

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2016-0524

MANDATORY PENALTY  
IN THE MATTER OF

STEVEN, FERRONE AND BAILEY ENGINEERING COMPANY  
AND  
BROOKFIELD EMERSON LAND LLC  
EMERSON RANCH CONSTRUCTION DEWATERING PROJECT  
CONTRA COSTA COUNTY

This Complaint is issued to Steven, Ferrone and Bailey Engineering Company on behalf of Brookfield Emerson Land LLC (hereafter Discharger) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability, Water Code section 13323, which authorizes the Executive Officer to issue this Complaint, and Water Code 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 provisions of Waste Discharge Requirements (WDRs) Order R5-2013-0074-142 (NPDES CAG995001).

The Assistant Executive Officer of the Central Valley Regional Wastewater Quality Control Board (Central Valley Water Board or Board) alleges the following:

1. On 28 February 2014, the Discharger applied for coverage under the Waste Discharge Requirements for Dewatering and Other Low Threat Discharges to Surface Waters (Low Threat General Order) R5-2013-0074, and on 24 April 2014, the Executive Officer issued Notice of Applicability (NOA) R5-2013-0074-142. On 5 October 2015, Board staff notified the Discharger that coverage under the Low Threat General Order was terminated on 25 September 2015 at the Discharger's request.
2. This Complaint addresses administrative civil liability for effluent violations that occurred from 24 April 2014 through 25 September 2015. These violations are specifically identified as subject to mandatory minimum penalties in Attachment A to this Complaint, which is attached hereto and incorporated herein by reference.
3. On 14 January 2016, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations (ROV). On 9 February 2016, the Discharger agreed with the violations and provided a minor correction to the 5 February 2015 total suspended solids result. Board staff agrees with the Discharger and made the appropriate correction to the 5 February 2015 TSS result.
4. Water Code section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

Water Code section 13385(h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

Water Code section 13385 (h)(2) states:

For the purposes of this section, a “serious violation” means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

Water Code section 13385 subdivision (i)(1) states, in part:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

5. Water Code section 13323 states, in part:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

6. WDRs Order R5-2013-0074-142, Effluent Limitations V.1. includes, in part, the following effluent limitations:

- a. The discharge of pollutants from dewatering and other low threat discharges shall not exceed the following effluent limitations:

**Table 3. Effluent Limitation**

Parameter	Units	Effluent Limitation		
		Average Monthly	Weekly Average	Maximum Daily
Total Suspended Solids	mg/L	10	15	30

7. WDRs Order R5-2013-0074-142, Effluent Limitations V.B.1 includes, in part, the following effluent limitations:
  1. **Final Effluent Limitations – Discharges within the Sacramento and San Joaquin River Basins (Except Goose Creek)**

The pH of all dewatering and other low threat discharges within the Sacramento and San Joaquin River Basins (except Goose Creek) shall at all times be within the range of 6.5 and 8.5..
8. According to the Discharger's self-monitoring reports, the Discharger committed five (5) serious Group I violations of the above effluent limitations contained in WDRs Order R5-2013-0074. These violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels in WDRs Order R5-2013-0074-142 by 40 percent or more. The mandatory minimum penalty for these serious violations is **fifteen thousand dollars (\$15,000)**.
9. According to the Discharger's self-monitoring reports, the Discharger committed three (3) non-serious violations of the above effluent limitations contained in WDRs Order R5-2013-0074-142. Two of these non-serious violations are subject to mandatory penalties under CWC section 13385 subdivision (i)(1) because these violations were preceded by three or more similar violations within 180-day period. The mandatory minimum penalty for these non-serious violations is **six thousand dollars (6,000)**.
10. The total amount of the mandatory penalties assessed for the alleged effluent violation is **twenty one thousand dollars (\$21,000)**. As stated herein, a detailed list of the alleged effluent violation is included in Attachment A. This Complaint addresses administrative civil liability for violation that is specifically identified as subject to mandatory minimum penalties in Attachment A.
11. On 14 February 2014, the Executive Officer designated Andrew Altevogt, Assistant Executive Officer, as the Lead Prosecution Officer for all enforcement matters originating in the Rancho Cordova Office. The 14 February 2014 Delegation of Authority also authorizes Andrew Altevogt to issue Administrative Civil Liability Complaints.
12. Issuance of this Administrative Civil Liability Complaint to enforce Water Code 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).

**STEVEN, FERRONE & BAILEY ENGINEERING CO., INC. ON BEHALF OF BROOKFIELD EMERSON LAND LLC IS HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **twenty one thousand dollars (\$21,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **23/24 June 2016**, unless the Discharger does one of the following by **27 April 2016**:
  - a) Waives the hearing by completing the attached form (checking off the box next to Option 1) and returning it to the Central Valley Water Board. In addition, submits payment for the

proposed civil liability of **twenty one thousand dollars (\$21,000)** to the State Water Board with a copy of the check to the Central Valley Water Board; or

- b) Requests to engage in settlement discussions by checking the box next to Option 2 on the attached form, and returning it to the Board along with a letter describing the issues to be discussed. The Central Valley Water Board must agree to the postponement; or
  - c) Requests to delay the hearing by checking off the box next to Option 3 on the attached form, and returning it to the Board along with a letter describing the proposed length of delay and the issues to be discussed. The Central Valley Water Board must agree to the postponement.
3. If a hearing on 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. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

Original Signed by

\_\_\_\_\_  
ANDREW ALTEVOGT, Assistant Executive Officer

28 March 2016

\_\_\_\_\_  
DATE

Attachment A: Record of Violations

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the Steven, Ferrone and Bailey Engineering Company, Inc. on behalf of Brookfield Emerson Land LLC (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2016-0524 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

- (OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)**
- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
  - b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **twenty one thousand dollars (\$21,000)** by check that references "ACL Complaint R5-2016-0524" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the State Water Resources Control Board, Accounting Office, Attn: ACL Payment at PO Box 1888, Sacramento, California, 95812-1888 by **27 April 2016**. The waiver and a copy of the check must be submitted to the Central Valley Water Board Attn: Wendy Wyels at 11020 Sun Center Drive #200, Rancho Cordova, California, 95670 by **27 April 2016**.
  - c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
  - d. 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.
- (OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."
- (OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

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(Print Name and Title)

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(Signature)

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(Date)

**ATTACHMENT A  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2016-0524**

**Brookfield Emerson Land LLC  
Emerson Ranch Construction Dewatering Project  
RECORD OF VIOLATIONS (24 April 2014 – 25 September 2015) MANDATORY PENALTIES  
(Data reported under Monitoring and Reporting Program R5-2013-0074-142)**

	<u>Date</u>	<u>Parameter</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
1	8-Jan-15	pH	SU	6.5 – 8.5	8.63	Instantaneous Maximum	3	997891
2	8-Jan-15	Total Suspended Solids	mg/L	30	82.8	Daily Maximum	1	997894
3	Week of 10-Jan-15	Total Suspended Solids	mg/L	15	82.8	Weekly Average	1	997895
4	31-Jan-15	Total Suspended Solids	mg/L	10	82.8	Monthly Average	1	997896
5	5-Feb-15	pH	SU	6.5 – 8.5	8.9	Instantaneous Maximum	4	997892
6	5-Feb-15	Total Suspended Solids	mg/L	30	38.2	Daily Maximum	4	997897
7	Week of 7-Feb-15	Total Suspended Solids	mg/L	15	38.2	Weekly Average	1	997898
8	28-Feb-15	Total Suspended Solids	mg/L	10	38.2	Monthly Average	1	997899

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violation falls within the first three violations in a 180-day period, thus is not subject to mandatory minimum penalties. Penalties that may be assessed for this violation are discretionary. This violation is not addressed or resolved in this ROV.
4. Non-serious violation subject to mandatory minimum penalties.

<b><u>VIOLATIONS AS OF:</u></b>	<b><u>9/25/2015</u></b>
Group I Serious Violations:	5
Group II Serious Violations:	0
Non-Serious Violations Not Subject to MMPs:	1
<u>Non-serious Violations Subject to MMPs:</u>	<u>2</u>
Total Violations Subject to MMPs:	<b>7</b>

**Mandatory Minimum Penalty = (5 Group I Serious Violations + 2 Non-serious Violations Subject to MMPs)  
x \$3,000 = \$21,000**