

California Regional Water Quality Control Board
North Coast Region

COMPLAINT NO. R1-2000-11

FOR

ADMINISTRATIVE CIVIL LIABILITY

IN THE MATTER OF

ROY HAUSER

dba

TALL TIMBER FOREST MANAGEMENT

FOR

VIOLATIONS 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. Mr. Roy Hauser dba Tall Timber Forest Management violated prohibitions 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 March 23, 2000 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. Mr. Roy Hauser violated the following prohibitions contained in the Water Quality Control Plan for the North Coast Region (page 4-28.00).

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:

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.

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.

6. The following facts are the basis for the alleged violations in this matter:
 - a. Timber Harvest Plan # 1-97-187 MEN (THP) received approval from the California Department of Forestry and Fire Protection (CDF) for a 91-acre shelterwood and seed tree removal, commercial thinning, and rehabilitation harvest on July 30, 1997. The properties are located in portions of SE ¼, Section 22 of Township 19 North, Range 13 West, Mount Diablo Base Meridian in Mendocino County. Jessie Wine, Leif and Kristi Yde, and Axel Yde are listed as the timberland owners on Timber Harvest Plan 1-97-187 MEN and own separate properties that together make up the THP area. Axel Yde and Jessie Wine have since passed away. Floyd Wine is the Trustee for the Wine estate while Leif Yde is the contact person for the Axel Yde property.
 - b. Mr. Roy Hauser was incorporated into THP as the Licensed Timber Operator (LTO) on June 22, 1998 through a minor amendment. Pursuant to the minor amendment, "The LTO will be responsible for the entire THP operation which includes, but is not limited to, road and landing reconstruction, construction and maintenance in the THP area and on the appurtenant road."
 - c. RWQCB staff were invited to an active field inspection for THP 1-97-187 MEN by CDF personnel. The inspection had been prompted by repeated forest practice rules violations. The violations included failure to remove a temporary crossing at a Class I watercourse (String Creek) and failure to install erosion control measures on temporary roads, among others. RWQCB personnel were present to assess potential sediment discharges into watercourses resulting from these violations.
 - d. RWQCB staff inspected the Timber Harvest Plan area, String Creek and Tartar Creek on November 17 and 23, 1999. RWQCB staff determined that soil was discharged from several locations within the THP area. RWQCB staff further determined that features necessary to control the discharge of waste earthen material from the plan area were not installed.
 - e. Since late October several rain events have occurred in the THP area. The rain, coupled with a lack of adequate erosion control devices, resulted in erosion and the discharge of waste earthen materials to String Creek and Tartar Creek.
 - f. RWQCB staff estimate that between October 15, 1999 and November 23, 1999 at least 1450 gallons of waste earthen material were discharged to String Creek and

Tartar Creek resulting from timber harvest activities associated with THP 1-97-187 MEN.

- g. Tartar Creek flows into String Creek which flows into Tomki Creek which eventually flows into the Eel River. Tartar Creek, String Creek, Tomki Creek and the Eel River support the following beneficial uses:
- a) cold freshwater habitat;
 - b) commercial and sport fishing;
 - c) warm freshwater habitat;
 - d) migration of aquatic organisms;
 - e) spawning reproduction and/or early development;
 - f) domestic and municipal supply;
 - g) agricultural supply;
 - h) industrial supply;
 - i) groundwater recharge;
 - j) navigation;
 - k) water contact recreation;
 - l) non contact recreation;
 - m) aquaculture;
 - n) estuarine habitat; and
 - o) wildlife habitat.

Tomki Creek and the Eel River are listed as impaired under Section 303(d) of the Federal Clean Water Act, due to excessive amounts of sediment and/or high temperatures.

- h. The deposition of earthen material from the THP area has caused a condition of pollution by filling pools, degrading spawning and rearing habitat for Steelhead trout, Chinook salmon, other non-game fish species, 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 THP 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 7.2 cubic yards, or approximately 1450 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 Roy Hauser pay an Administrative Civil Liability in the amount of \$10,000.

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 to the California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, CA 95403. The waiver and payment must be received no later than March 17, 2000. This settlement will not become effective until after a 30-day public comment period.

Ordered by _____

Lee A. Michlin
Executive Officer

March 1, 2000