

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2006-0512

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
IN THE MATTER OF

CITY OF ANTIOCH  
SOMERSVILLE-GENTRY, INC.  
ANTIOCH LANDFILL  
CONTRA COSTA COUNTY

This Administrative Civil Liability Complaint (hereafter Complaint) is issued to the City of Antioch and Somersville-Gentry, Inc. (hereafter jointly referred to as Discharger), based on findings of violations of Cleanup and Abatement Order (CAO) No. R5-2002-0735 and provisions of California Water Code Section 13350 that authorize the imposition of 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 and failure to act, the following:

1. The City of Antioch (City) operated and still owns most of the Old Antioch Landfill. The Old Antioch Landfill, operated from the 1920s until its closure in 1968, accepted municipal solid waste and for part of that time operated as a burn dump. The Landfill discharged burned and unburned municipal waste to low ground on either side of Markley Creek. Urban development up and down stream from the closed landfill has created a condition of rapid streambed down cutting in Markley Creek, causing erosion of the stream banks and releasing burned solid waste to surface waters.
2. The City owns most of the old Antioch Landfill; Somersville-Gentry Inc. (Somersville-Gentry) now owns the former Tom Gentry California Company property adjacent to the Old Antioch Landfill; and GBF Holdings LLC (GBF) owns a ¼ acre slice of the Old Antioch Landfill acquired for drainage assess to Markley Creek. All three properties presently contain municipal solid waste.
3. The Executive Officer issued CAO No. R5-2002-0735 naming the City, Tom Gentry California Company (precursor to Somersville-Gentry Inc.), and GBF as Dischargers. The CAO required, among other activities, completion of corrective actions to prevent further release of waste to Markley Creek by 1 October 2003. On 27 April 2004, GBF completed corrective actions and submitted a final report for its fraction of the site and is therefore not a party to this Administrative Civil Liability Complaint.

4. On 21 November 2003 Somersville-Gentry Inc. purchased the Gentry Property. Somersville-Gentry Inc. knew of the existence of the CAO when it purchased the property and therefore is named in this Order.

### **Site Description**

5. The Old Antioch Landfill is located on both sides of Markley Creek east of Somersville Road in the southeast  $\frac{1}{4}$  of Section 27, T2N, R1E, MDB&M. The City of Antioch portion of Old Antioch Landfill occupies assessors parcel numbers (APN): 076-021-015 (13.20 acres) and 076-021-014 (3.85 acres). The Somersville-Gentry property is located northeast of the City's property on approximately 4 acres (APN 076-010-034).
6. The Old Antioch Landfill operated as an unlined solid waste landfill from sometime after 1928, when the property was purchased, until it was closed in 1968. Operational records for the landfill no longer exist. The City, however, asserts that only municipal wastes were accepted at the landfill. Early landfill operations burned waste prior to final discharge, while later operations discharged unburned waste. Markley Creek bisects the landfill with waste located on both sides of the creek.
7. The Old Antioch Landfill was closed in 1968 with a cover of approximately 12-inches of clayey soil. In 1988 an Air Quality Solid Waste Assessment Test (SWAT) was conducted at the landfill. The SWAT determined that the threat to water quality due to migrating gases from the landfill were negligible.
8. In 1989 a Water Quality SWAT was conducted at the southern part of the Old Antioch Landfill. Groundwater testing detected elevated metal concentrations that have been attributed to the adjacent Contra County Sanitary Landfill (CCSL). Background groundwater at Old Antioch Landfill is strongly impacted by the adjacent and immediately up-gradient CCSL.
9. In 1996, slope failures and erosion in the south bank of Markley Creek on City property discharged waste into the creek. The City implemented corrective actions to remove waste from the creek bottom, and repaired and graded the failed slopes.
10. In 1997 and 1998, additional erosion and slope failures exposed and discharged waste to Markley Creek. The City repaired this area.
11. On or before 28 December 2001 a slope failure in the south bank of Markley Creek, mostly on Somersville-Gentry property but also on the CCSL drainage access, discharged waste into the Creek. Subsequent investigations of Markley Creek by Contra Costa County Environmental Health Department staff detected at least four additional small slope failures exposing waste in the south bank of Markley Creek and exposing waste in the north bank at the "mound area".

12. Subsequent investigations have detected burned and unburned municipal waste in the stream banks of Markley Creek on the City, GBF, and Somersville-Gentry properties. Investigations have found metal concentrations up to hazardous levels in stream sediment and waste samples and elevated EC, pH, turbidity, iron, and sulfate concentrations in downstream surface water.
13. One stream sediment sample and waste samples from both the City and Somersville-Gentry properties exceed or equal the Total Threshold Limit Concentration (TTLC) under Title 22 California Code of Regulations (CCR) Hazardous Waste Criteria for lead. Waste in the Streambed and exposed in the stream bank represents a potential threat to human health and welfare.
14. On 2 January 2003, the Executive Officer issued CAO No. R5-2002-0735. The CAO required: Submittal of an Engineered Feasibility Study (EFS) to prevent future discharges of waste by 15 February 2003; submittal of a work plan with time schedule to implement approved corrective actions by 15 March 2003; completion of work in Markley Creek by 1 October 2003; and submittal of proof of a deed restriction that the parcel has been used as a landfill by 30 June 2003.

#### **Violations of the Cleanup and Abatement Order**

15. On 18 March 2003, staff sent a letter to the City of Antioch, Tom Gentry California Company and GBF noting that the 15 February 2003 and 15 March 2003 compliance dates for submittal of an EFS and a work plan respectively had been missed. The letter states that staff *'will initiate enforcement actions for failure to comply if the EFS is not received by 1 April 2003'*.
16. On 21 March 2003, staff received a letter from the City of Antioch stating that they were concerned with the high cost of the remediation.
17. On 11 April 2003, the EFS was submitted and on 21 April 2003, staff concurred with the City of Antioch, Tom Gentry California Company and GBF regarding the EFS and asked for a work plan to complete corrective actions by 1 October 2003.
18. On 16 May 2003 staff responded to the request by the City of Antioch, Tom Gentry California Company and GBF request for more time with a letter stating that staff will not recommend enforcement if the Discharger demonstrates progress implementing corrective actions. This letter set the following progress goals: final design by 29 September 2003, construction contract by 5 January 2004, start of construction by 15 May 2004, construction complete by 15 August 2004 and final report by 18 October 2004.

19. On 27 April 2004, GBF completed corrective actions for their fraction of the site and submitted a final construction report.
20. The progress goals were not complied with and on 1 November 2004 the City of Antioch requested a second time extension to complete corrective actions by 14 October 2005.
21. On 27 June 2005, the Discharger (City of Antioch and Somersville-Gentry Inc.) submitted a Draft 50% Design Report. When staff contacted the Discharger's consultant, they stated that they anticipated submitting the final 50% Design Report in a couple of weeks. This was the last communication from the Discharger or their consultant regarding complying with the CAO.
22. By failing to complete corrective actions by 1 October 2003 or any of the subsequent completion dates (15 August 2004 or 14 October 2005), the Discharger has violated CAO No. R5-2002-0735.
23. California Water Code (CWC) Section 13350 states, in part, that:
  - (a) *Any person who (1) violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board... shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e)...*
  - (e) *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. (1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs...*
  - (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.*
24. As of 1 June 2006, the Dischargers have been in violation of the CAO No. R5-2002-0735 for 608 days for failure to implement corrective actions by 1 October 2003. The maximum liability for this CAO violation is three million, forty thousand dollars (\$3,040,000.00). The minimum liability for this violation is sixty thousand and eight hundred dollars (\$60,800.00).
25. 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.”

26. 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.

THE CITY OF ANTIOCH AND SOMERVILLE-GENTRY INC. ARE HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that the Dischargers be assessed Administrative Civil Liability in the amount of \$300,000. The amount of the liability proposed is based upon the minimum required and maximum allowed liability under Section 13350(e)(1)(B), a review of the factors set forth in CWC Section 13327 cited in Finding No. 24 above, and upon consideration of the economic benefit or savings resulting from the violations.
2. A hearing shall be held on **21/22 September 2006** unless the Dischargers agree 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 check and sign the waiver and return it and the 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, #200, Rancho Cordova, California 95670-6114, by **18 August 2006**.

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PAMELA CREEDON, Executive Officer

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19 July 2006

(Date)

RDA: 6/2/06

**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 City of Antioch and Sommersville-Gentry Inc. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2006-0512 (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; and
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 \$300,000 by check, which contains a reference to "ACL Complaint No. R5-2006-0512" 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)