

PROSECUTION TEAM STAFF REPORT
ADMINISTRATIVE CIVIL LIABILITY ORDER
FOR
MISSION SIERRA LAND, LP
RIDGESTONE VILLAS
SHASTA COUNTY

CASE BACKGROUND

Mission Sierra Land, LP (Discharger) is the owner and developer of an approximately 2.37-acre construction project known as Ridgestone Villas. Allen & Randy Knott own Mission Sierra Land LP. The site is located at 870 Mission Sierra Court, in the City of Redding, Shasta County. The site has steep slopes along the northern and eastern boundaries, exceeding 30 percent. The site is being developed into duplexes and fourplexes. Storm water runoff from the site discharges to Wentz Creek, tributary to Churn Creek and the Sacramento River.

Wentz Creek is tributary to Churn Creek, and Churn Creek is tributary to the Sacramento River. The existing beneficial uses of Wentz Creek, Churn Creek and the Sacramento River, as designated in the Central Valley Water Board Water Quality Control Plan for the Sacramento and San Joaquin Rivers-4th Edition 1998 (Basin Plan) are municipal, industrial, and agricultural supply; recreation; aesthetic enjoyment; navigation; groundwater recharge, fresh water replenishment; warm and cold freshwater habitat, warm and cold water migration, spawning and wildlife habitat.

During October 2007, Regional Water Board staff inspected the Ridgestone Villas construction site and found discharges of sediment-laden water and discharges of concrete wastewater to functioning on-site storm drains that were connected to waters of the state, in violation of the Construction Storm Water General Permit.

OVERVIEW OF THE CONSTRUCTION STORM WATER GENERAL PERMIT

On 16 November 1990, the State Water Resources Control Board adopted the National Pollutant Discharge Elimination System Permit (General Permit) for Storm Water Discharges Associated with Construction Activities. The General Permit was updated on 19 August 1999, and the current General Permit is WDR Order No. 99-08-DWQ. Construction projects that disturb one acre or more must submit a Notice of Intent (NOI) to obtain coverage under and indicate willingness to comply with the General Permit.

The General Permit requires the dischargers to implement Best Available Technology Economically Achievable and Best Conventional Control Technology (BAT/BCT) to reduce or eliminate storm water pollution from construction sites. The General Permit authorizes the discharge of storm water to surface waters, if the discharger implements BAT/BCT using best management practices (BMPs). The General Permit prohibits the discharge of materials other than storm water. The effluent limitations contained in the General Permit are narrative and includes the requirement to implement appropriate BMPs. The BMPs must primarily emphasize source controls such as erosion and sediment controls and pollution prevention methods. The General Permit states that erosion control is the most effective way to retain soil and sediment on construction sites and that the most effective way to address erosion control

is to preserve existing vegetation where feasible, to limit disturbance, and to stabilize and revegetate disturbed areas as soon as possible after grading or construction.

The General Permit requires the Discharger to prepare a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP specifies the use of appropriately selected, correctly installed and maintained pollution reduction BMPs. The SWPPP has two major objectives: (1) to help identify the sources of sediment and other pollutants that affect the quality of storm water discharges, and (2) to describe and ensure the implementation of BMPs to reduce or eliminate sediment and other pollutants in storm water as well as non-storm water discharges.

On 11 December 2006, the Discharger submitted a SWPPP and a copy of their NOI application to the Central Valley Water Board Regional Board Redding Office. On 18 January 2007, the Discharger submitted a NOI for coverage under the General Permit to the State Water Resources Control Board, and was assigned WDID No. 5R45C345364, on 19 January 2007. By signing the NOI, the Discharger certified the following:

"I certify under penalty of law that this document and all attachments were prepared under my direction and supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment. In addition, I certify that the provisions of the permit, including the development and implementation of a Storm Water Pollution Prevention Plan and a Monitoring Program Plan will be complied with."

ISSUE

Did the Discharger fail to provide an effective combination of erosion and sediment control Best Management Practices (BMPs) during the rainy season as required by the Construction Storm Water General Permit? Did the Discharger implement adequate soil erosion controls or sediment containment/treatment BMPs? Did the Discharger implement waste control BMPs as proposed in their SWPPP on the site? Did this failure to implement BMPs result in violation of the General Permit issued for Ridgestone Villas? Should the Central Valley Water Board adopt the Administrative Civil Liability Orders naming Mission Sierra Land, LP in the amount of \$10,000? Or should the Central Valley Water Board consider another monetary amount?

CENTRAL VALLEY WATER BOARD STAFF INSPECTIONS

During the summer of 2007 the Discharger graded 2.37-acre property, and began construction. The Central Valley Water Board Staff (Staff) notified the Discharger in writing of their responsibility to comply with the General Permit by sending them the fall 2007 Rainy Season Preparation Reminder letter dated 27 August 2007.

On **10 October 2007**, staff inspected the site and found that the Discharger had failed to provide an effective combination of erosion and sediment control, and failed to install, implement, and maintain storm water construction BMPs. Staff observed excessive erosion on the north slopes, lack of adequate cover and no concrete wash out. Specifically, there were failing slopes along the northern property boundary that resulted in the discharge of sediment to a storm drain inlet on the adjacent property, and there was no concrete washout on-site at the time of the inspection. A concrete washout on-site is a basic waste management BMP and was outlined in their SWPPP. Staff observed that concrete trucks had washed concrete waste

out directly onto the ground, resulting in a significant amount of concrete waste on the ground, which was being driven through and tracked throughout the construction site. The storm drain inlet on the adjacent property is connected to the City of Redding's storm sewer system that discharges directly to Wentz Creek.

Rainfall data for 9 October 2007, collected at Shasta Dam, Redding Fire Station, and Redding Airport, include 0.00", 0.00", and 0.22", respectively. On 10 October 2007, rainfall was 1.30", 0.64" and 1.09", respectively. A 2-year storm event for Shasta Dam is 6.00" and 4.25" for Redding Airport.

CENTRAL VALLEY WATER BOARD STAFF ACTIONS

Issuance of Notice of Violation

On 8 November 2007 a Notice of Violation (NOV) was issued to the Discharger for violating the Construction Storm Water General Permits. The violations cited included the following:

1. Failure to implement an effective combination of erosion and sediment control BMPs (Section A: Storm Water Pollution Prevention Plan (SWPPP), No. 6-Erosion Control and No. 8 – Sediment Control).
2. Failure to maintain, inspect and repair BMPs (Section A: SWPPP, No. 11-Maintenance, Inspection and Repair).
3. Failure to train contractors and/or employees regarding inspections and maintenance of BMPs (Section A: SWPPP, No. 12-Training).
4. Failure to maintain control measures identified in the SWPPP (Section A: SWPPP, No 1-Objectives).
5. Discharging storm water causing or threatening to cause pollution, contamination, or nuisance (Discharge Prohibition A.3).
6. Failure to implement the SWPPP developed for the construction activity, such that storm water discharges and authorized non-storm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or the applicable Regional Water Quality Control Board's Basin Plan (Receiving Water Limitation B.2).
7. Lack of implementation of controls to reduce pollutants in storm water discharges from their construction sites to the Best Available Technology/Best Conventional Pollutant Control Technology (BAT/BCT) performance standard (Special Provision C.2).

These violations may be grouped into three distinct categories: 1) failure to install and maintain erosion and sediment control BMPs (violations 1, 2, 4, 6 and 7); 2) failure to train contractors and/or employees regarding inspections and maintenance of BMPs (violation 3); and 3) discharging storm water causing or threatening to cause pollution, contamination, or nuisance (violation 5).

Discharger Response To The Notice of Violation (NOV)

The Discharger has not responded to the 8 November 2007 NOV and has failed to submit monthly inspection reports as requested in the NOV.

ADMINISTRATIVE CIVIL LIABILITY

The Discharger has violated the Construction Storm Water General Permit. On 28 July 2008 the Assistant Executive Officer issued an ACL Complaint (Order No. 5R-2008-0552) proposing the Discharger pay **\$10,000** to the State's Cleanup and abatement Account.

The prosecution team asserts that the Discharger violated provisions of law for which the Central Valley Regional Water Board may impose liability under Section 13385(c)(2) of the California Water Code (CWC). Section 13385 of the CWC states, in part:

“(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376

(2) Any waste discharge requirements or dredged and fill material permit.

(5) Any requirements of Sections 301, 302, 306, 307, 308, 318, or 405 of the Federal Water Pollution Control Act as amended.”

“(c) Civil liability may be imposed administratively by the State Board or a Central Valley Water Board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the... following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

“(e) In determining the amount of liability imposed under this section, the Central Valley Water Board, the state board, or the superior court, as the case may be, shall take into account 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 its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefits or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.”

Enforcement Considerations

The Regional Water Board may impose an ACL pursuant to CWC Section 13385(a) for violations of the General Permit. Pursuant to CWC Section 13385(c), the Regional Water Board may impose civil liability in an amount up to \$10,000 for each day in which the violation occurs, and 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 \$10 per gallon multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

Pursuant to CWC Section 13385(e), in determining the amount of civil liability imposed, the Regional Board shall take into account:

“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 its ability to continue its 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. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.”

Nature and Circumstances

The Discharger failed to install and maintain erosion and sediment control BMPs resulting in hillside erosion and the discharge of sediment laden water to storm drains. The Discharger failed to install a concrete washout as discussed in their SWPPP. The lack of a concrete washout resulted in the discharge of concrete wastewater to the ground and discharging or threatening to discharge to on-site storm drains. The Discharger failed to adequately train their contractors and/or employees regarding inspections and maintenance of BMPs. The failure to install and maintain BMPs resulted in the discharge or threatened discharge of sediment-laden storm water to the storm drain system. The storm drain system discharges to waters of the state.

Extent and Gravity

The discharge consisted of sediment-laden storm water, sediment washed from steep slopes, and concrete waste and concrete wash water dumped on the ground. The concrete waste was then driven through increasing the spread of fine particulate matter around the construction site. Sediment and concrete waste, when transported by storm water, readily runs to the nearest storm drains.

Susceptibility of the Discharge to Cleanup and Abatement

The discharge of sediment-laden storm water must be prevented, contained, and then cleaned up. The discharge of concrete waste (including wash water) to the ground and then driven through spreads the waste throughout the site and onto local roadways. The fine particulate matter is easily moved during rainfall events. The concrete waste must be contained in a concrete waste dump. The concrete disposal BMP is considered as a bare minimum pollution prevention BMP and must be utilized year round especially during the rainy season. The Discharger was not requested to cleanup the waste but to install adequate BMPs. Once sediment-laden storm water and other pollutants reach the city's storm drain they are not readily susceptible to cleanup.

Degree of Toxicity of the Discharge

The discharges likely added suspended matter and concrete waste to the storm drain system and to surface waters. Concrete waste has a high pH and is also highly toxic to aquatic species. Suspended matter impacts respiration by organisms that depend on gills to obtain

oxygen from the water column. However, no aquatic bio-assessment of down stream receiving waters has been completed.

Ability to Pay

The Discharger is an established developer in good financial standing. The units are being sold in blocks of 4 (buildings in 4-plex configuration) for over \$900,000 each. There are seven buildings in the development. As such, the monetary liability associated with this administrative civil liability should not pose financial hardship for the Discharger nor reduce their ability to continue in business. No one has submitted information indicating the Discharger can not pay the liability.

Prior History of Violations

There was no prior history of violations at this site.

Degree of Culpability

The Discharger was aware of their responsibility when they signed and certified the General Permit NOI as owner, which states:

"I certify under penalty of law that this document and all attachments were prepared under my direction and supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment. In addition, I certify that the provisions of the permit, including the development and implementation of a Storm Water Pollution Prevention Plan and a Monitoring Program Plan will be complied with."

Despite having the responsibility to ensure compliance with the General Permit and possessing the authority to control the construction activities on the site, the Discharger failed to prevent the discharge of sediment laden storm water to storm drains and surface waters. The Discharger failed to install a basic BMPs (concrete washout), resulting in concrete waste being discharged to the ground resulting in violation of the General Permit, and therefore is culpable.

Other Matters as Justice May Require

Staff expects to expend 20 hours (\$2400) to bring this matter to the Board.

Statutory Maximums and Minimums

Maximum Civil Liability. Per CWC section 13385(c), the Regional Water Board may assess fines of up to ten thousand dollars per violation per day. The violations noted by staff may be grouped into three distinct categories: 1) failure to install and maintain erosion and sediment control BMPs; 2) failure to train contractors and/or employees regarding inspections and maintenance of BMPs; and 3) discharging storm water causing or threatening to cause pollution, contamination, or nuisance. The three distinct sets of violations were noted in the NOV. No runoff calculation was performed that would lead to a per-gallon assessment under CWC section 13385(c)(2). Therefore, the maximum administrative civil liability that may be

assessed is thirty thousand dollars (**\$30,000**) (\$10,000 per violation per day, 1 day, 3 distinct violations).

Minimum Civil Liability. CWC section 13385(e) provides that, at a minimum, civil liability shall be assessed at a level that recovers the economic benefit or savings, if any, derived from the acts that constitute the violations. The Discharger should have redirected laborers to create an adequate concrete washout and repair the storm water BMPs, and should have invested more time training contractors and/or employees. Staff does not have an accurate calculation as to the economic benefit to the Discharger, but estimates that the proposed fine exceeds the economic benefit or savings from the violations.

Determination of the Amount of Civil Liability

In consideration of the above findings the Assistant Executive Officer on 28 July 2008 issued an Administrative Civil Liability Complaint in the amount of **\$10,000** for violations of the Construction Storm Water General Permit.

DISCHARGER RESPONSE TO ACL COMPLAINT

The Discharger failed to respond to the ACL by the **28 August 2008** deadline. No formal response has been received to-date. The Discharger sent an email to Staff on **22 September 2008**, with an attached letter dated **6 September 2008**, stating that the Discharger will be contesting the proposed ACL. A hard copy of the letter has not been received. This matter was publicly noticed for thirty days from 28 July through 29 August 2008. No comments were received.

SUMMARY AND RECOMMENDATION

In consideration of the above findings, Prosecution Staff recommends that the Discharger be assessed **\$10,000** for one day of violation.