

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

Complaint No. R1-2001-75

For
Administrative Civil Liability

In the matter of

California Cider Company, Inc.

For violations of
California Water Code Sections 13376

Sonoma County

The Executive Officer of the California Regional Water Quality Control Board, North Coast Region (hereinafter the Regional Water Board) hereby gives notice that:

1. The California Cider Company, Inc. (Cal Cider) operates an apple cider processing facility located at 3100 Gravenstein Highway, Sebastopol, California. The Cal Cider facility is owned by the Warren G. Dutton and Gail Dutton Trust. Cal Cider has a lease on the building and initially occupied the building in June 1999.
2. Cal Cider disposes of an average of 200 gallons per week of industrial wastewater consisting primarily of apple cider tank wastewater and process wastewater. Processing of apple cider commenced in September 1999. On average, wastewaters are discharged one time per week. There exists no wastewater treatment system onsite.
3. From the period beginning September 1999 through November 2000 Cal Cider knowingly discharged all of its industrial process wastewater directly into the facility's onsite storm drainage system, which drains to a tributary of Atascadero Creek, within the lower Russian River watershed.
4. Cal Cider violated California Water Code (CWC) Section 13376 by discharging process wastewater without submitting a report of waste discharge to the Regional Water Board and without a permit for which the Regional Water Board may impose civil liability under Section 13385 of the California Water Code.
5. The following facts are the basis for the alleged violations in this matter:
 - a. On Tuesday, October 17, 2000, Regional Water Board staff responded to a complaint call regarding the continued discharge of hard cider process wastewater into the onsite storm drainage system. Inspections of the storm drain drop inlets revealed an odor of apple wastes. Cal Cider representatives acknowledged that wastewaters were being discharged to the storm drain system, stating that the original building construction contractor cross-connected the process wastewater line to the storm drainage system. The representative showed staff an exposed storm drain pipe and indicated that Cal Cider was working with Sonoma County Permit and Resource Management Division (PRMD) to correct the situation. Cal

Cider was directed to immediately cease discharges of any apple wastes to the storm drain system.

- b. On Tuesday, October 17, 2000, Sonoma County Water Agency staff took samples from the onsite storm drainage system. Sample analyses revealed high levels of oxygen demanding organics, high suspended solids and a low pH reading as follows:
 - 1) Biological Oxygen Demand: 1310 mg/l
 - 2) Total Suspended Solids: 660 mg/l
 - 3) Chemical Oxygen Demand: 18,720 mg/l
 - 4) pH 4.5
- c. On October 20, 2000, Regional Water Board and PRMD staff met with Cal Cider staff. During this meeting Cal Cider again admitted knowing of the cross-connection from the process wastewater drain to the storm drainage system since June 1999. It was revealed at that meeting that PRMD and Sonoma County Water Agency were working with Cal Cider on sanitary sewer upgrade issues, and that the two agencies were only made aware of the storm cross-connection based on the October 17th Regional Water Board inspection.
- d. Waste discharges continued through November 2000, until such time as the Sonoma Water Agency and PRMD approved plans to redirect process wastewaters to the sanitary sewer. Thus, for a period of 14 months, from September 1999 through November 2000, Cal Cider made no effort to eliminate the discharge of process wastewaters directly to waters of the State of California.
- e. The length of time that hard cider process wastewaters discharged into the Cal Cider storm drainage system is determined to be approximately 60 weeks.
- f. Based on 200 gallons of waste discharged once weekly for a period of 60 weeks, the total volume of discharge is approximately 12,000 gallons.

PROPOSED CIVIL LIABILITY

6. CWC Section 13385 provides for the imposition of civil liabilities against dischargers who violate CWC Section 13376. Section 13385(c) provides that the amount of civil liability that may be imposed by the Regional Water Board is \$10,000 per day of violation, plus where there is discharge in excess of 1,000 gallons that is not susceptible to cleanup or cannot be cleaned up, an additional liability not to exceed \$10 per gallon of waste discharged and not cleaned up in excess of 1,000 gallons. The maximum civil penalty that could be imposed against Cal Cider in this matter is calculated as follows:

60 days of discharge violations occurred during the 60-week period from September 1999 through November 2000.

60 days of discharge X \$10,000 per day = \$600,000

Not all of the discharge was susceptible to cleanup or could be cleaned up because of downgradient flow through the storm drainage system. The number of gallons of waste in excess of 1,000 gallons that was discharged and not cleaned up is approximately 11,000 gallons. The Regional Water Board can impose an additional civil liability based on volume discharged in excess of 1,000 gallons that is not susceptible to cleanup or could not be cleaned up, as follows:

\$10 per gallon X 11,000 gallons of wastewater = \$110,000

Total Maximum Potential Civil Liability: \$600,000 + \$110,000 = \$710,000

7. In determining the amount of any civil liability, pursuant to California Water Code, Section 13385(e), the Regional Water Board took into account the nature, circumstances, extent, and gravity of the violation; and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require.
 - a). Nature, circumstances, extent and gravity of the violation: Apple processing wastewaters can be high strength, as evidenced by the October 17, 2000 sample results. These conditions can present instream conditions potentially toxic to aquatic life; however, a relatively small volume of wastewater was discharged each week.
 - b). Violator's ability to pay: The Regional Water Board has no information to indicate that the violator would be unable to pay any imposed administrative civil liability.
 - c). Prior history of violations: The Regional Water Board has no prior history of violations related to Cal Cider.
 - d). Degree of culpability: Cal Cider has admitted that they are responsible for the discharge of hard cider processing wastewater into their onsite storm drainage system.
 - e). Economic benefit: Discussions with Sonoma County Water Agency personnel reveal that Cal Cider had been paying monthly sanitary sewer rates that incorporated the wastewater being discharged to the storm drainage system. Thus there was no economic benefit derived from these discharges.
 - f). Other matters that may justice may require: The Regional Water Board will take into account the relatively small volume of wastewater discharged each week from the Cal Cider facility.
8. The issuance of this complaint is an enforcement action to protect the environment, and is therefore exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) pursuant to Title 14, California Code of Regulations, sections 15308 and 15321(a)(2).

9. Based on a review of the facts and the required factors, the Executive Officer of the Regional Water Board is issuing this Complaint with a proposed administrative civil liability in the amount of \$30,000 dollars. This amount is due and payable within 30 days of the date of this Complaint.

Waiver of Hearing

10. You may waive the right to a future hearing. If you wish to waive the hearing, please check and sign the waiver and return it together with a cashier's check or money order, made payable to the "State Water Resources Control Board" for \$30,000 within 15 days of receipt of this complaint to the California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, CA 95403. This settlement will not become effective until after a 30-day public comment period.

Ordered by _____
Lee A. Michlin
Executive Officer

July 6, 2001