

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2006-0517

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

OCHOA & SHEHAN, INC.
BEL AIR ESTATES
SHASTA COUNTY

This complaint is issued to Ochoa & Shehan, Inc. (hereafter Discharger) based on a finding of violations of Clean Water Act Section 301, California Water Code (CWC) Section 13376, and the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 Order No. 99-08-DWQ, pursuant to the provisions of Section 13385 of the CWC, which authorizes the imposition of an Administrative Civil Liability.

The Executive Officer of the Regional Water Quality Control Board, Central Valley Region, (Central Valley 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 Bel Air Estates a 120-acre construction project in Shasta County. The site is being developed into residential homes. Runoff from the site discharges to an unnamed creek, which is a tributary of the Sacramento River.
2. Approximately 54 acres of the site was disturbed during initial construction activities. That phase of the subdivision consisted of approximately 85 lots, roads, and utilities (including a sewer pipeline extension). An unnamed creek, which is a tributary of the Sacramento River, bisects the subdivision. There are two road crossings over the creek. The southern road crossing is designed as a restriction for an instream storm water detention basin. Roads and lots were constructed on both sides of a steep ravine. The sewer pipeline is adjacent to the creek and runs south of the subdivision. Some storm water also discharges from the west ridge to another unnamed creek immediately west of the subdivision. The erosion rate of the soils in the subdivision is moderate to high for Newton gravelly Loam (15-30% slopes) and slight to moderate for Redding Gravelly Loam (3-8% slopes). Construction activities were started in August 2005, which is relatively late in the construction season.
3. The Water Quality Control Plan for the Sacramento and San Joaquin Rivers-4th Edition 1998 (Basin Plan) designates the existing beneficial uses of the Sacramento River as municipal, industrial, and agricultural supply; recreation; industrial service supply; hydropower generation; water contact recreation; non-contact recreation; cold and warm freshwater habitat; migration of aquatic organisms; spawning, reproduction, and early development; aesthetic enjoyment; navigation; groundwater recharge, fresh water replenishment; and preservation and enhancement of fish, wildlife and other aquatic resources.

4. On 19 August 1999, the State Water Resources Control Board adopted NPDES General Permit No. CAS000002, Order No. 99-08-DWQ, implementing the Waste Discharge Requirements (WDRs) for storm water discharges associated with construction activity.
5. General Permit Order No. 99-08 DWQ requires that dischargers of storm water to surface waters associated with construction activity file a Notice of Intent (NOI) to obtain coverage under the General NPDES permit and to utilize best available technology economically achievable (BAT) and best conventional control technology (BCT) to reduce storm water pollution.
6. The federal Clean Water Act and California Water Code require that dischargers obtain coverage under the General Permit prior to commencement of construction activities. The Discharger submitted a NOI for coverage under the General Permit on 21 April 2005 and received confirmation and WDID No. 5A45C335361.
7. The Discharger is alleged to have violated provisions of law for which the Central Valley Water Board may impose liability under CWC Section 13385(c)(2).
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.

“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.

“Section A STORM WATER POLLUTION PREVENTION PLAN

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.

9. Section 301 of the federal Clean Water Act and Section 13376 of the CWC prohibit the discharge of pollutants to surface waters except in compliance with an NPDES permit.

10. The Discharger is alleged to have violated Discharge Prohibition A.3, Special Provisions C.2 and Section A (6) of the General Permit. These violations were caused by the Discharger's failure to properly stabilize exposed soil slopes and failure to implement and maintain effective combination of erosion and sediment control Best Management Practices (BMPs). Pursuant to CWC Section 13385 (a)(2), civil liability may be imposed for the following violations:

- On **1 September 2005**, Central Valley Water Board staff inspected the site with City of Redding Storm Water staff and observed that extensive earthwork activities had occurred throughout the site. However, there were few erosion and sediment control measures in place. During the inspection staff expressed their concerns to the discharger regarding potential erosion problems and sediment discharges due to the late season construction activities and the necessity to provide an effective combination of erosion and sediment controls and to stabilize the site prior to any rains.
- On **8 September 2005**, The City of Redding issued a staff letter to the Discharger noting the lack of implementation of erosion and sediment control measure on the site. The City required the Discharger to comply with the City's grading ordinance and have erosion control measure 50 percent complete by September 1st, 80 percent complete by October 1st and 100 complete by October 15th.
- On **18 October 2005**, prior to any fall rains, Central Valley Water Board staff conducted an aerial inspection of the site. It appeared that most of the site, including the offsite sewer alignment, had erosion control measures in place (straw mulch, bonded fiber matrix, straw netting). Erosion control blankets (straw within netting) were installed on a few slopes. Silt fence was constructed along the toe of the slopes adjacent to the creek. The main road on the west side of the site was covered with base rock. However, the remainder of the roads were not stabilized (i.e., bare soil). Some of the storm water conveyance ditches were stabilized with rock or erosion control fabric.
- On **7 November 2005**, Central Valley Water Board staff inspected the site and observed extensive erosion throughout the site and the discharge of sediment to the unnamed creek. The inspection followed the first rain event of the season with 4.36 inches of rainfall recorded at the west Redding Fire Station between 28 October and 7 November 2005. There were still significant areas with bare soils (lots, roads, stockpiles) that were eroding. Many cut and fill slopes had eroded, even those slopes with erosion control measures in place. There were very few sediment control measures around the perimeter of disturbed areas. There were storm water runoff problems throughout the site, including water cascading from one lot to another eroding the side slopes and drainage channels that were not adequately stabilized. In several areas the fill slopes slid into surface waters. There were numerous areas where silt fences collapsed under the sediment buildup. At the northwest storm water outfall, a large delta of sediment had formed

- in the unnamed creek due to erosion of soils. At the northern creek crossing, several inches of sediment had accumulated on the temporary bridge deck and it was obvious that sediment had discharged directly into the creek. One mile downstream from the site, very turbid water was observed in the creek, at the confluence with the Sacramento River just below the Dieselhorst Bridge. Water samples were collected that showed an increase in downstream turbidity and suspended solids within the creek by approximately 300 percent
- On **9 November 2005**, Central Valley Water Board staff met with the Discharger and his contractors to discuss the General Permit violations observed and the implementation of mitigation measures. During the meeting staff provided the discharger with a map of some of the most significant problems observed. Access to most of the site was limited, due to heavy rain and saturated soils. However, the Discharger agreed to address these problems as soon as it was feasible.
 - On **17 November 2005**, Central Valley Water Board staff re-inspected the site and determined that many additional erosion and sediment control measures had been implemented since the meeting. Erosion control blankets had been added to many of the slopes and silt fence was constructed at the toe of the slopes. Storm drain-pipes were added in many areas to control storm water runoff. Erosion control blankets had been installed in some of the erosion gullies to reduce further erosion. Some of the slopes that had slipped into the creek were pulled back away from the creek. There were still a few areas that required additional maintenance or stabilization measures.
 - On **1 December 2005**, Central Valley Water Board staff inspected the site and found significant erosion and sediment control problems. An additional 5.76 inches of rain occurred at the west Redding Fire Station between 25 November and 1 December 2005. The erosion problems were less severe than those observed on 7 November 2005. However, there was still erosion along some of the steeper slopes and from concentrated storm water flows (especially from the unpaved roads). Turbid and sediment laden water was observed discharging to both creeks (the main creek that bisects the site and the creek to the west of the subdivision). Very turbid water was observed in the main creek as it discharged to the Sacramento River below the Dieselhorst Bridge. The discharge from the site resulted in increasing the creek's turbidity by 27 percent and increasing suspended solids by 86 percent.
 - On **2 December 2005**, Central Valley Water Board staff contacted the Discharger, informing them that erosion controls at the site had improved since the November inspection. However, the installation of these erosion and sediment controls would have been more effective if installed earlier in the year prior to the first rains. Staff, also inform the Discharger of continuing problems of excessive gully erosion on steep slopes and mud accumulation on the bridge from road erosion. The

Discharger was requested to submit monthly reports and a recap of money spent on erosion and sediment controls.

- On **3 March 2006**, Central Valley Water Board staff and U.S. EPA staff met with the Discharger and their consultant. The inspection was part of an ongoing investigation by U.S.EPA regarding federal Clean Water Act Section 404 violations for illegally filling jurisdictional waters and/or failing to adequately report impacts to jurisdictional waters. Staff noted that the site was predominately covered by erosion and sediment control BMPs and that there were only minor erosion problems.

11. As discussed above, the Discharger failed to implement and maintained controls to reduce pollutants in storm water discharges from their construction site to the BAT/BCT performance standards resulting in the repeated discharges of sediment-laden storm water into surface waters.

12. On **1 May 2006** Central Valley Water Board staff issued a Notice of Violation for failure to provide an effective combination of erosion and sediment control and for the discharge of sediment to waters of the state, which are violations of the General Permit.

Discharge Prohibition A.3, states,

“Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.”

Section A.6 of the General Permit states,

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

13. Section 13385 of the California Water Code 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.

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

“(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... following:

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

“(e) In determining the amount of liability imposed under this section, the regional 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.”

14. The quantity of sediment-laden storm water discharged from the subject site for two separate days that a discharge was directly observed was conservatively estimated at 3,220,000 gallons. Runoff from the site for each day of discharge was estimated using the rational method ($Q=CIA$), with a low runoff coefficient of 0.40, rainfall data collected at the Shasta Dam and the City of Redding Fire Station was averaged and divided by 24, and a watershed area of 54 acres. Additional days of discharge most likely occurred based on precipitation data; however, these days were not considered in the calculation. During the rainy season of 04/05 and 05/06 there were 31 rainfall events that exceeded 0.5 inches of precipitation. These events would have resulted in discharges from the site. Of the 31 rainfall events staff only sampled 2 events.
15. The economic benefit for failure to comply with General Permit is \$56,000 by not implementing adequate erosion and sediment control BMPs, and for not maintaining those BMPs that were implemented. This amount is based on a cost of \$1,400 per acre, which is the additional cost for erosion and sediment control BMPs that are necessary to provide erosion control for late fall grading activities and erosion control on steep slopes. The Discharger did hire an erosion control specialist and did install a substantial amount of erosion and sediment controls BMPs on the 54-acres of disturbed site, however they failed to fully implement and maintain those BMPs. From 19 October 2005 through 29 November 2005 the Discharger was billed \$140,956 (\$2,600 per acre) by the erosion control specialist for erosion and sediment controls BMP installation and maintenance. From 29 November 2005 through 13 February 2006 the Discharger was billed an additional \$84,200 for erosion and sediment controls BMPs installation and maintenance.
16. Pursuant to CWC Section 13385(c), the Discharger has a maximum civil liability of \$33,120,000 for violations of the General Permit. From 1 September 2005 to 1 December 2005 the Discharger failed to install and maintain an effective combination of erosion and sediment control BMPs resulting in the discharge of sediment and sediment-laden storm water to surface waters. During that period staff documented surface water discharges that exceeded Basin Plan water quality objectives for turbidity and suspended solids on 7 November and 1 December 2005. The maximum civil liability for days of violation is determined by multiplying the 92 days by \$10,000 per day to obtain \$920,000. The maximum civil liability for discharge of sediment-laden storm water is determined by multiplying 3,220,000 gallons by \$10 to obtain \$32,200,000.

17. Central Valley Water Board staff spent a total of 80 hours investigating this incident and preparing this Complaint. The total cost for staff time is \$6,400 based on a rate of \$80 per hour.
18. 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 (Public Resources Code Section 21000, et. seq.), in accordance with Title 14 California Code of Regulations, Enforcement Actions by Regulatory Agencies, Section 15321(a)(2).

OCHOA & SHEHAN, INC. IS HEREBY GIVEN NOTICE

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **\$100,000**, which includes \$6,400 in staff cost and \$56,000 to recover the economic benefit derived from the acts that constitute violations. The amount of the proposed liability is based on a review of the factors cited in Water Code Section 13385 and the State Water Resources Control Board's Water Quality Enforcement Policy.
2. A hearing on this matter will be scheduled for the **26/27 October 2006** Central Valley Water Board meeting unless the Discharger agrees to waive the hearing and pay the proposed civil liability in full.
3. If a hearing in this matter is held, the Central Valley Water Board will consider whether to affirm, reject or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. The Discharger may waive the right to a hearing. If you wish to waive the hearing, you must **within 30 days of this complaint**, sign and return the waiver to the Central Valley Water Board's office with a check in the amount of the civil liability made payable to the "State Water Pollution Cleanup and Abatement Account". Any waiver will not be effective until 30 days from the date of this complaint to allow interested persons to comment on this action.

PAMELA C. CREEDON, Executive Officer

18 August 2006

Date

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent Ochoa & Shehan, Inc. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2006-0517 (hereinafter the "Complaint");
2. I am informed of the right provided by California Water Code Section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint;
3. I hereby waive the Discharger's right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of issuance of the Complaint; and
4. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **one hundred thousand dollars (\$100,000)** by check, which contains a reference to "ACL Complaint No. R5-2006-0517" and is made payable to the "*State Water Pollution Cleanup and Abatement Account*."
5. I understand the payment of the above amount constitutes a settlement of violations alleged in the Complaint that will not become final until after a public comment period.
6. I understand that the Executive Officer has complete discretion to modify or terminate this settlement.
7. 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.

(Print Name and Title)

(Signature)

(Date)