

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

In the Matter of:)	
)	COMPLAINT NO. R2-2008-0039
)	for
Mustards Grill and Consentino)	
Winery)	ADMINISTRATIVE
7399 and 7415 St. Helena Highway)	CIVIL LIABILITY
Napa, Napa County)	
_____)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Mustards Grill and Consentino Winery (hereinafter the Discharger) are 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 28I016259.
 - 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(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 confirmed that facility was still in business at the above address via telephone on April 18, 2008. Board staff called again on May 5, 2008, and discussed with Dischargers representative that they had failed to submit the 2006/2007 annual report and requested that they have the Discharger return the call. No verbal response was provided by the Discharger.

- 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 twice 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.

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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. R2-2006-0039 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. R2-2006-0039, 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)

Signature

Date

Title/Organization