

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

ORDER NO. R2-2008-0083

ORDER SETTING ADMINISTRATIVE CIVIL LIABILITY FOR:

**Willowbrook Feeds
40 Ely Road
Petaluma, Sonoma County**

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter called the Water Board), finds with respect to Willowbrook Feeds (hereinafter called the Discharger), that:

1. The Discharger operates the facility, which discharges storm water associated with industrial activity. In 1992, the Discharger submitted a Notice of Intent (NOI) to obtain coverage under the State Water Resources Control Board's (State Board) discharge permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order NO. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The Discharger's Waste Discharge ID No. is 2 49I003652.
2. The General Permit states, in part:

“Section B. Monitoring Program and Reporting Requirements

“14. All facility operators shall submit an Annual Report by July 1 of each year to the Executive Officer of the Regional Water Board responsible for the area in which the facility is located and to the local agency (if requested).”
3. The Discharger violated Section B of the General Permit by failing to submit its 2006/2007 annual report by July 1, 2007.
4. On August 6, 2007, the Executive Officer issued a Notice of Noncompliance (NNC) letter to the Discharger. The Discharger was notified of its obligation to submit an annual report and to comply with the General Permit. The Discharger was required to respond by September 8, 2007, but failed to do so.
5. By certified mail dated November 13, 2007, the Executive Officer issued a second NNC letter to the Discharger. This letter was to inform the Discharger that it was in violation of the General Permit and that the Executive Officer would recommend enforcement actions if an annual report was not submitted. No written or verbal response to the letter was provided by the Discharger.

6. Board staff confirmed that the facility was still in business at the above address via telephone on June 18, 2008.
7. As of June 15, 2008, the Discharger had failed to submit its 2006/2007 annual report. The Discharger has been in violation of the General Permit for a total of 350 days (July 2, 2007 through June 15, 2008).
8. California Water Code (CWC) Section 13385 states, in part:
 - “(a) Any person who violates any of the following shall be liable civilly in accordance with this section:*
 - (2) Any waste discharge requirements or dredge and fill material permit.*
 - (c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:*
 - (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.”*
 - (2) [subsection 2 is not pertinent to this ACL]*
9. CWC Section 13385 authorizes Administrative Civil Liability not exceeding \$10,000 for each day in which the violation occurs.
10. The Discharger’s late submittal of its Annual Report is a violation of CWC Section 13385 for which the Board may impose administrative civil liability.
11. On July 11, 2008, the Assistant Executive Officer issued a Complaint (R2-2008-0045) to the Discharger proposing a \$24,200 Administrative Civil Liability for the violation of the General Permit, and CWC Section 13385. The Discharger submitted a comment letter.
12. On August 4, 2008, the Water Board received the Discharger’s comment letter on the Complaint along with its 2006/2007 Annual Report, which was 399 days late.
13. The Discharger requested that the Complaint be absolved without further penalty or administrative action. The Discharger acknowledges the reporting delinquency and states that it was due primarily to personnel changes. The Discharger states that it has taken necessary corrective actions to ensure such violation will not happen again.
14. The Water Board, after hearing all testimony, determined the Discharger is subject to civil liabilities. In determining the amount of civil liability the following factors have been taken into consideration:

"...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup and abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and other matters of justice may require."

15. The Board determined, with respect to the factors required in the Findings, the following:

a. Nature, circumstances, extent, and gravity of the violation

Late submittal of the annual report is a significant violation because the Water Board relies on the report to determine the Discharger's compliance with the General Permit.

The Discharger was given a number of warnings, including two Notices of Noncompliance letters and was contacted once by telephone. These annual reports are a key means of determining the quality of stormwater runoff from the Discharger's site and ensuring the Discharger is implementing appropriate control measures at its site. In addition, the annual report eventually submitted past the deadline indicated that requirements of the General Permit, including implementation of the Surface Water Pollution Prevention Plan (SWPPP) and site monitoring, were not met.

b. Toxicity of Discharge and Susceptibility to Cleanup

The violation for which liability is proposed is late submittal of a required report. Civil liability is not proposed for a specific discharge.

c. Prior history of violations

The Discharger has submitted its annual reports from previous years in a timely manner.

d. Degree of culpability

The storm water regulations are applicable to all industrial sites on a nationwide basis. All dischargers are required to comply with the General Permit. The Discharger is fully culpable for violating the terms and conditions of the General Permit, which implements the Clean Water Act.

e. Savings resulting from the violation

The Discharger has realized cost savings by: failure to timely perform required sampling and analyses, and failure to implement and/or document its SWPPP. Assuming an average-sized site, the minimum economic savings for not submitting an annual report is approximately \$1000/year.

f. Discharger's ability to pay and the ability to continue business

There is no evidence that the Discharger can not pay the civil liability or that payment will prevent its ability to continue business.

g. Other matters that justice may require

Staff time to prepare a Complaint and supporting information is estimated to be 20 hours. Based on an average cost to the State of \$125 per hour, the total cost is \$2,500.

16. An \$24,200 Administrative Civil Liability is appropriate based on the determinations in the Findings. This amount includes staff costs of \$2,500, and estimated economic savings of \$1,000.
17. This action is an Order to enforce the laws and regulations administered by the Water Board. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.), in accordance with Section 15321(a) (2), Title 14, of the California Code of Regulations.
18. The Discharger may petition the State Board to review this action. The State Board must receive the petition within 30 days of the date this order was adopted by the Water Board. The petition will be limited to raising only the substantive issues or objections that were raised before the Water Board at the public hearing or in a timely submitted written correspondence delivered to the Water Board.

IT IS HEREBY ORDERED that Willowbrook Feeds is civilly liable for the violation of the General Permit cited in Complaint No. R2-2008-0045, and shall pay the administrative civil liability in the amount of \$24,200. The liability shall be paid to the State Water Pollution Cleanup and Abatement Account within 30 days of the date of this Order.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of Order No. R2-2008-0083 adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on September 10, 2008.

Bruce H. Wolfe
Executive Officer