

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2002-0502

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

MUSCO OLIVE PRODUCTS AND THE STUDLEY COMPANY
SAN JOAQUIN COUNTY

This Administrative Civil Liability Complaint (hereafter Complaint) is issued to Musco Olive Products and The Studley Company (hereafter jointly referred to as "Discharger") based on failure to comply with enforcement orders issued pursuant to Article 1, Chapter 5 of the California Water Code (CWC). This Complaint is issued pursuant to Sections 13350 and 13268 of the CWC, which authorize the imposition of administrative civil liability.

The Executive Officer of the Regional Water Quality Control Board, Central Valley Region (Regional Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. Musco Olive Products owns and operates an olive brining and packaging facility south of the town of Tracy, near Patterson Pass Road in San Joaquin County. The facility (Assessor's Parcel Number 251-3200-08) is in Section 4, T3S, R4E, MDB&M. Musco Olive Products operates the facility on land leased from the Studley Company, a California Limited Partnership.
2. Wastewater generated at the facility is regulated by two separate Waste Discharge Requirements (WDRs) Orders. Order No. 96-075 regulates the Title 27 Class II surface impoundments that are used to store concentrated brines, while Order No. 97-037, adopted by the Regional Board on 28 February 1997, regulates the less concentrated wastewater which is applied to land. This Complaint pertains only to violations of Order No. 97-037.
3. The facility processes olives year-round and generates several wastewater streams. Waste lye solutions, pit floatation brine, and rinse water all have high total dissolved solids (TDS) concentrations, and are discharged to either of two Class II surface impoundments for evaporation.

WASTE GENERATION AND DISPOSAL

4. Approximately 600,000 gallons per day of retort cooling water, wash waters (including weak lye solutions), acetic acid storage solutions, pitting machine wastewater, and cannery floor wastewater are collected and transferred to an unlined one-million-gallon storage pond, where primary settling occurs. The wastewater is then pumped to land application areas.
5. Based on the Discharger's self monitoring data for the period cited in this Complaint, the average biochemical oxygen demand (BOD) of the wastewater discharged to the land application areas was 3,000 mg/L, and the average concentration of dissolved inorganic solids (DIS) was 2,600 mg/L. WDRs Order No. 97-037 limits the BOD to a daily maximum of 3,176 mg/l and the DIS to a daily maximum of 1,340 mg/l. During the period cited in this Complaint, the Discharger exceeded the daily maximum values for both BOD and DIS.

6. The Discharger's facility is on approximately 280 acres, of which approximately 200 acres are available for land application of process wastewater. Wastewater is used to spray irrigate land containing mainly volunteer weeds and grass.
7. In mid-1999, the Discharger closed a similar facility in Visalia, and consolidated the production from that facility with the Tracy facility. The facility consolidation resulted in a significant flow increase to the storage pond and land disposal system, but the Discharger made no modifications to the system to accommodate the increased flow.
8. Due to the limited capacity of the storage pond relative to the current wastewater flow rate, the Discharger must irrigate the land application areas every day the facility operates to prevent overflowing the storage pond. Spillage from the storage pond is discharged through an overflow pipe that directs the excess wastewater to an intermittent stream channel.

ENFORCEMENT ORDERS

9. Because of lack of adequate storage and disposal capacity, between 28 February 1997 and 16 November 2000, the Discharger regularly violated various prohibitions and specifications contained in Order No. 97-037. To address the violations, the Executive Officer issued Cleanup and Abatement Order No. 5-00-717 (C&A Order) on 17 November 2000. The C&A Order requires the Discharger to:
 - a. Immediately comply with Order No. 97-037 (including certain prohibitions and specifications which are cited specifically);
 - b. Prepare certain technical reports; and
 - c. Construct wastewater treatment system improvements as needed to comply with Order No. 97-037.
10. Although the Discharger submitted most of the required technical reports, treatment system improvements were not constructed and the Discharger failed to come into compliance with Order No. 97-037. Therefore, on 25 January 2002, the Regional Board adopted a Time Schedule Order pursuant to Section 13308 of the CWC, requiring the Discharger to submit the delinquent reports required by Order No. 97-037 and the C&A Order.
11. This Complaint addresses civil liabilities incurred by the Discharger for failure to comply with the C&A Order from the date of issuance (17 November 2000) through issuance of the Time Schedule Order (25 January 2002). Subsequent violations of the WDRs or Time Schedule Order, if any, will be addressed in a future complaint, as appropriate.

GENERAL VIOLATIONS

12. The C&A Order required the Discharger to immediately comply with Order No. 97-037, including the following:
 - a. Cease discharges to surface waters;
 - b. Cease the discharge of waste within 100 feet of surface waters;

- c. Cease applying waste during rain events;
 - d. Confine the discharge to property owned and controlled by the Discharger;
 - e. Comply with the wastewater loading rate limits for BOD and DIS; and
 - f. Comply with the 500,000-gallon daily flow rate contained in Order No. 97-037.
13. A 2 November 2001 inspection of the facility and a review of the case file revealed the following violations of the C&A Order:
- a. C&A Order measures A.1.a and A.1.b require the Discharger to prevent wastewater from entering surface water drainage courses. During the inspection, staff observed irrigation tailwater draining to the intermittent stream channel. Based on the Discharger's reported daily flow totals and the capacity of the existing storage pond, it appears that tailwater discharges have been a daily occurrence whenever the facility is generating wastewater.
 - b. C&A Order measure A.1.e requires the Discharger to comply with the effluent concentration limits for DIS and BOD. The Discharger's self-monitoring reports indicate that the DIS concentration exceeded the limit a total of 51 times between 17 November 2000 and 25 January 2002. The BOD limit was exceeded on four occasions.
 - c. C&A Order measure A.1.c requires the Discharger to limit irrigation to those times when it is not raining and to allow a three day resting period between applications and precipitation events. The Discharger's self-monitoring reports indicate irrigation occurred during rain events on 57 separate occasions between 17 November 2000 and 25 January 2002.
 - d. On 28 December 2001, in violation of Order No. 97-037 and the C&A Order, an unknown volume of wastewater mixed with storm water runoff from the land discharge area spilled over containment berms constructed by the Discharger in the intermittent stream bed.
 - e. The Discharger's flow rates exceeded 500,000 gpd on 210 days between 17 November 2000 and 25 January 2002.
14. Considering the violations cited above, the Discharger violated at least one discharge requirement on each of 259 days between 17 November 2000 and 25 January 2002. Attachment A contains a day-by-day summary of violations that occurred during this time period.
15. The C&A Order also required the Discharger to complete certain technical reports as follows:
- a. Develop and implement a contingency plan to allow operation through the winter without off-site discharges and discharges to surface waters;
 - b. Develop and implement a storm water and surface water monitoring workplan;
 - c. Develop and implement a hydrogeologic investigation workplan designed to assess soil and groundwater conditions beneath the discharge areas;
 - d. Develop and implement a workplan to study the effects of the discharge on soil and crops at the discharge areas;
 - e. Develop a plan for facility improvements designed to ensure adequate long-term wastewater storage and disposal; and

f. Submit a report verifying that the facility improvements plan has been fully implemented.

16. The Discharger has submitted most of the technical reports described in Finding No. 15. Some of the reports were submitted after the dates specified in the C&A Order or were incomplete, as summarized below:

<u>Report Title</u>	<u>Date Due</u>	<u>Date Submitted</u>	<u>No. of Days of Violation</u>
Winter Contingency Report	19 December 2000	19 December 2000	0
Storm Water/Surface Water Sampling Plan	19 December 2000	19 December 2000	0
Hydrogeologic Investigation Workplan	3 January 2001	3 January 2001	0
Soil Salinity Study Workplan	3 January 2001	3 January 2001	0
Hydrogeologic Investigation Report	8 April 2001 ¹	14 June 2001	67
Wastewater Application (Crop Impact) Report	8 April 2001 ¹	11 April 2001	3
Wastewater Facilities Improvements Plan	30 May 2001	Incomplete	240 ²
Wastewater Facilities Improvements	15 November 2001	Not Submitted	71
<u>Total Daily Violations</u>			381

¹ The C&A Order required submittal of the report within 90 days of workplan approval. The workplan was conditionally approved on 8 January 2001.

² Each day that the report is incomplete is a violation equivalent to nonsubmittal of the report.

17. On 30 November 2001, the Executive Officer issued Revised Monitoring and Reporting Program (MRP) No. 97-037. Since adoption of the C&A Order, the Discharger has not completely complied with the previous MRP. All required monitoring reports were submitted on schedule, but the reports showed that the Discharger failed to perform all of the sampling and analysis required by the MRP. These violations of Order No. 97-037 are summarized below.

<u>Monitoring Report</u>	<u>Date Due</u>	<u>Date Submitted</u>	<u>Completeness</u>	<u>No. of Days of Violation¹</u>
4 th Quarter 2000 Report	30 January 2001	23 January 2001	Incomplete	360
2000 Annual Report	31 January 2001	19 January 2001	Incomplete	359
1 st Quarter 2001 Report	30 April 2001	20 April 2001	Incomplete	270
2 nd Quarter 2001 Report	30 July 2001	17 July 2001	Incomplete	179
3 rd Quarter 2001 Report	30 October 2001	15 October 2001	Incomplete	87
<u>Total Daily Violations</u>				1,255

¹ Each day that the report is incomplete is a violation equivalent to nonsubmittal of the report.

VIOLATIONS ADDRESSED UNDER CWC SECTION 13350

18. Section 13350 of the CWC states, in part:

“(a) Any person who (1) intentionally or negligently 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 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.

(A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.

(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.”

19. Section 13327 of the CWC states, in part:

“In determining the amount of civil liability, the regional board, and the state board upon review of any order pursuant to Section 13320, 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.”

20. The *maximum* administrative civil liability which can be imposed by the Regional Board under Water Code Section 13350 for the Discharger’s failure to comply with discharge requirements specifically set forth in the C&A Order is \$5,000 per day of violation. As stated in Finding No. 14, there were a total of 259 days of violations of this portion of the C&A Order. Therefore, the maximum administrative civil liability is \$5,000 times 259, for a total liability of \$1,295,000 under Water Code Section 13350.

21. The *minimum* administrative civil liability which can be imposed by the Regional Board under Water Code Section 13350 is \$500 per day of violation when there was a discharge plus \$100 per day of violation when there was no discharge. All of the 259 days of violations occurred on days when there was a discharge. Therefore, the minimum administrative civil liability is \$500 times 259 for a total liability of \$129,500 under Water Code Section 13350.

VIOLATIONS ADDRESSED UNDER CWC SECTION 13268

22. Section 13268 of the CWC states, in part:

“(a) Any person failing or refusing to furnish technical or monitoring reports as required by subdivision (b) of Section 13267. . . 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.”

23. Because the C&A Order was issued pursuant to Section 13267 of the CWC and required immediate full compliance with Order No. 97-037, pursuant to Section 13268 of the CWC, the Discharger is liable for the incomplete and delinquent technical reports and incomplete monitoring reports described in Finding Nos. 15 through 17.

24. The *maximum* administrative civil liability which can be imposed by the Regional Board under Water Code Section 13268 for the Discharger’s failure to submit complete monitoring reports is \$1,000 per day per report. As stated in Finding No. 16 there were a total of 381 days of violations of the technical report requirements set forth in the C&A Order and, as stated in Finding No. 17 there were a total of 1,255 days of violations of the MRP. Therefore, the maximum administrative civil liability is \$1,000 times 1,624 for a total liability of \$1,624,000 under Water Code Section 13268.

25. There is no *minimum* administrative civil liability which can be imposed by the Regional Board under Water Code Section 13268.

CIVIL LIABILITY

26. The Discharger avoided the cost of timely construction of wastewater treatment and disposal system improvements which, according to the Discharger’s technical reports, would have included, but may not be limited to construction of a 110-million-gallon storage reservoir. Therefore, there was an economic incentive to violate the C&A Order.

27. On 25 March 2002, pursuant to the Executive Officer’s request, the Discharger submitted an analysis of the economic benefit it obtained by continuing to violate the WDRs after the C&A Order was issued. The analysis ostensibly showed that the Discharger experienced a negative economic benefit (i.e., the Discharger lost money). However, the Discharger’s analysis was not supported by documentation of expenses or business losses, and staff disagrees with parts of the assessment methodology. Using the unsupported cost data provided by the Discharger, staff determined that the Discharger saved at least \$0.0001 (0.01 cents) per gallon of wastewater in operation and maintenance costs and as much as \$65,000 by deferring construction of the storage pond. The Discharger reportedly discharged a total of 197.5 million gallons between 17 November 2000 and 25 January 2002. Therefore, staff estimates that the Discharger realized a cost savings of approximately \$84,750 (\$19,750 plus \$65,000).

28. As a result of the events and activities described in this Order, the Executive Officer finds that the Discharger has caused or permitted waste to be discharged in such a manner that it has created, and continues to threaten to create, a condition of pollution or nuisance. The Executive Officer also finds that the Discharger is discharging waste in violation of WDRs Order No. 97-037, and in violation of C&A Order No. 5-00-717.
29. Considering the violations and information cited above, the total maximum civil liability that can be imposed by the Regional Board for all violations is \$2,919,000 and the minimum civil liability is \$129,500. The minimum civil liability exceeds staff's estimate of the economic benefit.
30. 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.

MUSCO OLIVE PRODUCTS AND THE STUDLEY COMPANY ARE HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed Administrative Civil Liability in the amount of one hundred fifty thousand dollars (\$150,000.00). The amount of the liability proposed is based upon a review of the factors set forth in Water Code Section 13323 cited above, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing shall be held on 6 or 7 June 2002 unless the Discharger agrees 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 your right to a hearing, please sign the enclosed waiver and return it with the amount of civil liability (in a check made payable to the *State Water Resources Control Board Cleanup and Abatement Account*), to the Board's office at 3443 Routier Road, Sacramento, CA 95827, by **8 May 2002**.

GARY M. CARLTON, Executive Officer

(Date)

WAIVER

By signing this waiver, Musco Olive Products and the Studley Company agree to waive their rights to a hearing before the Central Valley Regional Water Quality Control Board and to remit payment for civil liability imposed in the amount of one hundred fifty thousand dollars (\$150,000.00) by check made payable to the *State Water Resources Control Board Cleanup and Abatement Account*. The check must also contain a reference to ACL Complaint No. R5-2002-0502.

Musco Olive Products and the Studley Company understand that they are giving up their rights to argue against the allegations made by the Executive Officer in this Complaint, and against imposition of, and the amount, of civil liability imposed.

(Name)

(Title)

(Date)