

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

NORTH COAST REGION

IN THE MATTER OF:)	
)	
Dean Soiland dba Bo Dean Co., Inc.)	COMPLAINT NO. R1-2021-0047
)	FOR
SONOMA COUNTY)	ADMINISTRATIVE CIVIL LIABILITY
)	
)	
)	
)	September 10, 2021

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

The Regional Water Board alleges that Dean Soiland doing business as Bo Dean Co., Inc. (Discharger) has violated provisions of law for which the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) may impose civil liability pursuant to section 13385 of the California Water Code (Water Code).

BACKGROUND

1. The Discharger owns and operates Mark West Quarry, an aggregate rock quarry, located on two parcels of land at 4611 Porter Creek Road in Sonoma County (Facility).
2. The Discharger is subject to the terms of the *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities*, Order NPDES No. CAS000001 (Permit, or Industrial General Permit) because it conducts an industrial activity which is required to enroll in the Permit. The Discharger submitted a Notice of Intent to comply, thereby enrolling in the current iteration of the Permit, in June 2015.
3. The Facility discharges to Porter Creek, a perennial tributary to Mark West Creek, a tributary to the Russian River, and a water of the United States.

4. The *Water Quality Control Plan for the North Coast Basin* (Basin Plan) designates the following beneficial uses for the Mark West Subarea and Porter Creek:
 - a. Cold freshwater habitat (COLD);
 - b. Commercial and sport fishing (COMM);
 - c. Migration of aquatic organisms (MIGR);
 - d. Rare, threatened, or endangered species (RARE);
 - e. Spawning, reproduction, and/or early development (SPAWN);
 - f. Warm freshwater habitat (WARM); and,
 - g. Wildlife habitat (WILD).
5. The Russian River is listed on the Clean Water Act section 303(d) impaired water body list as being impaired for sediment.
6. Industrial General Permit Section III.A. states, "All discharges of stormwater to waters of the United States are prohibited except as specifically authorized by this General Permit or another NPDES permit."
7. Industrial General Permit Section X.H.1. requires, "The Discharger shall, to the extent feasible, implement and maintain all the following minimum BMPs [best management practices] to reduce or prevent pollutants in industrial stormwater discharges."
8. Minimum BMPs are specifically articulated in Permit Section X.H. and include: good housekeeping, preventative maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment control, employee training program, and quality assurance and record keeping.
9. Industrial General Permit Section X.H.2. requires, "In addition to the minimum BMPs described in Section X.H.1., the Discharger shall, to the extent feasible, implement and maintain any advanced BMPs ... necessary to reduce or prevent discharges of pollutants in its [stormwater] discharge in a manner that reflects best industry practice considering technological availability and economic practicability and achievability." As described in Section X.H.2, advanced BMPs include exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs.
10. The Regional Water Board inspected the Facility on the following dates:
December 17, 2018; January 9, 2019; January 16, 2019; February 13, 2019;
February 19, 2019; February 26, 2019; March 20, 2019; May 14, 2019; May 16,
2019; November 26, 2019; December 2, 2019; December 6, 2019; August 13,
2020; November 17, 2020 and August 24, 2021.

11. Beginning in December 2018, and through August 2020, Regional Water Board staff observed evidence of violations of the Industrial General Permit and Clean Water Act section 301 at the Facility.

ALLEGATIONS

1. **Violation 1:** The Discharger violated Industrial General Permit Section III.A. and section 301 of the Clean Water Act when it discharged approximately 10,519,608 gallons of sediment-laden storm water not otherwise specifically authorized by the Permit for 45 days between December 2018 through May 2019, on: December 18, 2018; December 23-24, 2018; January 5-6, 2019; January 8-9, 2019; January 11, 2019; January 15-16, 2019; January 20, 2019; January 30, 2019; February 1-4, 2019; February 8-9, 2019; February 12-16, 2019; February 25-27, 2019; March 2, 2019; March 5-6, 2019; March 9, 2019; March 20, 2019; March 22-23, 2019; March 25-28, 2019; April 5-6, 2019; April 15, 2019; May 15-16, 2019.
2. **Violation 2:** The Discharger violated Industrial General Permit Section X.H.1.a., by failing to implement and maintain good housekeeping minimum BMPs for a total of 606 intervening days between December 17, 2018 and August 13, 2020. The Prosecution Team is only alleging 125 days of violation, on: December 18, 2018; December 23-24, 2018; January 5-6, 2019; January 8-9, 2019; January 11, 2019; January 15-16, 2019; January 20, 2019; January 30, 2019; February 1-4, 2019; February 8-9, 2019; February 12-16, 2019; February 25-27, 2019; March 2, 2019; March 5-6, 2019; March 9, 2019; March 20, 2019; March 22-23, 2019; March 25-28, 2019; April 5-6, 2019; April 15, 2019; May 15-16, 2019; January 9, 2020; January 16, 2020; January 21, 2020; January 25, 2020; January 26, 2020; March 7, 2020; March 15, 2020; March 24, 2020; March 28, 2020; March 29, 2020, April 4-5, 2020; April 12, 2020; May 11, 2020; May 16, 2020; and May 17-18, 2020.
3. **Violation 3:** The Discharger violated Industrial General Permit Section X.H.1.d., by failing to implement and maintain material handling and waste management minimum BMPs for a total of 542 intervening days between February 19, 2019 and August 13, 2020. The Prosecution Team is only alleging 92 days of violation, on: February 25-27, 2019; March 2, 2019; March 5-6, 2019; March 9, 2019; March 20, 2019; March 22-23, 2019; March 25-28, 2019; April 5-6, 2019; April 15, 2019; May 15-16, 2019; January 9, 2020; January 16, 2020; January 21, 2020; January 25, 2020; January 26, 2020; March 7, 2020; March 15, 2020; March 24, 2020; March 28, 2020; March 29, 2020, April 4-5, 2020; April 12, 2020; May 11, 2020; May 16, 2020; and May 17-18, 2020.
4. **Violation 4:** The Discharger violated Industrial General Permit Section X.H.1.e. by failing to implement and maintain erosion and sediment control minimum

BMPs for a total of 606 intervening days between December 17, 2018 and August 13, 2020. The Prosecution Team is only alleging 125 days of violation, on: December 18, 2018; December 23-24, 2018; January 5-6, 2019; January 8-9, 2019; January 11, 2019; January 15-16, 2019; January 20, 2019; January 30, 2019; February 1-4, 2019; February 8-9, 2019; February 12-16, 2019; February 25-27, 2019; March 2, 2019; March 5-6, 2019; March 9, 2019; March 20, 2019; March 22-23, 2019; March 25-28, 2019; April 5-6, 2019; April 15, 2019; May 15-16, 2019; January 9, 2020; January 16, 2020; January 21, 2020; January 25, 2020; January 26, 2020; March 7, 2020; March 15, 2020; March 24, 2020; March 28, 2020; March 29, 2020, April 4-5, 2020; April 12, 2020; May 11, 2020; May 16, 2020; and May 17-18, 2020.

5. **Violation 5:** The Discharger violated Industrial General Permit Section X.H.2. by failing to implement and maintain advanced BMPs for a total of 255 intervening days between December 17, 2018 and May 6, 2019. The Prosecution Team is alleging 53 days of violations, on: December 18, 2018; December 23-24, 2018; January 5-6, 2019; January 8-9, 2019; January 11, 2019; January 15-16, 2019; January 20, 2019; January 30, 2019; February 1-4, 2019; February 8-9, 2019; February 12-16, 2019; February 25-27, 2019; March 2, 2019; March 5-6, 2019; March 9, 2019; March 20, 2019; March 22-23, 2019; March 25-28, 2019; April 5-6, 2019; April 15, 2019; May 15-16, 2019; January 9, 2020; January 16, 2020; January 21, 2020; January 25, 2020; January 26, 2020; March 7, 2020; March 15, 2020; March 24, 2020; March 28, 2020; March 29, 2020, April 4-5, 2020; and April 12, 2020.

LEGAL AND REGULATORY BACKGROUND

6. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and Water Code section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.
7. Pursuant to Water Code section 13385(a), any person who violates waste discharge requirements or any requirements of section 301 of the Clean Water Act is subject to administrative civil liability pursuant to Water Code section 13385(c), in an amount not to exceed the sum of both the following: (1) ten thousand dollars (\$10,000) for each day in which the violation occurs: and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
8. Pursuant to Water Code section 13385(e), in determining the amount of civil liability, the regional board shall take into consideration the nature,

circumstances, 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 the 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.

9. The State Water Resources Control Board's (State Water Board) *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for assessing administrative civil liability. The use of the Enforcement Policy addresses the factors that are required to be considered when imposing a civil liability.
10. The details of these violations and the application of the Enforcement Policy to these violations are set forth in full in the accompanying Attachment A, which is incorporated herein by this reference as if set forth in full.

PROPOSED CIVIL LIABILITY

11. The Prosecution Team recommends that the Regional Water Board impose civil liability against Discharger in the amount of **four million five hundred thousand dollars (\$4,500,000)** for the violations alleged herein and in Attachment A.
12. This Administrative Civil Liability (ACL) Complaint is issued under authority of Water Code section 13323.
13. The Regional Water Board will hold a hearing on this Complaint at the December 2-3, 2021 Board Meeting. The meeting will be held unless the Discharger does one of the following:
 - a. The Discharger waives its right to a hearing by completing the attached Waiver Form and returning it to the Regional Water Board with payment for the proposed administrative civil liability amount of **four million five hundred thousand dollars (\$4,500,000)**; or,
 - b. The Regional Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by completing the attached Waiver Form and returning it to the Regional Water Board with a letter describing the items described in the Waiver Form.
14. If the Regional Water Board holds a hearing, it will be governed Hearing Procedures which will be issued by the Advisory Team. During the hearing, the Regional Water Board will hear testimony and arguments, receive evidence, and affirm, reject, or modify the proposed administrative civil liability, or determine

Mark West Quarry
Complaint No. R1-2021-0047

September 10, 2021

whether to refer the matter to the Attorney General for recovery of judicial civil liability.

Dated this September 10, 2021

Claudia E. Villacorta, P.E.
Assistant Executive Officer