

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VEGION REGION

PROSECUTION TEAM'S PROPOSED ACL ORDER NO. R5-2008-xxxx

ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF

MISSION SIERRA LAND, L.P.  
RIDGESTONE VILLAS  
SHASTA COUNTY

This Order is issued to Mission Sierra Land, L.P. (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL). This Order is based on findings that the Discharger violated terms of the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity No. CAS000002, Order No. 99-08-DWQ.

The California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger is the owner and developer of Ridgestone Villas, a 2.37-acre construction project in Redding, Shasta County (APN 117-190-006). The site is being developed into duplexes and fourplexes.
2. Runoff from the site discharges to Wentz Creek, a tributary to Churn Creek and the Sacramento River, a water of the United States. Churn Creek and the Sacramento River immediately downstream support spawning salmonids.
3. On 19 August 1999, the State Water Resources Control Board adopted NPDES General Permit No. CAS000002, Order No. 99-08-DWQ (General Permit), implementing Waste Discharge Requirements (WDRs) for storm water discharges associated with construction activity.
4. The General Permit requires the dischargers to implement Best Available Technology Economically Achievable and Best Conventional Control Technology (BAT/BCT) to reduce or eliminate storm water pollution from construction sites. The General Permit authorizes the discharge of storm water to surface waters, if the discharger implements BAT/BCT using best management practices (BMPs). The General Permit prohibits the discharge of materials other than storm water. The effluent limitations contained in the General Permit are narrative and includes the requirement to implement appropriate BMPs. The BMPs must primarily emphasize source controls such as erosion and sediment controls and pollution prevention methods. The General Permit states that erosion control is the most effective way to retain soil and sediment on construction sites and that the most effective way to address erosion control is to preserve existing vegetation where feasible, to limit disturbance, and to stabilize and revegetate disturbed areas as soon as possible after grading or construction.

5. The General Permit requires the Discharger to prepare a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP specifies the use of appropriately selected, correctly installed and maintained pollution reduction BMPs. The SWPPP has two major objectives: (1) to help identify the sources of sediment and other pollutants that affect the quality of storm water discharges, and (2) to describe and ensure the implementation of BMPs to reduce or eliminate sediment and other pollutants in storm water as well as nonstorm water discharges.
6. On 11 December 2006, the Discharger submitted a SWPPP and a copy of their Notice of Intent (NOI) application to the Regional Water Board's Redding Office. On 18 January 2007, the Discharger submitted a NOI for coverage under the General Permit to the State Water Resources Control Board (SWRCB), and was assigned WDID 0No. 5R45C345364, on 19 January 2007.
7. During the summer of 2007 the Discharger graded the 2.37-acre property, and began construction. The Regional Water Board Staff (Staff) notified the Discharger in writing of their responsibility to comply with the General Permit by sending them the fall 2007 Rainy Season Preparation Reminder letter dated 27 August 2007, which reiterated the dischargers' responsibilities in complying with the General Permit.

8. General Order No. 99-08-DWQ states, in part, the following

"A. DISCHARGE PROHIBITIONS:

3. Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance."

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"B. RECEIVING WATER LIMITATIONS:

2. The SWPPP developed for the construction activity covered by the General Permit shall be designed and implemented such that storm water discharges and authorized non-storm water discharges shall not cause or contribute to an exceedence of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or the applicable RWQCB's Basin Plan."

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"C. SPECIAL PROVISIONS FOR CONSTRUCTION ACTIVITY:

2. All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT performance standard.

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5. All dischargers shall comply with the lawful requirements of municipalities, counties, drainage districts, and other local agencies regarding discharges of storm water to separate storm sewer systems or other watercourses under their jurisdiction..."

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“Section A: STORM WATER POLLUTION PREVENTION PLAN

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1. Objectives

A. Storm Water Pollution Prevention Plan (SWPPP) shall be developed and implemented to address the specific circumstances for each construction site covered by this General Permit....

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6. Erosion Control

... At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the wet season.

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8. Sediment Control

The SWPPP shall include a description or illustration of BMPs which will be implemented to prevent a net increase of sediment load in storm water discharge relative to preconstruction levels...

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11 Maintenance, Inspection, and Repair

...include a discussion of the program to inspect and maintain all BMPs as identified in the site plan or other narrative documents throughout the entire duration of the project...

12 Training

Individuals responsible for SWPPP preparation, implementation, and permit compliance shall be appropriately trained, and the SWPPP shall document all training... ”

9. On 10 October 2007, Staff inspected the site and found that the Discharger had failed to provide an effective combination of erosion and sediment control, and failed to install, implement, and maintain storm water construction BMPs. Staff observed excessive erosion on the north slopes, lack of adequate soil cover and no concrete wash out. Specifically, there were failing slopes along the northern property boundary that resulted in the discharge of sediment to a storm drain inlet on the adjacent property, and there was no concrete washout on-site at the time of the inspection. A concrete washout on-site is a basic waste management BMP and was outlined in their SWPPP to be deployed at the site. Staff observed that concrete trucks had washed concrete waste directly out onto the ground, resulting in a significant discharge of concrete waste to the ground, which was subsequently being driven through and tracked throughout the construction site. The storm drain inlet on the adjacent property is connected to the City of Redding’s storm sewer system that discharges directly to Wentz Creek. The violations of the General Permit observed by staff included:

- a. Failure to implement an effective combination of erosion and sediment control BMPs (Section A: Storm Water Pollution Prevention Plan (SWPPP), No. 6-Erosion Control and No. 8 – Sediment Control).
- b. Failure to maintain, inspect and repair BMPs (Section A: SWPPP, No. 11-Maintenance, Inspection and Repair).
- c. Failure to train contractors and/or employees regarding inspections and maintenance of BMPs (Section A: SWPPP, No. 12-Training).
- d. Failure to maintain control measures identified in the SWPPP (Section A: SWPPP, No 1-Objectives).
- e. Discharging storm water causing or threatening to cause pollution, contamination, or nuisance (Discharge Prohibition A.3).
- f. Failure to implement the SWPPP developed for the construction activity, such that storm water discharges and authorized non-storm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or the applicable Regional Water Quality Control Board's Basin Plan (Receiving Water Limitation B.2).
- g. Lack of implementation of controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT performance standard (Special Provision C.2).

These violations may be grouped into three distinct categories: 1) failure to install and maintain erosion and sediment control BMPs (violations a, b, d, f, and g); 2) failure to train contractors and/or employees regarding inspections and maintenance of BMPs (violation c); and 3) discharging storm water causing or threatening to cause pollution, contamination, or nuisance (violation e). Because the Central Valley Water Board seeks to avoid penalizing dischargers for duplicative violations (those that are substantially similar in the underlying circumstances), this Order charges the discharger with three distinct violations, corresponding to the three distinct categories of violations, rather than the seven permit violations that are noted above.

10. On **8 November 2007** Staff issued a Notice of Violation (NOV) to the Discharger for failing to provide an effective combination of erosion and sediment controls, for discharging construction waste (concrete waste water, etc.) to storm drains, and for the continuing threat of a discharge of sediment to waters of the state.
11. Section 13385 of the CWC states, in part:

*“(a) Any person who violates any of the following shall be liable civilly in accordance with this section:*

(1) *Section 13375 or 13376*

(2) *Any waste discharge requirements or dredged and fill material permit.*

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(5) *Any requirements of Sections 301, 302, 306, 307, 308, 318, or 405 of the Federal Water Pollution Control Act as amended.”*

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*“(c) Civil liability may be imposed administratively by the State Board or a Central Valley Water Board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the... following:*

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

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*“(e) In determining the amount of liability imposed under this section, the Central Valley Water Board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, 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 its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefits or savings, if any, resulting from the violation, and other matters that justice may require. 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.”*

### **CONSIDERATION OF FACTORS**

12. *Enforcement Considerations:* Pursuant to CWC Section 13385(c), the Discharger has a maximum civil liability in an amount up to \$30,000. The maximum liability is based on three (3) violations for 1 day, as discussed in Finding #9.
13. *Nature and Circumstances:* The Discharger failed to install and maintain erosion and sediment control BMPs resulting in hillside erosion and the discharge of sediment laden water to storm drains. The Discharger failed to install a concrete washout as discussed in their SWPPP. The lack of a concrete washout resulted in the discharge of concrete wastewater to the ground and discharging or threatening to discharge to on-site storm drains. The Discharger failed to adequately train their contractors and/or employees regarding inspections and maintenance of BMPs. The failure to install and maintain BMPs resulted in the discharge or threatened discharge of sediment-laden storm water to the storm drain system. The storm drain system discharges to waters of the state.
14. *Extent and Gravity:* The discharge consisted of sediment-laden storm water, sediment washed from steep slopes, and concrete waste and concrete wash water dumped on the ground. The concrete waste was then driven through increasing the spread of fine particulate matter around the construction site. Sediment and concrete waste, when transported by storm water, readily discharges to the nearest storm drains.

15. *Susceptibility of the Discharge to Cleanup and Abatement:* The discharge of sediment-laden storm water must be prevented, contained, and then cleaned up. The discharge of concrete waste (including wash water) to the ground and then driven through spreads the waste throughout the site and onto local roadways. The fine particulate matter is easily moved during rainfall events. The concrete waste must be contained in a concrete waste dump. The concrete disposal BMP is considered as a bare minimum pollution prevention BMP and must be utilized year round especially during the rainy season. The Discharger was not requested to cleanup the waste but to install adequate pollution prevention BMPs. Once sediment-laden storm water and other pollutants reach the city's storm drain they are not readily susceptible to cleanup.
16. *Degree of Toxicity of the Discharge:* The discharges likely added suspended matter and concrete waste to the storm drain system and to surface waters. Concrete waste has a high pH and is also highly toxic to aquatic species. Suspended matter impacts aquatic organism respiration by impeding the ability of the organisms gill to obtain oxygen from the water column. However, no aquatic bio-assessment of down stream receiving waters has been completed.
17. *Ability to Pay:* The Discharger is an established developer in good financial standing. The dwelling units are being sold in blocks of 4 (buildings in 4-plex configuration) for over \$900,000 each. There are seven buildings in the development. As such, the monetary liability associated with this administrative civil liability should not pose financial hardship for the Discharger nor reduce their ability to continue in business. No one has submitted information indicating the Discharger cannot pay the administrative civil liability.
18. *Prior History of Violations:* There was no prior history of violations at this construction site.
19. *Degree of Culpability:* The Discharger verified their awareness of their General Permit responsibilities when they signed and certified the General Permit NOI as owner, which states:

*"I certify under penalty of law that this document and all attachments were prepared under my direction and supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment. In addition, I certify that the provisions of the permit, including the development and implementation of a Storm Water Pollution Prevention Plan and a Monitoring Program Plan will be complied with."*

Despite having the responsibility to ensure compliance with the General Permit and possessing the authority to control the construction activities on the site, the Discharger failed to prevent the discharge of sediment laden storm water to storm drains and

surface waters. The Discharger failed to install a basic BMPs (concrete washout), resulting in concrete waste being discharged to the ground resulting in violation of the General Permit, and therefore is culpable.

20. *Other Matters as Justice May Require:* Staff expects to expend 20 hours (\$2400) to bring this matter to the Board.
21. Issuance of this Administrative Civil Liability Order to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).
22. Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

**IT IS HEARBY ORDERED** that Mission Sierra, LP shall pay a civil liability of \$10,000 as follows:

**No later than 30 days after adoption of this Order**, the Discharger shall pay ten thousand dollars (\$10,000) by check made payable to the *State Water Pollution Cleanup and Abatement Account*. The check shall have written upon it the number of this ACL Order.

I, Pamela C. Creedon, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on \_\_\_\_\_.

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PAMELA C. CREEDON, Executive Officer