

Document prepared by the Prosecution Team

ITEM: 21

SUBJECT: Richard Sykora, Red Ink Maid and Big Seam Mine, Placer County

BOARD ACTION: *Consideration of Administrative Civil Liability Order*

BACKGROUND: Richard Sykora (Discharger) operates an underground gold mine known as the Red Ink Maid and Big Seam Mine. The mine is on two contiguous 20-acre parcels in the Tahoe National Forest on land owned and administered by the U.S. Forest Service. The access roads, mine entrance, and waste rock dumps cover about two acres of land. The site slopes steeply to the south and sits approximately 2,000 feet above the Middle Fork of the American River. Waste rock from drilling and blasting inside the mine is hauled out of the mine portal and discharged to nearby waste dumps. Potential pollutants include sediment from the waste dumps and unpaved roads, and fuel, oil and other chemicals from the equipment fueling and maintenance areas. During storm events, rain falls onto these areas, leading to the potential for polluted storm water discharges.

On 7 July 2006, the Discharger submitted a Notice of Intent for coverage under the statewide Water Quality Order 97-03-DWQ (NPDES General Permit CAS000001), *Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities*. The gold mine is one of the many types of facilities that are required by the federal Clean Water Act to obtain NPDES permit coverage for its storm water discharges.

The Industrial Storm Water General Permit contains Monitoring and Reporting Requirements. Facility operators are required to submit an annual report to the Water Board by 1 July each year. The annual report must include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling and analysis results, laboratory reports, an annual comprehensive site compliance evaluation report, and if necessary, an explanation of why a facility did not implement any activities required by the Industrial Storm Water General Permit.

This ACL Order addresses the Discharger's failure to submit the 2011/2012 annual report by the 1 July 2012 deadline, and failure to respond to either of the two reminder notices.

The Water Code provides a process for the regional boards to follow when attempting to obtain delinquent annual storm water reports. It requires that the regional board notify each discharger that fails to submit an annual report with regard to its noncompliance and the associated penalties. If the discharger does not submit its annual report within 30 days of that notice, then the regional board sends a second notice to the discharger. If the discharger still fails to submit the annual report, then the regional board should impose the administrative civil liability penalties described in Water Code section 13399.33. These penalties are a minimum liability of \$1,000 plus staff costs incurred by the regional board while attempting to obtain the annual report.

The vast majority of the Central Valley dischargers submit their annual reports as required. Out of approximately 1,100 dischargers regulated by the Board's Rancho Cordova office, 167 received a first notice of non-compliance for failure to submit the annual report for the 2011/2012 reporting year. While the majority then submitted their report, 36 dischargers received a second notice. After the second notice, only two dischargers, including this Discharger, did not submit their reports and were issued Administrative Civil Liability (ACL) Complaints for the 2011/2012 reporting year.

As documented in the Water Board's case file, the Board provided the Discharger with both the first and second notices as required by the Water Code. The Discharger did not respond to either notice, and, to date, has not submitted its annual report.

On 4 March 2013, the Executive Officer issued ACL Complaint R5-2013-0518 pursuant to Water Code section 13399.33 in the amount of \$4,450 to the Discharger for failure to submit its 2011/2012 annual report. The liability amount includes the \$1,000 minimum penalty plus \$3,450 in staff costs as shown in Attachment A to the ACL Complaint.

On 29 April 2013, the Discharger responded to the ACL Complaint by submitting an "Evidence and Policy Statement" but did not submit the 2011/2012 Annual Report.

ISSUES:

In 2006, Mr. Sykora signed and submitted the Notice of Intent for coverage under the Industrial Storm Water General Permit. He then submitted the 2006-2007 and 2007-2008 annual reports, for the first two years he was enrolled in the permit. However, the Discharger has since failed to submit annual reports, despite repeated notices by Board staff that the documents were overdue.

This is the second enforcement action against Mr. Sykora for failure to submit annual storm water reports. In October 2012, the Board adopted an ACL Order in the amount of \$368,624 for violations of the two permits regulating discharges from the mine: the Waste Discharge Requirements and the Industrial Storm Water General Permit. The violations included failure to submit the 2008-2009, 2009-2010 and 2010-2011 Industrial Storm Water annual reports. The Discharger petitioned the ACL Order to the State Water Resources Control Board; the matter is pending.

Mr. Sykora has a history of not accepting Certified Mail from the Water Board. Because of this, Board staff also sent the 2013 ACL Complaint by regular mail at the same time the Complaint was sent by certified mail. When the certified mail was refused by the Discharger and returned to the Water Board office in late March, staff sent the ACL Complaint to the Discharger via FedEx on 28 March 2013. FedEx documented that it left the Complaint at the Discharger's home on 29 March 2013. The witness list and evidence list were delivered to the Discharger on 21 April 2013 by a process server. The rebuttal evidence and agenda package will also be delivered to the Discharger by a process server.

The Discharger received the 2013 ACL Complaint, as evidenced by the documents he submitted in response. On 29 April 2013, the Prosecution Team and Advisory Team received Mr. Sykora's *Evidence and Policy Statement*. The remainder of this document discusses the Prosecution

Team's response to the Evidence and Policy Statement.

In response to both the October 2012 ACL Order, as well as in response to the 2013 ACL Complaint, the Discharger asserts the same position as to why he is not an appropriately named party in the Complaint, and why the Industrial Storm Water Permit annual report requirement does not apply to him. Mr. Sykora asserts that it the responsibility of the U.S. Forest Service, the owner of the land on which the mine resides, to comply with the permits.

In the October 2012 matter, the Prosecution Team responded that the Discharger was appropriately named on that Complaint. The Central Valley Water Board issued the WDRs to the Discharger, in his individual capacity as mine operator, and to date the Board has not agreed to transfer the WDRs to another entity. Likewise, the requirements of the Industrial Storm Water permit apply to Mr. Sykora as well.

The Prosecution Team also rejected the Discharger's argument that the Central Valley Board does not maintain jurisdiction to enforce violations of the Industrial Storm Water permit because other local, state, and federal agencies also regulate mining activity. The Central Valley Board agreed with the Prosecution Team that none of the agreements limit the Board's ability to regulate either nonpoint or point source discharges of mining waste to surface waters or surface water courses, nor do these documents delegate monitoring and reporting responsibilities to the USFS.

The Central Valley Regional Board adopted the ACL Order in the October 2012 matter. That Discharger petitioned that Order to the State Water Board, but it has not been heard yet.

The arguments which were rejected by the Central Valley Board in October 2012 have been regurgitated by the Discharger in the present proceeding. The Prosecution Team requests that the Central Valley Board reject the Discharger's assertions that the U.S. Forest Service is the responsible party as these arguments are still without merit. In addition, the Prosecution Team continues to note that Mr. Sykora himself filed the Notice of Intent to comply with the Industrial Storm Water Permit.

The Discharger also states that there is no evidence that the mining operation threatens water quality. However, the Discharger has never collected storm water samples to substantiate his claim that there is no impact. Given the Discharger's location and type of activity, reasonable potential exists that storm water runoff could impact surface waters. All mining operations in California are required to comply with the Industrial Storm Water Permit; there is no exception for this Discharger.

**PROSECUTION TEAM
RECOMMENDATION:**

Board staff has prepared this ACL Order pursuant to the requirements of Water Code section 13399.33. The minimum penalty under this section of the Water Code is \$1,000 plus staff costs, while the maximum penalty is at least \$3,140,000. Water Code section 13399.33(c) requires assessment of at least the minimum penalty. Due to the need to prepare for a Board hearing, staff costs have increased from \$3,450 to \$7,125 since the ACL Complaint was issued (as shown in Attachment A to the proposed ACL Order).

Staff recommends adoption of the proposed ACL Order, requiring payment of the *minimum* penalty plus revised staff costs. The total proposed minimum penalty is \$8,125.

Mgmt. Review WSW
Legal Review JR

30/31 May 2013

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