

California Regional Water Quality Control Board  
North Coast Region

Complaint No. R1-2001-73

For

ADMINISTRATIVE CIVIL LIABILITY

In the matter of

Panattoni Development  
8401 Jackson Road  
Sacramento, CA 95826

Violations of the California Water Code  
Sections 13376 and 13385 for  
Construction Activity at 3850, 3880, 3910 and 3950  
Brickway Avenue, Santa Rosa

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. Panattoni Development (hereafter, Discharger) has violated provisions of law described below for which the California Regional Water Quality Control Board, North Coast Region (hereafter, Regional Water Board), may impose civil liability pursuant to Section 13385 of the California Water Code (CWC).
2. Unless waived, a hearing on this matter will be held before the Regional Water Board during a public meeting on March 23, 2001, in the Regional Water Board Hearing Room, 5550 Skylane Blvd, Suite A, Santa Rosa, California. You and/or your representative(s) will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Water Board. An agenda for the hearing will be mailed to you not less than ten days before the hearing date.
3. At the hearing, the Regional Water Board will consider whether to affirm, reject or modify the proposed administrative liability set forth herein, or whether to refer the matter to the Attorney General for recovery of judicial civil liability, or any other action appropriate as a result of the hearing.
4. The State of California has adopted a General Permit for Storm Water Discharges Associated with Construction Activities, Water Quality Order No. 99-08-DWQ, NPDES No. CAS000002 (General Permit). Storm water discharges associated with construction activities may also be regulated by site-specific NPDES permits.
5. Federal Water Pollution Control Act section 301 (33 U.S.C. section 1311, hereafter the federal Water Pollution Control Act is referred to as the Clean Water Act) prohibits all discharges of pollutants to navigable waters unless such discharges are in compliance with an

NPDES permit. The 1987 amendments to the Clean Water Act added Section 402 (p) establishing a framework for regulating municipal and industrial storm water discharges under the NPDES Program. On November 16, 1990, the U.S. Environmental Protection Agency (USEPA) published final regulations that establish storm water permit application requirements for specified categories of industries. The regulations provide that discharges of storm water to waters of the United States from construction projects that encompass five (5) or more acres of soil disturbance are effectively prohibited unless the discharge is in compliance with an NPDES Permit.

6. Construction activity that must be covered by an NPDES includes clearing, grading, disturbances to the ground such as stockpiling, or excavation that results in soil disturbances of at least five acres of total land area. Construction activity that results in soil disturbances of less than five acres is subject to this NPDES permit requirement if the construction activity is part of a larger common plan of development that encompasses five or more acres of soil disturbance or if there is significant water quality impairment resulting from the activity. Construction activity that requires an NPDES permit does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility, nor does it include emergency construction activities required to protect public health and safety.
7. Water Code Section 13376 provides that any person discharging pollutants or proposing to discharge pollutants to navigable waters must file a Report of Waste Discharge. Thus, any person conducting construction activity covered by the above-stated requirements must apply for and obtain coverage by an NPDES permit.
8. Persons who must obtain an NPDES permit for construction activities may do so by filing a Notice of Intent with the State Water Resources Control Board and complying with the General Permit or by filing an NPDES permit application (Report of Waste Discharge) with the Regional Water Board and obtaining a site-specific NPDES permit. A discharger may not obtain coverage under the General Permit for activities that are being regulated under a site-specific NPDES permit.
9. The Discharger conducted construction activities at 3850, 3880, 3910, and 3950 Brickway Boulevard in Santa Rosa on 18.26 acres of land that were required to be regulated by an NPDES permit and that resulted in storm water discharges to surface water. Activities conducted that were subject to an NPDES permit included clearing, grading, and general soil disturbance to greater than five (5) acres of total land area. On November 25, 2000 Regional Water Board staff observed storm water running off the property and into municipal storm drains. Staff also observed this discharge of storm water on November 28, 2000 and November 29, 2000. Upon later investigation of the facility Regional Water Board Staff found that no application for coverage under the General Permit had been filed. Discharger conducted the unpermitted construction activities from April 27, 2000 to December 27, 2000 when a Notice of Intent was filed.
10. The Discharger failed to timely file a Notice of Intent with the State Water Resource Control Board and failed to apply for and obtain a site specific NPDES permit for the above-described construction activities.

11. The Discharger has violated Water Code section 13376 by failing to obtain coverage under the General Permit by filing a Notice of Intent or failing to obtain coverage under a site specific NPDES permit by filing a report of waste discharge. Water Code section 13385 provides that a person who violates Water Code section 13376 is subject to administratively imposed civil liability in an amount not to exceed the sum of \$10,000 per day of violation and where there is a discharge, \$10 per gallon discharged in excess of 1000 gallons that is not susceptible to cleanup or is not cleaned up. Because the number of gallons discharged is unknown, liability is alleged under this complaint based upon days of observed violation only.
12. The Discharger was observed discharging stormwater without a permit and therefore violated Water Code section 13376 for a total of 3 days. The number of gallons of waste discharged are not known. Maximum administrative civil liability based on the number of days of violation is \$30,000.
13. In determining any liability to be imposed, CWC Section 13385(e) requires the Regional Water Board to consider the following factors:
  - a. Nature, circumstances, extent, and gravity of the violations: The violations documented in this action are based upon days of observed discharge. At the time of the violations, the Discharger had some on site controls in place in the form of stormdrain inlet protection. Curbs were in place around the perimeter of the site, which helped contain exposed soil. However, had the Regional Water Board been given an opportunity to review the Storm Water Pollution Prevention Plan, staff would have made significant comments about large amount of exposed and unprotected bare soil, as well as the dirt being tracked off site by trucks entering and leaving the area. By constructing this project without filing for the required permit, paying the necessary application fee, and being subject to Regional Board oversight, the Discharger gained an unfair advantage over those contractors that do file for coverage under the General Permit.
  - b. The ability to pay: The Regional Water Board is aware that the Discharger has several projects in this and other areas. Being that the Discharger is a large corporation, the Regional Water Board does not have sufficient reason to justify a reduction in maximum liability based upon the ability to pay.
  - c. Prior history of violations: The Discharger does not have a past history of violations. Therefore, reducing the maximum liability is justified.
  - d. Degree of Culpability: The Discharger has filed several Notice of Intents in the past and therefore is aware of the requirement for coverage under the General Permit. The Discharger has also prepared a Storm Water Pollution Prevention Plan (SWPPP) on past occasions for other projects. The Discharger is culpable for the violations, which are the subject of this civil liability.
  - e. Economic benefit or savings: The Discharger realized cost savings by failing to file a Notice of Intent, with the required annual filing fee and failing to have a SWPPP

prepared for the site. Administrative Civil Liability must be assessed in an amount not less than the economic benefit or savings. (Water Code Section 13385 (e)). Economic benefit realized in this case is estimated to be \$2,000.

- f. Other matters as justice may require: Staff time to prepare this Complaint is estimated to be \$850.

**Recommended Civil Liability:** Upon consideration of the foregoing factors as required by CWC Section 13385(e), the Executive Officer proposes a civil liability of \$7850.00 for violation the Water Code. This amount includes staff time valued at \$850 and economic benefit or savings in the amount of \$2000.00.

**WAIVER OF A HEARING:** The Discharger may waive the right to a hearing. If the Discharger wishes to waive the right to a hearing, please sign the attached waiver and return it, along with a check in the amount of \$7850.00 (payable to the State Water Resources Control Board, Cleanup and Abatement Account). Any such settlement shall not be effective until the expiration of a 30-day public comment period commencing on the date of issuance of this Complaint. If you have any questions please contact John Short at (707) 576-2065.

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Lee A. Michlin  
Executive Officer

July 5, 2001