

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2005-0528

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

RODNEY AND GAYLA SCHATZ
MOKELUMNE RIM VINEYARDS
SAN JOAQUIN COUNTY

This Administrative Civil Liability Complaint (hereafter Complaint) is issued to Rodney and Gayla Schatz (hereafter known as "Discharger") based on a finding of failure to submit technical reports and make improvements to the Mokelumne Rim Vineyards wastewater system pursuant to California Water Code (CWC) Sections 13301 and 13267, and based on provisions of CWC Sections 13268(a), 13268(b), and 13350(e)(1) which authorize the imposition of an Administrative Civil Liability.

The Executive Officer of the California Regional Water Quality Control Board, Central Valley Region, (Regional Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger owns and operates a wastewater treatment, storage, and disposal system, which is located at 6200 E. Peltier Road, Acampo in San Joaquin County.
2. Waste Discharge Requirements (WDRs) Order No. R5-2004-0035, adopted by the Regional Board on 19 March 2004, prescribes requirements for the treatment, storage and disposal of wastewater at the facility.
3. Wastewater is collected in floor drains, screened, collected in a wastewater storage pond, and subsequently applied to a 35-acre land application area. The 31 July 2001 Report of Waste Discharge (RWD) stated that the wastewater storage pond would be lined with a low permeability soil liner and be equipped with an aerator.
4. The Findings of WDRs Order No. R5-2004-0035 describe a number of deficiencies in the Discharger's wastewater system when compared to the system proposed in the RWD and therefore the WDRs required the Discharger to submit technical reports describing system improvements.
5. The Findings also include requirements to install groundwater monitoring wells, improve wastewater treatment performance, and reduce the dissolved solids loading rate in the land application area. To accomplish those goals, technical reports are required by the WDRs.

VIOLATIONS OF THE WDRs

6. The Discharger has a history of noncompliance with the WDRs. These violations include failure to comply with the Monitoring and Reporting Program (MRP), inadequate dissolved oxygen in the wastewater pond, inadequate freeboard in the wastewater pond, and failure to install groundwater monitoring wells. In addition, the Discharger has not submitted the technical reports required by the Provisions section of the WDRs. The following reports have not been submitted or the documents that were submitted are incomplete: *Water Balance and Treatment Report, Land*

Application Improvement Report, Operation and Management Plan, Groundwater Well Installation Report of Results, and Salinity Reduction Study.

7. Notices of Violations (NOVs) for the violations described above were issued on 30 August 2004 and 23 August 2005; in addition, staff contacted Mr. Shatz by telephone on 27 January and 23 August 2005 to discuss the noncompliance. The two NOVs are discussed below:
 - a. The 30 August 2004 NOV stated that the 24 June 2004 *Water Balance and Treatment Report*, which consisted of three sentences, was inadequate because it does not address the issues required by the WDRs and was not prepared by a registered engineer or geologist as required by the WDRs. The report was required because the wastewater storage pond was not constructed as described in the RWD. The pond described in the RWD would provide approximately 347,000 gallons of storage but the constructed pond is smaller, providing approximately 226,000 gallons of storage. This indicates that the facility likely has inadequate wastewater storage capacity, which may result in wastewater spills. In addition, the report proposed installation of aerators in the wastewater pond but did not state when the work would be completed. The WDRs required that if aerators were necessary to comply with the Discharge Specifications, then they must be installed no later than 1 September 2004.
 - b. The 23 August 2005 NOV stated that the Discharger's self-monitoring reports were incomplete, technical reports were incomplete or were not submitted, and the Discharger failed to comply with certain Discharge Specifications of the WDRs. The issues are further discussed below.

Self-Monitoring Reports

The NOV states that review of self-monitoring reports for the time period January through April 2005 revealed substantial noncompliance with the MRP, as follows:

- i. Wastewater flow is not metered and all the flow is not being reported.
- ii. Samples were not collected during the reporting period.
- iii. Not all the monitoring that is required is being performed, and some reporting is not specific enough for the reader to determine the result.
- iv. A certification statement is not included in any of the monitoring reports.

Technical Reports

The Discharger submitted incomplete technical reports or failed to submit reports that are required by the Provisions section of the WDRs. Each of these were discussed in the 23 August 2005 NOV, and are discussed in Findings No. 8-13, below.

Compliance with WDRs

The Discharger has failed to comply with a number of the Provisions of the WDRs:

- i. The January and February 2005 monitoring reports indicate that wastewater in the pond contained less than 1.0 mg/l dissolved oxygen, in violation of Discharge Specification No. B.6 which requires a minimum dissolved oxygen level of 1.0 mg/l. Inadequate dissolved oxygen concentrations indicate inadequate aeration is available in the pond. WDR Provision 1.b required an analysis of the need for pond aeration and if necessary, installation of an aeration system by 1 September 2004. This requirement was not met.
- ii. The wastewater pond possessed inadequate freeboard in February 2005. Inadequate freeboard may indicate that the pond is too small. The Discharger's 7 June 2005 response to the Regional Board's 30 August 2004 NOV confirmed that the pond is smaller than described in the RWD. Discharge Specification B.14 requires the wastewater system to have sufficient capacity to accommodate wastewater flow and precipitation. WDR Provision G.1.b required a schedule for construction of improvements, which has not been received. The current pond capacity is too small for the permitted wastewater flows and is therefore in violation of the WDRs.
- iii. As of the date of the NOV, the Discharger had not complied with the groundwater monitoring portion of the WDRs. Staff commented on workplans for the groundwater well installation in correspondence dated 27 August 2004 and 5 May 2005. A revised workplan was submitted on 20 October 2005. That workplan, with a minor addendum, has now been found acceptable. WDRs Provision G.1.f required wells to be installed no later than 15 September 2004, but the wells have not yet been installed and the installation is more than a year overdue.

INADEQUATE OR INCOMPLETE TECHNICAL REPORTS

8. WDRs Provision G.1.b required submittal of a *Water Balance and Treatment Report* by 17 June 2004. The original submittal was dated 24 June 2004; staff notified the Discharger that it was inadequate in the 30 August 2004 NOV. A revised report was submitted on 7 June 2005, but it is still inadequate because it failed to include a schedule for implementation of improvements. In addition, staff has serious concerns about the approach to provide aeration to the pond. A 12 September 2005 letter from Mokelumne Rim Vineyards states, "Aeration has been installed. The pond size is appropriate for the facilities operations." However, the Discharger has not submitted the monitoring data to show that the aeration system is adequate to maintain 1.0 mg/l dissolved oxygen in the pond. Staff also note that the 7 June 2005 revised report indicated the pond size does not comply with the Discharge Specifications of the WDRs, and that there is no indication that it has been expanded. To date, a complete report has not been received.
9. WDRs Provision G.1.c required submittal of a *Groundwater Well Installation Workplan* by 17 June 2004. Versions of the workplan were submitted three times (28 June 2004, 14 March 2005, and 23 May 2005); each of which were granted conditional approvals by staff (27 August 2004, 5 May 2005, and 21 July 2005). None of the workplans were complete, satisfactorily

addressed staff's comments, or contained the information listed in the WDRs. A 12 September 2005 letter from Mokelumne Rim Vineyards states, "I have addressed the test well issue. Please indicate where your office would like them to be placed." An acceptable workplan was recently submitted on 20 October 2005, which is 502 days late.

10. WDRs Provision G.1.d required submittal of a *Land Application Area Improvement Report* (LAAIR) by 13 July 2004. The LAAIR was required to show that adequate containment exists surrounding the land application area, so that wastewater will not leave the area permitted for discharge. A report was submitted on 14 February 2005 which states: "A levee will be used if necessary on the west boundary, east of the railroad tracks." This statement indicates that a containment berm does not exist surrounding the land application area. To date, an adequate report has not been received.
11. WDRs Provision G.1.e required submittal of an *Operation and Management Plan* (O&M Plan) by 13 July 2004. The 10 February 2005 O&M Plan that was submitted is inadequate because it does not address most of the items described in Provision G.1.e of the WDRs. To date, an adequate report has not been received.
12. WDRs Provision G.1.f required submittal of a *Groundwater Well Installation Report of Results* by 15 September 2004. Until 20 October 2005, a complete monitoring well installation workplan had not been submitted. As of this date, the wells have not been installed and the well installation report has not been submitted.
13. WDRs Provision G.1.g required submittal of a *Salinity Reduction Study* by 5 April 2005. The report has not been submitted.

REGULATORY CONSIDERATIONS

14. By the acts and omissions cited in the Findings above, the Discharger has violated WDRs Order No. R5-2004-0035, which requires that all technical and monitoring reports be submitted pursuant to CWC Section 13267.
15. CWC Section 13268 (a) states: "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)."
16. CWC Section 13268(b)(1) states: "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."
17. CWC Section 13350(e) states: "The state board or a regional board may impose civil liability administratively pursuant to Article 2.5(commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis,

but not both.”

18. CWC Section 13350(e)(1) states: “The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.”
19. CWC Section 13350(e)(1)(B) states: “(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.”
20. CWC Section 13327 states: “In determining the amount of civil liability, the regional board ... shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, 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 effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.”
21. As of 12 October 2005, the Discharger has failed to submit the following complete or substantially complete technical reports:
- a. The *Water Balance and Treatment Report* (due on 17 June 2004; 482 days overdue).
 - b. The *Groundwater Well Installation Workplan* (due on 17 June 2004; 482 days overdue). An acceptable workplan was submitted on 20 October 2005.
 - c. The *Land Application Area Improvement Report* (due on 13 July 2004; 456 days overdue).
 - d. The *Operation and Management Plan (O&M Plan)* (due on 13 July 2004; 456 days overdue).
 - e. The *Groundwater Well Installation Report of Results* (due on 5 April 2005; 190 days overdue).
 - f. The *Salinity Reduction Study* (due on 15 September 2004; 392 days overdue).
22. The required technical reports are a cumulative total of 2,458 days late. The maximum liability under CWC Section 13268(b)(1) for the nonsubmittal of these technical reports is \$1,000 per day late, for a total maximum liability of two million, four hundred fifty eight thousand dollars (\$2,458,000). No minimum liability is required to be imposed under Section 13268(b)(1).
23. As of 12 October 2005, the Discharger has failed to submit the following complete or substantially complete self-monitoring reports:

<u>Monitoring Report</u>	<u>Due Date</u>	<u>Status</u>	<u>Days Late</u>
May, 2004	7/1/2004	Not Submitted	468
June, 2004	8/1/2004	Not Submitted	437
July, 2004	9/1/2004	Not Submitted	406
August, 2004	10/1/2004	Not Submitted	376
September, 2004	11/1/2004	Not Submitted	345

<u>Monitoring Report</u>	<u>Due Date</u>	<u>Status</u>	<u>Days Late</u>
October, 2004	12/1/2004	Not Submitted	315
November, 2004	1/1/2005	Not Submitted	284
December, 2004	2/1/2005	Not Submitted	253
Fourth Quarter, 2004	2/1/2005	Not Submitted	253
January, 2005	3/1/2005	3/4/05 (Incomplete)	225
February, 2005	4/1/2005	4/13/05 (Incomplete)	194
March, 2005	5/1/2005	5/1/05 (Incomplete)	134
First Quarter, 2005	5/1/2005	Not Submitted	164
April, 2005	6/1/2005	6/13/05 (Incomplete)	103
May, 2005	7/1/2005	7/14/05 (Incomplete)	103
June, 2005	8/1/2005	Not Submitted	72
Second Quarter, 2005	8/1/2005	Not Submitted	72
July, 2005	9/1/2005	8/22/05 (Incomplete)	41
August, 2005	10/1/2005	Not Submitted	11

24. As of 12 October 2005, the required self-monitoring reports are a cumulative total of 4,256 days late. The maximum liability under CWC Section 13268(b)(1) for the nonsubmittal of these monitoring reports is \$1,000 per day late. Therefore, the maximum liability is four million two hundred fifty six thousand dollars (\$4,256,000). No minimum liability is required to be imposed under Section 13268(b)(1).
25. The total maximum liability under CWC Section 13268(b)(1) for the non-submittal of the technical reports and self-monitoring reports is six million seven hundred fourteen thousand dollars (\$6,714,000).
26. As of 12 October 2005, the Discharger has been in noncompliance with its WDRs for 2,458 days. The maximum liability under CWC Section 13350(e)(1) is \$5,000 per day per instance of violation, and in this case, the maximum liability is for daily violation of the WDRs is thirty three million five hundred seventy thousand dollars (\$33,570,000). The minimum liability under CWC Section 13350(e)(1) is \$100 per day per instance of violation, and in this case, is six hundred seventy one thousand four hundred dollars (\$671,400).
27. CWC Section 13350(f) allows imposition of a civil liability in an amount less than the minimum specified if express findings are made setting forth the reasons, based upon the specific factors required to be considered pursuant to CWC Section 13327. In this case, a civil liability less than the minimum required is appropriate based on (a) the Discharger's ability to pay and continue in business, (b) the economic benefit accrued by the Discharger in not complying with the WDRs, (c) the water quality impacts resulting from noncompliance, and (d) the range of other administrative civil liabilities recently issued to other dischargers for similar issues of non-compliance.
28. Issuance of this Complaint 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.

**RODNEY AND GAYLA SCHATZ, DOING BUSINESS AS MOKELUMNE RIM VINEYARDS,
ARE HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed Administrative Civil Liability in the amount of thirty thousand dollars (\$30,000). The amount of the liability proposed is based upon a review of the factors set forth in CWC Section 13327 cited in Finding No. 20 above, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing shall be held on **26/27 January 2006** unless the Discharger agrees to waive the hearing and pay the imposed civil liability in full.
3. If a hearing is held, the Regional Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. In lieu of a hearing, the Discharger may waive the right to a hearing. If you wish to waive the hearing, please sign the enclosed waiver and return it with the full amount of civil liability (in a check made payable to the *State Water Resources Control Board, Waste Discharge Permit Fund*) to the Regional Board's office at 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670, by **9 December 2005**.

Original Signed by
THOMAS R. PINKOS, Executive Officer

1 November 2005
(Date)

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Rodney and Gayla Schatz doing business as Mokelumne Rim Vineyards, (hereinafter “Discharger”) in connection with Administrative Civil Liability Complaint No. R5-2005-0528 (hereinafter the “Complaint”).
2. I am informed of the right provided by Water Code Section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint.
3. I hereby waive the Discharger’s right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of issuance of the Complaint.
4. Without admitting liability for the matters alleged in the Complaint, I otherwise agree to remit payment for the civil liability imposed in the amount of thirty thousand dollars (\$30,000) by check, which contains a reference to “ACL Complaint No. R5-2005-0528” and is made payable to the “*State Water Resources Control Board Waste Discharge Permit Fund.*”
5. I understand the payment of the above amount constitutes a settlement of the Complaint that will not become final until after a public comment period.
6. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(Name)

(Title)

(Date)