

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401**

**ADMINISTRATIVE CIVIL LIABILITY
DRAFT ORDER NO. R3-2008-0076
Waste Discharger Identification No. 3 42 | 014 493**

Issued To

**Cambria Winery, LLC
5475 Chardonnay Lane, Santa Maria 93454
Santa Barbara County**

The California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board), finds that:

1. Cambria Winery, LLC (Discharger) conducts industrial activities (vehicle maintenance facility) subject to National Pollutant Discharge Elimination System (NPDES) Permit No. CAS000001, State Water Board Order No. 97-03-DWQ, *Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities* (General Permit).
2. On August 13, 1998, the Discharger filed a Notice of Intent to comply with the terms of the General Permit.
3. The General Permit requires dischargers to submit an annual report no later than July 1st of each year (Provision E.3, and Monitoring Program and Reporting Requirement B.14).
4. The Discharger violated the General Permit by failing to submit the 2007-2008 annual report by July 1, 2008. The report covers the period from July 1, 2007, through June 30, 2008.
5. Pursuant to California Water Code Section 13399.31, Central Coast Water Board staff sent two Notice of Non-Compliance letters (dated July 11, 2008, and August 15, 2008) by certified mail to the Discharger for failing to submit the annual report
6. Water Code Section 13399.31(d) provides that if a discharger fails to submit an annual report within 60 days of the first Notice of Non-Compliance, then the Water Board shall impose administrative civil liability described in Section 13399.33(c).
7. Central Coast Water Board staff mailed the first Notice of Non-Compliance on July 11, 2008. The Discharger failed to submit an annual report within 60 days, or by September 11, 2008. The Discharger submitted its annual report on September 23, 2008.
8. Water Code Section 13399.33(c) requires the Central Coast Water Board to impose administrative civil liability for no less than \$1,000 upon any person that fails to submit an annual report in accordance with Section 13399.31.
9. In addition to violating the General Permit annual reporting requirements for the 2007-2008 reporting period, the Discharger also violated the same requirement for the last six reporting years. Staff issued 11 Notice of Non-Compliance letters before the Discharger submitted the late reports.

**Item No. 10
December 4-5, 2008 Meeting
ACL Order No. R3-2008-0076-
Cambria Winery
Attachment 2**

10. On April 19, 2007, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R3-2007-0034, alleging the Discharger was in violation of the General Permit annual reporting requirements and the Water Code for the Discharger's failure to submit the 2006-2007 annual report by its due date, and recommending liability for the amount of \$2,000. The Discharger waived its right to a hearing and paid \$2,000.
11. In concurrence with the *State Water Resources Control Board Water Quality Enforcement Policy*, water boards should quickly escalate enforcement actions to increasingly more serious actions until compliance is achieved.
12. The Discharger's history of violating General Permit annual reporting requirements, and the Central Coast Water Board's previous enforcement actions, indicate that escalating the seriousness of this enforcement action is appropriate. Liability for more than the mandatory minimum civil liability amount of \$1,000 is warranted, as is liability for more than \$2,000. The Water Board has already assessed liability in the amount of \$2,000 in a previous enforcement action, and the Discharger continues to violate annual reporting requirements.
13. On October 23, 2008, the Central Coast Water Board Assistant Executive Officer issued Administrative Civil Liability Complaint No. R3-2008-0076, alleging that the Discharger was in violation of California Water Code Section 13385(a)(2) for failure to submit an annual report as required by the General Permit, and recommending civil liability of \$7,500.
14. Pursuant to California Water Code Section 13385, any person who violates a waste discharge requirements permit shall be civilly liable for up to ten thousand dollars (\$10,000) for each day in which the violation occurs.
15. The Discharger is in violation of California Water Code Section 13385(a)(2) for failure to submit an annual report as required by a waste discharge requirements permit (the General Permit), and is subject to the civil liability prescribed in California Water Code Section 13385(c).
16. Pursuant to California Water Code Sections 13385(e) and 13399.33 (a)(2), in determining the amount of liability, the Central Coast Water Board must consider the nature, circumstances, extent, and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, the discharger's ability to pay, the effect on the discharger's ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, any economic benefit or savings resulting from the violation, and other matters that justice may require. These considerations shall be balanced against the need for the regulatory costs of environmental protection to be borne equally by dischargers throughout the state, and the need for predictability of enforcement when making business decisions. At a minimum, the Water Board must assess liability at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.
17. The Central Coast Water Board determines with respect to the factors in Section 13385 the following:
 - a. Nature, Circumstances, Extent, and Gravity of Violations: These considerations are described in the above paragraphs. The reporting violation does not warrant the applicable maximum liability, but does warrant liability greater than the minimum \$1,000 required by Water Code Section 13399.33(c) described in paragraph No. 8 above.
 - b. Discharge Susceptibility to Cleanup or Abatement: Cleanup or abatement does not apply to reporting violations.

- c. Degree of Toxicity of Discharge: Toxicity determinations do not apply to reporting violations.
 - d. Discharger's Ability to Pay the Liability, and the Effect on the Discharger's Ability to Continue Business: The Discharger has the apparent ability to pay because it owns and operates a 1,600-acre vineyard and winery in the Santa Maria Valley, producing approximately 200,000 cases of wine annually. This consideration warrants less than the maximum liability, but warrants liability greater than the minimum \$1,000 required by Water Code Section 13399.33(c) described in paragraph No. 8 above.
 - e. Voluntary Cleanup Efforts Undertaken: Voluntary cleanup efforts do not apply to reporting violations.
 - f. Prior History of Violations: The Discharger's prior history of reporting violations is fully described in ACL Complaint No. R3-2008-0076. The repetition of annual reporting violations indicates a chronic failure to perform the Permit's required monitoring and reporting duties. This consideration warrants less than the maximum liability, but warrants liability greater than the minimum \$1,000 required by Water Code Section 13399.33(c) described in paragraph No. 8 above.
 - g. Degree of Culpability: As described in these findings and in ACL Complaint No. R3-2008-0076, Water Board staff warned the Discharger multiple times by certified letter, telephone, or facsimile about the annual reporting requirements. As the owner of the regulated facility, the Discharger has the highest degree of culpability. This consideration warrants less than the maximum liability, but warrants liability greater than the minimum \$1,000 required by Water Code Section 13399.33(c) described in paragraph No. 8 above.
 - h. Economic Benefit or Savings Resulting from the Violation: Staff's preliminary review of the Discharger's annual report indicated the report was complete, and that the Discharger performed the observations, monitoring, and other duties required throughout the 2007-2008 reporting year, which generate the data required in the annual report. The economic benefit or savings to the Discharger would be limited to the time and expense of preparing the report itself. With the appropriate information available, staff estimates the Discharger could complete the annual report in two hours or less. Assuming an hourly rate of \$75, the economic benefit equates to \$150. However, the Discharger's eventual completion of the report eliminates any significant economic benefit.

This consideration warrants less than the maximum liability.
 - i. Other Matters Justice May Require: Central Coast Water Board staff, including technical staff, administrative staff, management, and legal counsel, spent 18 hours informing the Discharger of its responsibilities and preparing civil liability documents. At \$135 per hour, staff costs resulting from the Discharger's violations equate to **\$2,430**. This consideration warrants less than the maximum liability, but warrants liability greater than the minimum \$1,000 required by Water Code Section 13399.33(c) described in paragraph No. 8 above.
18. This enforcement action is taken for the protection of the environment and as such is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) in accordance with sections 15307 and 15308, Title 14, California Code of Regulations.

19. A hearing on this matter was held before the Central Coast Water Board on December 4-5, 2008, at the Central Coast Water Board, 895 Aerovista Place, in San Luis Obispo. The Discharger, or the Discharger's representative(s), had the opportunity to be heard and to contest the allegations in Complaint No. R3-2008-0076, which recommended the imposition of civil liability by the Central Coast Water Board.

IT IS HEREBY ORDERED, pursuant to Sections 13399 and 13385 of the California Water Code, the Discharger is assessed a total civil liability of \$7,500, to be paid as follows:

1. The sum of Seven Thousand Five Hundred Dollars (\$7,500) to be delivered to the Central Coast Regional Water Quality Control Board, 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401, **no later than January 5, 2009**. The Discharger shall make the cashier's check or money order payable to the *State Water Resources Control Board Waste Discharge Permit Fund*, with "Order No. R3-2008-0076" shown on the memo line.

I, Roger W. Briggs, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the Central Coast Regional Water Quality Control Board on December 5, 2008.

Roger W. Briggs
Executive Officer

Date