

California Regional Water Quality Control Board
North Coast Region

Complaint Order No. R1-2001-37

For

ADMINISTRATIVE CIVIL LIABILITY

In the matter of

Kendall-Jackson Wine Estates, Ltd.
1160 Kittyhawk Blvd.
Santa Rosa, CA

Sonoma County

For

Violation of California Water Code Section 13376

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

1. Kendall-Jackson Wine Estates, Ltd. (hereinafter Kendall-Jackson), is a Sonoma County wine producer that currently owns a blending, bottling and warehouse operation at 1160 Kittyhawk Boulevard, Santa Rosa, California, within the Russian River watershed. Storm water is regulated at this facility under the statewide Industrial Activities Storm Water General Permit adopted by the State Water Resources Control Board on April 17, 1997 (Order No. 97-03-DWQ).
2. Kendall-Jackson violated California Water Code (CWC) Section 13376 by discharging unauthorized pollutants into surface waters via a storm drain for which the Regional Water Board may impose civil liability under CWC Section 13385.
3. The following facts are the basis for the alleged violation in this matter:
 - a. On Thursday, March 30, 2000, Regional Water Board staff received a spill complaint from Sonoma County Office of Emergency Services, indicating approximately 300 gallons of a potassium permanganate solution was discharged from Kendall-Jackson's water filter containment area into the storm drain system and flowed into Airport Creek, tributary to Windsor Creek, tributary to Mark West Creek. The County Office of Emergency Services learned of the spill from Kendall-Jackson.
 - b. Regional Water Board staff met with Kendall-Jackson representatives to conduct an inspection of Kendall-Jackson's water filter system and the spill area. Upon inspection, staff observed the reddish discharge pooled in Airport Creek and the same substance flowing out of a storm drain pipe into the creek. The release occurred from the secondary containment area when a U.S. Filters technician was recharging the water filter system with potassium permanganate. Approximately 300 gallons of the solution escaped the containment area through a drain, entered a 36 inch storm drain and flowed approximately 300 feet into Airport Creek. The solution

consisted of 100 ounces of dry potassium permanganate (KMnO₄) and 500 gallons of water. The release entered a rock lined, energy dispersion area of Airport Creek and was contained in a pool. The discharge did not appear to flow into the main channel of the creek. Potassium permanganate solution is a strong oxidizer and is highly toxic to aquatic organisms.

- c. Regional Water Board staff collected water samples from the point of discharge, downstream in the creek, and from the water filter containment area. Flow from the outfall was measured at approximately 1 gpm at 10:30 a.m. A dam was constructed around the rocky area in Airport Creek with hay bails to contain the spill. Kendall-Jackson's employees pumped potassium permanganate solution out of the creek and into the industrial wastewater treatment pond. The storm drain was then flushed at approximately 30 gpm for 1 hour. All flushing was contained and pumped into the wastewater treatment pond on-site. The contaminated soil in the area near the water filter was removed as requested and the soils pile will be properly disposed.
 - d. On Friday, March 31, 2000, Regional Board staff re-inspected the water filter area and Airport Creek. The clean-up was performed in accordance with staff's recommendations.
 - e. On Thursday, April 13, 2000, Regional Water Board staff met with employees of Kendall-Jackson and U.S. Filters to discuss the discharge. U.S. Filters and Kendall-Jackson employees stated that Airport Creek and the water filter area was properly flushed and cleaned out. Both companies ensured that this type of discharge would not be repeated, as staff will be properly trained regarding drop inlets and storm drain systems.
 - f. The discharge of potassium permanganate solution occurred at approximately 08:00, Thursday, March 30, 2000 and ceased the same day. The volume of the release to the creek was approximately 300 gallons of potassium permanganate solution. The solution consisted of 100 ounces of potassium permanganate and 500 gallons of water.
4. CWC Section 13385(a)(1) provides for the imposition of civil liabilities against any person violating CWC Section 13376. Kendall-Jackson violated the prohibitions in CWC Section 13376 against discharging pollutants except as authorized by waste discharge requirements. Kendall-Jackson was not authorized to discharge the potassium permanganate solution by any waste discharge requirements. Kendall-Jackson's stormwater permit also did not authorize the discharge of the potassium permanganate solution. For violations of CWC Section 13376, Section 13385(c) authorizes the Regional Water Board to impose civil liability in an amount not to exceed the sum of \$10,000 for each day in which the violation occurs and \$10 for each gallon of waste over 1,000 gallons that is not susceptible to cleanup or is not cleaned up. The maximum total civil liability that could be imposed against Kendall-Jackson in this matter is calculated as follows:

One day of discharge X \$10,000 per day = \$10,000

Gallons of waste over 1,000 gallons not susceptible to cleanup or not cleaned up is zero. Therefore, the penalty of \$10 for each gallon of waste does not apply.

5. In determining the amount of any civil liability, pursuant to CWC, Section 13385(e), the Regional Water Board must take 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 ability to continue business, voluntary cleanup efforts, 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:

A. Nature, Circumstances, Extent, and Gravity of the Violations

The discharge of potassium permanganate solution flowed into the storm drain system and entered Airport Creek. The solution was contained in a pool of water and did not flow into the main channel of the creek. The discharge is one event that occurred during the morning hours of March 30, 2000. The discharge was avoidable. Once responsible personnel were aware of the release, the discharge was stopped and cleanup measures were implemented. Some impact to aquatic life may have occurred from the release but prompt action by Kendall-Jackson limited the potential impact to a relatively small section of the stream channel.

Consideration of the Nature, Circumstances, Extent, and Gravity of the Violations does provide reason for reduction from the maximum the amount of liability to be imposed.

B. Susceptibility to Cleanup or Abatement

Kendall-Jackson took steps to cease the discharge immediately by plugging the drain in the secondary containment area and started cleanup of Airport Creek. The pooled area of the creek was dammed with hay bales and an engine driven pump was brought in to extract the discharge from the creek. The solution was pumped into the industrial wastewater pond on-site, for proper treatment.

Consideration of Susceptibility to Cleanup or Abatement does provide reason for reduction from the maximum the amount of liability imposed.

C. Degree of Toxicity

Potassium Permanganate is a caustic alkali which degrades organic materials via direct oxidation. In its pure, dry state, KMnO₄ appears as a hard, deep purple (nearly black) crystal similar in overall size and appearance to common table sugar. When added to water, KMnO₄ imparts a very deep purple color. As a strong oxidizer, the solution can be highly toxic to aquatic life.

Consideration of the Degree of Toxicity of the violations does not provide reason for reducing the amount of liability to be imposed.

D. Ability to Pay

Kendall-Jackson Wine Estates, Ltd. is a large Sonoma County Wine producer. Kendall-Jackson has not submitted any information to the Regional Water Board indicating that they are in a financial position that would prevent them from remitting an imposed fine.

Consideration of the violator's Ability to Pay does not provide reason for reducing the amount of civil liability to be imposed.

E. Effect on Ability to Continue Business

Imposition of the maximum civil liability should not have an effect on Kendall-Jackson's ability to continue business.

Consideration of Effect on Ability to Continue Business does not provide reason for reducing the amount of civil liability.

F. Voluntary Cleanup Efforts

Kendall-Jackson immediately began cleanup efforts after the discharge was ceased on March 30, 2000.

Consideration of Voluntary Cleanup Efforts does provide reason for reduction from the maximum the amount of liability to be imposed.

G. Prior History of Violations

Kendall-Jackson has no prior discharge violations from due to similar spills from this facility.

Consideration of Prior History of Violations does provide reason for reduction from the maximum the amount of civil liability.

H. Degree of Culpability

The General Storm Water Permit directs permittees to address non-storm water discharges to storm drain systems at their facilities. Kendall-Jackson's storm water pollution prevention plan (SWPPP), required by provisions of the storm water permit, did not address maintenance operations for recharging the water filter system, as this area was recently constructed. However, Kendall-Jackson has updated their SWPPP to include maintenance of the water filter system and repiping of this area to the industrial wastewater pond. This area is no longer connected to the storm drain system.

Consideration of the Degree of Culpability does not provide reason for reducing from the maximum amount of liability to be imposed.

I. Economic Savings Resulting from the Violation

Kendall-Jackson did not receive economic savings resulting from the discharge incident.

Consideration of the Economic Savings Resulting from the Violation does not provide reason for adjusting the maximum the amount of liability to be imposed.

J. Other Matters as Justice May Require

Staff costs are estimated to be approximately \$2,500.

Consideration of Other Matters as Justice May Require does not provide reason for reducing from the maximum the amount of liability to be imposed.

6. The issuance of this Complaint is an enforcement action to protect the environment, and is therefore exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) pursuant to Title 14, California Code of Regulations, sections 15308 and 15321(a)(2).
7. This settlement will not become effective until after a 30-day public comment period.

PROPOSED CIVIL LIABILITY

Based on the foregoing we hereby propose that Kendall-Jackson pay an Administrative Civil Liability in the amount of \$7,500 dollars. Of this amount we propose that \$2,500 is due and payable within 30 days of the date of this Complaint. We further propose that the remaining \$5,000 is suspended contingent upon Kendall-Jackson's completion of the following Supplemental Environmental Project:

- A. Kendall-Jackson shall implement the Supplemental Environmental Project as depicted in the plans submitted by Kendall-Jackson on October 19, 2000, to the Regional Water Board and incorporated herein by this reference. The cost of the Supplemental Environmental Project shall not be less than \$5,000. As described in the October 19, 2000, plans, the Supplemental Environmental Project includes: (1) funding a project to provide tree plantings, and (2) irrigation and care of twenty four 36-inch boxed native trees on the northern bank of Airport Creek owned by Kendall-Jackson and on an easement by Sonoma County Water Agency.
- B. Kendall-Jackson shall complete the above task by December 31, 2001. Kendall-Jackson shall submit a report detailing the work completed along with as-built plans showing the restoration project by February 1, 2002.

- C. Failure to adequately implement the Supplemental Environmental Project (as depicted in the October 19, 2000, plans) or any portion thereof, or failure to submit the required completion report in accordance with the above deadline shall result in the automatic imposition of the suspended Administrative Civil Liability, at which time the full amount of the suspended Administrative Civil Liability shall become immediately due and payable.

WAIVER OF HEARING

You may waive the right to a future hearing. If you wish to waive the hearing, please check and sign the waiver and return it together with a cashier's check or money order, made payable to the "State Water Resources Control Board" for \$2,500.00 within 15 days of receipt of this Complaint to the California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, CA 95403.

Ordered by: _____

Lee A. Michlin
Executive Officer
May 7, 2001