

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2005-0525

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

VIRGINIA L. DRAKE, TRUSTEE
DRAKE REVOCABLE TRUST

HUMBOLDT ROAD BURN DUMP AREA 8
ASSESSORS PARCEL NUMBER 011-780-014
BUTTE COUNTY

This Administrative Civil Liability Complaint (hereafter Complaint) is issued to Virginia L. Drake, Trustee, Drake Revocable Trust (hereafter Discharger) based on findings of failure to comply with California Water Code (CWC) Section 13304 and Section 13267. This Complaint is issued pursuant to CWC Sections 13350 and 13268(a) and (b), which authorize the imposition of Administrative Civil Liability.

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

1. The Humboldt Road Burn Dump (HRBD) is a contiguous collection of parcels containing, in whole or in part, waste from the disposal of municipal and/or commercial operations that contains waste as defined in California Water Code (CWC) section 13050 and hazardous materials as defined in Health and Safety Code section 25260(d). Studies conducted under contract to the City of Chico of the HRBD characterized the waste, delineated the extent, and confirmed the need for further remediation on several properties. Studies show that the HRBD had waste containing lead exceeding hazardous waste levels in some locations and significant other hazardous and non-hazardous waste constituents that pose a threat to human health and the environment, including waters of the state.

Assessors Parcel Number 011-780-014

2. Currently, Assessors Parcel Number (APN) 011-780-014 is 10.18 acres of essentially unimproved property near the intersection of Stilson Canyon and Humboldt Road, in Chico, California. In the past, the property was part of a larger unimproved property; specifically, APN 011-780-014 was part of the Simmons Ranch, APN 011-050-128. APN 011-780-014 is also referred to as Area 8 of the HRBD.
3. APN 011-780-014 is currently owned by Virginia Drake, the Drake Revocable Trust, Darwin H. Simmons, Nina R. Simmons, James E. Simmons, and the Simmons Family Trust. It was formerly also owned by John D. Drake. On 21 February 2001, John D. Drake deeded his ½ interest in the property to himself and Virginia L. Drake as trustees of the Drake Revocable Trust created on 23 January 2001. John D. Drake died on 22 November 2001. The Discharger, through the Drake Revocable Trust established with her deceased husband, John D. Drake, owns

an undivided ½ interest, Darwin H. Simmons and Nina R. Simmons, through the Simmons Family Trust, own an undivided ¼ interest, and James E. Simmons owns an undivided ¼ interest in APN 011-780-014.

4. On 3 March 2003, the Discharger filed civil action in Butte County Superior Court (Case #129127) against Darwin H. Simmons, Nina R. Simmons, and James E. Simmons (hereafter the Simmons) to partition APN 011-780-014 and other properties the Discharger owns with the Simmons. Court action on the case is pending.

Previous Enforcement

Cleanup and Abatement Order No. 88-700

5. In 1982, the City of Chico decided to construct a two-lane extension from the intersection of Humboldt and Bruce Roads, northerly to State Highway 32 (the Bruce Road Extension Project). The City of Chico prepared an initial study, determined that the project would not have a significant environmental impact, and subsequently prepared a Negative Declaration. On 30 June 1982, the City of Chico approved the Negative Declaration and, on 13 April 1983, filed a Notice of Determination for the project.
6. On 20 July 1987, the City of Chico awarded the construction contract for the Bruce Road Extension Project to Baldwin Contracting Company, Inc. (Baldwin). The contract specifies that disposal of surplus construction material is the responsibility of the contractor. Baldwin excavated 31,700 cubic yards of material from the roadbed and, after obtaining permission from adjacent property owners, disposed of the surplus material on four HRBD properties (currently known as APN 011-780-014, 002-180-084, 002-180-086, and 011-030-136).
7. On 13 August 1987, James E. Simmons granted Baldwin permission to dispose of surplus material from the Bruce Road Extension Project on the Simmons Ranch property described in Finding 2. A stock pond levee was constructed on the property. On 16 September 1987, in response to complaints from citizens, Regional Board staff collected soil samples from the stock pond levee. Analyses of the samples showed the presence of polynuclear aromatic hydrocarbons at concentrations ranging from 2.3 µg/Kg to 84.9 µg/Kg, copper at concentrations ranging from 560 mg/Kg to 1,400 mg/Kg, total chromium at concentrations ranging from 75 mg/Kg to 110 mg/Kg, lead at concentrations ranging from 2,000 mg/Kg to 3,400 mg/Kg, and other metals. These constituents constitute waste as defined in CWC section 13050. The Discharger estimates the volume of waste in the stock pond levee is 7,500 cubic yards. The Discharger owns the property subject to this order and has knowledge of the waste discharge. The City of Chico never owned the property subject to this ACL complaint.
8. On 27 January 1988, the Regional Board Executive Officer issued Cleanup and Abatement Order (CAO) No. 88-700, pursuant to California Water Code section 13304, requiring the City of Chico, John D. Drake, and James E. Simmons to remove the Area 8 waste. In an effort to identify all the HRBD waste material and evaluate the threats to human health and the environment, including water quality, Regional Board staff deferred enforcement of CAO No. 88-700 until investigation of other HRBD properties could be completed.

9. Between 1989 and 1991, studies conducted under contract to John D. Drake further characterized the stock pond levee waste to support a Department of Toxic Substances Control (DTSC) special waste application (variance) to dispose of the waste at the City of Chico HRBD, APN 011-030-015. On 3 April 1992, DTSC staff granted approval to classify and manage the stock pond levee waste as a special waste, excluding approximately 300 cubic yards of waste that DTSC determined was hazardous. Although DTSC granted a variance for a majority of the stock pond levee waste, the waste was not removed.
10. Studies conducted under contract to the City of Chico further characterized the HRBD waste, delineated the extent, and confirmed the need for further remediation on several properties. Historic aerial photographs of the area were reviewed. Area 8 is visible in photographs taken in 1990.
11. On 2 June 1994, James E. Simmons agreed to reimburse John D. Drake for clean up or response costs associated with the stock pond levee waste. James E. Simmons reimbursed John D. Drake for \$89,946 in response costs and, on 1 August 1995, further agreed to reimburse John D. Drake ongoing response costs including remediation of the waste.
12. In October 1997, the City of Chico applied to the California Environmental Protection Agency Site Designation Committee, pursuant to HSC section 25260, et seq., requesting the Regional Board be designated as Administering Agency for thirteen HRBD properties, including APN 011-780-014. On 11 December 1997, the Site Designation Committee adopted Resolution No. 97-16 designating the Regional Board administering agency and City of Chico responsible party. Responsible party, as defined in HSC section 25260(h), means “any persons, except for an independent contractor, who agrees to carry out a site investigation and remedial action at a hazardous materials release site for one of the following reasons: (1) the person is liable under a state or local law, ordinance, or regulation for the site investigation or remedial action; or (2) the site investigation or remedial action is required by a state or local law, ordinance, or regulation because of a hazardous materials release.”

Cleanup and Abatement Order No. R5-2003-0707

13. On 3 June 2003, the Regional Board Executive Officer issued Cleanup and Abatement Order No. R5-2003-0707 (the Order), pursuant to California Water Code section 13304, to the reasonably identifiable parties responsible for the waste at the HRBD. The Order defines HRBD by the following parcels and their respective owners: APN 002-180-095 and 011-030-137 (City of Chico); APN 011-030-136, 011-030-138, 011-030-139 (Thomas and Mary Fogarty Revocable Trust); APN 011-030-015 (George Scott Revocable Trust); APN 011-030-016 (Edmond and Julie Johnson); APN 002-180-089 (Donald and Yvonne Mulkey Family Trust); APN 002-180-084 (Fred and Helen Bartig Family Trust et al.; APN 002-180-086 (Marilyn Adams Revocable Trust et al.); APN 011-780-014 (Simmons Family Trust)(Area 8); APN 011-780-018 (Drake Revocable Trust et al.)(Area 7); APN 002-180-087 and 002-180-088 (Chico Development Corporation); and APN 002-180-083 (Pleasant Valley Assembly of God).
14. The Order requires the City of Chico, Thomas and Mary Fogarty Revocable Trust, George Scott Revocable Trust, Edmond and Julie Johnson, Donald and Yvonne Mulkey Family Trust, Fred and Helen Bartig Family Trust et al., Marilyn Adams Revocable Trust et al., Simmons Family

Trust, Drake Revocable Trust et al., Chico Development Corporation, Pleasant Valley Assembly of God, County of Butte, and North Valley Disposal Service to investigate, clean up, and abate the effects of the waste resulting from activities at the HRBD beginning 1 June 2004. The Order does not specify a single responsible party to cleanup the fifteen parcels, but requests each individual named in the Order to submit written notification describing if they wish to maintain the City of Chico as lead responsible party and allow access to their respective properties for the purposes of investigation and cleanup or whether they intend to cleanup their own parcels.

15. On 13 February 2004, the Discharger submitted to Regional Board staff a notice of intent to submit a separate Remedial Action Plan to comply with the Order without indication of outside assistance or participation. On 15 March 2004, the Discharger submitted a status report committing to cleanup the Area 8 waste. Subsequently, the Discharger notified Regional Board and City of Chico staffs of the Discharger's intent to remove the Area 8 waste by summer 2004, if possible.
16. On 8 July 2004, the Discharger and other private parties submitted a Final Remedial Action Plan (RAP) for Humboldt Road Private Properties Operational Unit, which includes Area 8, APN 011-780-014 and seven other properties. The approved remedial alternative for Area 8 is excavation and off-site disposal. The RAP proposes a time schedule to submit initial engineering design plans documents by 11 June 2004. Upon approval of the RAP by the Executive Officer, the time schedule became an enforceable part of Cleanup and Abatement Order No. R5-2003-0707. On 13 July 2004, Regional Board staff approved the RAP and requested the Discharger submit a Remedial Design and Implementation Plan (RDIP) on or before 13 August 2004. On 28 July 2004, the Discharger notified Regional Board staff that the Discharger intended to immediately develop and submit an RDIP and seek permits from other agencies to allow remediation work to begin in spring 2005.
17. On 10 September 2004, the Discharger notified the Simmons of her intent to manage and obtain all necessary permits to cleanup the Area 8 waste during summer 2005. The Discharger proposed to allocate cleanup costs based on the percentage of property ownership and committed to keep the total overall cleanup costs to a minimum. The Simmons indicated in writing they would pay the Discharger their fair share of the cleanup costs.
18. On 10 March 2005, the Discharger submitted an incomplete Remedial Design and Implementation Plan (RDIP) containing three cleanup alternatives for the Area 8 waste and Area 7 waste (for Area 7 waste, see ACLC No. R5-2005-0524). The Discharger selected Alternative 3 (truck the 8,000 cubic yards of waste to a Class 1 landfill approximately 300 miles from the site), which is the cleanup alternative with the highest estimated total cost, \$1,400,000. Both Alternative 1 and 2 consisted of disposal of the waste in disposal sites at the HRBD with an estimated cost of \$200,000.
19. On 11 April 2005, the Simmons notified the Discharger that they agreed with the plan to cleanup the waste at the lower estimated total cost, \$200,000 (either Alternative 1 or 2). The Discharger did not object to the Simmons cleaning up the Area 8 waste at the Simmons' expense. However, on 15 April 2005, the Discharger submitted to Regional Board staff a notice that the Discharger will require the Simmons and other parties comply with unspecified conditions prior to the cleanup. The Discharger had made clear to the Regional Board that the Discharger had assumed

responsibility to cleanup the parcel, was authorized by the Simmons as part owners of the parcel to undertake cleanup, was in control of the cleanup activities as indicated by contact with permitting agencies, and had the financial ability, in part through an agreement with the Simmons, to cleanup the Area 8 waste.

Remediation of HRBD Properties

20. Since issuance of the Order, ownership has changed on several properties described in Finding 13. HRBD is currently identified by the following Assessor's Parcel Numbers (APN) and their respective owners: APN 002-180-087, 002-180-088, 002-180-095, 002-180-089, 011-030-015, and 011-030-137 (Chico Redevelopment Agency); APN 011-030-136, 011-030-138, 011-030-139, and 011-030-016 (Thomas and Mary Fogarty Revocable Trust); APN 002-180-084 and 002-180-086 (Borge Development); APN 002-180-083 (New Urban Builders); APN 011-780-014 and 011-780-018 (Drake Revocable Trust, Simmons Family Trust, and James E. Simmons). The Thomas and Mary Fogarty Revocable Trust took responsibility to remediate the Fogarty parcels and the Borge Development parcels. The City of Chico took responsibility to remediate the Chico Redevelopment Agency parcels. The New Urban Builders took responsibility to remediate its parcel.
21. On 14 July 2004, to comply with the Order, Thomas and Mary Fogarty Revocable Trust began cleanup of two HRBD properties (APN 011-030-138 and 011-030-139). On 10 March 2004, the Regional Board staff issued Thomas and Mary Fogarty Revocable Trust a Certificate of Completion, pursuant to HSC section 25260, et seq., for the hazardous materials release site on APN 011-030-139. On 31 May 2005, to comply with the Order, Thomas and Mary Fogarty Revocable Trust and Borge Development began cleanup of five HRBD properties (APN 011-030-136, 011-030-138, 011-030-016, 002-180-084, and 002-180-086). On 10 August 2005, excavation and removal of HRBD waste from APN 011-030-136, 011-030-138, 011-030-016, 002-180-084, and 002-180-086 was completed. The waste was placed in a consolidation cell, which is regulated pursuant to waste discharge requirements issued by the Regional Board.
22. On 1 June 2005, to comply with the Order, Chico Redevelopment Agency began cleanup of six HRBD properties (APN 002-180-087, 002-180-088, 002-180-095, 002-180-089, 011-030-015, and 011-030-137). On 12 August 2005, excavation and removal of HRBD waste from APN 002-180-087, 002-180-088, 002-180-095, 002-180-089, 011-030-015, and 011-030-137 was completed. The waste was placed in a consolidation cell, which is regulated pursuant to waste discharge requirements issued by the Regional Board.
23. On 25 July 2005, to comply with the Order, New Urban Builders began cleanup of one HRBD property (APN 002-180-083). On 2 August 2005, excavation and removal of HRBD waste from APN 002-180-083 was completed. The waste was disposed at Norcal Systems, Ostrom Road Class II Landfill, which is regulated pursuant to waste discharge requirements issued by the Regional Board.
24. Chico Redevelopment Agency, Thomas and Mary Fogarty Revocable Trust, Borge Development, and New Urban Builders excavated and removed burn dump waste from their respective properties and achieved compliance with the Order by 12 August 2005.

25. On 17 February 2005, the Discharger denied the Chico Redevelopment Agency's request to execute an Agreement for Right of Entry to place, operate or maintain air-monitoring equipment on APN 011-780-014 and APN 011-780-018 during the Chico Redevelopment Agency's remediation of six HRBD properties because the Discharger did not want anything interfering with the summer 2005 cleanup of the two parcels (Areas 7 and 8).
26. The Chico Redevelopment Agency consolidation cell was not filled to design capacity with waste from the Redevelopment Agency parcels. The Chico Redevelopment Agency consolidation cell had sufficient capacity for the Area 8 waste (the cell also had capacity for Area 7 waste also owned in part by the Discharger), which would implement Alternative 1 and the Redevelopment Agency had offered the Discharger the opportunity to place the waste from Area 7 and 8 into the cell. The Discharger, however, had failed to secure regulatory permits and agreements necessary for cleanup of Area 7 and 8 and had indicated their intent not to select HRBD as a disposal site (i.e., Alternatives 1 or 2). Between 1 and 3 August 2005, approximately 14,000 cubic yards of clean fill was imported and placed in the Chico Redevelopment Agency consolidation cell to reach design grade.
27. The City of Chico and Chico Redevelopment Agency do not own APN 011-780-014 and, therefore, could not remediate the site without permission of the Discharger. The Discharger, in fact, denied Chico Redevelopment Agency access to APN 011-780-014 and 011-780-018 for cleanup related activities. To comply with the Order, the City of Chico, Chico Redevelopment Agency, Thomas and Mary Fogarty Revocable Trust, Borge Development, and New Urban Builders are not considered as responsible parties for Area 8 wastes and were not required to excavate and remove the waste from APN 011-780-014.

Discharger Violations

Failure to Obtain Regulatory Permits

28. The Cleanup and Abatement Order includes Required Action 17, which requires the Discharger to obtain all local and state permits and access agreements to fulfill the requirements of the Order prior to beginning the work. On 28 July 2004, the Discharger notified Regional Board staff of her intent to secure regulatory permits necessary to cleanup the Area 8 waste.
29. On 21 December 2004, the Discharger submitted an incomplete application for Authority to Construct with Butte County Air Quality Management District (BCAQMD). The Discharger did not complete the application. Subsequently, the Discharger notified BCAQMD staff to halt the project.
30. On 28 March 2005, Regional Board staff provided the Discharger a list of five regulatory permits, the required compliance date for cleanup to begin in accordance with the Discharger's construction schedule, and requested the Discharger submit copies of each complete permit application by 1 May 2005.
31. On 15 April 2005, the Regional Board Executive Officer required the Discharger, Simmons Family Trust, James E. Simmons and City of Chico submit pursuant to CWC section 13267 a technical report and time schedule, by 20 April 2005, describing each regulatory agency permit

or authorization necessary for work to begin on Area 8, APN 011-780-014, the date they intend to apply for each permit or authorization, and the date they anticipated receiving the permit or authorization.

32. In response, the Discharger indicated that consultants were obtained to initiate two regulatory permits; however, the Discharger subsequently notified the consultants to halt the project. The Discharger failed to submit the technical report by 20 April 2005 and copies of each complete permit application by 1 May 2005.

Failure to Implement Cleanup

33. The Cleanup and Abatement Order includes Required Action 7, which requires the Discharger to submit, by 1 April 2004, 100 percent design plans and specifications for implementation of the Remedial Action Plan (RAP). Following the Regional Board Executive Officer's approval of the Discharger's RAP, on 13 July 2004, Regional Board staff requested the Discharger submit design plans and specifications (RDIP) on or before 13 August 2004, for implementing the Area 8 cleanup.
34. On 28 March 2005, to complete the RDIP, Regional Board staff requested the Discharger submit a revised Confirmation Sampling Plan and Transportation Plan. The Discharger submitted the revised Confirmation Sampling Plan but failed to submit the revised Transportation Plan by 1 May 2005. Therefore, the Discharger failed to complete the RDIP.
35. The Cleanup and Abatement Order includes Required Action 3, which requires the Discharger to begin cleanup no later than 1 June 2004. The 28 March 2005 letter provided the Discharger final notice of Regional Board staff's intent to request the Regional Board Executive Officer pursue additional enforcement action if final cleanup of Area 8 waste, APN 011-780-014, is not completed by 15 August 2005. The Discharger failed to begin cleanup by 1 June 2004 or complete cleanup by 15 August 2005. To date, Area 8 has not been remediated.
36. On 19 April 2005, the Regional Board Executive Officer required the Discharger, Simmons Family Trust, James E. Simmons and City of Chico, to submit pursuant to CWC section 13267 a technical report, by 1 May 2005, describing the selected off-site disposal alternative for the Area 8 waste and the revised transportation plan developed pursuant to the selected alternative. The City of Chico submitted a report denying responsibility for Area 8 waste and indicating they had no control or access to the property. The Discharger failed to submit the technical report on the behalf of the Simmons's or the Discharger.

Failure to Comply with other Required Actions

37. Required Action 9 in the Order requires the Discharger to submit, on the 15th of each month, a status report to describe progress in complying with the Order, explain any problems with compliance or delays in the schedule, and provide and plan for returning the cleanup to compliance with the Order. The Discharger submitted a limited number of monthly status reports from 15 March 2004 through 15 March 2005. The Discharger has failed to submit monthly status reports since 15 April 2005.

REGULATORY CONSIDERATIONS

38. Cleanup and Abatement Order (CAO) No. R5-2003-0707 states:
“If the Dischargers violate this Order, the dischargers may be liable civilly in a monetary amount provided by the California Water Code.”
39. On 28 July 2004, in violation of CAO No. R5-2003-0707, the Discharger has failed to apply for the necessary permits to remove the Area 8 waste. Although the Discharger notified Regional Board staff, James E. Simmons, Darwin and Nina Simmons, and City of Chico of the Discharger’s intent to secure regulatory permits necessary to cleanup the Area 8 waste on APN 011-780-014, the Discharger failed to submit complete timely applications to appropriate regulatory agencies so cleanup work could be completed by 15 August 2005.
40. On 31 May 2005, in violation of CAO No 88-700 and CAO No R5-2003-0707, the Discharger has failed to remove waste from Area 8, APN 011-780-014.
41. The only parcels containing burn dump waste not remediated during the 2004 and 2005 construction seasons are Area 7, APN 011-780-018, and Area 8, APN 011-780-014. All other parcels containing burn dump waste have been remediated and all waste that can be practically removed has been placed in functioning and fully permitted disposal cells. Approximately 31,700 cubic yards of surplus excavated soils from the Bruce Road Extension Project containing hazardous burn dump waste was placed on three other parcels in addition to Area 8 and these wastes have been successfully removed and properly disposed by current property owners.
42. CWC Section 13304(a) states:
“Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharge where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up such waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.”
43. CWC Section 13304(c)(1) states:
“If the waste is cleaned up or the effect of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any

governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial actions. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the state board to the extent of the latter's contribution to the cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds."

44. CWC Section 13350 states, in part:

"(a) Any person who (1) violates any ... cleanup and abatement order hereafter issued, reissued, or amended by a regional board ... shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the discharge occurs.

(f) A regional board may not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327."

46. Since 28 July 2004, the Discharger has failed to obtain the regulatory permits necessary for cleanup of Area 8 waste from APN 011-780-014 to begin and; therefore, as of 23 September 2005, the Discharger has been in violation of the Order for 422 days. Since 15 August 2005, the Discharger has failed to remove waste from Area 8 and; therefore, as of 23 September 2005, the Discharger has been in violation of the Order for 38 days. The maximum liability that can be imposed by the Regional Board under CWC Section 13350 is \$5,000 for each day and the minimum liability than can be imposed is \$100 for each day. Therefore, the maximum administrative civil liability is \$2,300,000 ((422 + 38) days times \$5,000 per day) and the minimum administrative civil liability is \$46,000 ((422 + 38) days times \$100 per day).
45. Since 15 April 2005, in violation of CAO No. R5-2003-0707, the Discharger has failed to submit status reports on the 15th of each month.
46. Since 20 April 2005, in violation of CWC section 13267 and CAO No. R5-2003-0707, the Discharger has failed to submit a regulatory permitting technical report for the Area 8 waste.

47. Since 1 May 2005, in violation of CWC section 13267 and CAO No. R5-2003-0707, the Discharger has failed to submit an off-site disposal alternative/revised transportation plan technical report for the Area 8 waste.

48. CWC Section 13268 states:

“Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 of a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.”

49. Since 15 April 2005, the Discharger has failed to submit monthly status reports and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC Section 13267 for 188 days. Since 20 April 2005, the Discharger has failed to submit a regulatory permitting technical report for the Area 8 waste and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC Section 13267 for 531 days. Since 1 May 2005, the Discharger has failed to submit an off-site disposal alternative/revised transportation plan technical report for the Area 8 waste and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC Section 13267 for 145 days. The maximum liability that can be imposed by the Regional Board under CWC Section 13268 is \$1,000 for each day. Therefore, the maximum administrative civil liability is \$863,000 ((188 + 531 + 145) days times \$1,000 per day).

50. The maximum administrative civil liability allowed pursuant to CWC Section 13350 and 13267 is \$3,536,000 (\$2,300,000 + \$863,000). The minimum administrative civil liability allowed pursuant to CWC Section 13350 is \$46,000. CWC Section 13267 does not provide for a minimum liability.

51. CWC Section 13327 states:

“In determining the amount of civil liability, the regional board ... shall take into consideration the 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 violation, and other matters as justice may require.”

52. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321 (a)(2), Title 14, of the California Code of Regulations.

VIRGINIA L. DRAKE, TRUSTEE, DRAKE REVOCABLE TRUST IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed Administrative Civil Liability in the amount of one hundred twenty five thousand dollars (\$125,000). The amount of the liability proposed is greater than the minimum allowed liability required under Section 13350 (e)(1)(B), and takes into account the factors set forth in CWC Section 13327 cited in Finding No. 51, and including consideration of the economic benefit or savings resulting from the violations.
2. A hearing shall be held on November 28 and/or 29 or 1 and/or 2 December 2005 unless the Discharger agrees to waive the hearing and pay the proposed civil liability in full.
3. If a hearing is held, the Regional 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. In lieu of a hearing, the Discharger may waive the right to a hearing. If you wish to waive the right to a hearing, sign the enclosed waiver and return it with the full amount of civil liability (in a check made payable to the *State Water Resources Control Board Cleanup and Abatement Account*), to the Regional Board's office at 415 Knollcrest Drive, Suite 100, Redding, CA 96002, **by 24 October 2005.**

THOMAS R. PINKOS, Executive Officer

23 September 2005

(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 Virginia L. Drake, Trustee, Drake Revocable Trust (hereinafter “Discharger”) in connection with Administrative Civil Liability Complaint No. R5-2005-0525 (hereinafter the “Complaint”);
2. I am informed of the right provided by 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 agree to remit payment for the civil liability imposed in the amount of one hundred twenty five thousand dollars (\$125,000) by check, which contains a reference to “ACL Complaint No. R5-2005-0525 ” and is made payable to the “*State Water Resources Control Board Cleanup and Abatement Account.*”
5. I understand the payment of the above amount constitutes a settlement of the Complaint that will not become final until after a public comment period.
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.

(Name)

(Title)

(Date)