

## Central Valley Regional Water Quality Control Board

25 January 2016

CERTIFIED MAIL  
7014 1200 0000 7154 4325

Michael M. Miller  
President  
Original Sixteen to One Mine, Inc.  
P.O. Box 909  
Alleghany, CA 95910

### **ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2016-0511 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, ORIGINAL SIXTEEN TO ONE MINE, INC, SIXTEEN TO ONE MINE, SIERRA COUNTY**

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code section 13385, for violations of Waste Discharge Requirements (WDRs) Order R5-2015-0002 (NPDES CA0081809) by Original Sixteen to One Mine, Inc. (Discharger) at the Sixteen to One Mine (Facility). This Complaint charges the Discharger with administrative civil liability in the amount of **six thousand dollars (\$6,000)**, which represents the sum of accrued Mandatory Minimum Penalties (MMPs) for effluent limitation violations (identified in Attachment A to this Complaint) which occurred from 16 April 2015 through 30 September 2015.

On 18 December 2015, Central Valley Water Board staff issued a draft Record of Violations (ROV) to the Discharger for the period from 16 April 2015 through 30 September 2015. On 4 January 2016, the Discharger responded and objected to the violations for antimony. However, the Discharger did not provide any information that would allow the MMPs to be dismissed.

Pursuant to Water Code section 13323, the Discharger may:

- Pay the proposed administrative civil liability and waive its right to a hearing (Option #1 on the attached waiver form);
- Ask that the hearing be postponed to facilitate settlement discussions or for other reasons (Options #2 or #3 on the attached waiver form); or
- Contest the Complaint and/or enter into settlement discussions without signing the enclosed waiver.

If the Central Valley Water Board does not receive a signed waiver by **24 February 2016**, a hearing will be scheduled for the **21/22 April 2016** Board meeting in Fresno. This hearing will be governed by the attached Hearing Procedures, which have been approved by the Board Chair for use in adjudicating matters such as this one. Any objections to the Hearing Procedures must be received by Patrick Pulupa, whose contact information is listed in the Hearing Procedures, by **5 p.m. on 3 February 2016**.

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations. Payment must be received by **24 February 2016**. The Discharger shall indicate on the check the number of this Complaint and send it to the State Water Resources Control Board, Accounting Office, Attn: ACL Payment, PO Box 1888, Sacramento, California, 95812-1888. The check shall be made payable to the *State Water Pollution Cleanup and Abatement Account*. The waiver and a copy of the check must also be mailed to the Central Valley Water Board at 11020 Sun Center Drive #200, Rancho Cordova, CA 95670 attention to Wendy Wyels by **24 February 2016**.

The settlement will be considered final pending a 30-day comment period, starting from the date this Complaint is issued. Interested parties may comment on the proposed action during this period by submitting written comments to the Central Valley Water Board staff person listed below. Should the Central Valley Water Board receive new information or comments during this comment period, the Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. If the Central Valley Water Board does not hold a hearing on the matter, and if the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement.

In order to conserve resources, this letter transmits paper copies of the documents to the Discharger only. Interested persons may download the documents from the Central Valley Water Board's Internet website at:

[http://www.waterboards.ca.gov/centralvalley/tentative\\_orders/](http://www.waterboards.ca.gov/centralvalley/tentative_orders/)

Copies of these documents can also be obtained by contacting or visiting the Central Valley Water Board's office weekdays between 8:00 AM and 5:00 PM.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Kari Holmes at (916) 464-4623 or [kari.holmes@waterboards.ca.gov](mailto:kari.holmes@waterboards.ca.gov).

*ORIGINAL SIGNED BY*

WENDY WYELS, Supervisor  
Compliance and Enforcement Section

Enclosures (3): ACLC R5-2016-0511  
Waiver Form  
Hearing Procedures

cc w/ encl: Kailyn Ellison, Office of Enforcement, SWRCB, Sacramento  
cc w/o encl: Patrick Pulpa, Office of Chief Counsel, SWRCB, Sacramento  
Lori Okun, Office of Chief Counsel, SWRCB, Sacramento  
Adam Laputz, Central Valley Water Board Advisory Team, Sacramento  
Carol Oz, Department of Fish and Game, Region 2, Rancho Cordova  
San Joaquin County Environmental Health Department, Stockton  
Bill Jennings, California Sportfishing Protection Alliance, Stockton  
Jae Kim, Tetra Tech, Fairfax, VA

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2016-0511

MANDATORY PENALTY  
IN THE MATTER OF

ORIGINAL SIXTEEN TO ONE MINE, INC.  
SIXTEEN TO ONE MINE  
SIERRA COUNTY

This Complaint is issued to the Original Sixteen to One Mine, Inc. (hereafter Discharger) pursuant to California Water Code section 13385, which authorizes the imposition of Administrative Civil Liability, and Water Code section 13323, which authorizes the Executive Officer to issue this Complaint, and Water Code 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 the findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2015-0002 (NPDES CA0081809).

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

1. The Discharger owns and operates the Sixteen to One Mine (Facility), an underground hard rock gold mine. The Facility discharges mine drainage via the 21 Tunnel Portal to Kanaka Creek, tributary to Middle Fork Yuba River and a water of the United States.
2. Discharges from the Facility were regulated by the Central Valley Water Board under Waste Discharge Requirements (WDRs) Order R5-2002-0043, which was adopted on 1 March 2002 and amended on 30 April 2003. On 5 February 2015, the Board adopted WDRs Order R5-2015-0002 which contained new requirements and superseded Order R5-2002-0043 except for enforcement purposes. WDRs Order R5-2015-0002 became effective on 16 April 2015. A minor modification letter was issued on 10 September 2015 to correct an error in the monitoring report due dates.
3. On 17 April 2015, the Board issued Time Schedule Order (TSO) R5-2015-0035 pursuant to Water Code section 13300. The TSO provides protection from mandatory minimum penalties (MMPs) for electrical conductivity, arsenic, antimony, cadmium, copper, iron, lead, manganese, and nickel until 16 April 2020. This Complaint considers the protection from MMPs provided by the TSO.
4. This Complaint addresses administrative civil liability for effluent violations that occurred during the period from 16 April 2015 through 30 September 2015. These violations are specifically identified in Attachment A to this Complaint as subject to MMPs. Attachment A to this Complaint is attached hereto and incorporated herein by this reference.
5. On 18 December 2015, Central Valley Water Board staff issued a draft Record of Violations (ROV) to the Discharger for the period from 16 April 2015 through 30 September 2015. The Discharger responded on 4 January 2016 and objected to the violations for antimony. The Discharger contends that the penalties are excessive considering the lack of history in the area. However, the Discharger did not provide any information to show that the laboratory results were in error or should otherwise be dismissed, and therefore, MMPs must be assessed.

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ORIGINAL SIXTEEN TO ONE MINE, INC.  
SIXTEEN TO ONE MINE  
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6. Water Code section 13385 subdivision (h) and (i) require assessment of mandatory penalties and state, in part, the following:

Water Code section 13385, subdivision (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.

Water Code section 13385, subdivision (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.

Water Code section 13385 subdivision (i)(1) states, in part:

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.

7. Water Code 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.

8. Water Code section 13385, subdivision (j) exempts certain violations from the mandatory minimum penalties, and states, in relevant part:

Subdivisions (h) and (i) do not apply to any of the following:

- 3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or 13308 if all of the following requirements are met:

- C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible....For the purposes of this subdivision, the time schedule may not exceed five years in length .... The interim requirements shall include both of the following:
  - i) Effluent limitations for the pollutant or pollutants of concern.
  - ii) Actions and milestones leading to compliance with the effluent limitation.

9. WDRs Order R5-2015-0002 Effluent Limitations IV.A.1.a., includes, in part, the following effluent limitations:

a. The Discharger shall maintain compliance with the final effluent limitations...:

Effluent Limitations			
Parameter	Units	Average Monthly	Maximum Daily
Antimony	µg/L	6	12

10. TSO R5-2015-0035 Directive 2, states in part:

The following interim effluent limitations shall be effective immediately and until 16 April 2020...

Interim Effluent Limitations			
Parameter	Units	Interim Average Monthly	Interim Maximum Daily
Antimony	µg/L	35	50

- 11. TSO R5-2015-0035 contains interim effluent limitations for antimony; however, as shown in Attachment A, the Discharger exceeded the interim effluent limit and therefore Water Code section 13385, subdivision (j) does not exempt those particular violations from MMPs.
- 12. According to the Discharger's self-monitoring reports, the Discharger committed two (2) serious Group II violations of the above effluent limitations contained in WDRs Order R5-2015-0002, as shown in Attachment A. These violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in WDRs Order R5-2015-0002 by 20 percent or more. The mandatory minimum penalty for these serious violations is **six thousand dollars (\$6,000)**.
- 13. The total amount of the mandatory penalty assessed for the cited effluent violations is **six thousand dollars (\$6,000)**. As stated herein, a detailed list of the cited effluent violations is included in Attachment A. This Complaint addresses administrative civil liability only for violations that are specifically identified in Attachment A as subject to mandatory minimum penalties.

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SIXTEEN TO ONE MINE

SIERRA COUNTY

14. On 14 February 2014, the Executive Officer designated Andrew Altevogt, Assistant Executive Officer, as the Lead Prosecution Officer for all enforcement matters originating in the Rancho Cordova Office. The 14 February 2014 Delegation of Authority also authorizes Andrew Altevogt to issue Administrative Civil Liability Complaints.
15. Issuance of this Administrative Civil Liability Complaint to enforce Water Code 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 ORIGINAL SIXTEEN TO ONE MINE, INC. 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 **six thousand dollars (\$6,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **21/22 April 2016**, unless the Discharger does one of the following by **24 February 2016**:
  - a) Waives the hearing by completing the attached form (checking off the box next to Option 1) and returning it to the Central Valley Water Board. In addition, submits payment for the proposed civil liability of **six thousand dollars (\$6,000)** to the State Water Board with a copy of the check to the Central Valley Water Board; or
  - b) Requests to engage in settlement discussions by checking the box next to Option 2 on the attached form, and returning it to the Board along with a letter describing the issues to be discussed. The Central Valley Water Board must agree to the postponement; or
  - c) Requests to delay the hearing by checking off the box next to Option 3 on the attached form, and returning it to the Board along with a letter describing the proposed length of delay and the issues to be discussed. The Central Valley Water Board must agree to the postponement.
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.
4. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

*ORIGINAL SIGNED BY*

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ANDREW ALTEVOGT, Assistant Executive Officer

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DATE

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the Original Sixteen to One Mine, Inc. (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2016-0511 (hereafter Complaint). 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. The person who has been issued a complaint may waive the right to a hearing."

**(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)**

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **six thousand dollars (\$6,000)** by check that references "ACL Complaint R5-2016-0511" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the State Water Resources Control Board, Accounting Office, Attn: ACL Payment at PO Box 1888, Sacramento, California, 95812-1888 by **24 February 2016**. The waiver and a copy of the check must be submitted to the Central Valley Water Board, Attn: Wendy Wyels, at 11020 Sun Center Drive #200, Rancho Cordova California, 95670 by **24 February 2016**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant 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. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. 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.

**(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt 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 the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

**(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

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(Print Name and Title)

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(Signature)

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(Date)

**ATTACHMENT A  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2016-0511**

**Original Sixteen to One Mine, Inc.  
Sixteen to One Mine**

RECORD OF VIOLATIONS (16 April 2015 – 30 September 2015) MANDATORY MINIMUM PENALTIES  
(Data reported under Monitoring and Reporting Program R5-2015-0002 and Time Schedule Order R5-2015-0035)

<u>Date</u>	<u>Parameter</u>	<u>Units</u>	<u>WDRs Limit</u>	<u>TSO Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
28-Apr-15	Antimony	µg/L	12	50	62.3	Daily Maximum	2	998935
30-Apr-15	Antimony	µg/L	6	35	62.3	Monthly Average	2	998936

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 violation falls within the first three violations in a 180-day period, thus is not subject to mandatory minimum penalties. Penalties that may be assessed for this violation are discretionary. This violation is not addressed or resolved in this ROV.
4. Non-serious violation subject to mandatory minimum penalties.

<u>VIOLATIONS AS OF:</u>	<u>9/30/15</u>
Group I Serious Violations:	0
Group II Serious Violations:	2
Non-Serious Violations Not Subject to MMPs:	0
<u>Non-serious Violations Subject to MMPs:</u>	<u>0</u>
<b>Total Violations Subject to MMPs:</b>	<b>2</b>

**Mandatory Minimum Penalty = (2 Group II Serious Violations) x \$3,000 = \$6,000**