

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0600

MANDATORY PENALTY
IN THE MATTER OF

OAKWOOD LAKE WATER DISTRICT AND BECK PROPERTIES
OAKWOOD LAKE SUBDIVISION MINING RECLAMATION PROJECT
SAN JOAQUIN COUNTY

This Complaint is issued to the Oakwood Lake Water District and Beck Properties, Oakwood Lake Subdivision Mining Reclamation Project (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order 98-123 and R5-2005-0153 (NPDES No. CA0082783).

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board) finds the following:

1. The Discharger operates the Oakwood Lake Subdivision, a mining reclamation project. Groundwater seepage and stormwater is discharged from to the San Joaquin River within the boundary of the Sacramento-San Joaquin Delta, a water of the United States within the San Joaquin Delta Hydrologic Area.
2. On 5 June 1998, the Central Valley Water Board adopted WDRs Order 98-123 to regulate discharges of waste from the mining reclamation project. The Order named Brown Sand, Inc. and Vernalis Partners, Ltd. as the Discharger. On 21 October 2005, the Central Valley Water Board adopted WDRs Order R5-2005-0153, which contained new requirements and rescinded WDRs Order 98-123. This Order names Oakwood Lake Water District and Beck Properties as the Discharger.
3. On 21 October 2005, the Central Valley Water Board adopted Time Schedule Order (TSO) R5-2005-0154, providing a time schedule and establishing interim effluent limits until 1 May 2010 to comply with new effluent limitations for antimony, arsenic, specific conductance, barium, iron, manganese, aluminum, and ammonia. This Complaint considered the interim effluent limitations and the protection from Mandatory Minimum Penalties provided by TSO R5-2005-0154.
4. On 29 July 2008, the Central Valley Water Board sent the Discharger a draft Record of Violations (ROV). Central Valley Water Board staff has discussed the ROV with both the Discharger's engineer and attorney, and extended the time to review the ROV. On 10 October 2008, the Discharger's attorney responded that

Under the circumstances, the District is prepared to move forward with this matter in

[sic] and seek an appropriate resolution as the named party on any necessary actions taken related to the discharge activities in question. The District expects to resolve with the appropriate party or parties any potential financial consequences that may result from the proposed action separate from the Regional Board's administrative process.

5. CWC sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

CWC section 13385 (h)(2) states:

For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

CWC section 13385(i)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

6. CWC section 13323 states, in part

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

7. WDRs Order 98-123 Effluent Limitations No. B.1., include, in part, the following effluent limitations: *“Effluent shall not exceed the following limits:”*

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>
Turbidity	NTUs	15	20	25

8. WDRs Order 98-123 Effluent Limitations No. B.2., include, the following effluent limitations: *“The discharge shall not have a pH less than 6.5 nor greater than 8.5.”*
9. According to Discharger’s self-monitoring reports, there has been no discharge to the San Joaquin River since 24 October 2005. Because Order No. R5-2005-0153 and TSO R5-2005-0154 were adopted on 21 October 2005, the interim and final effluent limitations contained in these orders are not relevant to this Complaint.
10. According to the Discharger’s self-monitoring reports, the Discharger committed seven (7) serious Group I violations of the above effluent limitations contained in Orders 98-123 and R5-2005-0153 during the period beginning 1 January 2000 and ending 30 April 2008. The violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels by more than 40 percent on these occasions. The mandatory minimum penalty for these serious violations is **twenty-one thousand dollars (\$21,000)**.
11. According to the Discharger’s self-monitoring reports, the Discharger committed twenty (20) non-serious violations of the above effluent limitations contained in Orders 98-123 and R5-2005-0153 during the period beginning 1 January 2000 and ending 30 April 2008. Fourteen (14) of the non-serious violations are subject to mandatory penalties under CWC section 13385(i)(1) because these violations were preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for these non-serious violations is **forty-two thousand dollars (\$42,000)**.
12. The total amount of the mandatory penalties assessed for the cited effluent violations is **sixty-three thousand dollars (\$63,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
13. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

THE OAKWOOD LAKE WATER DISTRICT AND BECK PROPERTIES, OAKWOOD LAKE SUBDIVISION MINING RECLAMATION PROJECT IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **sixty-three thousand dollars (\$63,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **5/6 February 2009**, unless the Discharger does either of the following by **10 December 2008**:
 - a) Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **sixty-three thousand dollars (\$63,000)**; or
 - b) Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board, along with a letter describing the issues to be discussed.
3. If a hearing on this matter is held, the Central Valley Water 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.

JACK E. DEL CONTE, Assistant Executive Officer

10 November 2008

Attachment A: Record of Violations
Attachment B: Technical Memorandum
BLH: 11/10/08

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Oakwood Lake Water District and Beck Properties, Oakwood Lake Subdivision Mining Reclamation Project (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0600 (hereinafter the "Complaint");
2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint; and
4. **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
 - a. I certify that the Discharger will remit payment for the proposed civil liability imposed in the amount of **sixty-three thousand dollars (\$63,000)** by check, which contains a reference to "ACL Complaint R5-2008-0600" and is made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **10 December 2008** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **5/6 February 2009** Central Valley Water Board meeting.
 - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Central Valley Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. 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.

-or-

5. **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). . By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed
6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0600

(Date)

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0600

Oakwood Lake Water District and Beck Properties
Oakwood Lake Subdivision Mining Reclamation Project

RECORD OF VIOLATIONS (1 January 2000 – 30 April 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program Nos. 98-123 and R5-2005-0153)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
1	24-Apr-01	Turbidity	NTU	25	60	Daily	1
2	24-Apr-01	Turbidity	NTU	20	60	Weekly	1
3	30-Apr-01	Turbidity	NTU	15	18	Monthly	3
4	19-Jun-01	Turbidity	NTU	25	32	Daily	4
5	19-Jun-01	Turbidity	NTU	20	32	Weekly	1
6	30-Jun-01	Turbidity	NTU	15	16	Monthly	4
7	31-Oct-01	Turbidity	NTU	15	17	Monthly	4
						Instantaneous	
8	27-Nov-02	pH	pH units	8.5	8.7	s	3
						Instantaneous	
9	27-Mar-03	pH	pH units	8.5	8.6	s	3
						Instantaneous	
10	22-May-03	pH	pH units	8.5	8.6	s	3
						Instantaneous	
11	12-Jun-03	pH	pH units	8.5	8.6	s	3
						Instantaneous	
12	3-Jul-03	pH	pH units	8.5	9	s	4
						Instantaneous	
13	10-Jul-03	pH	pH units	8.5	8.8	s	4
						Instantaneous	
14	17-Jul-03	pH	pH units	8.5	8.6	s	4
						Instantaneous	
15	24-Jul-03	pH	pH units	8.5	8.6	s	4
						Instantaneous	
16	7-Aug-03	pH	pH units	8.5	8.6	s	4
						Instantaneous	
17	25-Nov-03	pH	pH units	8.5	8.8	s	4
18	29-Apr-04	Turbidity	NTU	25	41	Daily	1
19	29-Apr-04	Turbidity	NTU	20	41	Weekly	1
						Instantaneous	
20	20-May-04	pH	pH units	8.5	8.7	s	4
						Instantaneous	
21	27-May-04	pH	pH units	8.5	8.6	s	4
						Instantaneous	
22	24-Jun-04	pH	pH units	8.5	8.6	s	4
23	12-Apr-05	Turbidity	NTU	25	44	Daily	1
24	12-Apr-05	Turbidity	NTU	20	44	Weekly	1
25	19-Apr-05	Turbidity	NTU	25	27	Daily	3
26	19-Apr-05	Turbidity	NTU	20	27	Weekly	4
						Instantaneous	
27	23-Aug-05	pH	pH units	8.5	8.7	s	4

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0600

VIOLATIONS AS OF: 4/30/2008

Group I Serious Violations:	7
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	6
Non-serious Violations Subject to MPs:	14
Mass Limit Violations Not Subject to MPs:	0
<u>Total Violations Subject to MPs:</u>	<u>21</u>

Mandatory Minimum Penalty = (7 Serious Violations + 14 Non-Serious Violations) x \$3,000 = \$63,000