

California Regional Water Quality Control Board
North Coast Region

COMPLAINT NO. R1-2000-12

FOR

ADMINISTRATIVE CIVIL LIABILITY

IN THE MATTER OF

KISTLER VINEYARDS

FOR

FAILURE TO SUBMIT TECHNICAL DOCUMENTATION
REQUESTED UNDER SECTION 13267 (b) OF THE CALIFORNIA
WATER CODE
ON THE DATE SPECIFIED

AND

FALSIFYING TECHNICAL DOCUMENTATION
REQUESTED 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. On October 7, 1999, the Executive Officer issued a written directive pursuant to Water Code Section 13267 requiring Kistler Vineyards to submit a technical report by October 25, 1999.
2. Kistler Vineyard failed to submit the technical report until October 29, 1999 and falsified information in the technical report.
3. Pursuant to Water Code Section 13268(a), Kistler Vineyards is guilty of a misdemeanor and is liable civilly. 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 March 23, 2000 in Santa Rosa. 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.

4. Kistler Vineyards failed to comply with a directive issued pursuant to Section 13267(b) of the California Water Code 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 or perjury, technical or monitoring program reports which the regional board requires...”

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

- On May 25, 1999, the RWQCB received a complaint indicating that a watercourse used for agricultural water supply was being impacted by sedimentation resulting from vineyard development activity occurring upstream of the water supply.
- RWQCB staff inspected Kistler Vineyards on May 28, 1999 and observed evidence of erosion, which was the result of vineyard development activities. RWQCB staff verbally requested an Erosion Control and Mitigation Workplan be submitted to the RWQCB by July 15, 1999. RWQCB staff contacted Kistler Vineyards on several occasions requesting the Erosion Control and Mitigation Plan.
- On September 29, 1999, the RWQCB received the proposed Erosion Control and Mitigation Workplan for Kistler Vineyards.
- On October 7, 1999, the Executive Officer of the RWQCB issued a letter approving the Erosion Control and Mitigation Workplan and requiring submittal of an Erosion Control and Mitigation Workplan Completion Report by October 25, 1999, pursuant to Water Code Section 13267(b). The letter requested implementation of the Erosion Control and Mitigation Workplan by October 15, 1999. The October 7, 1999 letter further stated that failure to submit a timely and accurate completion report may constitute a misdemeanor subject to administrative civil liabilities pursuant to Section 13268 of the California Water Code.
- Kistler Vineyards failed to submit the Erosion Control and Mitigation Workplan Completion Report by the required date of October 25, 1999.
- On October 29, 1999, the RWQCB received the Erosion Control and Mitigation Workplan Completion Report. The Completion Report stated that Kistler Vineyards had fully implemented the erosion control plan.
- On November 16, 1999 and December 7, 1999, RWQCB staff inspected Kistler Vineyards and concluded that the measures prescribed in the erosion control plan were not fully implemented, contrary to the statement in the completion report. Therefore, Kistler Vineyard falsified information in the Erosion Control and Mitigation Workplan Completion Report requested by the Executive Officer of the RWQCB.

- On December 17, 1999, the Executive Officer of the NCRWQCB sent Kistler Vineyards a letter requiring the submittal of another Erosion Control and Mitigation Workplan Completion Report. The letter required the completion of the measures specified in the erosion control plan by January 3, 2000 and the submittal of the Erosion Control and Mitigation Workplan Completion Report by January 7, 2000. The letter also stated that the October 29, 1999 completion report from Kistler Vineyards contained inaccurate information, was not submitted by the required date and that failure to submit a timely accurate completion report may constitute a misdemeanor subject to administrative civil liabilities pursuant to Section 13268 of the California Water Code.
- On January 7, 2000 Kistler Vineyards submitted an additional Erosion Control and Mitigation Workplan Completion Report asserting that temporary erosion control measures already in place at the Kistler Vineyard development were adequate to prevent erosion until the permanent erosion control measures, described in the Erosion Control and Mitigation Workplan, are installed. The report also asserted that conditions are too wet to install the permanent erosion control measures and that Kistler Vineyards will install the permanent measures during the summer of 2000.

Proposed Civil Liability

6. Section 13268 of the California Water Code 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 California Water Code 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...”
7. The RWQCB has determined that Kistler Vineyards submitted the Erosion Control and Mitigation Workplan Completion Report on October 29, 1999, three (3) days late, and may be subject to the imposition of civil liabilities up to \$3000. The RWQCB has further determined that Kistler Vineyards falsified information in the Erosion Control and Mitigation Workplan Completion Report submitted on October 29, 1999, and may be subject to the imposition of civil liabilities for each day until an accurate Erosion Control and Mitigation Workplan Completion Report is received. The RWQCB has calculated potential civil liabilities up to \$70,000 for the period from October 29, 1999 to January 7, 2000, a total of 70 days. Although Kistler Vineyards has not complied with the 13267 (b) orders dated October 7, 1999 and December 17, 1999 for complete implementation of the Erosion Control and Mitigation Workplan, the RWQCB is currently deferring the

potential accrual of civil liabilities for time beyond the date of January 7, 2000. The RWQCB shall monitor the efficacy of the temporary erosion control measures in preventing sediment discharges during the remaining winter season in determining whether additional civil liabilities are warranted.

8. In determining the amount of civil liability, the RWQCB took into account the nature, circumstances, extent, and gravity of the violations, whether the discharge is subject to cleanup or abatement, the degree of toxicity of the discharge, and with respect to the violator, the ability to pay, the effect of 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 such other matters as justice may require.
9. The issuance of a Complaint for Administrative Civil Liability is not subject to the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321 (a)(2) (enforcement action).

Therefore, I hereby propose that Administrative Civil Liability in the amount of \$10,000 be imposed.

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 of 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

February 18, 2000