

California Regional Water Quality Control Board
North Coast Region

Complaint No. R1-2001-35

For

ADMINISTRATIVE CIVIL LIABILITY

In the matter of

Michael Menges
41517 South Highway 97
Macdoel, CA

Siskiyou County

For

Violations of Section 13267(b) of The California Water Code

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

1. Michael Menges (hereinafter referred to as the “Discharger”) violated Section 13267(b) of the California Water Code (CWC) for which the Regional Water Board may impose civil liability under CWC Section 13268(a).
2. The Discharger owns the Macdoel General Store which is identified by Siskiyou County Assessor as Parcel Numbers 35-024-060, 35-024-120 and 35-024-140 (hereinafter referred to as “Site”) located in the Macdoel – Dorris hydrologic subarea (105.81). The Discharger owned and operated petroleum underground storage tanks located at the Site.
3. Four petroleum underground storage tanks were removed from the Site on December 28, 1994 under permit from the Siskiyou County Health Department. Five soil samples were collected by a Siskiyou County Health Department Representative from beneath the former locations of the petroleum underground storage tanks. The county representative released custody of the five samples to the Discharger, who had one of the five samples analyzed for petroleum constituents. Laboratory analysis of the sample detected petroleum constituents. The four remaining soil samples were not analyzed as required under Title 23, California Code of Regulations 2672(d).
4. Regional Water Board staff have issued letters to the Discharger on May 9, 1995, January 23, 1998, April 12, 1999, October 19, 1999 and January 19, 2000 requiring investigative work at the Site. Pursuant to CWC Section 13267(b), the Executive Officer of the Regional Water Board issued orders to the Discharger on June 21, 2000, August 10, 2000 and December 28, 2000 requiring submission of a completed site investigation report or a new workplan for the investigation of petroleum hydrocarbon discharges at the Site. The Discharger failed to submit the required report or workplan, thereby violating CWC Section 13267(b).

5. The Regional Water Board adopted the Basin Plan on December 9, 1993. The State Water Resources Control Board, on March 21, 1994, and the Office of Administrative Law, on August 18, 1994, approved the Basin Plan. The Basin Plan was amended on March 24, 1994, June 22, 1995, and May 23, 1996.

Pursuant to the Basin Plan, including State Water Board Resolution 88-63, the existing and potential beneficial uses of groundwater in the Macdoel Dorris hydrologic subarea that are or may be affected by the petroleum contamination are:

- a. municipal and domestic supply
 - b. agricultural supply
 - c. industrial service supply
6. CWC Section 13268(a) provides for the imposition of civil liabilities against dischargers who fail to provide technical reports as required by subdivision (b) of CWC Section 13267. CWC Section 13268 provides that the Regional Water Board may assess civil penalties in an amount not exceeding one thousand dollars (\$1,000) for each day in which the violation occurs. As set forth above, the Discharger has failed to submit the report required under CWC Section 13267(b). As of April 30, 2001, the Discharger has been in violation of Section 13267(b) of the CWC for eighty-nine (89) days. This yields a maximum civil liability of \$89,000.
7. In determining the amount of the liability, the following factors were considered:
 - a. The Nature, Circumstances, Extent, and Gravity of the Violations:

Failure to submit reports of compliance with the terms of CWC Section 13267(b) is a serious violation. Lack of submitted data does not allow the Regional Water Board to adequately review the Discharger's operations to ensure protection of water quality.
 - b. Economic Savings:

The estimated economic savings from failure to conduct an initial site investigation for petroleum hydrocarbon contamination is estimated at \$15,000.
 - c. Degree of Culpability:

The Discharger failed to comply with the December 28, 2000 Order to submit a site investigation report or revised site investigation workplan.
 - d. Prior History of Violations:

The Discharger has failed to comply with written Regional Water Board requests dated May 9, 1995, March 14, 1997, January 23, 1998, April 12, 1999, October 19, 1999, January 19, 2000, June 21, 2000, and August 10, 2000 to conduct an investigation of the contamination at the site.

e. Susceptibility to Cleanup and Voluntary Cleanup Efforts Undertaken:

This factor is not applicable with respect to the violations for which this complaint is issued.

f. Ability to Pay and Ability to Continue in Business:

The Regional Water Board staff has no information regarding the Discharger's ability to pay. The Discharger should be prepared to address their ability to pay the maximum civil liability or any lesser amount.

g. Other Matters as Justice May Require:

The Discharger is operating at an unfair economic advantage to other similar firms who are in compliance with Regional Water Board Orders requiring investigation and cleanup at contaminated sites.

8. The issuance of a Complaint for Administrative Civil Liability is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321.
9. The Regional Water Board's costs for attempting to achieve compliance with California Law in this matter are \$5,000.
10. This settlement will not become effective until after a 30-day public comment period.

PROPOSED CIVIL LIABILITY

Based on the foregoing, I propose that Michael Menges be assessed an Administrative Civil Liability in the amount of Thirty Thousand Dollars (\$30,000). Of that amount, I propose that fifteen thousand dollars (\$15,000.00) be due and payable by May 29, 2001. We further propose that the remaining fifteen thousand dollars (\$15,000.00) be suspended contingent upon submission of an adequate site investigation workplan by July 15, 2001 and implementation of the workplan within 45 days of concurrence by the Executive Officer with the workplan.

An adequate site investigation workplan requires preparation by a licensed civil engineer or geologist familiar with contamination, appropriate soil and groundwater sampling, a sensitive receptor survey within one thousand feet of the petroleum release area(s), and identification of potential preferential pathways for contaminant migration. Implementation requires the commencement of onsite collection of soil and groundwater samples and the remainder of the workplan tasks.

Failure to comply with any of the foregoing shall result in the automatic imposition of the suspended penalty of fifteen thousand dollars (\$15,000.00).

WAIVER OF HEARING

Mr. Menges may waive the right to a future hearing. If Mr. Menges wishes to waive the hearing, he should sign the enclosed waiver and return it with a cashier's check or money order, made

payable to the "State Water Resources Control Board," in the amount of \$15,000 by May 29, 2001, to the California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, CA 95403. The suspended liability shall be automatically due and payable if Mr. Menges fails to comply with any of the above-mentioned requirements for suspended liability.

Ordered by: _____
Lee A. Michlin
Executive Officer

May 4, 2001

(ACL-Macdoel32001complaint)