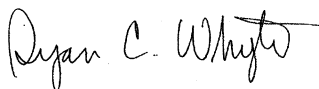
Staff time to prepare a Complaint and supporting information is estimated to be 20 hours. Based on an average cost to the State of \$125 per hour, the total cost is \$2,500.

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 \$24,200. 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: )  
)  
)  
Storybook Mountain )  
3835 Highway 128 )  
Calistoga, Napa County )  
\_\_\_\_\_ )

COMPLAINT NO. R2-2008-0043  
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. R2-2006-0043 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. R2-2006-0043, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$12,100 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)

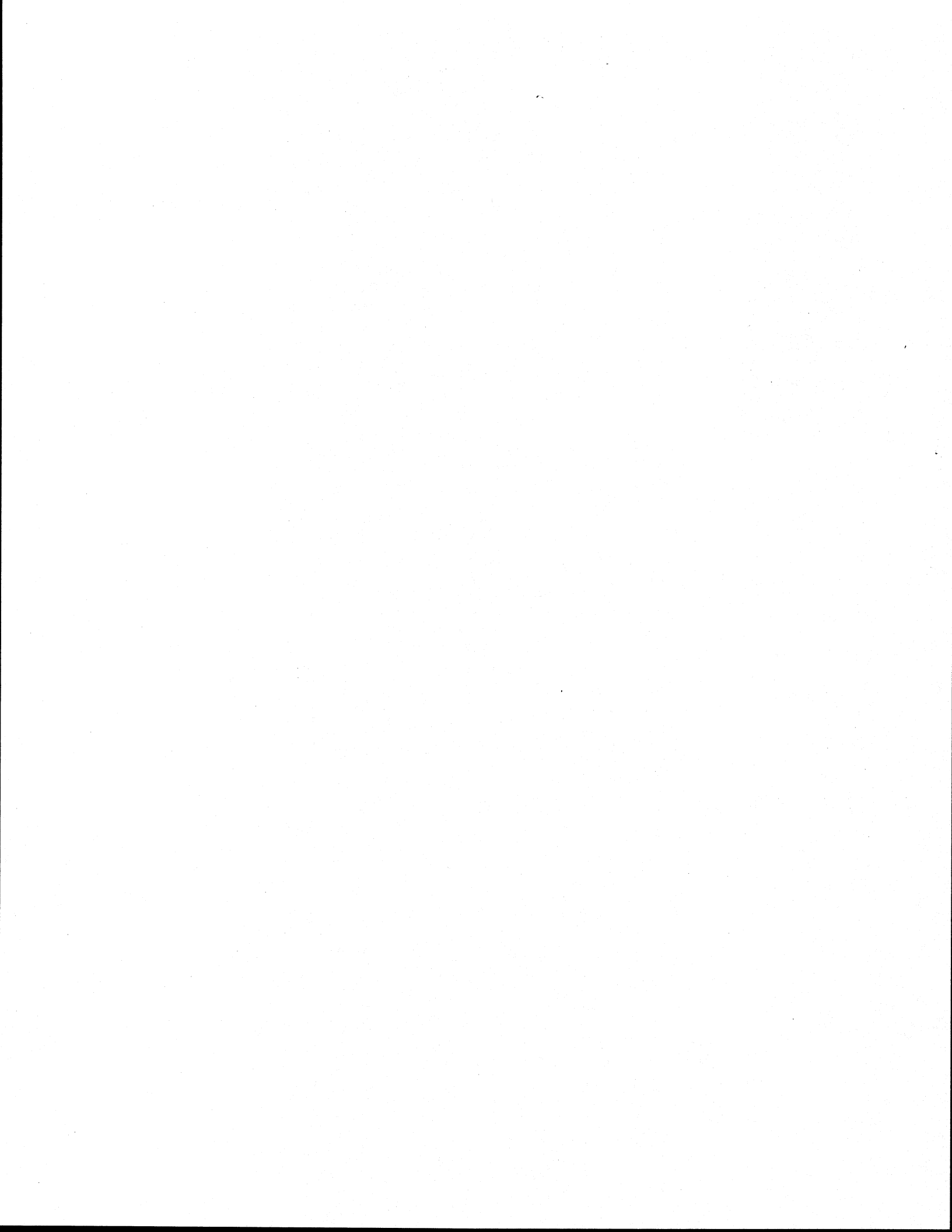
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Signature

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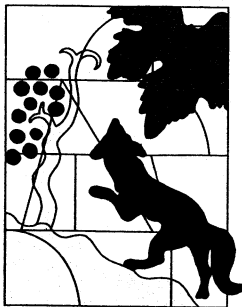
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Title/Organization

# APPENDIX C

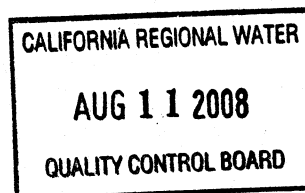
Comment Letter







STORYBOOK  
MOUNTAIN  
WINERY, INC



3835 HIGHWAY 128, CALISTOGA, NAPA VALLEY, CA 94515 · TEL 707.942.5310 · FAX 707.942.5334

August 5, 2008

California Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

RE: Complaint No. R2-2008-0043

I was quite surprised to receive the notice on complaint against our company for noncompliance and failure to file our 2006-07 Annual Report. Please find enclosed the report and copies of the letters that have gone with the reports that I have filed twice previously.

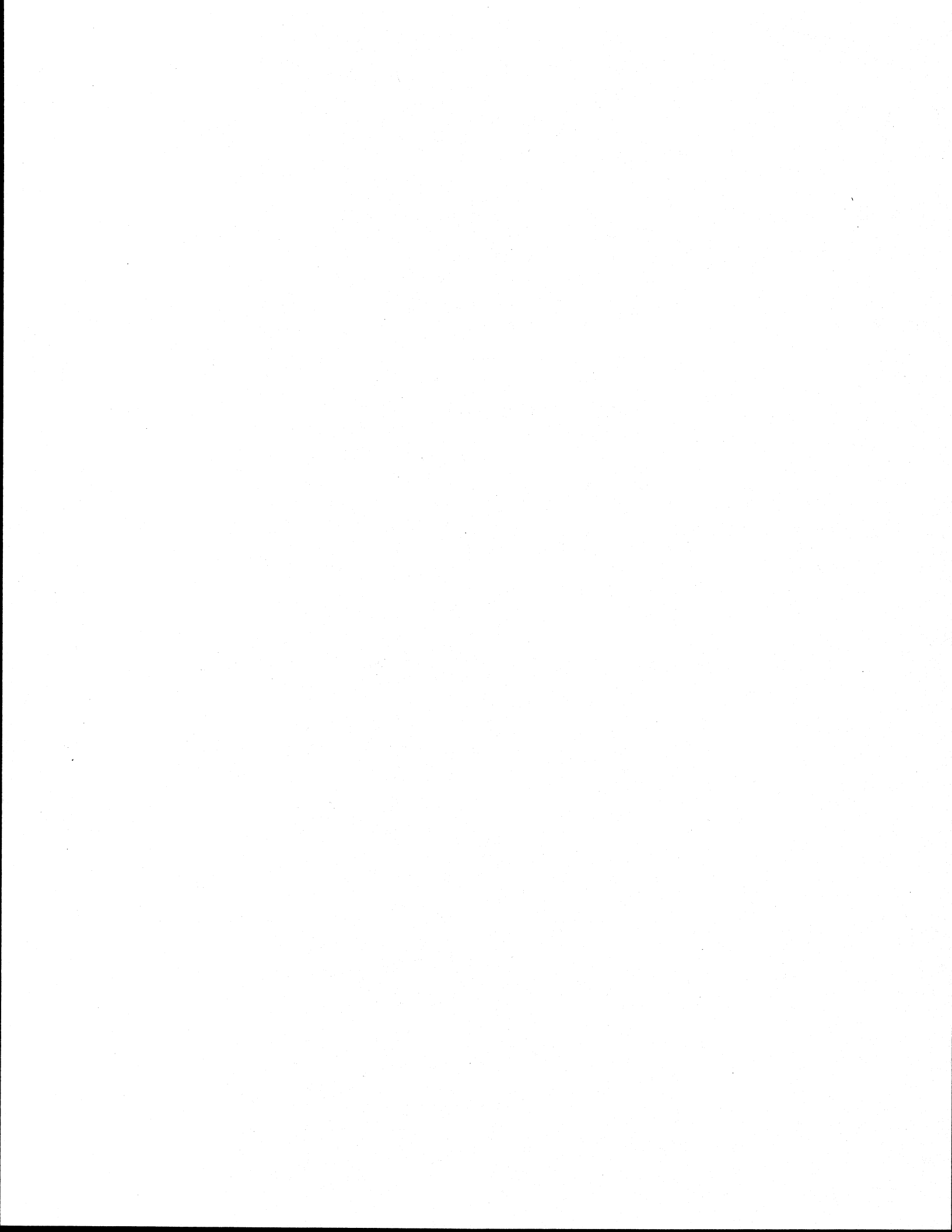
According to the allegations, we failed to file the report and did not respond to notices sent. While it is true that the original filing was late (see enclosed letter of explanation dated August 21, 2007) I did file the report at the time I received the first notice. I sent it to the office in Sacramento, apparently in error, as that is the address on the cover letter of the report. After receiving the second notice in November, I filed the report again. This time I looked up the address on the website, and apparently again chose the incorrect office to send it to, this time being Santa Rosa.

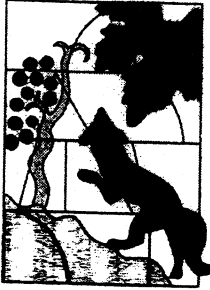
I must say that the website mapping is not very helpful. At this time, when I enter our address where prompted, it cannot find us. We are right on the Napa/Sonoma County line, so it is very difficult to decide which office to send forms to. This year I phoned the Santa Rosa office to find out which office I should file with, hopefully you have received our 2007-08 report.

I am respectfully requesting an appeal of your decision to fine us for noncompliance. As stated in your own file, we have always filed our reports in a timely fashion. We are a very small company, with very little exposure, and we are trying to stay in compliance. If you decide that we still need to have a hearing, I would request that it be postponed to November as no one would be available to come to a hearing during our harvest season.

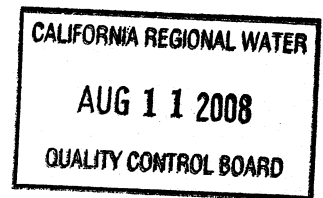
Thank you

Colleen Williams  
VP-Operations





STORIBOOK  
MOUNTAIN  
WINERY



August 21, 2007

Storm Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

RE: 2006-07 Annual Report  
2281014091

I have received a notice that our annual report is past due. Please find enclosed our report. The reason for the delay in filing is that my employee, Karl Lehman, mistakenly removed the file with the data when he left our employ in May. I had contacted him to return the file in June when I originally tried to fill out the report. Unfortunately, at that point it was out of mind.

Please accept our filing at this time.

Sincerely,

Colleen Williams  
VP-Operations