

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COST REGION

COMPLAINT NO. R1-2005-0089

ADMINISTRATIVE CIVIL LIABILITY

IN THE MATTER OF

DEL NORTE COUNTY
DEPARTMENT OF PUBLIC WORKS

FOR

VIOLATIONS OF THE CALIFORNIA WATER CODE
SECTIONS 13376 AND 13385

FOR

CONSTRUCTION ACTIVITY AT ELK VALLEY ROAD
CRESCENT CITY

Del Norte County

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Del Norte County Department of Public Works (hereinafter Discharger) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, North Coast Region (hereinafter, Regional Water Board), may impose civil liability pursuant to Section 13385 of the California Water Code (CWC).
2. Unless waived, a hearing on this matter will be held before the Regional Water Board during a public meeting on October 12, 2005, in Santa Rosa, 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 Water Board. An agenda for the hearing will be mailed to you not less than ten days before the hearing date.
3. At the hearing, the Regional Water Board will consider whether to affirm, reject or modify 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.
4. The State of California has adopted a General Permit for Storm Water Discharges Associated with Construction Activities, Water Quality Order No. 99-08-DWQ, NPDES No. CAS000002 (General Permit). Storm water discharges associated with construction activities may also be regulated by site-specific NPDES permits.
5. The Federal Water Pollution Control Act (hereinafter Clean Water Act) Section 301 (33 U.S.C. Section 1311) prohibits all discharges of pollutants to navigable waters unless such

discharges are in compliance with an NPDES permit. The 1987 amendments to the Clean Water Act added Section 402 (p), establishing a framework for regulating municipal and industrial storm water discharges under the NPDES Program. On November 16, 1990, the U.S. Environmental Protection Agency (USEPA) published final regulations that establish storm water permit application requirements for specified categories of industries. The regulations provide that discharges of storm water to waters of the United States from construction projects that encompass one (1) or more acres of soil disturbance are effectively prohibited unless the discharge is in compliance with an NPDES Permit.

6. Construction activity that must be regulated by an NPDES Permit includes clearing, grading, disturbances to the ground such as stockpiling, or excavation that results in soil disturbances of at least one acre of total land area. Construction activity that results in soil disturbances of less than one acre is subject to this NPDES permit requirement if the construction activity is part of a larger common plan of development that encompasses one or more acres of soil disturbance or if there is significant water quality impairment resulting from the activity. Construction activity that requires an NPDES permit does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility, nor does it include emergency construction activities required to protect public health and safety.
7. CWC Section 13376 provides that any person discharging pollutants or proposing to discharge pollutants to navigable waters shall file a Report of Waste Discharge. Any person conducting construction activity covered by the above-stated requirements must apply for and obtain coverage by an NPDES permit.
8. Persons who must obtain an NPDES permit for construction activities may do so by filing a Notice of Intent with the State Water Resources Control Board and complying with the General Permit or by filing an NPDES permit application (Report of Waste Discharge) with the Regional Water Board and obtaining a site-specific NPDES permit. A discharger may not obtain coverage under the General Permit for activities that are being regulated under a site-specific NPDES permit.
9. The Discharger conducted construction activities at Elk Valley Road in Crescent City on 8.5 acres of land (hereinafter Site) that were required to be regulated by an NPDES permit and that resulted in storm water discharges to surface water. Activities conducted that were subject to an NPDES permit included clearing, grading, and general soil disturbance of greater than one (1) acre of total land area. On January 28, 2005, Regional Water Board staff observed highly turbid storm water running off the Site and into storm drains, which discharged, into Elk Creek. Analytical results from samples collected by Regional Water Board staff showed that the discharge from the Site increased the turbidity of Elk Creek from 3.7 NTU to 333 NTU, or an 8,900 percent increase in turbidity, far exceeding Basin Plan water quality objectives. Regional Water Board staff later determined that the Discharger did not submit a proper application and/or fee for coverage under the General Permit. The Discharger conducted the unpermitted construction activities from August 2004 to February 22, 2005, when the Discharger filed a Notice of Intent for the project.

10. The Discharger failed to properly file a Notice of Intent with the State Water Resources Control Board and failed to apply for and obtain a site-specific NPDES permit for the above-described construction activities.
11. The Discharger has violated CWC Section 13376 by conducting construction activities that should have been regulated by an NPDES permit and failing to either obtain coverage under the General Permit by filing a Notice of Intent or to apply for and obtain coverage under a site-specific NPDES permit. CWC Section 13385 provides that any person who violates CWC Section 13376 is subject to administratively imposed civil liability in an amount not to exceed the sum of \$10,000 per day of violation and, where there is a discharge, \$10 per gallon discharged in excess of 1000 gallons that is not susceptible to cleanup or is not cleaned up. Because the number of gallons discharged is unknown, liability alleged under this complaint is based upon days of observed violation only.
12. The Discharger was observed discharging storm water without a permit and therefore violated CWC Section 13376 for a total of one (1) day. The number of gallons of waste discharged is unknown. Maximum administrative civil liability based on the number of days of violation is \$10,000.
13. In determining any liability to be imposed, CWC Section 13385(e) requires the Regional Water Board to consider the following factors:
 - a. Nature, circumstances, extent, and gravity of the violations: The violations documented in this action are based upon days of observed discharge. At the time of the violations, the Discharger did not have a Storm Water Pollution Prevention Plan on-site as required. During the January 28, 2005 inspection, Regional Water Board staff observed large areas of bare, unprotected soil that was eroding during moderate rainfall and being discharged off-site into Elk Creek. Numerous areas lacked proper erosion and sediment control measures, proper drainage, and implementation of best management practices. The construction project occurred during the rainy season in an area of high intensity rainfall, when proper erosion control measures are needed. By constructing this project without filing for the required permit; paying the necessary application fee, and being subject to Regional Water Board oversight, the Discharger gained an unfair advantage over those contractors that do file for coverage under the General Permit.
 - b. Ability to pay: The Regional Water Board has no reason to believe the Discharge does not have the ability to pay.
 - c. Prior history of violations: Regional Water Board Staff has no knowledge of previous violations
 - d. Degree of culpability: The Discharger has filed several Notices of Intent in the past and, therefore, is aware of the requirement for coverage under the General Permit. The Discharger has also prepared Storm Water Pollution Prevention Plans (SWPPP) on past occasions for other projects. The discharger is culpable for the violations, which are the subject of this civil liability.

- e. Economic benefit or savings: The Discharger realized cost savings by failing to file a Notice of Intent last year, with the required filing fee of \$403, and by failing to have an adequate SWPPP prepared and implemented for the site, at a cost of approximately \$5,000. Administrative civil liability must be assessed in an amount not less than the economic benefit or savings. (CWC Section 13385(e)). Economic benefit realized in this case is estimated to be \$5,400.
- f. Other matters as justice may require: Staff time to investigate the matter and prepare this Complaint is estimated to be \$4,600.

Recommended Civil Liability: Upon consideration of the foregoing factors as required by CWC Section 13385(e), the Executive Officer is issuing this Complaint with a proposed civil liability of \$10,000. This amount includes staff time valued at \$4,600 and economic benefit or savings in the amount of \$5,400.

WAIVER OF A HEARING: You may waive the right to a hearing. If you wish to waive the right to a hearing, please sign the attached waiver and return it (payable to the State Water Resources Control Board, Cleanup and Abatement Account) within 30 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. If you have any questions please contact Andrew Baker at (707) 576-2690 or the Regional Water Board counsel, David Boyers at (916) 341-5182.

Catherine Kuhlman
Executive Officer

September 2, 2005