

California Regional Water Quality Control Board
North Coast Region

COMPLAINT ORDER NO. R1-2001-32

FOR

ADMINISTRATIVE CIVIL LIABILITY

IN THE MATTER OF

BAXMAN GRAVEL CO., INC.
SHERWOOD ROAD FACILITY
FORT BRAGG, CA

FOR

FAILING TO FILE AN ANNUAL STORM WATER REPORT FOR 1999-2000

Mendocino County

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

1. Baxman Gravel Co., Inc., is a sand and gravel business along Sherwood Road near Fort Bragg, California (hereinafter Facility).
2. Federal regulations for storm water discharges were issued by the U. S. Environmental Protection Agency on November 16, 1990. In 1991, the State Water Resources Control Board adopted Water Quality Order No. 91-013-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No CAS000001, Waste Discharge Requirements For Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities (hereinafter General Permit). On September 17, 1992, the General Permit was amended, and on August 17, 1997, the General Permit was revised and renewed, with Order No. 97-03-DWQ replacing the previous Orders.
3. Provision E(1) of the General Permit requires that all facility operators seeking coverage by the General Permit file a Notice of Intent (NOI) for each of the facilities they operate. Baxman Gravel Co. Inc. filed an NOI for the Facility on May 7, 1999, and was assigned WDID No. 1B23S009804 for the operation.

4. Provision E(3) of the General Permit requires Facility Operators who have filed an NOI to develop and implement a Monitoring Program in accordance with Section B of the General Permit. Section B(14) of the General Permit requires that all facility operators 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.
5. The Annual Report for 1999-2000 for the Baxman Gravel Co., Inc. Sherwood Road Pit was due on July 1, 2000. Baxman Gravel Co. Inc. (hereinafter Discharger) did not submit an Annual Report.
6. The Storm Water Enforcement Act of 1998 requires the Executive Officer to notify each discharger regarding its noncompliance with submittal of the Annual Report. California Water Code (CWC) Section 13399.31(b) requires two notices of the violations to be sent to each discharger failing to submit the Annual Report. On September 1, 2000, the Executive Officer issued the first Notice of Non-Compliance to the Discharger for violations of the General Permit related to the failure to submit the 1999-2000 Annual Report. No Annual Report was received in response to this notice. On October 13, 2000, the Executive Officer issued the second Notice of Non-Compliance letter to the Discharger for violations of the General Permit related to the failure to submit the 1999-2000 Annual Report. No response was received from the Discharger.
7. The Discharger failed to submit the Annual Report within 60 days of the first notice, for which the Regional Water Board is required to impose civil liability pursuant to CWC Section 13399.31(d) and 13399.33 of the Storm Water Enforcement Act of 1998.
8. In addition, the Discharger violated Provision B(14) of the General Permit for which the Regional Water Board may impose civil liability of up to \$10,000 for each day in which the violation occurs pursuant to CWC Section 13385. At this time, the Executive Officer declines to impose liability pursuant to CWC Section 13385, but reserves the right to do so in the future. Thus, this Complaint is only for violations of the Storm Water Enforcement Act of 1998.
9. Unless waived, a hearing on this matter will be held before the Regional Water Board on June 28, 2001 at the Ukiah City Council Chambers, 300 Seminary Avenue in Ukiah, California. The Discharger or his representatives will have an opportunity to address and contest the allegations in the Complaint and the imposition of civil liabilities before the Regional Water Board.
10. At the hearing the Regional Water Board 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.

11. CWC Section 13399.33(c), requires the Regional Water Board to impose a minimum liability of \$1000 to dischargers for failure to submit an Annual Report in accordance with CWC Section 13399.31. Staff costs in preparing documents for obtaining the Annual Report is estimated to be \$1200, which the Regional Water Board is required to recover pursuant to CWC Section 13399.33(d).
12. 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).
13. This settlement will not become effective until after a 30-day public comment period.

PROPOSED CIVIL LIABILITY

Based on the foregoing, I hereby propose that Baxman Gravel Co., Inc., pay an Administrative Civil Liability in the amount of \$1,200.

Waiver of Hearing

Baxman Gravel Co., Inc., may waive the right to a future hearing. If the Discharger wishes to waive the hearing, the Discharger should 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.

Ordered by _____

Lee A. Michlin
Executive Officer

May 3, 2001