



California Regional Water Quality Control Board Los Angeles Region



320 West Fourth Street, Suite 200, Los Angeles, California 90013
(213) 576-6600 • Fax (213) 576-6640
<http://www.waterboards.ca.gov/losangeles>

Matthew Rodriquez
Secretary for
Environmental Protection

Edmund G. Brown Jr.
Governor

December 16, 2011

Mr. John Knipe
City Engineer
City of Westlake Village
31200 Oak Crest Drive
Westlake Village, California 91361

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
CLAIM NO. 7010 3090 0002 1022 4982

COMPLAINT NO. R4-2011-0188 FOR ADMINISTRATIVE CIVIL LIABILITY AGAINST THE CITY OF WESTLAKE VILLAGE FOR FAILURE TO COMPLY WITH THE GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITY (ORDER NO. 99-08-DWQ; CASW000002) WDID NO. 419C 355091.

Dear Mr. Knipe:

Enclosed is Complaint No. R4-2011-0188 for Administrative Civil Liability in the amount of **\$81,500** against the City of Westlake Village ("Permittee") for failure to comply with the General Permit for Storm Water Discharges Associated with Construction Activity Order No. 99-08-DWQ. Also enclosed are the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) Notice of Public Hearing and Administrative Civil Liability Fact Sheet for this matter.

Unless waived, a hearing before the Regional Board Hearing Panel (Hearing Panel) will be held on this Complaint pursuant to California Water Code §§ 13228.14 and 13323. Should the Permittee choose to waive their right to a hearing, an authorized agent must sign the waiver form attached and return it to the Regional Board by 5:00 pm on January 17, 2012. If we do not receive the waiver and full payment of the penalty by January 17, 2012, this matter will be heard before the Regional Board Hearing Panel. An agenda containing the date, time, and location of the hearing will be mailed to you prior to the hearing date.

Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.

California Environmental Protection Agency

Mr. John Knipe
City of Westlake Village

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December 16, 2011

If you have any questions, please contact Ms. Laura Drabandt, Staff Counsel, State Water Resources Control Board Office of Enforcement, at (916) 341-5180 or LDrabandt@waterboards.ca.gov

Sincerely,



Paula Rasmussen, Chief
Compliance and Enforcement Section

Attachments: 1. Administrative Civil Liability Complaint No. R4-2011-0188 and Waiver Form
2. Notice of Public Hearing
3. Administrative Civil Liability Fact Sheet

cc: Ms. Laura Drabandt, State Water Resources Control Board, Office of Enforcement (via email)
Ms. Jennifer Fordyce, State Water Resources Control Board (via email)
Mr. Samuel Unger, Los Angeles Regional Water Quality Control Board (via email)



**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the matter of:)	Complaint No. R4-2011-0188
)	
City of Westlake Village)	Violation of California Water Code
)	§§ 13376, 13385(a)(2) and 13385(a)(4)

This Complaint is issued to the CITY OF WESTLAKE VILLAGE, (hereafter "Discharger") under authority of California Water Code section 13323 to assess administrative civil liability pursuant to Water Code section 13385(c) for unauthorized discharges of sediment-laden waste water from a construction site, and permit violations. This Complaint proposes administrative civil liability in the amount of \$81,500 based on violating Water Code section 13376 and the General Permit for Discharges of Storm Water Associated with Construction Activity ("Construction General Permit") Order No. 99-08-DWQ.

The Chief Prosecutor of the Regional Water Quality Control Board, Los Angeles Region (Regional Board) finds the following:

- 1. Named Discharger:** The Discharger is the responsible party because it owns the property located at the north side of Thousand Oaks Boulevard, between Lindero Canyon Road and Via Colinas in the City of Westlake Village, Los Angeles County, California (the "Site").
- 2. Site Location and Description:** The Site is 50.5 acres, with about 45 acres that were mass graded to construct Westlake Village Community Park. The construction time period was June 1, 2009 through December 31, 2010. The Site is surrounded by commercial and residential areas.
- 3. Background:** Over the course of constructing Westlake Village Community Park, the Discharger graded an extensive area of the Site while failing to have effective Best Management Practices ("BMPs") in place to contain sediment-laden water from entering into the storm drain, ultimately draining into waters of the state and United States. The most significant ineffective BMP was the de-silting basin that did not have enough capacity to function and settle out solids from the run-off water. As a result, the waste water from the Site was discharged into the storm drain. During inspections, the Discharger failed to have a Storm Water Pollution Prevention Plan ("SWPPP") on the Site, and failed to have updated information about the contractors in the SWPPP.
- 4. Construction General Permit:** The Discharger filed a Notice of Intent to Comply with the Construction General Permit on or about April 4, 2009 with the Regional Board. For the purposes of the Construction General Permit, the rainy season is considered October 15

through April 15 each year. January 21, 2010 and February 9, 2010 were both during the rainy season.

- a. On February 25, 2010, Regional Board staff issued a Notice of Violation for Construction General Permit violations. The notice emphasized ineffective BMPs to contain sediment-laden discharges, failure to have a SWPPP on site, and failing to update their Notice of Intent with the correct contractor information.
 - b. On March 11, 2010, Regional Board staff issued a second Notice of Violation, again for ineffective BMPs and for failing to have a SWPPP on site.
5. **CEQA:** The issuance of this Complaint is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, section 15321.

VIOLATIONS

6. **Violation 1:** On or about and between January 21, 2010 and February 9, 2010, the Discharger violated the Construction General Permit by failing to implement and/or maintain effective erosion and sediment control BMPs.
- a. Construction General Permit Section A.6 requires a discharger to, at a minimum, implement an effective combination of erosion and sediment control on disturbed areas during the rainy season. The Discharger violated this requirement by failing to implement effective BMPs to contain sediment-laden water from running off disturbed areas on the site, off the property and into the storm drain during the rainy season.
 - b. Construction General Permit Section A.8 requires a) sediment control BMPs along the site perimeter and at all storm drain internal inlets at all times during the rainy season, and b) one of four options for how a sediment basin is to be designed. The Discharger violated Section A.8 by failing to install effective sediment control BMPs, and because the sediment basin could not retain all the flows into it long enough to settle the solids out. Instead, massive amounts of sediment-laden storm water discharged from the site and entered the storm drain system.
 - c. The statutory maximum liability for violating the Construction General Permit pursuant to Water Code section 13385(a)(2) and (c) is \$10,000 a day for each violation, plus \$10 for each gallon of discharge not cleaned up over 1,000 gallons. For the twenty days of violation between January 21 and February 9, 2010, the statutory maximum is \$200,000 for the daily liability.
 - d. Alternatively, if the Regional Board elects to instead allege each violation for January 21 and February 9, 2010 separately (paragraphs 6.a. and 6.b. for both January 21 and February 9, 2010), the daily liability statutory maximum is \$40,000.

7. **Violations 2 and 3:** On or about January 21, 2010 (Violation 2), and February 9, 2010 (Violation 3) the Discharger had unauthorized discharges of sediment-laden waste water into a storm drain, ultimately entering into a water of the state and United States, violating Water Code section 13376 and the Construction General Permit.
- a. Pursuant to Water Code section 13376, any person who discharges pollutants to the navigable waters of the United States shall file a report of the discharge in compliance with the procedure set forth in Water Code section 13260. Discharging pollutants without a permit is prohibited. The Discharger violated section 13376 by failing to file a report of waste discharge with the Regional Water Board for its sediment-laden waste water discharges observed by staff. The Discharger's Notice of Intent to Comply with the Construction General Permit is a report of waste discharge; however, it does not serve as a report of waste discharge for discharges not authorized by the permit. The sediment-laden discharges were not authorized under the permit, and thus the Discharger failed to file a report of waste discharge.
 - b. Construction General Permit Prohibition A.2. prohibits discharges of material other than storm water. The Discharger violated this prohibition by discharging sediment-laden storm water.
 - c. The statutory maximum liability for violating Water Code section 13376, and the Construction General Permit pursuant to Water Code section 13385(a)(1), (2) and (c) is \$10,000 a day for each violation, plus \$10 for each gallon of discharge not cleaned up over 1,000 gallons. For the two days of violation on January 21 and February 9, 2010, the statutory maximum is \$20,000 for the daily liability, as alleged. If the Regional Board elects to instead allege each violation separately (paragraphs 6.a. and 6.b. for both January 21 and February 9, 2010), the daily liability statutory maximum is \$40,000.
8. **Violation 4:** On or about January 21, 2010, the Discharger violated the Construction General Permit by failing to possess an updated SWPPP on-site. Construction General Permit Section A.3. requires the SWPPP to remain on the site while under construction and during working hours. The statutory maximum liability for violating the Construction General Permit pursuant to Water Code section 13385(a)(2) and (c) is \$10,000 a day for each violation.

PROPOSED LIABILITY

9. Based on the considerations of the factors listed in Water Code section 13385(e) and the liability methodology contained in the State Water Resources Control Board's Water Quality Enforcement Policy (amended November 2009) ("Enforcement Policy"), the proposed administrative civil liability is \$81,500 for four violations of Water Code section 13385(a)(2), as alleged herein.
10. If a hearing on this matter is held, the Regional Water Board will consider whether to affirm, reject, or modify the proposed civil liability up to the maximum penalty provided for by law, or refer the matter to the Attorney General to have a Superior Court consider enforcement. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by submitting a signed waiver and paying the civil liability in full, or by taking other actions as described in the attached waiver form. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this administrative civil liability complaint through hearing. The enforcement costs can be considered as an additional factor as justice may require.



Paula Rasmussen
Chief Prosecutor
Los Angeles Regional Water Quality Control Board

12-16-11
Date

Attachment A: Liability Methodology Analysis
Attachment B: Liability Methodology Spreadsheet

ATTACHMENT A

LIABILITY METHODOLOGY ANALYSIS

1. Step 1 – Potential for Harm for Discharge Violations

Violations 1 and 4: The failure to implement effective sediment and erosion control BMPs and the failure to have the SWPPP on-site are non-discharge violations. Therefore, this step does not apply.

Violations 2 and 3: The potential for harm factor is 5. This factor is determined by a matrix analysis using the potential for harm and the deviation from applicable requirements. The potential for harm is determined to be moderate because the Discharger failed to retain soil and sediment on the construction site or to stabilize disturbed area. The Discharger failed to implement adequate BMPs. By February 9, 2010, BMPs were improved. The deviation from the requirement to implement and maintain effective BMPs was moderate since the effectiveness of the Construction General Permit requirements was only partially compromised.

2. Step 2 – Assessments for Discharge Violations

Violations 1 and 4: The failure to implement effective sediment and erosion control BMPs and the failure to have the SWPPP on-site are non-discharge violations. Therefore, this step does not apply.

Violations 2 and 3: The potential for harm factor is 5. Like the potential for harm factor used above in Step 1, this factor is determined by a matrix analysis using the potential for harm and the deviation from applicable requirements.

- a. The per day factor for discharges is 0.1. The potential for harm to beneficial uses is moderate because the discharges resulted in un-quantified harm to the beneficial uses of waters. The sediment that was discharged likely did diminish and impact the physical quality of waters of the state, and its ability to support the beneficial uses of the receiving waters. The characteristics of the discharged material pose a moderate risk or threat to potential receptors, and were susceptible to cleanup or abatement. The Dischargers moderately deviated from the requirements in the Water Code and the Construction General Permit. Staff discussed the violation on January 21, 2010, yet there was little improvement by February 9, 2010, though a SWPPP was present on site by then.
- b. Violations 2 and 3 are each alleged for one day of violation for a maximum \$10,000 daily liability, totaling \$20,000. Imposing an additional amount of liability for the gallons released is not recommended because of the unquantifiable volume of the discharges.

- c. Applying the per day factor for both violations yields an initial liability of \$2,000, or \$1,000 for each violation. This is the number of days of violation (2) multiplied by the per day factor for discharges (0.1), multiplied by the statutory daily maximum liability (\$10,000).

3. Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the Enforcement Policy's penalty calculation methodology directs a Regional Water Board to calculate a per day factor for non-discharge violations by considering the potential for harm and the extent of deviation from the applicable requirements.

Violation 1 and 4: The per day factor is 0.35. The potential for harm is moderate because the Discharger failed to implement adequate BMPs to retain soil and sediment on the construction site or to stabilize the disturbed area. The deviation from the requirement to implement and maintain effective BMPs was moderate since the effectiveness of the Construction General Permit requirements was only partially compromised. There are 20 days of violation from January 21 through February 9, 2010. Applying the per day factor to the number of days of violation yields an initial liability of \$70,000. This is the number of days of violation (20) multiplied by the per day factor (0.35), multiplied by the statutory maximum penalty per day (\$10,000).

Violations 2 and 3: These are actual discharge violations; therefore, step three does not apply.

4. Step 4 – Adjustment Factors

a. Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the Regional Water Board may adjust the per-day basis for civil liability if certain findings are made, and provided that the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violation. None of the four violations alleged in the Complaint lasted longer than 30 days. Therefore, no adjustment is made for multiple day violations.

b. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this matter for all violations, the Discharger's culpability factor is 1 based on the Discharger's intentional failure to comply with the Construction General Permit's erosion and sediment control provisions, SWPP provision, and for two actual observed discharges. The Discharger filed for permit coverage indicating knowledge of the permit's requirements, and was advised of the ineffectiveness of the BMPs during the January 21, 2010 inspection, yet improvements were minor by February 9, 2010. The Discharger did, however, have the SWPPP on site for the February 9, 2010 inspection.

c. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation. For this case, for all violations, the Discharger's cleanup and cooperation factor is 1. The Discharger did not cooperate fully to implement effective BMPs after the first site inspection on January 21, 2010, but there was minor improvement by the second inspection on February 9, 2010. However, there were discharges on both January 21 and February 9, 2010.

d. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. In this case, the Discharger's history of violations factor is 1 because it is a neutral multiplier. Enforcement staff is not aware of any prior violations.

5. Step 5 – Determination of Total Base Liability Amount

The total base liability amount is determined by applying the adjustment factors from step 4a through 4d to the revised initial liability amount. Accordingly, the total base liability amount is calculated as follows:

(Revised initial liability) x (Culpability multiplier) x (Cleanup and cooperation multiplier) x (History of violations) = Total based liability amount

(\$75,500) x (1) x (1) x (1) = \$75,500.

6. Step 6 – Ability to Pay and Continue to Stay in Business

If there is sufficient financial information to assess the violator's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violator's ability to continue in business, the Total Base Liability Amount may be adjusted to address the ability to pay or to continue in business. The City of Westlake Village has one of the highest credit ratings of a city its size in the State. Based on the Census 2000, 47% of the City's households have incomes of \$100,000 or more. Furthermore, the City's financial budget for 2010-11 shows a projected year-end balance in the General Fund of \$5,106,410. Based on the above, the Discharger has the ability to pay the total base liability amount.

7. Step 7 – Other Factors as Justice May Require

Pursuant to the Enforcement Policy, if the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this. In addition, the costs of investigation and enforcement are "other factors as justice may require," and should be added to the liability amount.

The Enforcement staff time incurred to prepare this Complaint and supporting information is estimated to be 40 hours. Based on an average cost to the State of \$150 per hour, the total staff cost is estimated to be \$6,000. This amount was added to the total base liability amount, bringing the liability adjusted Total Base Liability Amount to \$81,500.

(Total Base Liability) + (Staff Costs)

= \$75,500 + \$6,000.00

= *\$81,500 adjusted Total Base Liability*

Staff supports that the adjusted Total Base Liability Amount determined using the above factors is appropriate.

8. Step 8 – Economic Benefit

The Economic Benefit Amount is any savings or monetary gain derived from the act or omission that constitutes the violation. The Enforcement Policy states that the adjusted Total Base Liability Amount shall be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations. Water Code section 13385, subdivision (e) also requires that at a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation(s).

The economic benefit in this matter is minimal. Though no SWPPP was available at the Site during the January 24, 2010 inspection, the Discharger did have one prepared; thus, there was no avoided or delayed cost. Though the BMPs that were implemented at the site from January 21 through February 9, 2010 were ineffective, the Discharger implemented additional BMPs after the inspections; thus, there was no avoided cost and a minimal delayed cost. The adjusted total base liability amount of \$81,500 is more than at least 10% higher than the economic benefit amount as required in the Enforcement Policy. Therefore, the liability amount is not adjusted for this factor.

9. Step 9 – Statutory Minimum and Maximum Liability

The statutory minimum liability amount is any economic benefit received, which is believed to be minimal in this matter. Pursuant to Water Code section 13385, subdivision (e) the Regional Water Board is required to assess an amount that recovers economic benefit. Further, as mentioned in Step 8, the Enforcement Policy states that when making monetary assessments, the adjusted total base liability amount shall be at least 10 percent higher than the economic benefit amount. However, the minimum would be negligible for this case.

The Maximum Liability Amount is \$230,000 as alleged. This is determined by multiplying the daily maximum penalty of \$10,000 for each violation, each day under Water Code section 13385, subdivision (c).

10. Step 10 – Final Liability Amount

In accordance with the above methodology, enforcement staff recommends a final liability amount of \$81,500. This final liability amount is within the statutory minimum and maximum amounts. Attachment B is a spreadsheet that demonstrates the use of the liability methodology.

ATTACHMENT B

LIABILITY METHODOLOGY ANALYSIS SPREADSHEET

Select item 1: Discharge of Pollutants
 Select item 2: Discharge of Pollutants from a Point Source
 Select item 3: Discharge of Pollutants from a Non-Point Source
 Select item 4: Discharge of Pollutants from a Point Source into a Surface Water Body
 Select item 5: Discharge of Pollutants from a Point Source into a Surface Water Body
 Select item 6: Discharge of Pollutants from a Point Source into a Surface Water Body
 Select item 7: Discharge of Pollutants from a Point Source into a Surface Water Body
 Select item 8: Discharge of Pollutants from a Point Source into a Surface Water Body
 Select item 9: Discharge of Pollutants from a Point Source into a Surface Water Body
 Select item 10: Discharge of Pollutants from a Point Source into a Surface Water Body

Discharge Name: CITY OF WESTLAKE VILLAGE

Step	Violation 1: Construction Permit BMPs	Violation 2: January 21, 2010 Discharge	Violation 3: February 9, 2010 Discharge	Violation 4: Permit SWPPP
Step 1	Potential Harm Factor (Generated from Bulion)	6	6	
Step 2	Per Gallon Factor (Generated from Bulion)	0.35	0.35	
	Gallons	1	1	
	Statutory / Adjusted Max per Gallon (\$)	1,000.00	1,000.00	
	Total	\$ 1,000.00	\$ 1,000.00	\$ 3,500.00
	Per Day Factor (Generated from Bulion)			
	Days	1	1	
	Statutory Max per Day	1,000.00	1,000.00	
	Total	\$ 1,000.00	\$ 1,000.00	\$ 3,500.00
Step 3	Per Day Factor			
	Days	1	1	
	Statutory Max per Day	1,000.00	1,000.00	
	Total	\$ 1,000.00	\$ 1,000.00	\$ 3,500.00
Step 4	Initial Amount of the ACL			
	Capacity	70,000.00	70,000.00	
	Cleanup and Cooperation	70,000.00	70,000.00	
	History of Violations	70,000.00	70,000.00	
Step 5	Total Base Liability Amount	\$ 75,500.00	\$ 75,500.00	\$ 230,000.00
Step 6	Ability to Pay & to Continue in Business	\$ 75,500.00	\$ 75,500.00	\$ 230,000.00
Step 7	Other Factors as Justice May Require	\$ 6,000.00	\$ 6,000.00	\$ 18,000.00
Step 8	Staff Costs	\$	\$	\$
Step 9	Economic Benefit	\$	\$	\$
Step 10	Maximum Liability Amount	\$ 230,000.00	\$ 230,000.00	\$ 690,000.00
Step 10	Final Liability Amount	\$ 230,000.00	\$ 230,000.00	\$ 690,000.00

Penalty Day Range Generator

Start Date of Violation: 1/21/10

End Date of Violation: 2/9/10

Medium Days Fined (Steps 2 & 3): 20 Days

Maximum Days Fined (Steps 2 & 3): 5 Days

WAIVER FORM

FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2011-0188

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

I am duly authorized to represent City of Westlake Village (hereinafter "Permittee") in connection with Administrative Civil Liability Complaint No. R4-2011-0188 (hereinafter the "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 [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

- (OPTION 1: Check here if the Permittee waive the hearing requirement and will pay the recommended liability.)*
- a. I hereby waive any right the Permittee may have to a hearing before the Regional Water Board.
 - b. I certify that the Permittee will remit payment for the civil liability imposed in the amount of **\$81,500** by check that references "ACL Complaint No. R4-2011-0188" made payable to the "*Cleanup and Abatement Account*". Payment must be received by the Regional Water Board by **January 16, 2012** or this matter will be placed on the Regional Board's agenda for a hearing as initially proposed in the Complaint.
 - 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 the 30-day public notice and comment period expires. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Respondents 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 Respondents to further enforcement, including additional civil liability.

- (OPTION 2: Check here if the Permittee waives the 90-day hearing requirement in order to engage in settlement discussions.)*** I hereby waive any right the Permittee may have to a hearing before the Regional 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 Permittee will promptly engage the Regional Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Permittee request that the Regional Water Board delay the hearing so that the Permittee and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

Print Name and Title

Signature

Date

**HEARING PANEL OF THE
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

320 W. 4th Street, Suite 200
Los Angeles, California 90013
(213) 576-6600

ACLC No. R4-2011-0188

NOTICE OF PUBLIC HEARING

**TO CONSIDER AN ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND
PROPOSE RECOMENDATIONS**

<u>PERMITTEE</u>	<u>DISCHARGE LOCATION</u>	<u>RECEIVING WATER</u>
City of Westlake Village	North side of Thousand Oaks Blvd. between Lindero Canyon Rd. & Via Colinas	Westlake Lake

Administrative Civil Liability Complaint ("ACLC") No. R4-2011-0188 alleges that City of Westlake Village violated General Permit for Storm Water Discharges Associated with Construction Activity (Order No. 99-08-DWQ;CAS000002) that directed the Permittee to take certain actions to reduce or eliminate erosion, to retain soil and sediment on the construction site and to prevent any discharges from the site into Westlake Lake. As stated in the ACLC, Regional Board staff, represented by the Regional Board Staff Prosecution Team (Prosecution Team), recommends that a penalty of \$81,500 be assessed against the City of Westlake Village for these violations.

Pursuant to Water Code section 13228.14, a Hearing Panel consisting of three or more members of the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") will convene a hearing to hear evidence, determine facts, and to propose a recommendation to the Regional Board about resolution of the ACLC.

This notice sets forth procedures to be used by hearing panels of the Regional Board and outlines the process to be used at this hearing.

I. HEARING DATE AND LOCATION

Date: March 15, 2012
Time: To be determined (TBD)
Place: TBD

II. AVAILABILITY OF DOCUMENTS

The ACLC, related documents, proposed order, comments received, and other information about the subject of the ACLC are available for inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. at the following address:

California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Arrangements for file review and/or obtaining copies of the documents may be made by calling the Los Angeles Regional Board at (213) 576-6600.

The entire file will become a part of the administrative record of this proceeding, irrespective of whether individual documents are specifically referenced during the hearing. However, the entire file might not be available at the hearing. Should any parties or interested persons desire that the Prosecution Team bring to the hearing any particular documents that are not included in the Hearing Panel binder, they must submit a written or electronic request to the Prosecution Team during business hours, not later than February 24, 2012. The request must identify the documents with enough specificity for the Prosecution Team to locate them. (Documents in the Hearing Panel binder will be present at the hearing.)

III. NATURE OF HEARING

This will be a formal adjudicative hearing pursuant to section 648 et seq. of title 23 of the California Code of Regulations. Chapter 5 of the California Administrative Procedure Act (commencing with section 11500 of the Government Code) relating to formal adjudicative hearings does not apply to adjudicative hearings before the Regional Board, except as otherwise specified in the above-referenced regulations.

IV. PARTIES TO THE HEARING

The following are the parties to this proceeding:

1. City of Westlake Village
2. Regional Board Staff Prosecution Team

All other persons who wish to participate in the hearing as a designated party shall request party status by submitting a written or electronic request to the Legal Advisor to the Hearing Panel identified in section VIII below no later than January 30, 2012. The request shall include a statement explaining the reasons for their request (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person), and a statement explaining why the party or parties designated above do not adequately represent the person's

interest. The requesting party will be notified before the hearing whether the request is granted. All parties will be notified if other persons are so designated.

V. COMMUNICATIONS WITH THE PROSECUTION TEAM

The California Administrative Procedure Act requires the Regional Board to separate prosecutorial and adjudicative functions in matters that are prosecutorial in nature. A Prosecution Team, comprised of Regional Board enforcement and other staff, will serve as the complainant in the proceedings and is a designated party. The Case Manager over this matter, who will coordinate the efforts of the Prosecution Team, is Ms. Pansy Yuen, Environmental Scientist. Ms. Laura Drabandt, Staff Counsel from the State Water Resources Control Boards' Office of Enforcement will advise the Prosecution Team prior to and at the panel hearing. Neither Ms. Laura Drabandt nor the members of the Prosecution Team will be advising the Regional Board in this matter or have engaged in any substantive conversations regarding the issues involved in this proceeding with the any of the Board Members or the advisors to the hearing panel (identified below).

Any communication with the Prosecution Team prior to the hearing should be directed to the Case Manager:

Ms. Pansy Yuen
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(213) 620-6367
pyuen@waterboards.ca.gov

VI. PUBLIC COMMENTS AND SUBMITTAL OF EVIDENCE

A. Submittals By Parties.

Not later than January 25, 2012, the Prosecution Team will send the parties a preliminary Hearing Panel binder containing the most pertinent documents related to this proceeding and a PowerPoint presentation, which summarizes the evidence and testimony that the Prosecution Team will present and rely upon at the hearing.

City of Westlake Village is required to submit:

- 1) Any additional documents or evidence Permittee wants the Hearing Panel to consider,
- 2) A summary of any testimony the Permittee intends to present, and
- 3) A statement regarding how much time the Permittee needs to present the case

to the attention of the Case Manager of the Prosecution Team (as identified above) no later than close of business on February 15, 2012. The Prosecution Team shall have the right to present additional evidence in rebuttal of matters submitted by any other party.

The Prosecution Team will send to the Hearing Panel and the parties a final Hearing Panel binder no later than March 5, 2012.

B. Submittals By Interested Persons.

Persons who are not designated as parties above, that wish to comment upon or object to the proposed ACLC, or submit evidence for the Hearing Panel to consider, are invited to submit them in writing to the Prosecution Team (as identified above). To be evaluated and responded to by the Prosecution Team, included in the final Hearing Panel binder, and fully considered by the Hearing Panel in advance of the hearing, any such written materials must be received no later than January 17, 2012. If possible, please submit written comments in Word format electronically to pyuen@waterboards.ca.gov. Interested persons should be aware the Regional Board is entitled to settle this matter without further notice, and therefore a timely submittal by this date may be the only opportunity to comment upon the subject of this ACLC. If the hearing proceeds as scheduled, the Hearing Panel will also receive oral comments from any person during the hearing (see below).

VII. HEARING PROCEDURES

Adjudicative proceedings before the Hearing Panel generally will be conducted in the following order:

- Opening statement by Hearing Panel Chair
- Administration of oath to persons who intend to testify
- Prosecution Team presentation
- Discharger presentation
- Designated parties' presentation (if applicable)
- Interested persons' comments
- Prosecution Team rebuttal
- Questions from Hearing Panel
- Deliberations (in open or closed session)
- Announcement of recommendation to the Regional Board

While this is a formal administrative proceeding, the Hearing Panel does not generally require the cross examination of witnesses, or other procedures not specified in this notice, that might typically be expected of parties in a courtroom.

Parties will be advised by the Hearing Panel after the receipt of public comments, but prior to the date of the hearing, of the amount of time each party will be allocated for presentations. That decision will be based upon the complexity and the number of issues under consideration, the extent to which the parties have coordinated, the number of parties and interested persons anticipated, and the time available for the hearing. The parties should contact the Case Manager not later than February 15, 2012 to state how much time they believe is necessary for their presentations (see Section VI.A above). It is the Regional Board's intent that reasonable requests be accommodated.

Interested persons are invited to attend the hearing and present oral comments. Interested persons may be limited to approximately five (5) minutes each, for their presentations, in the discretion of the Chair, depending on the number of persons wishing to be heard. Persons with similar concerns or opinions are encouraged to choose one representative to speak.

For accuracy of the record, all important testimony should be in writing, and delivered as set forth above. The Hearing Panel will include in the administrative record written transcriptions of oral testimony or comments made at the hearing.

VIII. COMMUNICATIONS WITH THE HEARING PANEL

A. Ex Parte Communications Prohibited.

As an adjudicative proceeding, Regional Board members and their advisors may not discuss the subject of this hearing with any person, except during the public hearing itself, except in the limited circumstances and manner described in this notice. **Any communications to the Regional Board, Hearing Panel, or Hearing Panel Advisors before the hearing must also be copied to the Prosecution Team.**

B. Hearing Panel Advisors.

The Hearing Panel will be advised before and during the hearing by Executive Officer Mr. Samuel Unger and a Legal Advisor, Ms. Jennifer Fordyce Senior Staff Counsel for the Regional Board. While Mr. Samuel Unger exercises general oversight over the staff's enforcement activities, neither he nor Ms. Jennifer Fordyce have exercised any authority or discretion over the Prosecution Team, or advised them with respect to this matter.

C. Objections to manner of hearing and resolution of any other issues.

1. Parties or interested persons with procedural requests different from or outside of the scope of this notice should contact the Case Manager at any time, who will try to accommodate the requests. Agreements between a party and the Prosecution Team will generally be accepted by the Hearing Panel as stipulations.
2. Objections to (a) any procedure to be used or not used during this hearing, (b) any documents or other evidence submitted by the Prosecution Team, or (c) any other matter set forth in this notice, must be submitted in writing no later than February 15, 2012 to the Legal Advisor to the Hearing Panel:

Ms. Jennifer Fordyce
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814
(916) 323-6847
JFordyce@waterboards.ca.gov

Untimely objections will be deemed waived. Procedural objections about the matters contained in this notice will not be entertained at the hearing. Further, except as otherwise stipulated, any procedure not specified in this hearing notice will be deemed waived pursuant to section 648(d) of Title 23 of the California Code of Regulations, unless a timely objection is filed.

3. Any issues outside the scope of those described in section C.2, above, that cannot be resolved by stipulation shall be brought to the attention of the Legal Advisor to the Hearing Panel, as set forth in section C.2, by February 15, 2012 if possible, and if not possible, then at the earliest possible time with an explanation about why the issue could not have been raised sooner.

IX. QUESTIONS

If you have any questions about this Notice of Public Hearing, please contact as appropriate, the Case Manager of the Prosecution Team, or the Legal Advisor to the Hearing Panel as described above.

Date: December 16, 2011

Administrative Civil Liability

Fact Sheet

The California Regional Water Quality Control Boards (Regional Water Boards) have the authority to impose administrative civil liabilities for a variety of violations under California Water Code section 13323. This document generally describes the process that the Regional Water Boards follow in imposing administrative civil liabilities.

The first step is the issuance of an administrative civil liability complaint (complaint) by the authorized Regional Water Board's Executive Officer or Assistant Executive Officer or Chief Prosecutor. The complaint describes the violations that alleged to have been committed, the Water Code provisions authorizing the imposition of liability, and the evidence that supports the allegations. **Any person who receives a complaint must respond timely as directed, or risk the Regional Water Board imposing the administrative civil liability by default.** The complaint is accompanied by a letter of transmittal, a Waiver Form and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

Parties

The parties to a complaint proceeding are the Regional Water Board Prosecution Team and the person/s named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Water Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit non-evidentiary policy statements. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Water Board (composed of up to nine board members appointed by the Governor) or before a panel of three board members. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by an Advisory Team, which provides advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the Prosecution Team nor the Discharger or his/her representatives are permitted to communicate with the board members or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Procedure.

Complaint Resolution options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; (5) hearing. Each of these options is described below.

Withdrawal: may result if the Discharger provides information to the Prosecution Team that clearly demonstrates that a fundamental error exists in the information set forth in the complaint.

Withdrawal and reissuance: may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

Payment and waiver: may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

Settlement: results when the parties negotiate a resolution of the complaint. A settlement can include such things as a payment schedule, or a partial payment and suspension of the remainder pending implementation by the Discharger of identified activities, such as making improvements beyond those already required that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project. Qualifying criteria for Compliance Projects and SEPs are contained in the State Water Resources Control Board's (State Water Board) Enforcement Policy, which is available at the State Water Board's website at: http://www.waterboards.ca.gov/plans_policies/. Settlements are generally subject to public notice and comment, and are conditioned upon approval by the Regional Water Board or its authorized staff management. Settlements are typically memorialized by the adoption of an uncontested Administrative Civil Liability Order.

Hearing: if the matter proceeds to hearing, the parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within 90 days of the issuance of the complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Form included in this package. The hearing will be conducted under rules set forth in the Hearing Procedure. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Regional Water Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide non-evidentiary policy statements, but may generally not submit evidence or testimony. At the end of the presentations by the parties, the board members will deliberate to decide the outcome. The Regional Water Board may issue an order requiring payment of the full amount recommended in the complaint, it may issue an order requiring payment of a reduced amount, it may order the payment of a higher amount, decide not to impose an assessment or it may refer the matter to the Attorney General's Office.

Factors that must be considered by the Regional Water Board

Except for Mandatory Minimum Penalties under Water Code section 13385 (h) and (i), the Regional Water Board is required to consider several factors specified in the Water Code, including nature, circumstance, 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 ability to continue in 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 as justice may require (Cal. Water Code §§ 13327, 13385(e) & 13399). During the period provided to submit evidence (set forth in the Hearing Procedure) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint. If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements;
12. Other debt documentation.

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated,
2. Copies of last three years of company financial audits
3. Copies of last three years of IRS tax returns of business principals, signed and dated.
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

For larger firms:

1. Federal income tax returns for the last three years, specifically:
 - IRS Form 1120 for C Corporations
 - IRS Form 1120 S for S Corporations
 - IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows IRS to provide the Regional Water Board with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;
3. The following information can be substituted if income tax returns cannot be made available:
 - Audited Financial Statements for last three years;
 - A list of major accounts receivable with names and amounts;
 - A list of major accounts payable with names and amounts;
 - A list of equipment acquisition cost and year purchased;
 - Ownership in other companies and percent of ownership for the last three years;
 - Income from other companies and amounts for the last three years.

For a municipality, county, or district:

1. Type of entity:
 - City/Town/Village;
 - County;
 - Municipality with enterprise fund;
 - Independent or publicly owned utility;
2. The following 1990 and 2000 US Census data:
 - Population;
 - Number of persons age 18 and above;
 - Number of persons age 65 and above;
 - Number of Individual below 125% of poverty level;
 - Median home value;
 - Median household income.
3. Current or most recent estimates of:
 - Population;
 - Median home value;
 - Median household income;
 - Market value of taxable property;
 - Property tax collection rate.
4. Unreserved general fund ending balance;
5. Total principal and interest payments for all governmental funds;
6. Total revenues for all governmental funds;
7. Direct net debt;
8. Overall net debt;

9. General obligation debt rating;
10. General obligation debt level.
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding its financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public.

Petitions

If the Regional Water Board issues an order requiring payment, the Discharger may challenge that order by filing a petition for review with the State Water Board pursuant to Water Code section 13320. More information on the petition process is available at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml

An order of the State Water Board resolving the petition for review of the Regional Water Board's Administrative Civil Liability Order can be challenged by filing a petition for writ of mandate in the superior court pursuant to Water Code section 13330.

Once an Administrative Civil Liability Order becomes final, the Regional Water Board or State Water Board may seek a judgment of the superior court under Water Code section 13328, if necessary, in order to collect payment of the administrative civil liability amount.