

California Regional Water Quality Control Board  
North Coast Region

Administrative Civil Liability Complaint No. R1-2008-0005

For

Violation of Waste Discharge Requirements

In the Matter of

Kendall-Jackson Winery Limited  
dba Harford Court Winery and Matanzas Creek Winery  
WDID Nos. 1B96005RSON, 1B78003OSON

Sonoma County

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

1. On June 27, 1996, the Regional Water Board adopted Waste Discharge Requirements (WDRs), Order No. 96-36, for the Matanzas Creek Winery owned by Kendall-Jackson Winery (Discharger). The Matanzas Creek Winery WDRs were adopted to regulate winery-related discharges including those from pre-treatment best management practices, wastewater treatment and storage ponds, and drip irrigation disposal of winery wastewater.
2. The Matanzas Creek Winery is located at 6097 Bennett Valley Road, in Santa Rosa, Sonoma County. Matanzas Creek, a tributary to Santa Rosa Creek and the Russian River, flows on the south side of the property. Several tributaries of Matanzas Creek flow through the facility.
3. On March 27, 1997, the Regional Water Board adopted WDRs, Order No. 97-25, for the Harford Court Winery owned by the Discharger. The Harford Court Winery WDRs were adopted to regulate winery-related discharges including those from pre-treatment best management practices, wastewater treatment and storage ponds, and irrigation disposal of winery wastewater.
4. The Harford Court Winery is located at 8075 Martinelli Road, in Forestville, Sonoma County. Green Valley Creek, a tributary to the Russian River, flows through the property.
5. This Administrative Civil Liability Complaint (ACLC) is being issued to the Discharger for two unauthorized discharges that occurred, one at each facility.
6. **Matanzas Creek Winery**

On December 27, 2005, an employee of the Discharger observed that the water level of a wastewater treatment pond was elevated due to recent storm events.

The employee feared that a pond levee failure was possible and cut a three inch notch in a drainage pipe that had been previously sealed. Winery wastewater discharged from the treatment pond to a tributary of Matanzas Creek and then to Matanzas Creek. The Discharger was not able to estimate the volume of wastewater discharged.

The notch was repaired on January 13, 2006. Regional Water Board staff was not able to establish how many days of discharge occurred. Therefore, for the purposes of this ACLC, the Regional Water Board will assume only one day of discharge occurred.

The Regional Water Board received verbal notification of the discharge on January 17, 2006, and received a written report on January 31, 2006.

**7. Hartford Court Winery**

On April 14, 2006, an inspection performed by an employee of the Discharger discovered that the pipe that transports winery wastewater from the winery operation to the waste treatment pond had ruptured and discharged untreated wastewater to an unnamed tributary to Green Valley Creek. The pipe rupture was caused by a landslide on an old logging road directly above the pipeline. The Discharger had started inspecting the pipeline twice daily for soil movement due to heavy spring rains. The Discharger reported that twelve hours was the maximum time that the pipeline could have been discharging to the tributary based on the previous day's inspection at 7:30 pm. The Discharger estimated the volume of wastewater discharged to be between 600 gallons and 21,600 gallons.

The Regional Water Board received verbal notification of the discharge on April 17, 2006, and received a written report on May 1, 2006.

8. The following facts are the basis for the alleged violations in this matter:
- a. The Discharger's WDRs for the Matanzas Creek Winery, Order No. 96-36, prohibits the discharge of waste to Matanzas Creek or its tributaries (Discharge Prohibition A.5). The December 27, 2005, wastewater treatment pond drainage pipe damage resulted in the discharge of waste to Matanzas Creek and its tributaries.
  - b. The Discharger's WDRs for the Harford Court Winery, Order No. 97-25, prohibits the discharge of waste to Green Valley Creek or its tributaries (Discharge Prohibition A.5). The April 14, 2006, pipeline rupture resulted in the discharge of waste to Green Valley Creek and its tributaries.

9. California Water Code section 13385, subdivision (a)(2) provides the basis for civil liability against any person who violates any waste discharge requirements. As detailed above, the Discharger violated the discharge prohibitions of the waste discharge requirements. California Water Code section 13385, subdivision (c) provides that the maximum amount of civil liability that may be imposed by the Regional Water Board is \$10,000 per day of violation.
10. Where there is discharge in excess of 1,000 gallons that is not susceptible to cleanup or cannot be cleaned up, an additional liability may be assessed. The Discharger was unable to determine the exact volume of discharge and it may have exceeded 1,000 gallons in each incident, but the Regional Water Board was not able to determine the volume of waste discharged, and therefore, no additional liability will be assessed.
11. The maximum civil liability that could be imposed against the Discharger in this matter is calculated as follows:

Violation	Number of Days (at \$10,000/day)	Maximum Civil Liability
Matanzas Creek Winery wastewater discharge	1 (December 27, 2005)	\$10,000
Hartford Court Winery wastewater discharge	1 (April 14, 2006)	\$10,000
<b>Total Potential Civil Liability</b>		<b>\$20,000</b>

12. In determining the amount of any civil liability, pursuant to California Water Code section 13385, subdivision (e), the Regional Water Board is required to take 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. The Regional Water Board is also required by this section to assess liability at a level that, at a minimum, recovers the economic benefits, if any, derived from the acts that constitute the violation.

**a. Nature, circumstances, extent and gravity of the violations:**

Winery wastewater is typically high in BOD and suspended solids; these constituents can potentially cause both short-term and longer-term serious water quality impacts. BOD may significantly lower dissolved oxygen in a waterway, which may be harmful for aquatic life. Suspended solids may increase turbidity in a waterway and eventually settle out to add to detritus covering the bed of a waterway, impairing the habitat for aquatic life. Winery wastewater may also contain cleaning products and other chemicals.

Both Matanzas Creek and Green Valley Creek are tributaries of the Russian River. The Russian River and its tributaries are within the habitat range of coho salmon (*Oncorhynchus kisutch*), Chinook salmon (*Oncorhynchus tshawytscha*) and steelhead (*Oncorhynchus mykiss*), each listed under the federal Endangered Species Act or the California Endangered Species Act. Populations of salmonids in California have declined substantially in the last century. Green Valley Creek is one of the last known tributaries of the Russian River that supports a native coho salmon spawning population.

- b. **Susceptibility to Cleanup or Abatement and Voluntary Cleanup Efforts Undertaken:** No cleanup efforts were undertaken.
- c. **Violator's ability to pay:** The Discharger owns several wineries and is one of the most successful wine producers in Sonoma County. Staff has no information to indicate that the Discharger would be unable to pay any imposed administrative civil liability.
- d. **Prior history of violations:** On May 7, 2001, the Executive Officer of the Regional Water Board issued an ACLC to the Discharger for a discharge of potassium permanganate and water to Airport Creek from their facility in the Airport Business Park. The Discharger was assessed a \$7,500 penalty; \$2,500 was paid to the State Cleanup and Abatement account and the remainder of the penalty was used for a supplemental environmental project that consisted of revegetating a portion of Airport Creek.
- e. **Degree of culpability:**

#### **Matanzas Creek Winery**

The Matanzas Creek Winery discharge was the result of a deliberate action taken by the Discharger's employee. The employee cut a notch in a sealed drainage pipe to lower the water levels in the wastewater treatment pond. The Discharger reported that the employee was concerned that if the water level continued to rise the wastewater treatment pond may have experienced a levee failure.

The wastewater discharged had been partially treated, but it is the responsibility of the Discharger to have sufficient operational redundancy to provide additional storage capacity during wet seasons and heavy storms.

The damage to the pipe was not repaired for seventeen days, during which it is likely wastewater continued to discharge. The Regional Water Board received verbal notification of the discharge twenty-one days after the discharge began. The Discharger's WDRs require immediate verbal notification when a violation of the WDRs is discovered. As the Discharger's

employee caused the discharge with a deliberate act, the verbal notification was not conducted in a timely manner.

For these reasons, Regional Water Board staff has determined that the Discharger should be assessed the maximum potential civil liability for this day of violation.

### **Hartford Court Winery**

The Hartford Court Winery discharge was the result of a landslide that damaged the pipeline that conveyed untreated wastewater from the winery to the wastewater treatment pond. The landslide was most likely the result of heavy rains and unstable slopes associated with an access road. The wastewater that discharged to Green Valley Creek was untreated.

The Discharger began conducting twice daily pipeline inspections to ensure that if a landslide occurred, any pipeline damage would be discovered as soon as possible. It was the Discharger's responsibility, however, to ensure that the pipeline was routed properly to avoid foreseeable damage to the pipeline.

The Discharger reported that the pipeline discharge was stopped within thirty minutes of discovery. The Regional Water Board was notified within three days of occurrence of the pipeline discharge.

Because the Discharger exercised some initiative in protecting water quality and notified the Regional Water Board within three days, Regional Water Board staff has determined that the Discharger should be assessed a reduced civil liability from the maximum for this day of violation.

- f. **Economic benefit:** The Discharger received economic benefit by failing to construct increased pond capacity in the matter of the Matanzas Creek Winery discharge and by failing to reroute the pipeline around the landslide prone area in the matter of the Hartford Creek Winery discharge. The economic benefit was most likely substantial and greater than the maximum civil liability.
  - g. **Other matters that justice may require:** Regional Water Board staff costs are estimated to be \$4,500.
13. The issuance of this ACLC is an enforcement action to protect the environment and is, therefore, exempt from provisions of the California Environmental Quality Act (Public Resources Code sections 21000 et seq.) pursuant to title 14, California Code of Regulations, sections 15308 and 15321, subdivision (a)(2).

KENDALL-JACKSON WINERY IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that the Discharger be assessed an administrative civil liability in the amount of \$15,000.
2. A hearing shall be conducted on this ACLC by the Regional Water Board on March 5-6, 2008, unless the Discharger waives the right to a hearing by signing and returning the waiver form attached to the ACLC. By doing so, the Discharger agrees to pay \$15,000 in full to the State Water Pollution Cleanup and Abatement Account within 30 days of the date of this ACLC.
3. If the Discharger waives the hearing and pays the liability, the resulting settlement will become effective on the next day after the public comment period for this ACLC is closed, provided that there are no significant comments received during the public comment period. If there are significant public comments, the Assistant Executive Officer may withdraw the ACLC, reissue it as appropriate, or take other appropriate action.
4. If a hearing is held, the Regional 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 liabilities, or other remedies as appropriate.

Ordered by \_\_\_\_\_

Luis G. Rivera  
Assistant Executive Officer

January 9, 2008