

California Regional Water Quality Control Board
North Coast Region

COMPLAINT NO. 99-73

FOR

ADMINISTRATIVE CIVIL LIABILITY

IN THE MATTER OF

WATTLE CREEK, INC.

FOR

VIOLETIONS OF WASTE DISCHARGE PROHIBITIONS
CONTAINED IN THE WATER QUALITY CONTROL PLAN
FOR THE NORTH COAST REGION

Mendocino County

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

1. Wattle Creek, Inc., (Christopher J. Williams, President) violated a prohibition contained in the Water Quality Control Plan for the North Coast Region for which the RWQCB may impose civil liability under Section 13350(a)(2) of the California Water Code.
2. Unless waived, a hearing on this matter will be held before the RWQCB within 60 days following the issuance of this Complaint. You or your representative will have an opportunity to address and contest the allegations in the Complaint and the imposition of civil liability before the RWQCB. The hearing is scheduled for the RWQCB Meeting to be held on December 9, 1999 in Santa Rosa. An agenda showing the time set for the hearing will be mailed to you not less than 10 days before the hearing.
3. At the hearing, the RWQCB will consider whether to affirm, reject, or modify the proposed civil liability, to refer the matter to the Attorney General for recovery of judicial liability, or take other enforcement actions.
4. Wattle Creek, Inc., violated the following prohibitions contained in the Water Quality Control Plan for the North Coast Region (page 4-1.00).

Section 4. IMPLEMENTATION PLANS

DISCHARGE PROHIBITIONS:

The discharge of soil, silt, bark, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.

The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.

5. The Basin Plan also contains water quality objectives (page3-2.00-3.00) including:

Section 3. WATER QUALITY OBJECTIVES

OBJECTIVES FOR INLAND SURFACE WATERS, ENCLOSED BAYS, AND ESTUARIES

Color

Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.

Suspended Material

Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.

Settleable Material

Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.

Sediment

The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.

Turbidity

Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones of dilution within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.

6. The following facts are the basis for the alleged violations in this matter:
 - a. Wattle Creek, Inc. obtained approved Timber Harvest Plan # 1-98-436 MEN and Timberland Conversion Permit # 442 from the California Department of Forestry and Fire Protection for an 160-acre vineyard conversion on May 10, 1999. The property is located in portions of SW ¼, Section 15; E ½, SW ¼ Section 16; NE ¼, Section 21; and NW ¼, Section 22 of Township 12 North, Range 12 West, Mount Diablo Base Meridian in Mendocino County. Wattle Creek, Inc., is listed as the timberland owner of record on Timber Harvest Plan 1-98-436 MEN. Christopher Williams is listed as the president of Wattle Creek Inc. on Timber Harvest Plan 1-98-436 MEN. Christopher Williams informed RWQCB staff that he owns Wattle Creek, Inc.
 - b. On October 28, 1999, the RWQCB received a citizen's complaint indicating that Elkhorn Creek and Dry Creek were turbid and discolored. The citizen stated that he traced the discharge to Timber Harvest Plan 1-98-436 MEN and Timberland Conversion Permit # 442 area.
 - c. The North Coast Regional Water Quality Control Board staff inspected the Timber Harvest Plan and Timberland Conversion Plan area, Elkhorn Creek and Dry Creek on November 2 and 5, 1999 and determined that features necessary to control the discharge of waste earthen material from the timberland conversion area were not installed or were inadequate.
 - d. On or about October 27, 1999, areas in the vicinity of the timberland conversion received approximately 1.25 inches of rain. The rain, coupled with a lack of adequate erosion control devices, resulted in erosion and the discharge of waste earthen materials to Elkhorn Creek and Dry Creek.
 - e. RWQCB staff estimate that on or around October 27, 1999, at least 20 cubic yards of waste earthen material were discharged to Elkhorn Creek and Dry Creek as a result of timberland conversion activities.
 - f. Elkhorn Creek, Dry Creek and the Russian River support the following beneficial uses: cold freshwater habitat, commercial and sport fishing, warm freshwater habitat, migration of aquatic organisms, spawning reproduction and/or early development, domestic and municipal supply, agricultural supply industrial supply, groundwater recharge, navigation, water contact recreation, non contact recreation, aquaculture, estuarine habitat, and wildlife habitat. Elkhorn Creek, Dry Creek and the Russian River

are listed as impaired under Section 303(d) of the Federal Clean Water Act, due to excessive amounts of sediment.

- g. The deposition of earthen material from the timberland conversion area has caused a condition of pollution by substantially filling pools, degrading spawning and rearing habitat for steelhead trout and smothering benthic organisms which are part of the fish rearing food chain. The Water Quality Objectives for the North Coast Region state that waters shall not contain substances in concentrations that adversely affect beneficial uses. The discharge of earthen material into watercourses and the placement of earthen material from the timberland conversion area where it could pass into watercourses were in amounts deleterious to the beneficial uses of water.

Proposed Civil Liability

7. Section 13350(a)(2) of the California Water Code provides for the imposition of civil liabilities against dischargers who violate a prohibition issued by the RWQCB. Section 13350(e)(1) provides that the RWQCB may assess civil penalties in an amount not to exceed \$10 for each gallon of waste discharged. It is estimated that at least 20 cubic yards, or approximately 4000 gallons, of waste were discharged.
8. In determining the amount of civil liability, the RWQCB took into account the nature, circumstances, 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 effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require.
9. The issuance of a Complaint for Administrative Civil Liability is not subject to the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321(a)(2) (enforcement action).

Therefore, I hereby propose that Administrative Civil Liability in the amount of \$25,000 be imposed.

Ordered by _____

Lee A. Michlin
Executive Officer

November 12, 1999

Waiver of Hearing

You may waive the right to a future 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 the amount of civil liability proposed above within 30 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.