

California Regional Water Quality Control Board
North Coast Region

COMPLAINT NO. R1-2000-63

FOR

ADMINISTRATIVE CIVIL LIABILITY

IN THE MATTER OF

KERNIT AND SUSAN RANKIN

FOR

FAILURE TO SUBMIT TECHNICAL REPORTS
REQUIRED UNDER SECTION 13267(b) OF THE
CALIFORNIA WATER CODE

Sonoma County

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

1. Kernit and Susan Rankin (hereinafter the discharger) failed to comply with the orders of the Executive Officer to submit, pursuant to California Water Code (CWC) Section 13267(b), technical reports. Under CWC Section 13268(a), any person failing to submit reports required under CWC Section 13267(b) is guilty of a misdemeanor and may be held civilly liable.
2. The Executive Officer, therefore, seeks to assess civil liabilities as provided herein in this Complaint. Unless waived, a hearing on this matter will be held before the RWQCB within 60 days following the issuance of this Complaint. You or your representative will have an opportunity to address and contest the allegations in this Complaint and the imposition of civil liability before the RWQCB. The hearing is scheduled for the RWQCB meeting to be held on October 27, 2000, in Santa Rosa California. An agenda showing the time set for the hearing will be mailed to you not less than 10 days before the hearing.

At the hearing, the RWQCB will consider whether to affirm, reject, or modify the proposed civil liability, to refer the matter to the Attorney General for recovery of judicial liability, or take other enforcement actions.

3. The discharger failed to comply with the directive issued pursuant to Section 13267(b) of the CWC, which provides as follows:

“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of discharging or who proposes to discharge waste within its region...that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires...”

4. The following facts are the basis for the alleged violations in this matter:

- The discharger owns approximately 375 acres located at 1255 Hiatt Road, Cloverdale California, Parcel No. 115260023 (hereinafter referred to as “site”). The property is managed for vineyard and residential use with an extensive road network.
- On January 4, 2000, the RWQCB received a complaint indicating that Ponchetta Creek, a tributary to the Russian River, was being impacted by sedimentation resulting from vineyard development activities and adversely affecting three downstream domestic water supplies. One 12,000-gallon water tank used for domestic supply was reported to have filled with silt after the rain events in late October and early November of 1999.
- The RWQCB staff inspected Ponchetta Creek on January 11, 2000, and observed high turbidity levels and extensive sediment deposits along the bottom of Ponchetta Creek.
- The RWQCB began conducting an investigation following the January 11, 2000 inspection to determine possible responsible parties.
- On February 2, 2000, the Executive Officer sent a letter to the discharger requesting them to contact RWQCB staff and to coordinate an on-site inspection of their property.
- On February 9, 2000, the discharger contacted RWQCB staff and provided verbal permission for RWQCB staff to inspect the site.
- On February 12, 2000, RWQCB and California Department of Fish and Game staff inspected the site utilizing all terrain vehicles. During the inspection, RWQCB staff observed evidence of recent land clearing activities, including tree removal, grubbing, ripping, and grading on approximately 15 acres. This activity appeared to cause severe erosion and sediment discharge to a tributary of Ponchetta Creek. The sediment from the land clearing project was observed flowing downstream to Ponchetta Creek, three domestic water supplies, and a reservoir which is located on Ponchetta Creek approximately $\frac{3}{4}$ mile downstream of the land clearing project. High turbidity levels and recent sediment deposits up to 6 inches deep were observed in Ponchetta Creek. The reservoir also contained highly turbid water. A watercourse, located along the northern boundary of the site, was filled with earthen soil material and left unprotected during the winter period. The road network has not been properly maintained and was observed to be eroding into watercourses. The site drains to Ponchetta Creek and Icaria Creek, which are tributaries to the Russian River. Icaria Creek provides habitat for steelhead trout, which are listed as threatened under the federal Endangered Species Act. The Russian River and its tributaries are also listed as impaired under Section 303(d) of the Clean Water Act due to excessive sediment.
- On February 14, 2000, RWQCB staff contacted the discharger to inform him of the findings of the February 12, 2000, inspection and arranged another inspection for February 18, 2000.

- On February 17, 2000, the discharger left a voicemail message with RWQCB staff stating that the February 18, 2000 inspection was canceled, RWQCB staff were prohibited from entering the property without a search warrant, and that the discharger would no longer talk to RWQCB staff.
- On March 1, 2000, the Executive Officer of RWQCB issued his first written directive, pursuant to Water Code Section 13267(b), requiring the discharger to submit technical reports. The submittal of technical reports included a short-term erosion control plan (ECP) by March 10, 2000, a short-term ECP completion report by March 15, 2000, and a long-term ECP by March 31, 2000. The Order also requested written notification granting RWQCB staff permission to access the site.
- On March 10, 2000, the date on which the short-term ECP was due, the discharger requested, in a letter, an extension of time for submittal of technical reports requested in March 1, 2000 order. The request did not specify a time for submittal of the technical reports.
- On March 21, 2000, the discharger through their attorney requested, in a letter, an extension of time for submittal of the technical reports. The requested time extensions were April 10, 2000 for the short-term ECP, April 25, 2000 for the short-term ECP completion report, and May 25, 2000 for the long-term ECP.
- On April 28, 2000, the Executive Officer issued his second written directive, pursuant to Water Code Section 13267(b), requiring submittal of the reports, but granting an extension of time for submittal of the technical reports required in the March 1, 2000, 13267(b) Order. The new deadlines for submission were May 10, 2000 for the short-term completion report and May 25, 2000 for the long-term ECP. The April 28, 2000 Order again requested written permission to access the site. Written permission had not been provided as requested in the March 1, 2000 Order.
- On May 2, 2000, the discharger provided written permission for RWQCB to access the site.
- On May 17, 2000, the discharger submitted the short-term ECP, seven days after the deadline.
- On May 25, 2000, the due date for submittal of the long-term ECP, the discharger through their attorney sent a letter requesting another extension until June 25, 2000 for submittal of the long-term ECP. The Executive Officer did not grant the extension.
- On June 26, 2000, the discharger through their attorney sent a letter stating the long-term ECP will be submitted by June 30, 2000.
- On June 30, 2000, over a month after the due date, the discharger submitted the long-term ECP.

- On July 18, 2000, the Executive Officer issued his third written directive, pursuant to Water Code Section 13267(b), requiring submittal of an adequate long-term ECP, since the one submitted on June 30, 2000 was incomplete and inadequate. The July 18, 2000 Order reminded the discharger that the long-term ECP was more than one month late and no time extension had been granted to the May 25, 2000 due date.
- On July 28, 2000, the discharger through their attorney submitted a supplement to the long-term ECP. The supplemental ECP was not prepared by a California Licensed Engineer or Geologist as required in the March 1, 2000 Order.
- On August 3, 2000, the Executive Officer sent the discharger his fourth CWC 13267(b) Order, requiring again the submittal of an adequate long-term ECP and commenting on the long-term ECP submitted on June 30, 2000.
- On August 22, 2000 the Executive Officer received from the discharger a revised long-term ECP developed by discharger's consultants Ron Chappel and Mike Woodal of Layout Vineyard Services. RWQCB staff has determined that the long-term ECP, as revised, is still inadequate and incomplete, and is preparing comments to it to provide the discharger.

Proposed Civil Liability

5. Section 13268 of the CWC provides for the imposition of civil liabilities against dischargers for failing or refusing to furnish technical or monitoring reports or falsifying information therein, up to \$1,000 per day. Specifically, Section 13268 of the CWC states the following:

“(a) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs...”
6. The discharger submitted the short-term ECP completion report seven (7) days late on May 17, 2000. The discharger is, therefore, subject to maximum civil liabilities up to \$7,000 for failure to timely submit the short-term ECP. The discharger submitted the long-term ECP on June 30, 2000, and revisions thereto on July 28, 2000 and on August 22, 2000; however, the long-term ECP remains incomplete and inadequate. The maximum potential civil liability for failure to timely submit an complete and adequate long-term ECP is \$87,000 for the period from May 25, 2000 to August 22, 2000, a period of 87 days. Although the discharger has not complied with 13267(b) Orders dated March 1, 2000, April 28, 2000, July 18, 2000, and August 3, 2000 for submittal of a timely and complete ECP, the Executive Officer seeks to defer the potential accrual of civil liabilities for the period

beyond the date of August 22, 2000. The Executive Officer will monitor compliance with dates specified below to determine the need for imposition of additional civil liabilities.

7. In sum, the discharger may be subject to maximum potential civil liabilities of \$94,000 for the late and incomplete submittal of technical reports.
8. In determining the amount of civil liability, the following factors were considered:

The Nature, Circumstances, Extent, and Gravity of the Violations:

The failure of the discharger to install adequate erosion control devices and follow best management practices for vineyard development, road maintenance and conversion of timberland, resulted in the discharge of an undetermined volume of earthen material into Ponchetta Creek, Icaria Creek and the Russian River. Sedimentation of three downstream domestic water supplies have been documented by staff. Timely development of an adequate long-term ECP to prevent further discharges and impacts to the beneficial uses of water has not occurred.

Degree of Culpability

Inspections by RWQCB and California Department of Fish and Game staff determined that adequate erosion control devices were not installed or were inadequate to control erosion and prevent the excess discharge of earthen material. The discharger has consistently failed to submit a timely and adequate long-term ECP to address discharges to Icaria Creek and Ponchetta Creek from the land clearing projects at the site. A time extension for the long-term ECP from the due date of March 31, 2000 to May 25, 2000 had been provided to the discharger. A time extension had also been provided for submittal of the short-term completion report from the due date of March 15, 2000 to May 10, 2000. .

Prior History of Violations:

The California Department of Forestry and Fire Protection issued violations of the Forest Practice Act to the discharger on March 13, 2000, for failure to have timber operations conducted by a Licensed Timber Operator, failure to obtain a Timber Harvesting Plan and Failure to obtain a Timberland Conversion Permit.

Susceptibility to Cleanup and Voluntary Cleanup Efforts Undertaken:

This factor is not applicable with respect to the violations for which this complaint is issued. The removal of sediment from Ponchetta Creek, Icaria Creek and the Russian River is not entirely feasible because it will result in further damage to the waterways and because the sediment continues to be transported downstream during successive rainfall events. Timely and properly installed erosion control measures would assist in mitigating continued discharges to the waterways during storm events. Some limited emergency erosion control measures were installed following the February 2, 2000 RWQCB staff enforcement letter.

Economic Savings:

The RWQCB staff has no information regarding the total economic savings realized by the discharger for not providing timely submittal of an adequate long-term ECP.

Ability to Pay and Ability to Continue in Business:

RWQCB staff has no information regarding the discharger's ability to pay. The discharger should be prepared to address their ability to pay the maximum civil liability or any lesser amount.

Other Matters as Justice May Require:

The delay in responding to the Executive Officer's requests for access to the site, the delay in implementation of short-term erosion control measures at the site, and the delay in responding in a timely manner to the Executive Officers Orders for submittal of adequate ECPs, has likely resulted in continuing discharges of sediment that could reasonably be controlled.

9. The issuance of a Complaint for Administrative Civil Liability is an enforcement action and is not subject to the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321(a)(2).

Therefore, I hereby propose that Administrative Civil Liability in the amount of \$50,000 be imposed. \$25,000 of the total civil liability amount shall be held in abeyance pending submittal of a complete and adequate long-term ECP by September 22, 2000 and installation of erosion control measures set forth in the long-term ECP in a manner that accomplishes erosion control objectives no later than October 15, 2000. Compliance with the foregoing shall result in the forgiveness of the civil liability amount held in abeyance. Failure to comply with the foregoing shall result in the imposition of the civil liability amount held in abeyance.

Waiver of Hearing

10. You may waive the right to a future hearing. If you wish to waive the hearing, please sign the enclosed waiver and return it together with a cashier's check or money order, made payable to the "State Water Resources Control Board", for the amount to civil liability proposed above 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. This settlement will not become effective until after a 30-day public comment period.

Ordered by _____

Lee A. Michlin
Executive Officer

September 1, 2000