California Regional Water Quality Control Board
North Coast Region

Revised Administrative Civil Liability Complaint No. R1-2008-0052

For

Violation of Waste Discharge Requirements Order No. 85-136

In the Matter of

Gallo of Sonoma, Dry Creek Winery
WDID No. 1B79154OSON

Sonoma County

The Executive Officer of the California Regional Water Quality Control Board, North Coast Region (hereinafter the Regional Water Board), finds the following:

1. Gallo of Sonoma Dry Creek Winery (hereinafter Discharger) owns and operates a wine production facility located at 3387 Dry Creek Road, Healdsburg, within the Dry Creek watershed, tributary to the Russian River. On October 23, 1985, the Regional Water Board adopted Waste Discharge Requirements, Board Order No. 85-136 (WDRs) for the Discharger. The Gallo Winery WDRs were adopted to regulate winery-related discharges including those from pretreatment best management practices, wastewater treatment and storage ponds, solids handling and drip irrigation disposal of winery wastewater.

2. This Administrative Civil Liability Complaint (ACLC) is being issued to the Discharger for two unauthorized discharges to waters of the United States that occurred at the Dry Creek Winery. This ACLC revises ACLC No. R1-2007-0081, which was issued to Gallo in September 2007 and included penalties for a discharge of pumice leachate that was identified on March 6, 2007. This revised ACLC also incorporates a second unauthorized discharge of <u>propylene glycol from a pipe leak</u> that was discovered February 10, 2008 at the Gallo Dry Creek Winery. .

3. <u>Pomace Leachate Discharge</u>: At 16:45 on March 6, 2007, Regional Water Board staff (staff) received a call from the Discharger's environmental manager, who indicated that a neighbor had reported seeing a grey colored mass in the creek behind his property that he thought might be coming from the Discharger's facility directly upstream.

4. At 1300 on March 7, Regional Water Board staff met with the Discharger's environmental manager, Mr. John Nagle, who brought staff to the wine pomace leachate management area, where the source of the discharge had recently been discovered. Wine pomace consists of the seeds, skin and stems remaining after grapes have been crushed. The pomace leachate management area consists of large piles of wine pomace that are stockpiled within a bermed area. The leachate

from the pomace collects in a sump and is then directed via gravity flow to a series of three aeration ponds where the leachate is aerated prior to being land applied. After formation of the pomace piles, they remain untouched until late spring.

5. Due to its high biochemical oxygen demand and low pH, wine pomace can have a deleterious impact if discharged to surface waters. It can also have an impact to shallow groundwater if allowed to infiltrate. Mr. Nagle indicated that pomace at the Dry Creek winery was being managed on an engineered pad so as to prevent any shallow groundwater infiltration.

6. In turning one of the pomace piles, a Gallo employee traversed the berm with heavy equipment, creating a pathway for the pomace leachate to escape the control berm on the north side of the leachate management area. Leachate then flowed across approximately 150 feet of vineyard prior to discharging to a field storm drain that leads to a tributary to Dry Creek. It was obvious from the dark stained leachate pathway that in places had crusted, that the discharge had been occurring for a number of days. Mr. Nagle was unsure of when the discharge might have initially occurred.

7. Mr. Nagle took staff down to the creek, which daylighted 200 feet downgradient from the above-mentioned field drain. A thick grey matter with the consistency of clay and the smell of raw sewage was noted clinging to the bed and bank of the creek. In some areas, this heavy grey matter was over an inch thick. Mr. Nagle indicated that prior to the staff inspection that a vactor truck had sucked up the majority of the material for proper offsite wastewater treatment plant disposal.

8. The substrate of the creek revealed visual evidence of the discharge of the leachate matter from the outfall to a distance of approximately 150 feet downstream, having been slowed from moving further downgradient by a thick stand of cattails. There was no visual evidence at the time of inspection that the discharge entered Dry Creek, approximately 5/8 mile downgradient.

9. Although the Discharger notified the staff when they were notified of the problem by a downgradient neighbor, the notification was some time after the discharge had first occurred. Employees did not communicate to the environmental manager that a breach in the berm and subsequent leachate discharge had been ongoing for a number of days, as evidenced by a thick line of dried pomace leachate emanating from the pomace management area to the drop inlet in the vineyard. Staff took photos of the site, and requested that water quality sampling of the unnamed tributary and of the grey matter be performed.

10. <u>Propylene Glycol Pipe Leak</u>: On February 10, 2008, a leak was detected in an underground coolant pipeline. The coolant composition was a 20% propylene glycol solution in water. The leak was discovered by the Discharger due to a pressure drop in the plant's monitoring system. The coolant lines were immediately shut off upon discovery of the leak. The coolant was noted as discharging to an unnamed tributary to Dry Creek via a storm drain outfall. Water samples were immediately taken within the creek, both upstream and downstream of the storm drain outfall.

11. On February 11, a biological consultant inspected the half-mile of the creek below the storm drain outfall. The consultant stated that there were no obvious impacts on fish from the coolant release.

12. On February 13, Gallo personnel estimated that 4200 gallons of the coolant mixture were discharged from the pipe to the ground. Approximately 1400 gallons of the mixture were estimated to have flowed into the tributary creek. The remainder of the coolant was recovered.

13. On February 14, the source of the pipe leak was discovered at a connection flange. Pipe repair, including the removal of the flanges in order to prevent the potential for future leakage, was performed on February 19.

The following facts are the basis for the proposed penalties for the alleged violations:

14. The Discharger's WDRs for the Gallo Dry Creek Winery, Order No. 85-136, prohibits the discharge of waste to the Russian River or its tributaries (Discharge Prohibition A.1). The March 6, 2007, pomace leachate berm breach resulted in the discharge of waste to a tributary to Dry Creek. The February 10, 2008 pipe break resulted in the discharge of waste to a tributary to Dry Creek. In order to be able to discharge into waters of the United States, the Discharger would require a National Pollutant Discharge Elimination System (NPDES) permit for these discharges. The Discharger does not have any such permit.

15. California Water Code section 13385, subdivision (a)(1) provides the Regional Board with the ability to assess civil liability against any person who violates California Water Code section 13376, which requires a person discharging pollutants into navigable waters of the United States to file a report of waste discharge. As detailed above, although the Discharger had WDRs for operations on the site, the WDRs did not permit discharges into waters of the United States. To obtain a NPDES permit for discharges to waters of the United States requires the Discharger to have filed a report of waste discharge, which was not done. California Water Code section 13385, subsection (c) provides that the maximum amount of civil liability that may be imposed by the Regional Water Board is $10,000 per day of violation. In this case it appeared that the pomace discharge occurred over many days; however, only one day of discharge was actually observed. The propylene glycol coolant spill appeared to be a one day discharge event.

16. Where there is discharge in excess of 1,000 gallons that is not susceptible to cleanup or cannot be cleaned up, Water Code section 13385, subsection (c) provides for an additional penalty of $10 per gallon discharged for each gallon exceeding 1,000 gallons. The Discharger was unable to determine the exact volume of pomace leachate discharge and it may have exceeded 1,000 gallons, but the Regional Water Board was not able to determine the volume of waste discharged. The Discharger was able to estimate the volume of propylene glycol discharged to waters of the United States at 1400 gallons.

17. The maximum civil liability that could be imposed against the Discharger in this matter is calculated as follows:

Violation	Number of Days (at $10,000/day)	Maximum Civil Liability
Gallo Dry Creek Winery pomace leachate discharge	1 (March 6, 2007)	$10,000
Gallo Propylene Glycol Spill	1 (February 10, 2008	$10,000
1400 Gallons Propylene Glycol not subject to cleanup @ $10/gallon	$10 per gallon for each gallon in excess of 1,000 gallons	$4,000
Total Potential Civil Liability		$24,000

18. In determining the amount of any civil liability pursuant to Water Code section 13385, subdivision (e) of that section requires the Regional Water Board to take 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. The Regional Water Board is also required to consider the requirement in this section that states that, at a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

(a). Nature, circumstances, extent and gravity of the violations:

Wine pomace is typically high in BOD and suspended solids: these constituents can cause both short-term and long-term serious water quality impacts. BOD may significantly lower dissolved oxygen in a waterway, which may be harmful for aquatic life. Suspended solids may increase turbidity in a waterway and eventually settle out to add to detritus covering the bed of a waterway, impairing the habitat for aquatic life.

The propylene glycol solution contained 20% glycol and 80% water. It is a sugar based food grade material. It was estimated to have flowed into the creek at a rate of 23 gallons per minute for a period of one hour. Upon discovery of the leak, the Discharger flushed the storm drain line with 6600 gallons of water, which along with creek flow of approximately 14,400 gallons during the one-hour period of discharge, resulted in a dilution ratio of 15:1.

Dry Creek is a tributary of the Russian River. The Russian River and its tributaries are within the habitat range of coho salmon (*Oncorhynchus kisutch*), Chinook salmon (*Oncorhynchus tshawytscha*) and steelhead (*Oncorhynchus mykiss*), each listed under the federal Endangered Species Act or the California Endangered Species Act. Populations of salmonids in California have declined substantially in the last century. Because the spill had the potential to detrimentally impact endangered species, consideration of the nature, circumstances, extent and gravity of the discharge does not provide reason for reducing from the maximum amount of civil liability to be imposed.

(b). Susceptibility to Cleanup or Abatement and Voluntary Cleanup Efforts Undertaken:

Pomace Leachate -The leachate discharge had ceased prior to discovery of the spill, and Gallo performed the majority of the cleanup via vactor truck prior to staff arrival. However, based on stained soils and stressed vegetation, the spill had likely occurred over a longer period of time than what staff was able to observe. There was no visual monitoring of the area by the Discharger to determine if containment leaks had been occurring. It was only after complaints by neighbors that the Discharger took cleanup action. The response was immediate upon notification; consideration of the Discharger's cleanup efforts does provide reason for reducing from the maximum amount of civil liability to be imposed.

Propylene Glycol – Response to the discovery of the propylene glycol pipe leak was immediate, concerning both soil and receiving water capture of as much of the discharge as possible. Repair of the pipe was immediately performed in an effort to ensure that this type of pipe breakage would not reoccur. Consideration of the Discharger's cleanup efforts and repair upon discovery of the leak does provide reason for reducing from the maximum amount of civil liability to be imposed.

(c). Violator's ability to pay:

The Discharger is one of the most successful wine producers in Sonoma County. Staff has no information to indicate that the Discharger would be unable to pay any imposed administrative civil liability.

(d). Prior history of violations:

Regional Water Board staff are not aware of significant previous violations at this winery. Consideration of prior history of violations at this winery does provide reason for reduction from the maximum the amount of civil liability to be imposed.

(e). Degree of culpability:

The pomace discharge was due both to human error and to a lack of communication within the company that could have led to an avoidance of leachate discharge. The pomace management area should have been periodically checked for pomace leachate leakage. Consideration of the degree of culpability does not provide reason for reducing from the maximum amount of civil liability to be imposed.

The propylene glycol leak was considered an unforeseen accident. Consideration of the degree of culpability does provide reason for reducing from the maximum amount of civil liability to be imposed.

(f). Economic benefit:

The Discharger did not receive significant economic savings from either of the two discharges. Consideration of the economic savings resulting from the

violations does not provide reason for considering any additional civil liability to be imposed.

(g). Other matters that justice may require:

Consideration of other matters as justice may require does not provide reason for reducing from the maximum the amount of civil liability to be imposed.

19. The issuance of this Complaint is an enforcement action to protect the environment and is, therefore, exempt from provisions of the California Environmental Quality Act (Public Resources Code sections 21000 et seq.) pursuant to title 14, California Code of Regulations, sections 15308 and 15321, subdivision (a) (2).

GALLO DRY CREEK WINERY IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Water Board proposes that the Discharger be assessed an administrative civil liability in the amount of $10,000.

2. A hearing shall be conducted on this Complaint by the Regional Water Board on July 23 and 24, 2008, unless the Discharger waives the right to a hearing by signing and returning the waiver form attached to the ACLC. By doing so, the Discharger agrees to pay $10,000 in full to the State Water Pollution Cleanup and Abatement Account within thirty days of the date of this Complaint.

3. If the Discharger waives the hearing and pays the liability, the resulting settlement will become effective on the next day after the public comment period for this Complaint is closed, provided that there are no significant comments received during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint, reissue it as appropriate, or take other appropriate action.

4. If a hearing is held, the Regional Water Board may impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability; or refer the matter to the Attorney General to have a Superior Court consider enforcement. Notwithstanding the issuance of this Complaint, the Regional Water Board shall retain the authority to assess additional penalties for violation of the Discharger's waste discharge requirements or any additional unpermitted discharges to waters of the United States.

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Luis G. Rivera
Assistant Executive Officer

April 21, 2008