

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

<b>IN THE MATTER OF:</b>	)	<b>COMPLAINT NO. R2-2002-0003</b>
<b>VINTAGE GRAPEVINE, INC.</b>	)	<b>FOR</b>
<b>COSENTINO WINERY</b>	)	<b>ADMINISTRATIVE CIVIL LIABILITY</b>
<b>7415 SAINT HELENA HIGHWAY</b>	)	
<b>YOUNTVILLE, CA 94599</b>	)	
_____	)	

**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. Vintage Grapevine, Inc. and the Cosentino Winery (hereinafter, the discharger) have 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 February 27, 2002, at the Elihu M. Harris State Building, First Floor Auditorium, located at 1515 Clay Street, Oakland, California. The meeting begins at 9:00 a.m. The discharger 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 Regional 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 February 10, 2002. Any written evidence not so submitted may not be considered by the Board.
3. At the February 27, 2002 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 (CWC) Section 13376 for discharging storm water without obtaining either an individual permit or coverage under the State Water Resources Control Board Water Quality Order No. 91-013-DWQ (and subsequently revised Order No. 97-03-DWQ) National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 and Waste Discharge Requirements (WDRs) for Discharges of Storm Water Associated With Industrial Activities (General Permit). It is also alleged that after filing a Notice of Intent to comply with the General Permit and obtaining General Permit coverage, the discharger failed to comply with the requirements of the General Permit. Civil liability may be administratively imposed by the Regional Board for these violations pursuant to CWC 13385 (a)(1) for violation of CWC Section 13376, and CWC 13385(a)(2) for violating the terms of the General Permit.
  
5. This complaint is based on the following facts:
  - a. The discharger has operated its winemaking facility (facility) in Yountville since 1987. At the facility, material-handling equipment, wine-manufacturing activities, and industrial machinery are exposed to storm water. As such, the facility is subject to the NPDES industrial storm water regulations. Wineries which have storm water discharges associated with industrial activities are required to obtain coverage under the General Permit.
  
  - b. The discharger did not have General Permit coverage as required during the period from March 30, 1992 through October 16, 1999. The discharger failed to obtain General Permit coverage despite being notified of this requirement several times by the State Water Resources Control Board (SWRCB) and Regional Board between 1991 and 1999.

- c. On July 30, 1999, Regional Board staff inspected the facility in response to a complaint regarding illicit discharges of wastewater to an on-site storm water collection system (storm drain) which discharges to a tributary to the Napa River. While no discharges were observed during this inspection, staff identified the potential for illicit discharges resulting from grape processing and barrel washing activities, and from polluted storm water contacting industrial areas. Staff also found that the discharger did not have General Permit coverage and had not implemented a Storm Water Pollution Prevention Plan (SWPPP) for its facility.
  
- d. On August 17, 1999, staff issued a Notice to Comply requiring the discharger to obtain coverage under the General Permit. Although the Notice To Comply required the submittal of the application no later than September 16, 1999, the SWRCB did not receive a permit application from the discharger until October 16, 1999.
  
- e. On June 1, 2000, staff inspected the facility in response to complaints from neighbors who submitted photographs of the facility reportedly taken between January and March 2000. This inspection took place during the dry season, when crushing operations were not in progress. As such, staff did not observe any illicit discharges during the inspection. However, staff identified inadequacies with respect to the facility's SWPPP and other aspects of General Permit non-compliance. The facility did not have an adequate Monitoring Program in place, had failed to keep a record of inspections, had not adequately trained facility staff responsible for implementing the SWPPP, and had not updated the SWPPP to include structural changes made at the facility. The discharger's Vice President of Operations was given an Inspection Report Form identifying corrective actions required to bring the facility into compliance with the General Permit. Staff explained the required corrective actions at the time the Inspection Report Form was issued. The Vice President of Operations agreed to implement the corrective actions within 5 days, and to submit a revised SWPPP, including documentation

of completion of the corrective actions by July 2, 2000. Despite repeated prompting by staff, the discharger did not submit an acceptable SWPPP and Monitoring Program, as required in the Inspection Report Form, until December 22, 2000, in response to issuance of Cleanup and Abatement Order No. 00-119 on November 3, 2000, requiring these actions.

- f. On July 1, 2000, the discharger failed to submit the 1999-2000 Industrial Storm Water Program Annual Report as required by the General Permit. After being contacted by staff in mid-July and early August, the discharger filled out and faxed an Annual Report form to the Regional Board on August 3, 2000. The Annual Report indicated that the discharger had not performed the level of monitoring and storm water sampling required by the General Permit.
  
- g. On October 16, 2000, staff received a written complaint from neighbors of the facility, which included photographs reportedly taken on September 24, 2000. The photographs displayed a discharge from the facility crush area (industrial area) to the facility's storm drain inlet which discharges to a tributary of the Napa River. This discharge was apparently caused by either an equipment maintenance problem (a plugged wastewater collection system pipe or inlet) or delinquent operational practices (discharger staff not operating the waste water collection system properly). This discharge was the result of the same types of deficiencies identified by staff in the June 1, 2000, Inspection Report Form and for which the discharger had failed to make the required corrective actions. Staff contacted the discharger on October 17, 2000, and requested the immediate termination of any washwater, wastewater, or industrial storm water discharges from the facility, and submittal of the revised SWPPP. In response, the discharger faxed a revised SWPPP to the Board the same afternoon. However, this revised SWPPP did not address the specified inadequacies in an effective manner.

- h. On November 3, 2000, the Regional Board issued the discharger Cleanup and Abatement Order No. 00-119 (CAO) prohibiting the illicit discharge of wastewater and polluted storm water from the facility, and requiring submittal of the overdue revised SWPPP and Monitoring Program. On December 22, 2000, the Regional Board received a revised SWPPP and Monitoring Program. The revised SWPPP and Monitoring Program were determined to be acceptable by staff.
  
- i. The discharger discharged without the required General Permit coverage from March 30, 1992, until October 16, 1999, thereby violating CWC Sections 13376 for 2755 days. In addition, from October 17, 1999 until December 22, 2000 (432 days), the discharger violated the terms of the General Permit by failing to develop and implement an adequate Storm Water Pollution Prevention Plan (SWPPP) and Monitoring Program for its facility. By not obtaining General Permit coverage, and by failing to comply with General Permit requirements, the discharger realized significant economic savings at the expense of the environment.

### **PROPOSED CIVIL LIABILITY**

- 6. As provided by CWC Section 13385(c), the Board can administratively assess civil liability for violations of CWC Section 13376 and the General Permit in the amount not to exceed the sum of both of the following: 1) \$10,000 for each day in which a violation of CWC Section 13376 occurs; and 2) an additional liability not to exceed \$10.00 multiplied by the number of gallons by which the volume of wastewater and polluted storm water discharged but not cleaned up exceeds 1,000 gallons. The discharger is alleged to have violated CWC Section 13376 for 2755 days (March 30, 1992 to October 16, 1999) and violated the General Permit for 432 days (October 17, 1999 through

December 22, 2000), for a total of 3187 days of violation. Regional Board staff estimates that the discharger has enjoyed an economic benefit of not less than \$77,424 from these violations.

7. Pursuant to CWC 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 or violations, 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 its ability to continue its business, any voluntary cleanup efforts undertaken, 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. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.”
8. After consideration of the above factors, the Executive Officer proposes civil liability be imposed on the discharger in the amount of \$98,000.00 for the violations cited above. This includes \$93,000 as an assessment for the violations, and \$5,000 for staff costs. This amount is payable within 60 days of the issuance of this complaint.
9. The discharger may request that up to \$80,000 of the above amount be suspended and an amount equal to the suspended amount be dedicated to a local Supplemental Environmental Project (SEP), acceptable to the Executive Officer and in conformance with the general criteria for SEPs set forth in the State Water Resources Control Board’s Guidance to Implement the Water Quality Enforcement Policy, Resolution No. 96-030, as amended by Resolution No. 97-085. The discharger must indicate by February 15, 2002, its intent to submit a proposal for such a SEP. The civil liability balance, at least \$13,000 as an assessment for the violations and all of \$5,000 for staff costs, would then be submitted to the Regional Board and made payable to the State Water Pollution Cleanup and Abatement Account. Should the discharger later fail or elect not to

successfully implement an approved SEP, the total amount of \$98,000.00 will be due and payable within 30 days of such an event.

10. 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.
11. 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.
12. The discharger may waive its right to a hearing. If the discharger chooses 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 February 15, 2002. 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 Bill Hurley at (510) 622-2364 or Yuri Won, Regional Board Counsel at (916) 341-5164.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Loretta K. Barsamian  
Executive Officer

**Complaint No. R2-2002-0003  
Cosentino Winery**

**IN THE MATTER OF: )  
VINTAGE GRAPEVINE, INC. )  
COSENTINO WINERY )  
7415 SAINT HELENA HIGHWAY )  
YOUNTVILLE, CA 94599 )  
\_\_\_\_\_ )**

**COMPLAINT NO. R2-2002-0003  
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. R2-2002-0003, 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