

California Regional Water Quality Control Board
North Coast Region

COMPLAINT NO. R1-2003-0069-A

FOR

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

SIERRA-PACIFIC INDUSTRIES
ARCATA DIVISION SAWMILL

2593 New Navy Base Road¹
Arcata, California

Humboldt County

For

Failure to Comply with Cleanup and Abatement Order R1-2001-0200

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

1. This Complaint is issued to Sierra-Pacific Industries (hereinafter referred to as Discharger)² based on violation of Cleanup and Abatement Order R1-2001-0200 (Attachment 1) and on provisions of the California Water Code (CWC) Section 13350, which authorizes the imposition of Administrative Civil Liability for violation of a Cleanup and Abatement Order (CAO).
2. The Discharger owns and operates the Arcata Division Sawmill located at 2593 New Navy Base Road, Arcata (hereinafter Site) adjacent to Mad River Slough and Humboldt Bay. The Discharger developed a sawmill at the Site around 1950 and has operated the sawmill to the present day.
3. The Discharger used wood treatment chemicals containing pentachlorophenol (PCP) and tetrachlorophenol (TCP) at the Site from the 1960s through about 1985. During that period, wood treatment chemicals were applied to milled lumber at a dip tank located across the former green-chain. Wood treatment operations were relocated to an enclosed dip facility building around 1985.
4. Although the use of wood treatment chemicals containing PCP and TCP was discontinued at the Site around 1985, these chemicals continued to be detected in stormwater discharges from the Site through the 1990s. On December 19, 2000, the Executive Officer issued a CWC Section 13267(b) Order to the Discharger requiring a soil and groundwater

¹ The U.S. Post Office changed the Arcata Division Sawmill's street address on January 1, 2003. The street address was formerly 2293 Samoa Road

² Many of the actions mentioned in this Complaint were performed by agents of the Discharger, e.g., Pacific Northwest EnviroNet Group, Inc. (a.k.a. EnviroNet). For simplicity, the Complaint attributes these actions to the Discharger.

investigation to determine the source of the PCP and TCP affecting the stormwater runoff from the Site.

5. An initial investigation was conducted at the Site in July 2001. The initial investigation revealed PCP and TCP in soil and groundwater beneath the Site. PCP was detected in groundwater at concentrations as high as 100,000 parts-per-billion.
6. On October 31, 2001, the Executive Officer issued CAO R1-2001-0200 to the Discharger. The CAO required, among other things, submittal of a workplan for a feasibility study by February 1, 2002, to address cleanup and abatement of the discharges to soil, groundwater and surface water. Within 60 days of concurrence in the workplan, the CAO required the Discharger to submit a report of plan completion, including (1) a time schedule to complete to remedial investigation, feasibility study, and remedial action plan and (2) all associated elements, including a public participation plan (PPP).
7. On November 28, 2001, the Discharger submitted a *Workplan for Subsurface Investigation* proposing installation of groundwater monitoring wells prior to preparation of the feasibility study due by February 1, 2002. The workplan proposed submittal of a feasibility study and corrective action plan concurrently with a summary report of workplan implementation. Regional Water Board staff concurred with implementation of the *Workplan for Subsurface Investigation* in a letter dated January 17, 2002.
8. On May 1, 2002, the Discharger submitted a workplan entitled *Interim Feasibility Study to Remediate Chlorophenols in Soil and Groundwater* (IFS Workplan). The IFS Workplan proposed, among other things, aquifer pump tests, laboratory bench tests, and a treatability study. Regional Water Board staff provided comments on the IFS Workplan in a letter dated July 23, 2002. The Discharger submitted an addendum to the IFS Workplan on August 30, 2002, addressing staff's comments. On September 9, 2002, Regional Water Board staff sent a letter informing the Discharger that staff concurred with implementation of the IFS Workplan and addendum.
9. In accordance with Provision 6 in the CAO, a report of plan completion and PPP were due within 60 days from the date of Regional Water Board staff's concurrence with the IFS Workplan. Regional Water Board staff's concurrence on September 9, 2002, therefore, made the report of plan completion and PPP due by November 9, 2002. Staff's September 9, 2002, letter extended that due date to November 30, 2002.
10. A letter from the Discharger, dated October 11, 2002, requested a modification of the IFS Workplan and addendum. The letter indicated that conductor casing was not necessary for constructing the monitoring wells and asked for Regional Water Board approval of that modification. The letter did not request additional time to submit the report of plan completion or PPP.
11. In a letter dated October 25, 2002, Regional Water Board staff agreed with the elimination of conductor casing as proposed by the Discharger.
12. The Discharger sent a letter to Regional Water Board staff dated November 26, 2002, stating that implementation of the IFS Workplan (and addendum) was in progress and the

report of plan completion would be submitted by January 30, 2003. The letter reported that the shallow monitoring wells, an extraction well, and numerous borings had already been installed, and the aquifer and pump tests necessary to evaluate remedial alternatives and complete the final feasibility study were being scheduled.

13. On January 13, 2003, the Executive Officer sent a letter reminding the Discharger that the report of plan completion was overdue and it was imperative that it be submitted to the Regional Water Board as soon as possible and in a form satisfactory³ to the Executive Officer. The letter also informed the Discharger that an Administrative Civil Liability Complaint would be issued for non-compliance with the CAO if a report satisfactory to the Executive Officer was not received by January 30, 2003.
14. On January 30, 2003, the Discharger submitted a report of plan completion entitled *Results of Remedial Investigation for Sierra-Pacific Industries – Arcata Division Sawmills, Arcata, California* (RI Report). The RI Report includes historical data, data generated from monitoring well installation and sampling, and an *Aquifer Testing Summary* that only includes data from slug tests.
15. An adequate report would demonstrate completion of all actions proposed in the IFS Workplan. As noted above, the IFS Workplan and addendum proposed aquifer pump tests, a laboratory bench test, and a treatability study to develop information necessary to prepare the feasibility study. The RI Report fails to demonstrate completion of the IFS Workplan because the report lacks: (1) confirmation that the pump tests were performed and test results; (2) confirmation that laboratory bench tests were performed or test results; and (3) confirmation that treatability tests were performed or test results. The RI Report is therefore unsatisfactory and fails to comply with the CAO.
16. On January 31, 2003, the Discharger submitted a document entitled, *Workplan for Public Participation Plan*. In a meeting on January 31, 2003, Regional Water Board staff informed the Discharger that this document did not constitute an adequate PPP, but resembled an outline of a PPP instead. A PPP, or draft PPP submitted for Regional Water Board staff review, should contain site specific details and plans for how the public will be informed of past and future site activities.
17. Under Section 13350(e)(1) of the CWC, the Regional Water Board may impose civil liability on any person who intentionally or negligently violates any cleanup and abatement order in an amount not to exceed five thousand dollars (\$5,000) for each day the violation occurs. Where there is a discharge, Section 13350(e)(1)(B) of the CWC states that the minimum civil liability shall be five hundred dollars (\$500) for each day in which the violation occurs. If the Regional Water Board chooses to impose less than this minimum civil liability, it must make express findings setting forth the supporting reasons based on the specific factors to be considered pursuant to CWC Section 13327.

³ On October 8, 2002, Regional Water Board staff sent a letter (Attachment 2) informing the Discharger that information submitted in the *Results of 2nd Quarter Groundwater Monitoring and Sampling Event, Study of Tidal Influence on Groundwater and Sensitive Receptor Survey* submitted on September 25, 2002, was not presented in a clear and readable format. The letter requested submittal of complete and organized reports to minimize cost recovery charges and to allow staff and the public to understand the reported data.

18. The September 9, 2002, letter from Regional Water Board staff set November 30, 2002, as the due date for a report of plan completion and PPP. The PPP and the report were not timely submitted, which are violations of the CAO. Because the PPP was submitted late and the RI Workplan submitted on January 30, 2003 was unsatisfactory, the Discharger is still in violation of the CAO. Accordingly, the Discharger has been in violation of the CAO each day since November 30, 2002, for a total of 61 days of violation as of January 30, 2003. The maximum total civil penalty for these violations is \$305,000 and the minimum civil penalty is \$30,500 not including each day of violation from January 30, 2003, to the date of this Complaint.
19. The issuance of a Complaint for Administrative Civil Liability is an enforcement action to protect the environment and does not have the potential to result in a physical change in the environment and is therefore not a "project" subject to the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.) in accordance with Title 14, California Code of Regulations, Sections 15061(b)(3) and 15321(a)(2).
20. In determining the amount of any civil liability, pursuant to CWC Section 13327, the Regional Water Board must take into account the nature, circumstance, extent, and gravity of the violation; 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 ability to continue business; voluntary cleanup efforts; prior history of violations; the degree of culpability; economic benefit or savings resulting from the violation; and other matters that justice may require.

A. Nature, Circumstance, Extent, and Gravity of the Violations

PCP and TCP have been detected in stormwater discharges from the Site into the Mad River Slough. A significant plume of contaminated groundwater is present beneath the Site. Evidence indicates that shallow contaminated groundwater intercepts pervious subsurface drainage conduits and is transported into the Mad River Slough and Humboldt Bay. Groundwater at the Site is very shallow and surfaces as springs, which have the potential to transport contaminated groundwater to the Mad River Slough and Humboldt Bay. Failure to submit and implement a feasibility study as required by the CAO has delayed progress towards completing an acceptable Remedial Action Plan and has allowed the discharge and threatened discharge of pollutants to continue. PCP and TCP are toxic to humans and wildlife and their continuing discharge into Mad River Slough and Humboldt Bay poses a threat to human health and the environment.

On the other hand, the Discharger made an attempt to submit information responsive to the CAO requirement to provide a report of plan completion and PPP.

Consideration of the nature, circumstance, extent, and gravity of the violations does provide reason for reduction from the maximum amount of Civil Liability to be imposed.

B. Susceptibility to Cleanup or Abatement

Conditions at the Site are susceptible to cleanup and abatement through the preparation and implementation of an acceptable Remedial Action Plan that abates the ongoing threat of discharges to the Mad River Slough and Humboldt Bay, removes and/or treats remaining sources of contamination and addresses dissolved contaminants in groundwater. Technically feasible cleanup alternatives exist that may be implemented with success in a timely manner.

Consideration of susceptibility to cleanup or abatement does not provide reason for reduction from the maximum amount of Civil Liability to be imposed.

C. Degree of Toxicity

Site contaminants include metals, petroleum hydrocarbons, PCP, TCP and impurities associated with PCP including dioxins and furans. PCP is a probable human carcinogen with a Department of Health Services Maximum Contaminant Level (MCL) of 1.0 part-per-billion (ppb) in drinking water and an MCL Goal of zero. Groundwater samples collected at the Site have showed PCP at concentrations as high as 100,000 ppb. The Department of Health Services MCL for 2,3,7,8-tetrachlorodibenzo-p-dioxin, the most toxic dioxin, is 0.00003 ppb. Dioxin has been detected in groundwater at the Site at a concentration of 0.00000041 ppb. The toxicity of the individual chemicals and the cumulative toxicity of the all the chemicals present at the Site to humans and wildlife are not completely known at this time.

Consideration of the degree of toxicity associated with the violations does not provide reason for reduction from the maximum amount of Civil Liability to be imposed.

D. Ability to Pay

An assets search has not been conducted. The Discharger is a large private corporation and is one of the largest landowners in California, and is the owner and operator of several sawmills in California including the Site in Humboldt County. The Discharger has not submitted information to Regional Water Board staff indicating they are in a financial position that would prevent them from remitting an imposed civil liability and Regional Water Board staff believe the Discharger has the financial ability to pay the imposed civil liability.

Consideration of the Discharger's ability to pay does not provide reason for reduction from the maximum amount of Civil Liability to be imposed.

E. Effect on Ability to Continue Business

An assets search has not been conducted. The Discharger is a large private corporation and is one of the largest landowners in California, and is the owner and operator of several sawmills in California including the Site in Humboldt County. The Discharger has not submitted any information to Regional Water Board staff indicating they are in

a financial position that would prevent them from continuing in business following remittance of the imposed civil liability.

Consideration of effect on ability to continue business does not provide reason for reduction from the maximum the amount of Civil Liability to be imposed.

F. Voluntary Cleanup Efforts

Voluntary efforts to remediate the contaminated soil and groundwater at the Site have not been initiated.

Consideration of voluntary cleanup efforts does not provide reason for reduction from the maximum amount of Civil Liability to be imposed.

G. Prior History of Violations

Consideration of prior history of violations does not provide reason for reduction from the maximum amount of Civil Liability to be imposed.

H. Degree of Culpability

The Discharger is culpable as the owner of 2593 New Navy Base Road. Provision 5 of the CAO requires submittal of a workplan for a feasibility study to address cleanup and abatement of the discharges to soil, groundwater and surface water. Provision 6 of the CAO requires submittal of a report of plan completion within 60 days of concurrence with the workplan submitted under Provision 5. Regional Water Board staff concurred with implementation of the workplan submitted under Provision 5 in a letter dated September 9, 2002. Staff's letter extended the deadline for submittal of the report of plan completion to November 30, 2002.

The report of plan completion was not submitted by November 30, 2002, and is still late as of the date of this Complaint. On November 26, 2002, the Discharger submitted a letter to Regional Water Board staff regarding their progress on implementation of the workplan and submittal of the report of implementation. The Discharger's letter states that the aquifer and pump tests necessary to evaluate the remedial alternatives and to complete the final feasibility study were being scheduled and that the report on workplan implementation would be submitted by January 30, 2003.

On January 13, 2003, the Executive Officer informed the Discharger that it was out of compliance with the CAO and an Administrative Civil Liability Complaint would be issued if the report of plan completion was not submitted in a form satisfactory to the Executive Officer by January 30, 2003. The RI Report submitted by the Discharger on January 30, 2003, is incomplete, because it does not contain the results of the aquifer pump tests, laboratory bench tests and treatability study proposed in the IFS Workplan and referenced in the November 26, 2002, letter. Therefore, the submitted RI Report is not satisfactory to the Executive Officer.

Despite being notified of the violation of the CAO and being given an opportunity to correct it by submitting a complete report of plan completion by January 30, 2003, the Discharger is still in violation of the CAO. Consideration of the degree of culpability does not provide reason for reduction from the minimum amount of Civil Liability to be imposed.

I. Economic Savings Resulting from the Violation

Failure to adequately conduct and report test results has caused additional delay in implementing appropriate remedial actions at the Site and results in additional economic savings for the Discharger. Additional costs savings are received for delaying the cleanup process including the costs for preparing and implementing an adequate Public Participation Plan, Final Feasibility Study and Remedial Action Plan. The additional cost savings for delaying the cleanup progress could be estimated by calculating the amount of interest that would accrue on the money that would have been spent on the cleanup over the length of time that cleanup is delayed. The actual cost savings for delaying the cleanup process has not been estimated at this time because an acceptable remedial alternative has not been selected, therefore the cost to implement a Remedial Action Plan is unknown, and the delay could continue until the Discharger implements an acceptable Remedial Action Plan for the Site.

Consideration of the economic savings does not provide reason for reduction from the minimum amount of Civil Liability to be imposed.

J. Other Matters as Justice May Require

Significant Regional Water Board staff hours have been dedicated to this Site in an effort to gain compliance including the preparation of enforcement Orders to protect ground and surface water quality. Regional Water Board staff hours are recovered directly from the Discharger through the cost-recovery program.

Consideration of other matters as justice may require does not provide reason for reduction from the minimum amount of Civil Liability to be imposed.

21. A hearing to affirm, reject, or modify this Complaint may be held before the Regional Water Board unless the Discharger waives its right to a hearing and pays the imposed civil liability.
22. Payment of the civil liability does not satisfy the Discharger's obligation to comply with the tasks required by CAO R1-2001-0200. That Order remains in full force and effect.
23. The Executive Officer of the Regional Water Board issued Administrative Civil Liability Complaint No. R1-2002-0069 on May 21, 2003. Administrative Civil Liability Complaint No. R1-2002-0069 proposed that the Discharger pay an Administrative Civil Liability in the amount of \$80,000 with \$20,000 due and payable by June 6, 2003 and the remaining \$60,000 would be permanently suspended contingent upon submittal of a Final Feasibility Study Report. After receiving Administrative Civil Liability Complaint No. R1-2002-0069, the Discharger proposed reducing the amount due and payable from \$20,000 to

\$15,000 and increasing to \$65,000 the amount to be suspended contingent on submittal of a Final Feasibility Study Report acceptable to the Executive Officer by December 2, 2003.

24. This complaint is intended to replace Administrative Civil Liability Complaint No. R1-2002-0069. This complaint is similar to Administrative Civil Liability Complaint No. R1-2002-0069 and proposes the same amount of Administrative Civil Liability. This complaint differs from than Administrative Civil Liability Complaint No. R1-2002-0069 in that \$15,000 is due and payable by September 2, 2003, and \$65,000 shall be permanently suspended contingent on submittal of a Final Feasibility Study Report acceptable to the Executive Officer by December 2, 2003.

Proposed Civil Liability

Based on the above factors, I hereby propose that the Discharger pay an Administrative Civil Liability in the amount of \$80,000 for non-submittal of a report of plan completion and PPP required by Provision 6 of the CAO. This amount is reduced from the maximum liability because the Discharger attempted to submit information responsive to the requirement to provide a report of plan completion and PPP.

I also hereby propose that the Discharger pay \$15,000 of the total Administrative Civil Liability now and the remaining \$65,000 of the Administrative Civil Liability shall be permanently suspended contingent upon submittal of a Final Feasibility Study Report acceptable to the Executive Officer by December 2, 2003 that: (1) provides the results of the treatability studies; identifies and evaluates alternative final cleanup remedies; and (3) identifies the proposed final cleanup remedy for the site.

Waiver of Hearing

You may waive the right to a hearing. If you wish to waive the hearing, please sign the enclosed waiver and return it together with a cashier's check or money order, made payable to the "State Water Resources Control Board" for \$15,000 by September 2, 2003, to the California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, CA 95403.

Ordered by



Catherine E. Kuhlman
Executive Officer

August 15, 2003