



California Regional Water Quality Control Board

Central Coast Region



Vinston H. Hickox
Secretary for
Environmental
Protection

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Gray Davis
Governor

May 18, 2004

CERTIFIED MAIL: 7002 2410 0004 0509 0907

Mr. Dan Milligan
Coastal Boatworks
C/O Sullivan & Corcoran
2238 Bayview Heights Drive, Suite C
Los Osos, CA 93402

Dear Mr. Milligan:

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO SUBMIT GENERAL INDUSTRIAL STORM WATER PERMIT ANNUAL REPORT; COASTAL BOATWORKS, 261 MAIN ST., MORRO BAY, SAN LUIS OBISPO COUNTY, WDID# 3 40I010949

This letter rescinds Administrative Civil Liability Complaint No. R3-2004-0026.

Enclosed is an Administrative Civil Liability Complaint (Complaint No. R3-2004-0088) issued by the Executive Officer of the Regional Water Quality Control Board for failure to submit Annual Fees and an Annual Report as required by the General Industrial Storm Water Permit.

Should Coastal Boatworks choose to waive the right to a public hearing, an authorized agent must sign the waiver form attached to the Complaint, and return it to the Regional Board no later than July 8, 2004. Should a hearing be necessary, it will occur on July 8 or 9, 2004, in the City of Watsonville. At that time the Regional Board will hear public testimony and decide whether to affirm the action of the Executive Officer as described in the Complaint, or refer the matter for judicial civil action.

Should you have questions please contact **Bruce Paine at (805) 542-4782.**

Sincerely,

Roger W. Briggs
Executive Officer

Enclosure: Complaint No. R3-2004-0088

cc: Lori Okun, State Water Resources Control Board, Office of Chief Counsel

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California Environmental Protection Agency



Item No. 17, Attachment No. 1
July 9, 2004 Meeting
Coastal Boatworks ACL

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION

Complaint No. R3-2004-0088

In the matter of:)

**Administrative Civil Liability
for**

**Dan Milligan, Coastal
Boatworks**)

Violations of the California Water Code

261 Main St.)

Section 13399.33 and 13261

Morro Bay, CA 93442)

Storm Water Permit Violations

WDID# 3 40I010949)

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Dan Milligan, doing business as Coastal Boatworks, is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Central Coast Region (hereinafter, Regional Board), may impose civil liability pursuant to Section 13399.33 and Section 13261 of the California Water Code (CWC).
2. The State of California has adopted a General Permit for Storm Water Discharges Associated with Industrial Activity, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The General Permit requires facilities to submit a Notice of Intent (NOI) to comply with the General Permit if the facility presents an exposure threat to storm water runoff as prescribed by the General Permit.
3. The Discharger is in violation of the General Permit and California Water Code section 13399.31 for failure to submit an annual report and section 13260(d) and (e) for failure to submit an annual fee and is subject to penalties set forth in California Water Code Section 13399.33 and Section 13261.
4. Unless waived, a hearing on this matter will be held before the Regional Board during a public meeting on July 8 and 9, 2004, in Watsonville, California. You and/or your representative(s) 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 hearing will be mailed to you not less than ten days before the hearing date.

5. At the hearing, the Regional Board will consider whether to affirm, reject or modify (increase or decrease) the proposed administrative liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability, or any other action appropriate as a result of the hearing.
6. On March 9, 1994, Dan Milligan (hereinafter Discharger) filed an NOI to comply with the terms of the General Permit. By filing an NOI, the Discharger agrees to comply with all terms and conditions of this General Permit, which includes submittal of an annual report to the Regional Board.
7. The General Permit requires the discharger to submit an annual report to the Regional Board by July 1 of each year. On August 5, 2003, the Regional Board issued a Notice of Violation for failure to submit this report as required by California Water Code (CWC) Section 13399.31. On September 9, 2003, the Regional Board issued a second Notice of Violation to the Discharger as required by CWC Section 13399.31. More than 30 days have passed since the second Notice of Violation.
8. Section 13399.33(c) of the California Water Code provides that a person that fails to submit an annual report in accordance with Section 13399.31, shall be civilly liable in an amount that is not less than \$1,000. Therefore, the Discharger is liable in an amount equal to at least \$1,000.
9. Section 13261(a) of the California Water Code provides that "[a]ny person failing to furnish a report or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b)." Section 13261(b)(1) provides that "[c]ivil liability may be administratively imposed by a regional board or the state board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount that may not exceed one thousand dollars (\$1,000) for each day in which the violation occurs." Section 13261(b)(2) provides that "[c]ivil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (a) in an amount that may not exceed five thousand dollars (\$5,000) for each day the violation occurs."
10. The California Regional Water Quality Control Board, Central Coast Region (hereinafter Regional Board), may impose liability in accordance with California Water Code Sections 13261(b) for Discharger's failure to pay the annual fee assessed by the State Water Resources Control Board (State Board) for Waste Discharge Requirements Order No. 97-03-DWQ.

11. According to records provided by the State Board, the State Board mailed the following invoices and subsequent demand letters and/or notices of violation to Dan Milligan:

<u>Fiscal Year</u>	<u>Annual Fee</u>	<u>Original Invoice</u>	<u>Demand Letter</u>	<u>Notice of Violation</u>
03/04	\$700	4/8/03	6/5/03	8/7/03
02/03	\$500	4/4/02	3/28/03	6/5/03
01/02	\$500	4/6/01	6/12/01	8/8/01

12. Dan Milligan is alleged to have violated Water Code Section 13260(d)(1) for 1037 days from the due date of the original invoice for the annual fee for Fiscal Year 01/02, and 674 days from the due date of the original invoice for the annual fee for Fiscal Year 02/03, and 305 days from the due date of the original invoice for the annual fee for Fiscal Year 03/04, through March 8, 2004.
13. Therefore, Dan Milligan is alleged to be in violation of Water Code Section 13260(d)(1) for a total of 2016 days.
14. Pursuant to Water Code Section 13261(b)(1), the Regional Board may impose administrative civil liability up to a **maximum amount of \$2,016,000 dollars**. Pursuant to Water Code Section 13261(b)(2), the Superior Court may impose judicial civil liability up to a **maximum amount of \$10,080,000 dollars**. The Regional Board may also refer this violation to the District Attorney for prosecution as a misdemeanor.
15. As required by California Water Codes section 13327, the Executive Officer has considered the nature, circumstances, extent, and gravity of the Discharger's late payment of annual fees, the Discharger's ability to pay the proposed civil liability, the effect of the proposed civil liability on the Discharger's ability to continue in business, any history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the late payment of annual fees, and other matters as justice may require, including the staff time required to prepare this Complaint. Staff costs are estimated at \$1,125. The Discharger enjoyed the privilege of discharging waste without complying with the obligation to timely pay the annual waste discharge fee. By delaying the payment of fees, the Discharger gained the use of that money for other purposes. This has provided an economic business advantage to the Discharger over competitors who have timely paid their fees. The amount of the business advantage is the time value of delaying payment. Late payment of fees also negatively affected the Regional Board's ability to assure that Dischargers are complying with their waste discharge requirements. The degree of culpability is high, since the Discharger failed to pay annual fees for almost six years, despite numerous notices and invoices.

16. The proposed civil liability does not include the amount of the annual waste discharge fee. If the Discharger would like to waive the right to a hearing, full payment of all outstanding annual fees must be submitted to the Regional Board along with the amount of the proposed civil liability. Penalties for failure to pay the annual fee after the issuance of this Complaint will continue to accrue and be subject to additional assessment of liability until the Discharger pays the annual fees.
17. The issuance of this Complaint is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act, pursuant to Section 15321(a)(2), Title 14, California Code of Regulations.

Recommended Civil Liability: Based on the mandatory minimum liability requirement of California Water Code section 13399.33(c) of \$1,000, the maximum liability under section 13261 of \$2,016,000 and the factors considered above, the Executive Officer recommends civil liability be imposed in the amount of \$5,725.

WAIVER OF A HEARING: The Discharger may waive the right to a hearing. If the Discharger wishes to waive the right to a hearing, please sign the attached waiver and return it, along with a check in the amount of \$5,725 (payable to the State Water Resources Control Board, Cleanup and Abatement Account). If you have any questions please contact Mr. Bruce Paine, at (805) 542-4782, or the Regional Board counsel, Ms. Lori Okun, at (916) 341-5165.



Roger W. Briggs
Executive Officer

Dated: 5-18-04

**PROCEDURAL INFORMATION
FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
HEARING AND PAYMENT**

HEARING

Unless you waive your right to a hearing, a hearing on this matter will be held before the Regional Board within 90 days of receipt of this administrative civil liability (ACL) complaint. You or your representatives will have the opportunity to be heard and to contest the allegations in the ACL complaint and the imposition of civil liability by the Regional Board. A hearing is tentatively scheduled for:

July 9, 2004 at 8:30 A.M.
Watsonville City Council Chambers
250 Main St.
Watsonville, CA 95076

At the hearing, the Regional Board will consider whether to accept or reject the amount of the proposed administrative civil liability.

WAIVER OF HEARING AND PAYMENT OF CIVIL LIABILITY

You may waive your right to a hearing. If you wish to waive your right to the hearing, you or a duly authorized person must check and sign the attached WAIVER OF HEARING form and pay the civil liability amount specified on the ACL complaint. Make a check or money order payable to "State Water Resources Control Board" and write the ACL complaint number on your check to assure correct crediting of your account. Do not send cash. Send your PAYMENT and WAIVER OF HEARING form to the Regional Board office at the address above.

A duly authorized person is defined as a principal executive officer of at least the level of vice president in a corporation, a general partner or the proprietor in a partnership or sole proprietorship, a principal executive officer or ranking elected official in a public agency, or a duly authorized representative.

If full PAYMENT and a signed WAIVER OF HEARING form are received before the hearing, the hearing will not be held, and the violation will be settled. If full PAYMENT and a signed WAIVER OF HEARING form are not received, the matter will be placed on the Regional Board's agenda for a hearing as stated above.

WAIVER OF HEARING

- By checking this box, I agree to waive my right for a hearing before the Regional Board with regard to the violations alleged in Administrative Civil Liability Complaint No. R3-2004-0088. Also, I agree to remit payment for the civil liability proposed. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this ACL complaint, and against the imposition of the amount of civil liability proposed.

Signature: _____

Name: _____

Position: _____

Company: _____

Date: _____