

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT R5-2012-0500

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

CALIFORNIA DEPARTMENT OF GENERAL SERVICES
NEVADA CITY FOREST FIRE STATION
NEVADA COUNTY

This Complaint is issued to the California Department of General Services (hereafter DGS or Discharger) pursuant to California Water Code (CWC) 13385, which authorizes the imposition of Administrative Civil Liability, and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that DGS violated provisions of the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ (NPDES No. CAS000002).

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

Background

1. The Discharger is a California State agency, and owns the Nevada City Forest Fire Station which is located at 10242 Ridge Road in Nevada City. The Discharger is also responsible for capital improvements, including construction, at the property. The Fire Station is operated by California Department of Forestry and Fire Protection (Cal Fire). Sequoia Pacific Builders is the site construction contractor and is responsible for all phases of construction under contract to DGS.
2. The site is the current home of Cal Fire's Nevada City Forest Fire Station. The facility is being enlarged, during which time approximately five acres of the eight-acre site will be disturbed. New construction will consist of six buildings, associated parking, drive aisles, vehicle maintenance areas, and landscaping.
3. On 2 September 2009, the State Water Resources Control Board adopted the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ (NPDES No. CAS000002) (General Permit). This Order became effective on 1 July 2010.
4. Among other items, the General Permit requires:
 - (a) the implementation of best management practices (BMPs), using best available technology economically achievable (BAT) and best conventional control technology (BCT) to reduce pollution from storm water runoff from construction sites;

- (b) that a State-certified Qualified SWPPP Developer (QSD) prepare a site specific Storm Water Pollution Prevention Plan (SWPPP) and identify the Risk Level prior to construction; and
 - (c) that Risk Level 2 and 3 dischargers develop and implement a Rain Event Action Plan (REAP) designed to protect all exposed portions of a site within 48 hours prior to any likely precipitation event. A REAP must be developed when there is a forecast of 50% or greater probability of precipitation in the project area.
5. On 27 January 2011, the Discharger applied for permit coverage under the General Permit for the Nevada City Forest Fire Station construction site by filing an on-line Notice of Intent on the Water Board's SMARTS (Storm Water Multiple Application and Tracking System) data management system. The Discharger determined the project was a Risk Level 2 site based on Project Sediment Risk and Receiving Water Risk under the terms of the General Permit.
 6. On 31 January 2011, the Discharger's Notice of Intent was approved and the Nevada City Forest Fire Station construction site was assigned Waste Discharge Identification Number 5S29C360298. The Discharger (i.e., Department of General Services) is listed as the legally responsible person for the site, and is, therefore, responsible for complying with all elements of the General Permit.
 7. On behalf of the Discharger, Sequoia Pacific Builders completed a site-specific SWPPP for the Nevada City Forest Fire Station site and uploaded the SWPPP to the SMARTS data management system on 10 March 2010, nearly a year prior to the start of the project. As listed in SMARTS, construction began on 7 February 2011 and is proposed to be completed by 3 February 2012.
 8. Other than as described below, there is no history of previous enforcement actions at this particular construction site. However, the Central Valley Water Board has cited DGS for non-compliance with the Construction Storm Water General permit at several other construction sites within the Central Valley Region.

Violations at the Nevada City Forest Fire Station

9. On 5 October 2011, Board staff completed a brief inspection of the subject construction site following the first rain of the season. Staff observed sediment tracking off of the construction site and onto city streets and identified that sediment control BMPs were not effective in controlling off-site tracking of soils. Staff also observed that the Discharger failed to implement soil stabilization BMPs across their active construction site and were relying on perimeter control BMPs to protect the construction site.
10. On 11 October 2011, Board staff completed a thorough inspection of the construction site with Sequoia Pacific Builders. Staff observed that a number of management practices required for Risk Level 2 sites had not been implemented. Certain good site management or "housekeeping" BMPs such as covering soil stockpiles and containing concrete wastes were deficient or absent. Erosion control BMPs were not installed on disturbed soil in active construction areas. Linear sediment control BMPs were not installed along

disturbed slopes. Construction access road BMPs were inadequate to prevent sediment tracking from the site. Sediment tracking observed during both inspections indicated to Board staff that the Discharger was not implementing the General Permit requirement to inspect access roads and cleanup tracked sediment. Board staff also concluded that the Discharger failed to implement an effective inspection and BMP repair and improvement program because of BMP deficiencies observed during the 11 October 2011 inspection. Using scaled site maps, staff subsequently estimated the disturbed area on 11 October 2011 at 3.4 acres.

11. Based on the two inspections, Board staff identified that the following practices required by the General Permit for Risk Level 2 sites were deficient or absent:
 - (1) Covering soil stockpiles;
 - (2) Containment of concrete wastes;
 - (3) Stabilization of construction entrances to control sediment discharges from site;
 - (4) Effective erosion and sediment control BMPs on active construction areas;
 - (5) Linear sediment control BMPs on disturbed sloped areas;
 - (6) Inspection of access roads and removal of tracked sediment;
 - (7) Repairs or design changes to BMPs to correct failures or other shortcomings; and
 - (8) Visual monitoring following a qualifying rain event to identify adequacy of BMPs.
12. Although sediment was tracked onto the street, Board staff did not find evidence of a discharge of sediment or sediment-laden storm water to surface waters from the site during the inspections.
13. On 25 October 2011, Board staff issued a Notice of Violation (found as Attachment A to this Complaint) to the Discharger for the General Permit violations observed on 5 October 2011 and 11 October 2011.
14. On 9 November 2011, DGS submitted a Violation Response letter with attachments describing site stabilization work completed to comply with the General Permit. This letter included a narrative explanation of how erosion and sediment control BMPs were installed between 11 October and 3 November 2011, an updated SWPPP map, copies of weekly, pre-storm, post-storm, and REAP reports, and photographs of the completed work. Water Board staff reviewed this Violation Response letter and site photographs and determined that as of 3 November 2011, the Discharger met the General Permit requirements at this construction site.
15. On 18 November 2011, Water Board staff completed a follow-up inspection of the subject site and met with DGS and Sequoia Pacific Builders. Staff observed that drive isles and parking areas were stabilized with either final paving or base rock, and no tracking was observed off the construction site. The majority of disturbed soils had been hydro-seeded and slopes and stockpiles were stabilized as required by the General Permit.

Surface Water Beneficial Uses

16. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (hereafter Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board.
17. Surface water drainage from the Nevada City Forest Fire Station construction site flows to roadside ditches and storm drain systems and eventually drains to Deer Creek, which is tributary to the South Fork Yuba River.
18. The beneficial uses for the Yuba River from Sources to Englebright Reservoir include: municipal and domestic supply; agricultural supply including irrigation and stock watering; hydropower generation; contact and other non-contact water recreation; cold freshwater habitat; cold spawning, and wildlife habitat.

Calculation of Penalties Under CWC Section 13385

19. CWC section 13385 states, in relevant part:
 - (a) *Any person who violates any of the following shall be liable civilly in accordance with this section:*
 - (2) *A waste discharge requirement ... issued pursuant to this chapter...*
 - (5) *Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended.*
20. The General Permit was adopted by the State Water Board on 2 September 2009, pursuant to Clean Water Act sections 201, 208(b), 302, 303(b), 304, 306, 307, 402, and 403. Section IV(A)(1) of the General Permit, states in part:

Any permit noncompliance constitutes a violation of the Clean Water Act (CWA) and the Porter-Cologne Water Quality Control Act and is grounds for enforcement action and/or removal from General Permit coverage.
21. Based on Board staff's inspections and the information submitted by the Discharger in response to the Notice of Violation, the Discharger violated the following sections of the General Permit found in Attachment D, Risk Level 2 Requirements:
 - a. Part B, Good Site Management "Housekeeping", which states in part:
 - B. 1. b. Cover and berm loose stockpiled construction materials that are not actively being used (i.e. soil, spoils, aggregate, fly-ash, stucco, hydrated lime, etc.).*
 - B. 2. i. Ensure the containment of concrete washout areas and other washout areas that may contain additional pollutants so there is no discharge into the underlying soil and onto the surrounding areas.*

b. Part E. Sediment Controls, which states in part:

E. 1. Risk Level 2 dischargers shall establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.

E. 3. Additional Risk Level 2 Requirement: Risk Level 2 dischargers shall implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction²

E. 4. Additional Risk Level 2 Requirement: Risk Level 2 dischargers shall apply linear sediment controls along the toe of the slope, face of the slope, and at the grade breaks of exposed slopes to comply with sheet flow lengths in accordance with Table 1.

E. 7. Additional Risk Level 2 Requirement: Risk Level 2 dischargers shall inspect on a daily basis all immediate access roads daily. At a minimum daily (when necessary) and prior to any rain event, the discharger shall remove any sediment or other construction activity-related materials that are deposited on the roads (by vacuuming or sweeping).

c. Part G, Inspection, Maintenance and Repair, which states in part:

G. 3. Upon identifying failures or other shortcomings, as directed by the QSP, Risk Level 2 dischargers shall begin implementing repairs or design changes to BMPs within 72 hours of identification and complete the changes as soon as possible.

d. Part I.3. Risk Level 2 – Visual Monitoring (Inspection) Requirements for Qualifying Rain Events, which states in part:

I. 3. g. Within two business days (48 hours) after each qualifying rain event, Risk Level 2 dischargers shall conduct post rain event visual observations (inspections) to (1) identify whether BMPs were adequately designed, implemented, and effective, and (2) identify additional BMPs and revise the SWPPP accordingly.

22. The Discharger's failure to implement the elements of the General Permit described above violated the General Permit and therefore, violated the Clean Water Act and the Porter-Cologne Water Quality Control Act. CWC section 13385 authorizes the imposition of administrative civil liability for such violations.

23. CWC section 13385 states, in relevant part:

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

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

(e) ...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.

24. **Maximum Civil Liability for Failure to Implement Appropriate BMPs:** Pursuant to CWC section 13385(c), each violation of the General Permit identified above is subject to penalties not to exceed \$10,000 per day. The following table shows each General Permit item violated by the Discharger, the dates of the violation, and the total days of the violation. The maximum liability for these violations is **one million three hundred and twenty thousand dollars (\$1,320,000)**.

	General Permit, Attachment D, Risk Level 2 Requirements	Dates of Violation	Days of Violation
	Part B, Good Site Management "Housekeeping", which states in part:		
	B. 1. b. Cover and berm loose stockpiled construction materials that are not actively being used (i.e. soil, spoils, aggregate, fly-ash, stucco, hydrated lime, etc.).	10/11 to 11/02	23
	B. 2. i. Ensure the containment of concrete washout areas and other washout areas that may contain additional pollutants so there is no discharge into the underlying soil and onto the surrounding areas.	10/11 to 11/02	23
	Part E, Sediment Controls, which states in part:		
	E. 1. Risk Level 2 dischargers shall establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.	10/05 to 11/02	29
	E. 3. Additional Risk Level 2 Requirement: Risk Level 2 dischargers shall implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.	10/05, 10/10, and 10/11	3
	E. 4. Additional Risk Level 2 Requirement: Risk Level 2 dischargers shall apply linear sediment controls along the toe of the slope, face of the slope, and at the grade breaks of exposed slopes to comply with sheet flow lengths in accordance with Table 1.	10/11 to 11/02	23
	E. 7. Additional Risk Level 2 Requirement: Risk Level 2 dischargers shall inspect on a daily basis all immediate access roads daily. At a minimum daily (when necessary) and prior to any rain event, the discharger shall remove any sediment or other construction activity-related materials that are deposited on the roads (by vacuuming or sweeping).	10/05 to 11/02	29
	Part G, Inspection, Maintenance and Repair, which states in part:		
	G. 3. Upon identifying failures or other shortcomings, as directed by the QSP, Risk Level 2 dischargers shall begin implementing repairs or design changes to BMPs within 72 hours of identification and complete the changes as soon as possible.	10/06	1
	Part I.3. Risk Level 2 – Visual Monitoring (Inspection) Requirements for Qualifying Rain Events, which states in part:		

	General Permit, Attachment D, Risk Level 2 Requirements	Dates of Violation	Days of Violation
	I. 3. g. Within two business days (48 hours) after each qualifying rain event, Risk Level 2 dischargers shall conduct post rain event visual observations (inspections) to (1) identify whether BMPs were adequately designed, implemented, and effective, and (2) identify additional BMPs and revise the SWPPP accordingly.	10/06	1
	Total Days of Violation per General Permit Item:		132
	Permit Violation Days X \$10,000 per day:		\$1,320,000

25. **Minimum Civil Liability for Failure to Implement Appropriate BMPs:** Pursuant to CWC section 13385(e), at a minimum, civil liability must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The violations of the General Permit were due to failure to implement appropriate erosion and sediment control BMPs as listed in the site specific SWPPP. Board staff estimates the cost to stabilize construction sites ranges from \$2,000 to \$6,000 per acre depending on the slope and soil type. Since only perimeter BMPs were installed at the construction site, the economic benefit received by the Discharger by not installing and maintaining appropriate erosion and sediment control BMPs is estimated to be \$4,000 per acre, or the midpoint of the estimated per-acre cost to stabilize a construction site. At 3.4 acres of disturbed area, the minimum liability is thirteen thousand six hundred dollars (\$13,600).

Proposed Administrative Civil Liability

26. Pursuant to CWC section 13385(e), in determining the amount of any civil liability imposed under CWC section 13385(c), the Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, 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 violations, and other matters that justice may require.
27. On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in CWC section 13385(e).
28. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment B. The proposed civil liability takes into account such factors as the Discharger’s culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.

29. As described above, the maximum penalty for the violations is \$1,320,000 and the minimum penalty is \$13,600. The Enforcement Policy requires that the minimum liability imposed be at least 10% higher than the economic benefit so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations. In this case, the economic benefit amount, plus 10%, is \$14,960. Based on consideration of the above facts and after applying the penalty methodology and allowing for staff costs pursuant to the Enforcement Policy, the Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **\$168,000**. The specific factors considered in this penalty are detailed in Attachment B.

Regulatory Considerations

30. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the General Permit for which penalties have not yet been assessed or for violations that may subsequently occur.
31. An administrative civil liability may be imposed pursuant to the procedures described in CWC section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
32. 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 § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

THE CALIFORNIA DEPARTMENT OF GENERAL SERVICES IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board charges the Discharger with an administrative civil liability in the amount of **one hundred sixty eight thousand dollars (\$168,000)**. The amount of the proposed liability is based upon a review of the factors cited in CWC section 13385, as well as the State Water Resources Control Board's 2010 Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **29/30 March 2012**, unless one of the following options occurs by **2 February 2012**:
 - a) The Discharger 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, along with payment for the proposed civil liability of one hundred sixty eight thousand dollars (\$168,000); or

- b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
 - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
3. If a hearing 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.

Original Signed by Frederick S. Moss

PAMELA C. CREEDON, Executive Officer

3 January 2012

Date

Attachment A: 25 October 2011 Notice of Violation with 11 October 2011 Inspection Report
Attachment B: Specific Factors Considered for Civil Liability

WMH/SER/WSW: 3-Jan-12

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the California Department of General Services (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2012-0500 (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 **one hundred sixty eight thousand dollars (\$168,000)** by check that references "ACL Complaint R5-2012-0500" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **2 February 2012**.

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 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.

(Print Name and Title)

(Signature)

(Date)