

California Regional Water Quality Control Board  
North Coast Region

COMPLAINT NO. R1-2001-7

FOR

ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF

THE BARLOW COMPANY

FOR VIOLATIONS OF  
CALIFORNIA WATER CODE SECTIONS 13243 AND 13376

Sonoma County

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

1. The Barlow Company, 200 Morris Street, Sebastopol, California (hereinafter Barlow), owns and operates an apple processing facility located at 200 Morris Street, Sebastopol, California. Barlow treats and disposes of an average of 50,000 gallons per day of industrial wastewater consisting primarily of apple wastewater, washwater and cooling water. The existing wastewater treatment and disposal facilities include a collection system, solids removal, and disposal by irrigation and/or discharge to the Santa Rosa subregional water reclamation plant. The discharge to land is regulated under Waste Discharge Requirements, Board Order No. 99-67. The discharge of wastewater to surface waters is specifically prohibited by Order No. 99-67.
2. Barlow violated California Water Code Section 13376 and the discharge prohibition in Order 99-67 (issued pursuant to California Water Code Section 13243) by discharging wastewater into surface waters for which the Regional Water Board may impose civil liability under Section 13385 of the California Water Code.
3. The following facts are the basis for the alleged violations in this matter:
  - a. On Tuesday, October 5, 1999, a Sebastopol resident filed a complaint with the City of Sebastopol. The complainant alleged that a portion of the Laguna de Santa Rosa (Laguna) was black in color and was emitting a foul odor. The complainant described the affected area as being from the point of discharge of Zimpher Creek into the Laguna, downgradient to the northern boundary of what is known as the Laguna's Sebastopol Pond. The City of Sebastopol immediately inspected the area and concurred with the complainant's portrayal of what was occurring in this portion of the Laguna. Peter Otis and Paul Keiran, Regional Water Board staff, responded to the complaint on the afternoon of October 5,

1999. The area in question was found to be black in color and was emitting a hydrogen sulfide odor.

- b. Further field investigations revealed that the black plume was originating from the outfall of Zimpher Creek, which flows through Sebastopol and discharges into the Laguna approximately 150 feet north of where Highway 12 crosses over the Laguna. There was a very strong odor of apple wastes at the outfall, and the presence of a thick transparent floating product on the water. There were also thick mats of black organic matter in the vicinity of, and downgradient from, the Zimpher Creek outfall.
- c. Field monitoring taken in several areas downgradient from the confluence of Zimpher Creek and the Laguna showed severely depressed dissolved oxygen levels. Dissolved oxygen levels in the Laguna upgradient of this confluence were normal for the time of day sampled.
- d. Later that afternoon, Regional Water Board staff met with Barlow staff, both at the Barlow site and at the Zimpher Creek outfall. Barlow staff indicated that the discharges into Zimpher Creek were the result of a leak in a plug at the Barlow site that is intended to separate a wastewater sump from a storm drain inlet. The discharge consisted of apple processing waste. The leak was reported to had been fixed and Regional Water Board staff were told that the source of the discharges into Zimpher Creek had ceased.
- e. On Thursday, October 7, 1999, Lee Michlin, Regional Water Board Executive Officer, and other staff met with the City of Sebastopol and Barlow to discuss the Laguna discharge. Tom Barlow, CEO of Barlow, stated that his company would take the necessary measures to clean up the Laguna and to ensure that this type of spill would not be repeated.
- f. On Friday, October 8, 1999, Cleanup and Abatement Order No. 99-70 was issued to Barlow. The same day Barlow indicated they would initiate a cleanup plan by using floating pumps and a firewater pump to circulate and aerate the Laguna in an effort to increase dissolved oxygen levels. Four 2-horsepower floating aerator pumps and one firewater pump were placed into the Laguna.
- g. On Saturday, October 9, 1999 Barlow began operating these pumps and began to re-aerate the lower half of the Laguna's Sebastopol Pond.
- h. On Monday October 10, 1999 the Regional Water Board received additional laboratory analysis showing high biological oxygen and chemical oxygen demand

in the area of the discharge. These results are consistent with the release of high strength organic wastes into a receiving stream.

- i. On Wednesday, October 13, 1999, Regional Water Board staff re-inspected the Laguna and Zimpher Creek. Dissolved oxygen levels in the vicinity of the aerators were dramatically improved, with levels near normal for the time of day sampled. However, dissolved oxygen levels just upgradient of the aerators still showed severely depressed dissolved oxygen levels. A re-inspection of the Zimpher Creek outfall indicated that a strong smell of apple wastes, and higher volumes of transparent floating product were present in the creek flow. Barlow staff and the City of Sebastopol were immediately notified of these findings.
- j. On Thursday, October 14, 1999, the City of Sebastopol inspected Barlow's storm water collection and drainage system. Their inspection revealed that the main storm water trunk line that serves the Barlow plant contained high strength apple wastes. The trunk line was immediately dammed off to prevent further discharges to Zimpher Creek. The location of the leaks from Barlow's operations into the storm drain system could not immediately be ascertained.
- k. Barlow took action to locate and eliminate all leaks of apple processing wastewater into their storm water drainage system. All wastewater that entered the main storm water trunk line was pumped into their wastewater treatment system. An interior sump was relined, and all suspected interior trench drains were systematically segregated and hard-piped to the treatment system. All storm water in contact with active industrial areas were also routed to Barlow's wastewater treatment system.
- l. On Monday, October 18, 1999 an inspection of the Zimpher Creek outfall revealed a clean discharge with no floating materials observed and producing no smell of apple wastewater. Aeration activities in the Laguna were continued unabated, and dissolved oxygen levels within the formerly depressed zones showed marked improvement. A television camera inspection of the storm water trunk line that passes under the Barlow plant was performed. It revealed several direct connections to the since plugged storm drainage system, emanating from the interior of the Barlow plant.
- m. The length of time that apple wastewaters have been discharging into the Barlow storm drain system and then to surface waters is uncertain. Staff witnessed discharges from the period of October 5, 1999, through October 13, 1999, a period of nine days. It is reasonable to assume that the discharges ceased on October 14, 1999, the day that the storm drain system was cutoff from discharging to Zimpher Creek.

- n. The volume of discharge could not be measured or calculated. Staff has no direct knowledge of the actual volumes of wastewater generated at the Barlow plant versus the actual volume of wastewater treated within their wastewater treatment system.

#### PROPOSED CIVIL LIABILITY

- 4. Section 13385(a)(4) of the California Water code provides for the imposition of civil liabilities against dischargers who violate any order or prohibition issued by the Regional Water Board. Section 13385(c) provides that the amount of civil liability that may be imposed by the Regional Water Board is \$10,000 per day of violation, plus where there is discharge in excess of 1,000 gallons that is not susceptible to cleanup or cannot be cleaned up, an additional liability not to exceed \$10 per gallon of waste discharged and not cleaned up in excess of 1,000 gallons. The civil penalty that could be imposed against Barlow in this matter is calculated as follows:

Ten days of discharge violations occurred from October 5, 1999 (date when discharge was first noticed) to October 14, 1999 (date of trunk line damming).

Ten days of discharge X \$10,000 per day = \$100,000

Not all of the discharge was susceptible to cleanup or could be cleaned up because of downgradient flow through the Laguna. However, it is difficult, if not impossible, to determine the number of gallons of waste in excess of 1,000 gallons that was discharged and not cleaned-up, thereby precluding the Regional Water Board from imposing additional civil liability based on volume discharged in excess of 1,000 gallons that is not susceptible to cleanup or could not be cleaned up.

- 5. In determining the amount of any civil liability, pursuant to California Water Code, Section 13385(e), the Regional Water Board took into account 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 (See attached Staff Report).
- 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. Based on a review of the facts and the required factors, as discussed in the associated Staff Report, the Executive Officer of the Regional Water Board is issuing this Complaint with a proposed administrative civil liability in the amount of \$45,000 dollars. Of this amount, \$4,500 is due and payable within 30 days of the date of this Complaint.

The remaining \$40,500 is suspended contingent upon the Barlow Company's completion of the following approved supplemental environmental project.

Supplemental Environment Project:

1. The Discharger shall implement the supplemental environmental project described in the Discharger's November 1, 2000 letter to the Regional Water Board incorporated herein by this reference. As described in the November 1, 2000, letter, the supplemental environmental project includes, but is not limited to, the design and implementation of a 2-acre Laguna riparian restoration project, focusing on tree planting, irrigation maintenance and cattle removal; providing an easement for City of Sebastopol trail development; and development and implementation of a process to reduce the volume and organic load of wastewater generation at the Discharger's facility by 25 percent.
  
2. The Discharger shall complete the following tasks and submit the following deliverables and/or progress reports on or within sixty (60) days of the completion deadlines set forth below:

Date
<p>March 1, 2001</p> <ul style="list-style-type: none"> <li>• Complete production process audit and recommendations for Barlow</li> <li>• Complete design for Sonoma State University</li> <li>• Cease irrigating the buffer zones on the west, north and east perimeter of the irrigation field</li> </ul>
<p>May 1, 2001</p> <ul style="list-style-type: none"> <li>• Complete design for 2-acre irrigation restoration site</li> <li>• Complete design and planting for Barlow storm ditch</li> <li>• Complete audit of wastewater treatment system at Barlow</li> <li>• Complete modifications and set-up at Sonoma State University</li> <li>• Submit list of production process measures, budget, schedule, and expected results at Barlow to Regional Water Board</li> </ul>
<p>August 1, 2001</p> <ul style="list-style-type: none"> <li>• Complete installation of listed production process measures at Barlow</li> <li>• Complete wastewater treatment recommendations for Barlow</li> </ul>
<p>March 1, 2002</p> <ul style="list-style-type: none"> <li>• Complete planting at 2-acre restoration site</li> <li>• Complete installation of listed wastewater measures at Barlow</li> <li>• Complete installation of subsurface irrigation and planting at Barlow</li> </ul>

December 1, 2002
<ul style="list-style-type: none"><li>• Complete summary of performance at Sonoma State University</li><li>• Submit to Regional Water Board a summary of discharge reductions from Barlow</li></ul>
March 1, 2003
<ul style="list-style-type: none"><li>• Confirm 25 percent reduction of discharge load and volume</li></ul>
September 1, 2003
<ul style="list-style-type: none"><li>• Complete demonstration project report</li></ul>

3. Failure to adequately implement the supplemental environmental project (as described in the November 1, 2000, letter) or any portion thereof, or failure to submit the required deliverables and/or progress reports or complete the required tasks in accordance with the schedule above shall result in the automatic imposition of the suspended administrative civil liability.

### **Waiver of Hearing**

8. 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 \$4,500.00 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. This settlement will not become effective until after a 30-day public comment period.

Ordered by \_\_\_\_\_

Lee A. Michlin  
Executive Officer

January 22, 2001

(barlowacl)