

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

IN THE MATTER OF:)
)
THE AMERICAN CENTER FOR WINE,)
FOOD AND THE ARTS)
1700 SOSCOL AVENUE, SUITE 1)
NAPA, CA 94556)
_____)

**COMPLAINT NO. 00-037
FOR
ADMINISTRATIVE CIVIL LIABILITY**

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The American Center for Wine, Food and the Arts (discharger) has violated provisions of law for which the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board), may impose liability pursuant to Section 13385 of the California Water Code.
2. Unless waived, a hearing concerning this complaint will be held before the Regional Board on October 18, 2000, at the Elihu M. Harris State Building, First Floor Auditorium, located at 1515 Clay Street, Oakland, California. The meeting begins at 9:30 a.m. The American Center for Wine, Food and the Arts or its representative will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to the discharger not less than 10 days before the hearing date. You must submit copies of any written evidence concerning this complaint to the Board by October 10 2000. Any written evidence not so submitted may not be considered by the Board.
3. At the October 18, 2000 hearing, the 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 liability.

ALLEGATIONS

4. The discharger is alleged to have violated California Water Code Section 13376 by failing to file a Notice of Intent (NOI) to comply with Order No. 92-08-DWQ (and subsequently revised Order No. 99-08-DWQ), NPDES No. CAS000002 (General Permit) prior to commencement of construction activities for its project at 500 First Street in Napa. Pursuant to Water Code Section 13385 (a)(1) & (2), civil liability may be imposed for the preceding violation.
5. This complaint is based on the following facts:
 - a. The discharger was duly notified of its permit requirements in the project's Environmental Impact Report. This report states, "*HYDRO-4c: The applicant should obtain all required permits from the California Regional Water Quality Control Board prior to any grading or construction activity*".

- b. Additionally, on May 5, 1998, the Regional Board issued the project a "Waiver of Waste Discharge Requirements and Water Quality Certification". The letter stated in part, *"Construction of the CWF&A will disturb an area greater than five acres. Therefore, CWF&A is required to obtain coverage under the General Permit for Stormwater Runoff Associated with Construction Activity issued by the State Water Resources Control Board, prior to beginning project construction"*.
- c. On October 28, 1999, Regional Board staff inspected the discharger's project and found that project construction had begun and the discharger had failed to obtain permit coverage under the General Permit. Additionally, the discharger had failed to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) and Monitoring/Reporting Plan, in accordance with the General Permit requirements. Staff issued an on-site inspection report requiring immediate submittal of a "Notice of Intent" (permit application), the development of a SWPPP and Monitoring/Reporting Plan, and implementation of additional on-site erosion control measures.
- d. On November 17, 1999, the State Board received and processed a Notice of Intent from the discharger. On November 5, 1999, Rudolph and Sletten (the developer of the project) submitted a SWPPP to the Regional Board for staff review.
- e. From June 1, 1999 to November 16, 1999, the discharger operated without obtaining coverage under the General Permit, thereby violating Section 13376 of the Water Code. Pursuant to Water Code Section 13385(a)(1), civil liability can be assessed administratively for violations of Section 13376.

PROPOSED CIVIL LIABILITY

6. As provided by Water Code Section 13385(c)(1), the Board can administratively assess a liability of \$10,000 for each day in which a violation of Water Code Section 13376 occurs. The discharger is alleged to have violated Section 13376 for 169 days (from June 1, 1999 to November 16, 1999) by failing to obtain permit coverage. The total maximum liability is \$1,690,000.
7. Pursuant to Water Code Section 13385(e), the Regional Board must consider the following factors in determining the amount of civil liability (described in attached staff report): 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.
8. After consideration of the above factors, the Executive Officer proposes civil liability be imposed on the discharger in the amount of \$25,000 for the violations cited above. This includes \$17,000 as an assessment for the violations, \$5000 for staff costs, and \$3,000 as a realized economic benefit. This amount is payable within 60 days of the issuance of this complaint.

9. In the event that the discharger fails to make payment as specified, the Regional Board is authorized to refer this matter to the State of California Attorney General to petition the superior courts to impose the liability.
10. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. Seq.), in accordance with Section 15321(a)(2), Title 14, of the California Code of Regulations.
11. You may waive your right to a hearing. If you choose to do so, an authorized person must sign and date the attached "Waiver of Hearing" form and submit it to the Regional Board at 1515 Clay Street, Suite 1400, Oakland, CA, 94612, by **October 16 2000**. Payment is due within 60 days from the date this Complaint was issued (payable to the State Water Resources Control Board). Any waiver will not be effective until 30 days from the date this Complaint was issued, to allow other interested persons to comment on this action. If you should have any questions, please contact Bruce H. Wolfe at (510) 622-2443 or the Regional Board Counsel at (916) 657-2406.

10/3/2000
Date



Lawrence P. Kolb
Acting Executive Officer

IN THE MATTER OF:)
)
THE AMERICAN CENTER FOR WINE,))
FOOD AND THE ARTS))
1700 SOSCOL AVENUE, SUITE 1))
NAPA, CA 94556))
_____)

COMPLAINT NO. 00-037
FOR
ADMINISTRATIVE CIVIL LIABILITY

WAIVER OF HEARING

I agree to waive my right to a hearing before the San Francisco Bay Regional Water Quality Control Board with regard to violations alleged in Complaint No. 00-037, and to remit payment for the civil liability imposed within 60 days from the date this Complaint was issued. I understand that I am giving up my right to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, the civil liability proposed.

Date

Signature of Discharger Representative

Printed Name

Title

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

STAFF REPORT

To: Lawrence P. Kolb
Acting Executive Officer

From: Laurie M. Taul, ESIII

Date: May 15, 2000

Subject: **ACL Complaint No. 00-037; The American Center for Wine, Food and the Arts, City of Napa, Napa County; Violation of California Water Code Section 13376, Failure to obtain coverage under the California General Permit for Storm Water Runoff Associated with Construction Activity**

SUMMARY

The American Center for Wine, Food and the Arts (the discharger or CWF&A), is the owner of a 12 acre construction project, located adjacent to the Napa River at 500 First Street in Napa. Clearing and grading of the property started on June 1, 1999; however, the discharger did not obtain coverage under the California General Permit for Storm Water Runoff Associated with Construction Activity (General Permit) until November 17, 1999, after my October 28, 1999 inspection. The discharger also failed to implement an adequate Storm Water Pollution Prevention Plan (SWPPP) and Monitoring Plan. Lack of SWPPP implementation has resulted in excessive sediment-laden storm water discharges during rain events to the Napa River. Based on the following discussion, staff recommends issuance of Administrative Civil Liability Compliant No. 00-037 for the amount of \$25,000.

DISCUSSION

The American Center for Wine, Food and the Arts, a publicly funded non-profit organization, began construction of the above-referenced project on June 1, 1999. The project is located within the Napa River floodway and includes an 80,000 square-foot pavilion, a 500-seat outdoor concert terrace, a 280-seat auditorium, a 3.5 acre garden, and a parking lot.

The discharger was given adequate notice of its obligation to obtain General Permit coverage prior to the start of any construction activity. An Environmental Impact Report was developed for the project which stated in part "*HYDRO-4c: The applicant should obtain all required permits from the California Regional Water Quality Control Board prior to any grading or construction activity*". Additionally, on May 5, 1998, the Regional Board issued the discharger a "Waiver of Waste Discharge Requirements and Water Quality Certification", addressed to the discharger's representative, Mr. Michael McKaig. The letter stated in part, "*Construction of the CWF&A will disturb an area greater than five acres. Therefore, CWF&A is required to obtain coverage under the General Permit for Stormwater Runoff Associated with Construction Activity issued by the State Water Resources Control Board, prior to beginning project construction*".

On October 28, 1999, I inspected the construction site in response to a citizen complaint regarding sediment-laden storm water discharges from the project site. On this day, I met with Mr. McKaig, Mr. Bruce Beevers, Sr. Project Superintendent (developer, Rudolph and Sletten), and Mr. Vern Godwyn, City of Napa Building Inspector. During this meeting, Mr. McKaig, Mr. Beevers, and Mr. Godwyn stated that they were unaware of the General Permit and its requirements. In fact, a SWPPP and the required monitoring records were not developed for the project, as required by the General Permit. A city-approved erosion plan was on-site; however, the on-site erosion and sediment control measures were inadequate and not in compliance with General Permit conditions. In general, the developer relied on inadequate sediment control measures, without the required erosion control measures, within the active construction areas. For example, each storm drain inlet was inappropriately and ineffectively protected with haybales. Additionally, final grade slopes and exposed soils around building areas were unprotected, and the site perimeter uncontrolled, allowing sediment to migrate into the street. These inadequate measures resulted in sediment discharges to storm drains and the Napa River.

I issued an on-site inspection report requiring submittal of a Notice of Intent (NOI), development of a SWPPP and additional specific erosion and sediment control measures. These measures included improved inlet protection and perimeter controls and the addition of straw mulch/tackifier on all exposed soil and slopes. On October 29, 1999, I confirmed, via State Board records, that a NOI had not been filed for this project.

On November 5, 1999, Rudolph and Sletten submitted a SWPPP to our office for staff review. The plan was not adequate in that the narrative plan was not site-specific and the site map was not complete. I gave verbal comments to Mr. Beevers on November 9, 1999 and requested that improvements be made to the plan. On November 17, 1999, the State Board received and processed a Notice of Intent from the discharger, signed by Kurt Nystrom, Deputy Director of Operations for the discharger.

On November 30, 1999, I conducted a follow-up inspection to ensure compliance with my previous inspection report and verbal comments. I noted that additional measures had been implemented; however, improved management practices were still needed for adequate erosion control within the active work area and at the storm drain inlets. The SWPPP and monitoring records were on-site, but the plan was still not updated as requested. It should be noted that Mr. Beevers responded quickly and cooperatively to my requests for improved on-site control measures and the implementation of a monitoring program, on the discharger's behalf.

In summary, from June 1, 1999 to November 16, 1999 (169 days), the discharger operated without obtaining coverage under the General Permit, thereby violating Section 13376 of the Porter-Cologne Water Quality Control Act (Water Code). During this period, there were approximately 7 storm events, which resulted in uncontrolled sediment discharges to the Napa River. Prior notice of the General Permit requirements was given to the discharger. In addition, these requirements apply to all statewide construction projects 5 acres and larger, and have been in effect since 1992. By not complying with the General Permit, the discharger impacted the Napa River and has received an economic savings at the expense of the environment.

REGULATORY FRAMEWORK

Storm Water General Permit – The General Permit is a National Pollutant Discharge Elimination System (NPDES) Permit covering discharges of storm water associated with construction activities that result in the disturbance of 5 or more acres. Property owners proposing to conduct construction activities subject to this General Permit must file an NOI (indicating intention to comply with terms of the General Permit) prior to the commencement of construction activity. The General Permit also requires that a site-specific SWPPP and monitoring plan be developed and implemented prior to the start of construction. The SWPPP must include an effective combination of erosion and sediment controls for all disturbed areas, and waste/chemical controls that utilize best available technology (BAT) and best conventional pollutant control technology (BCT). The General Permit requires the SWPPP and inspection records to be kept on site during the construction activity and be made available upon request of a representative of the Regional Board and/or local agency.

California Water Code - The discharger violated Water Code Section 13376 by conducting work and discharging storm water associated with construction activities for 169 days without General Permit coverage. Non-compliance with General Permit conditions constitutes a violation of the Clean Water Act and the Water Code.

San Francisco Basin Plan - Pursuant to the Basin Plan, the discharge of sediment to Waters of the State, in quantities and concentrations that cause a nuisance or adversely effect beneficial uses of those waters, is prohibited (Basin Plan Table 4-1, Provision 9). The existing beneficial uses of the water downstream of the site include rare and endangered species habitat, cold freshwater habitat, warm freshwater habitat, fish migration, freshwater spawning, wildlife habitat, municipal and domestic supply, water contact recreation and non-contact recreation. Water Code Section 13385(a)(4) provides that any person who violates a Basin Plan prohibition shall be civilly liable.

LEGAL BASIS FOR ACTION

The discharger has violated Section 13376 of the Water Code for the discharge of pollutants to the waters of the State without authorized Waste Discharge Requirements (WDRs). The State Water Resources Control Board has adopted Order No. 99-08 DWQ, NPDES General Permit No. CAS000002, which is also WDRs for discharges of storm water runoff associated with construction activities. The provisions of the General Permit require the submission of an NOI in order to obtain coverage under the General Permit. The discharger failed to submit an NOI for its project located at 500 First Street in Napa, prior to the start of construction, for which the Board may impose Administrative Civil Liability pursuant to Water Code Section 13385 (a)(1). The Board may impose up to \$10,000 for each day in which the violation occurs, and \$10 per gallon for discharges not cleaned-up that exceed 1,000 gallons. The discharger is alleged to have violated Section 13376 for 169 days (from June 1, 1999 to November 16, 1999) by failing to obtain permit coverage. The total maximum liability is \$1,690,000. Although discharge volume measurements were not taken, potential for significant sediment-laden discharges occurred during the rainy season.

Pursuant to Water Code Section 13399, the Board may also impose a minimum penalty of \$5000 per year for failure to file an NOI.

ENFORCEMENT CONSIDERATIONS

Pursuant to Water Code Section 13385(e), the Board shall take the following into account in determining the amount of liability imposed under that section: nature, circumstances, extent and gravity of the violation, the ability of the discharger to pay the fine levied, the prior history of violations, degree of culpability, economic benefit or savings resulting from the violation, and any other matters that justice may require.

Nature, Circumstances, Extent, and Gravity of the Violation

The discharger is alleged to have violated Section 13376 for 169 days (from June 1, 1999 to November 16, 1999) by failing to obtain permit coverage. The discharger was adequately notified of its permit requirements through the project's EIR and Regional Board correspondence. However, even with such direct, prior notification, the discharger's construction representative and contracted superintendent were not aware of the General Permit requirements. In addition, key pollution prevention elements of the General Permit were not implemented on the project, resulting in sediment discharges that threatened and impacted the beneficial uses of the Napa River. Noncompliance with the General Permit is a violation of the Federal Clean Water Act, State Water Code, and the Region's Basin Plan, and gives the discharger an unfair economic advantage. In addition, this project is flanked by the Napa River on three sides, and is situated in a highly visible location. The need to plan for effective erosion control should have been integral to the project's development.

Ability To Pay The Proposed Assessment

The discharger is a non-profit, privately funded organization. The discharger's web site, in May 2000, stated, "The total project cost is approximately \$70 million, which includes \$50 million for the building and \$20 million for endowment. In March 1999, the discharger launched a \$50 million fundraising campaign. To date more than \$38 million in cash and pledges has been secured, including a \$20 million lead gift to the project by Mr. Robert Mondavi." The discharger has adequate funds to pay the assessment.

Prior History of Violations

The discharger has no prior violations.

Degree of Culpability

As noted above, it is the property owner's responsibility for obtaining General Permit coverage and for ensuring compliance with all permit conditions. The project's EIR included requirements for obtaining all Regional Board permits prior to the start of construction. Regional Board staff directly notified the discharger of this responsibility with written correspondence dated May 5, 1998. The discharger is fully culpable for the cited violations.

Economic Benefit or Savings Resulting from the Violation

By failing to submit an NOI and fee, to properly prepare and fully implement a SWPPP, and to conduct and record required monitoring activities, the discharger was able to delay and avoid expenditures that would have been necessary to comply with the General Permit. It is reasonable to assume that at a minimum the discharger was able to *delay costs* of at least \$15,000, for approximately 5 months. This amount includes a \$500 filing fee, a conservative \$10,000 estimate for developing and implementing a SWPPP and an adequate monitoring program for 5 months, and an estimate of \$5000 to \$10,000 in additional erosion and sediment control measure costs for that period.

Since necessary control measures vary depending upon site conditions and seasonal requirements, the actual *avoided costs* are difficult to estimate; however, it is reasonable to assume that the discharger realized additional cost-savings from October through November by not having to pay for:

- Technical SWPPP updates required for seasonal and construction phase changes and additional BMPs required for these changes
- Monitoring, maintaining, repairing, and replacing the full set of BMPs after storm events
- Conducting the required training of site personnel, and
- Labor hours related to site maintenance

It is reasonable to assume that the discharger realized an additional economic saving of at least \$3,000 attributed to the above activities.

RECOMMENDATION

After consideration of the above factors and discussion, staff recommends that civil liability be imposed for a total of \$25,000. This includes \$17,000 as an assessment for the violations, \$5000 for staff costs associated with enforcement activities, and \$3,000 as a realized economic benefit. The recommended assessment represents approximately 1.5% of the total maximum liability of \$1,690,000. Staff believes this penalty is fair given the high profile nature of this project, its lack of accountability, and the potential and actual adverse impacts to the beneficial uses of the Napa River.

Concur:



M. Hossain Kazemi, Section Leader

Concur:



Bruce H. Wolfe, Division Chief

Attachments:

Regional Board Correspondence
Location Map/Photo