

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2008-0528

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

TML DEVELOPMENT LLC
THUNDER MOUNTAIN LODGE
AMADOR COUNTY

This complaint is issued to TML Development LLC (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL), CWC section 13323, which authorizes the Executive Officer to issue this complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that the Discharger violated the terms of National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 Order No. 99-08-DWQ.

The Assistant Executive Officer of 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 Thunder Mountain Lodge, a 2.7-acre construction project located within the Kirkwood Ski Resort in Amador County. Runoff from the site discharges to an unnamed tributary of Kirkwood Creek, which flows into Kirkwood Creek and Kirkwood Meadow about a quarter mile downstream from the project site.
2. Kirkwood Creek is the headwaters of the South Fork of the American River. Headwaters are sensitive areas that provide aquatic and terrestrial invertebrates and organic detritus for downstream habitats. Impacts to headwaters can be detrimental to downstream waterways. As described in the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins* (Basin Plan), the existing and potential beneficial uses of the American River are municipal and domestic water supply, agricultural supply, hydropower generation, water contact recreation, non-contact water recreation, cold and warm fresh water habitat, cold water spawning, and wildlife habitat.
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 for storm water discharges associated with construction activity.
4. The General Permit requires that those who discharge storm water associated with construction activity to surface waters file a Notice of Intent to obtain coverage under the

General Permit and use best available technology economically achievable and best conventional control technology to reduce storm water pollution. The General Permit also authorizes non-storm water discharges only where they do not cause or contribute to a violation of any water quality standard and are controlled through implementation of appropriate Best Management Practices (BMPs) for elimination or reduction of pollutants.

5. The CWC requires that dischargers obtain coverage under the General Permit prior to commencing construction activities. The Discharger obtained coverage under the General Permit and was assigned WDID No. 5S03C346861 on 20 April 2007.
6. General Order No. 99-08-DWQ states, in part, the following:

“C. SPECIAL PROVISIONS FOR CONSTRUCTION ACTIVITY:

3. *Discharges of non-storm water are authorized only where they do not cause or contribute to a violation of any water quality standard and are controlled through implementation of appropriate BMPs for elimination or reduction of pollutants.”*

7. The Discharger violated Special Provisions C.3 of the General Permit. The violation was caused by the Discharger’s failure to implement appropriate BMPs for dewatering activities, which caused or contributed to a violation of the turbidity water quality objective.
8. The following General Permit violations were found at the Thunder Mountain Lodge site:
 - a. On 7 June 2007, Regional Water Board staff inspected the Thunder Mountain Lodge construction site and found most of the construction site to be disturbed. During the inspection, staff observed a significantly sediment-laden discharge entering an unnamed tributary of Kirkwood Creek. Staff followed the discharge to its source and found the Discharger’s contractor using a sump pump to dewater a trench. Staff did not observe appropriate BMPs to control the turbidity in this non-storm water discharge and noted that the discharge created considerable turbidity downstream and well into Kirkwood Meadow.

Staff took samples and measured the turbidity of the discharge at 1600 NTUs. Upstream of the runoff, staff noted that the water from the snowmelt was crystal clear. Turbidity measurements for clear water are most likely to be less than 10 NTUs and are definitely less than 100 NTUs. The Central Valley Regional Water Board’s Basin Plan water quality objective for turbidity is based on background turbidity levels. Where natural turbidity is between 10 to 100 NTUs, increases in turbidity attributable to controllable water quality factors cannot exceed 20 percent. A discharge of 1600 NTUs would have, at a minimum, contributed to a violation of

the water quality objective for turbidity and was therefore a violation of the Basin Plan and the General Permit.

- b. On 27 June 2007, a Notice of Violation (NOV) was issued to the Discharger for the violation of the General Permit.
 - c. On 13 July 2007, the Discharger responded to the NOV with documentation that settling tanks with a filtering mechanism had been installed and that perimeter BMPs and drain inlet protections were serviced. These BMPs should have been installed and operational before the Discharger's contractor began pumping any water, and prior to staff's 7 June 2007 inspection.
9. As discussed above, the Discharger failed to comply with the General Permit by discharging non-storm water that may contribute to a violation of a water quality standard and was not controlled through implementation of appropriate BMPs for elimination or reduction of turbidity.
10. 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.

(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.

(2) Where there is discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.”

“(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."

10. Pursuant to CWC section 13385(c), the Discharger has accrued a maximum civil liability of \$10,000. The maximum liability is based on one day of violation of the General Permit.
11. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

TML DEVELOPMENT LLC IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of ten thousand dollars (**\$10,000**).
2. A hearing on this matter will be scheduled for the **31 July/1 August 2008** Regional Water Board meeting unless the Discharger agrees to complete the following by **9 June 2008**:
 - a. Waive the hearing by completing the attached form and returning it to the Regional Water Board; and
 - b. Pay the proposed civil liability of ten thousand dollars (\$10,000) in full.
3. If a hearing in this matter is held, the Regional 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.

JACK E. DEL CONTE, Assistant Executive Officer

7 May 2008

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 TML Development LLC (hereafter “Discharger”) in connection with Administrative Civil Liability Complaint No. R5-2008-0528 (hereafter 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 service 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 service of the Complaint; and
4. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **ten thousand dollars (\$10,000)** by check, which contains a reference to “ACL Complaint No. R5-2008-0528” 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 the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Regional Water Board receive new information during this comment period, the Regional Water Board may withdraw the complaint, return payment, and issue a new complaint.
6. 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)