

**Note: This document has been prepared by the
Central Valley Water Board's Prosecution Team**

ITEM: 12

SUBJECT: The Original Sixteen to One Mine, Inc., Sixteen to One Mine, Sierra County

BOARD ACTION: *Consideration of an Administrative Civil Liability Order (ACLO) for
Assessment of Mandatory Minimum Penalties*

BACKGROUND: The Original Sixteen to One Mine, Inc. (Discharger) owns and operates the Sixteen to One Mine, an underground hard rock gold mine in and around the town of Alleghany, Sierra County. There is currently no treatment or control on the mining waste. The facility discharges mine drainage from the 21 Tunnel Portal to Kanaka Creek, which is tributary to the Middle Yuba River, Yuba River, Feather River, and Sacramento River, a water of the United States.

Discharges from the mine were regulated by the Central Valley Water Board under WDRs Order R5-2002-0043, as well as Cease and Desist Order R5-2002-0044. The Discharger failed to submit the monitoring reports required by the WDRs for most of the time from May 2003 through February 2007, and therefore and accrued a significant amount in mandatory minimum penalties (MMPs). The Regional Board referred the case to the Attorney General's Office for appropriate action. A Stipulated Judgment was entered into on 11 February 2015 which required the Discharger pay a total of \$237,083. As part of the Stipulated Judgment, the Discharger agreed to comply "with each and every term" of the new NPDES permit.

On 5 February 2015, the Board adopted WDRs R5-2015-0002 (2015 WDRs), which became effective as of 16 April 2015. The 2015 WDRs were modified on 10 September 2015 to clarify the due dates for monitoring reports. The 2015 WDRs contain effluent limits for antimony, arsenic, cadmium, copper, iron, lead, manganese, nickel, and electrical conductivity. The Discharger was not able to immediately comply with the final effluent limitations and therefore, on 17 April 2015, the Board issued Time Schedule Order (TSO) R5-2015-0035. As allowed by the Water Code, the TSO provides protection from MMPs for electrical conductivity, arsenic, antimony, cadmium, copper, iron, lead, manganese, and nickel until 16 April 2020, while the Discharger assess and constructs a control and/or treatment option such that the discharge will meet the effluent limits.

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT: The Discharger's Second Quarter 2015 Self-Monitoring Report reported a 28 April 2015 effluent sample result for antimony of 62.3 µg/L. The Discharger only reported one sampling event during April 2015; thus, this daily value is also used as the monthly average. The table below shows

the effluent limitations for antimony contained in the 2015 WDRs and TSO, as compared to the measured value:

Order	Antimony, ug/L	
	Average Monthly Effluent Limit	Maximum Daily Effluent Limit
2015 WDRs	6	12
2015 TSO	35	50
Measured Value	62.3	62.3

The Prosecution Team alleges that the Discharger violated the maximum daily and average monthly effluent limits for antimony required by the TSO in April 2015. If a Discharger is not in compliance with a TSO, the Discharger does not receive MMP protection, and the Prosecution Team assesses MMPs based on the effluent limits in the WDRs. The Prosecution Team alleges that Water Code section 13385, subdivision (h)(2), requires assessment of MMPs because antimony is a Group II pollutant and the effluent limitations were exceeded by more than 20 percent. Under the statute, the mandatory minimum amount of administrative civil liability is \$3,000 per violation. Therefore, on 25 January 2016, the Assistant Executive Officer issued an Administrative Civil Liability Complaint for assessment of MMPs in the amount of \$6,000.

ISSUES:

The Discharger raised three categories of arguments in this case. First, the Discharger has put forth arguments implying there should not be an effluent limitation for antimony, and that there was not an effluent limitation for antimony in the 2002 WDRs

The Discharger is correct that the 2002 WDRs did not contain requirements for routine monitoring or an effluent limitation for antimony. However, as described in the Fact Sheet for the 2015 permit, antimony is an EPA priority pollutant and a California Toxics Rule (CTR) constituent. Between 2004 and 2011, two sampling events for antimony were conducted. The mine effluent contained a maximum concentration of 30.8 ug/L, while antimony was not detected in the upstream receiving water. Antimony was added as a water quality based effluent limitation to the 2015 WDRs based on the maximum measured effluent concentration of 30.8 µg/L and (a) the CTR criterion of 14 µg/L for protection of human health and (b) the Primary Maximum Contaminant Level for antimony of 6 µg/L. Therefore, “the discharge has a reasonable potential to cause or contribute to an in-stream excursion above a water quality standard for antimony.” (2015 WDRs, Fact Sheet, Section 3.b.i.(b)). The Discharger had the opportunity to question the addition of antimony to the 2015 WDRs, but did not do so. The Prosecution Team contends the

Discharger is bound by the requirements of the 2015 WDRs, which includes an antimony effluent limit. Therefore, the argument about the applicability of an antimony effluent limitation is irrelevant to this imposition of MMPs.

The Discharger's second argument is that the laboratory could have made a mistake in its reporting. Yet, the Discharge admits that it has no evidence to substantiate this claim. It is noted that the 2015 WDRs do not require the submittal of laboratory reports and the Discharger has not done so for the analytical result which has led to these MMPs. However, the Discharger did submit its Fourth Quarter 2015 laboratory report and Board staff found no evidence of a laboratory error for those analyses. Unless the Discharger can prove a laboratory error, this argument is unsubstantiated and irrelevant to this case.

Last, the Discharger argues that the proposed MMPs are excessive considering the lack of history in the area. The Prosecution Team alleges the proposed penalty of \$6,000 in MMPs is not excessive, it is the minimum allowed by statute, and the alleged lack of history is irrelevant to this case because the proposed penalty of \$6,000 is not discretionary and is the minimum required by statute.

SUMMARY: The Prosecution Team alleges that the Discharger exceeded the effluent limitations in the TSO for antimony; therefore, MMP protection was lost during April 2015 and the effluent limitations in the WDRs apply. Water Code section 13385, subdivision (h)(2) requires assessment of MMPs in the amount of \$3,000 per violation.

RECOMMEND: The Prosecution Team recommends that the Board adopt the Order assessing mandatory minimum penalties in the amount of \$6,000.

Mgmt. Review WSW
Legal Review KE

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