

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ACL COMPLAINT R5-2012-0500

ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF

CALIFORNIA DEPARTMENT OF GENERAL SERVICES  
NEVADA CITY FOREST FIRE STATION  
NEVADA COUNTY

This Complaint is issued to the California Department of General Services (hereafter DGS or Discharger) pursuant to California Water Code (CWC) 13385, which authorizes the imposition of Administrative Civil Liability, and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that DGS violated provisions of the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ (NPDES No. CAS000002).

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

**Background**

1. The Discharger is a California State agency, and owns the Nevada City Forest Fire Station which is located at 10242 Ridge Road in Nevada City. The Discharger is also responsible for capital improvements, including construction, at the property. The Fire Station is operated by California Department of Forestry and Fire Protection (Cal Fire). Sequoia Pacific Builders is the site construction contractor and is responsible for all phases of construction under contract to DGS.
2. The site is the current home of Cal Fire's Nevada City Forest Fire Station. The facility is being enlarged, during which time approximately five acres of the eight-acre site will be disturbed. New construction will consist of six buildings, associated parking, drive aisles, vehicle maintenance areas, and landscaping.
3. On 2 September 2009, the State Water Resources Control Board adopted the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ (NPDES No. CAS000002) (General Permit). This Order became effective on 1 July 2010.
4. Among other items, the General Permit requires:
  - (a) the implementation of best management practices (BMPs), using best available technology economically achievable (BAT) and best conventional control technology (BCT) to reduce pollution from storm water runoff from construction sites;

- (b) that a State-certified Qualified SWPPP Developer (QSD) prepare a site specific Storm Water Pollution Prevention Plan (SWPPP) and identify the Risk Level prior to construction; and
  - (c) that Risk Level 2 and 3 dischargers develop and implement a Rain Event Action Plan (REAP) designed to protect all exposed portions of a site within 48 hours prior to any likely precipitation event. A REAP must be developed when there is a forecast of 50% or greater probability of precipitation in the project area.
5. On 27 January 2011, the Discharger applied for permit coverage under the General Permit for the Nevada City Forest Fire Station construction site by filing an on-line Notice of Intent on the Water Board's SMARTS (Storm Water Multiple Application and Tracking System) data management system. The Discharger determined the project was a Risk Level 2 site based on Project Sediment Risk and Receiving Water Risk under the terms of the General Permit.
  6. On 31 January 2011, the Discharger's Notice of Intent was approved and the Nevada City Forest Fire Station construction site was assigned Waste Discharge Identification Number 5S29C360298. The Discharger (i.e., Department of General Services) is listed as the legally responsible person for the site, and is, therefore, responsible for complying with all elements of the General Permit.
  7. On behalf of the Discharger, Sequoia Pacific Builders completed a site-specific SWPPP for the Nevada City Forest Fire Station site and uploaded the SWPPP to the SMARTS data management system on 10 March 2010, nearly a year prior to the start of the project. As listed in SMARTS, construction began on 7 February 2011 and is proposed to be completed by 3 February 2012.
  8. Other than as described below, there is no history of previous enforcement actions at this particular construction site. However, the Central Valley Water Board has cited DGS for non-compliance with the Construction Storm Water General permit at several other construction sites within the Central Valley Region.

### **Violations at the Nevada City Forest Fire Station**

9. On 5 October 2011, Board staff completed a brief inspection of the subject construction site following the first rain of the season. Staff observed sediment tracking off of the construction site and onto city streets and identified that sediment control BMPs were not effective in controlling off-site tracking of soils. Staff also observed that the Discharger failed to implement soil stabilization BMPs across their active construction site and were relying on perimeter control BMPs to protect the construction site.
10. On 11 October 2011, Board staff completed a thorough inspection of the construction site with Sequoia Pacific Builders. Staff observed that a number of management practices required for Risk Level 2 sites had not been implemented. Certain good site management or "housekeeping" BMPs such as covering soil stockpiles and containing concrete wastes were deficient or absent. Erosion control BMPs were not installed on disturbed soil in active construction areas. Linear sediment control BMPs were not installed along

disturbed slopes. Construction access road BMPs were inadequate to prevent sediment tracking from the site. Sediment tracking observed during both inspections indicated to Board staff that the Discharger was not implementing the General Permit requirement to inspect access roads and cleanup tracked sediment. Board staff also concluded that the Discharger failed to implement an effective inspection and BMP repair and improvement program because of BMP deficiencies observed during the 11 October 2011 inspection. Using scaled site maps, staff subsequently estimated the disturbed area on 11 October 2011 at 3.4 acres.

11. Based on the two inspections, Board staff identified that the following practices required by the General Permit for Risk Level 2 sites were deficient or absent:
  - (1) Covering soil stockpiles;
  - (2) Containment of concrete wastes;
  - (3) Stabilization of construction entrances to control sediment discharges from site;
  - (4) Effective erosion and sediment control BMPs on active construction areas;
  - (5) Linear sediment control BMPs on disturbed sloped areas;
  - (6) Inspection of access roads and removal of tracked sediment;
  - (7) Repairs or design changes to BMPs to correct failures or other shortcomings; and
  - (8) Visual monitoring following a qualifying rain event to identify adequacy of BMPs.
12. Although sediment was tracked onto the street, Board staff did not find evidence of a discharge of sediment or sediment-laden storm water to surface waters from the site during the inspections.
13. On 25 October 2011, Board staff issued a Notice of Violation (found as Attachment A to this Complaint) to the Discharger for the General Permit violations observed on 5 October 2011 and 11 October 2011.
14. On 9 November 2011, DGS submitted a Violation Response letter with attachments describing site stabilization work completed to comply with the General Permit. This letter included a narrative explanation of how erosion and sediment control BMPs were installed between 11 October and 3 November 2011, an updated SWPPP map, copies of weekly, pre-storm, post-storm, and REAP reports, and photographs of the completed work. Water Board staff reviewed this Violation Response letter and site photographs and determined that as of 3 November 2011, the Discharger met the General Permit requirements at this construction site.
15. On 18 November 2011, Water Board staff completed a follow-up inspection of the subject site and met with DGS and Sequoia Pacific Builders. Staff observed that drive isles and parking areas were stabilized with either final paving or base rock, and no tracking was observed off the construction site. The majority of disturbed soils had been hydro-seeded and slopes and stockpiles were stabilized as required by the General Permit.

### Surface Water Beneficial Uses

16. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (hereafter Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board.
17. Surface water drainage from the Nevada City Forest Fire Station construction site flows to roadside ditches and storm drain systems and eventually drains to Deer Creek, which is tributary to the South Fork Yuba River.
18. The beneficial uses for the Yuba River from Sources to Englebright Reservoir include: municipal and domestic supply; agricultural supply including irrigation and stock watering; hydropower generation; contact and other non-contact water recreation; cold freshwater habitat; cold spawning, and wildlife habitat.

### Calculation of Penalties Under CWC Section 13385

19. CWC section 13385 states, in relevant part:
  - (a) *Any person who violates any of the following shall be liable civilly in accordance with this section:*
    - (2) *A waste discharge requirement ... issued pursuant to this chapter...*
    - (5) *Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended.*
20. The General Permit was adopted by the State Water Board on 2 September 2009, pursuant to Clean Water Act sections 201, 208(b), 302, 303(b), 304, 306, 307, 402, and 403. Section IV(A)(1) of the General Permit, states in part:

*Any permit noncompliance constitutes a violation of the Clean Water Act (CWA) and the Porter-Cologne Water Quality Control Act and is grounds for enforcement action and/or removal from General Permit coverage.*
21. Based on Board staff's inspections and the information submitted by the Discharger in response to the Notice of Violation, the Discharger violated the following sections of the General Permit found in Attachment D, Risk Level 2 Requirements:
  - a. Part B, Good Site Management "Housekeeping", which states in part:
    - B. 1. b. Cover and berm loose stockpiled construction materials that are not actively being used (i.e. soil, spoils, aggregate, fly-ash, stucco, hydrated lime, etc.).*
    - B. 2. i. Ensure the containment of concrete washout areas and other washout areas that may contain additional pollutants so there is no discharge into the underlying soil and onto the surrounding areas.*

b. Part E. Sediment Controls, which states in part:

*E. 1. Risk Level 2 dischargers shall establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.*

*E. 3. Additional Risk Level 2 Requirement: Risk Level 2 dischargers shall implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction<sup>2</sup>*

*E. 4. Additional Risk Level 2 Requirement: Risk Level 2 dischargers shall apply linear sediment controls along the toe of the slope, face of the slope, and at the grade breaks of exposed slopes to comply with sheet flow lengths in accordance with Table 1.*

*E. 7. Additional Risk Level 2 Requirement: Risk Level 2 dischargers shall inspect on a daily basis all immediate access roads daily. At a minimum daily (when necessary) and prior to any rain event, the discharger shall remove any sediment or other construction activity-related materials that are deposited on the roads (by vacuuming or sweeping).*

c. Part G, Inspection, Maintenance and Repair, which states in part:

*G. 3. Upon identifying failures or other shortcomings, as directed by the QSP, Risk Level 2 dischargers shall begin implementing repairs or design changes to BMPs within 72 hours of identification and complete the changes as soon as possible.*

d. Part I.3. Risk Level 2 – Visual Monitoring (Inspection) Requirements for Qualifying Rain Events, which states in part:

*I. 3. g. Within two business days (48 hours) after each qualifying rain event, Risk Level 2 dischargers shall conduct post rain event visual observations (inspections) to (1) identify whether BMPs were adequately designed, implemented, and effective, and (2) identify additional BMPs and revise the SWPPP accordingly.*

22. The Discharger's failure to implement the elements of the General Permit described above violated the General Permit and therefore, violated the Clean Water Act and the Porter-Cologne Water Quality Control Act. CWC section 13385 authorizes the imposition of administrative civil liability for such violations.

23. CWC section 13385 states, in relevant part:

(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 sum of both of the following:

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

(e) ...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.

24. **Maximum Civil Liability for Failure to Implement Appropriate BMPs:** Pursuant to CWC section 13385(c), each violation of the General Permit identified above is subject to penalties not to exceed \$10,000 per day. The following table shows each General Permit item violated by the Discharger, the dates of the violation, and the total days of the violation. The maximum liability for these violations is **one million three hundred and twenty thousand dollars (\$1,320,000)**.

	General Permit, Attachment D, Risk Level 2 Requirements	Dates of Violation	Days of Violation
	Part B, Good Site Management "Housekeeping", which states in part:		
	B. 1. b. Cover and berm loose stockpiled construction materials that are not actively being used (i.e. soil, spoils, aggregate, fly-ash, stucco, hydrated lime, etc.).	10/11 to 11/02	23
	B. 2. i. Ensure the containment of concrete washout areas and other washout areas that may contain additional pollutants so there is no discharge into the underlying soil and onto the surrounding areas.	10/11 to 11/02	23
	Part E, Sediment Controls, which states in part:		
	E. 1. Risk Level 2 dischargers shall establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.	10/05 to 11/02	29
	E. 3. Additional Risk Level 2 Requirement: Risk Level 2 dischargers shall implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.	10/05, 10/10, and 10/11	3
	E. 4. Additional Risk Level 2 Requirement: Risk Level 2 dischargers shall apply linear sediment controls along the toe of the slope, face of the slope, and at the grade breaks of exposed slopes to comply with sheet flow lengths in accordance with Table 1.	10/11 to 11/02	23
	E. 7. Additional Risk Level 2 Requirement: Risk Level 2 dischargers shall inspect on a daily basis all immediate access roads daily. At a minimum daily (when necessary) and prior to any rain event, the discharger shall remove any sediment or other construction activity-related materials that are deposited on the roads (by vacuuming or sweeping).	10/05 to 11/02	29
	Part G, Inspection, Maintenance and Repair, which states in part:		
	G. 3. Upon identifying failures or other shortcomings, as directed by the QSP, Risk Level 2 dischargers shall begin implementing repairs or design changes to BMPs within 72 hours of identification and complete the changes as soon as possible.	10/06	1
	Part I.3. Risk Level 2 – Visual Monitoring (Inspection) Requirements for Qualifying Rain Events, which states in part:		

	General Permit, Attachment D, Risk Level 2 Requirements	Dates of Violation	Days of Violation
	I. 3. g. Within two business days (48 hours) after each qualifying rain event, Risk Level 2 dischargers shall conduct post rain event visual observations (inspections) to (1) identify whether BMPs were adequately designed, implemented, and effective, and (2) identify additional BMPs and revise the SWPPP accordingly.	10/06	1
Total Days of Violation per General Permit Item:			132
Permit Violation Days X \$10,000 per day:			\$1,320,000

25. **Minimum Civil Liability for Failure to Implement Appropriate BMPs:** Pursuant to CWC section 13385(e), at a minimum, civil liability must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The violations of the General Permit were due to failure to implement appropriate erosion and sediment control BMPs as listed in the site specific SWPPP. Board staff estimates the cost to stabilize construction sites ranges from \$2,000 to \$6,000 per acre depending on the slope and soil type. Since only perimeter BMPs were installed at the construction site, the economic benefit received by the Discharger by not installing and maintaining appropriate erosion and sediment control BMPs is estimated to be \$4,000 per acre, or the midpoint of the estimated per-acre cost to stabilize a construction site. At 3.4 acres of disturbed area, the minimum liability is thirteen thousand six hundred dollars (\$13,600).

### Proposed Administrative Civil Liability

26. Pursuant to CWC section 13385(e), in determining the amount of any civil liability imposed under CWC section 13385(c), the Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, 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 benefit or savings, if any, resulting from the violations, and other matters that justice may require.
27. On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in CWC section 13385(e).
28. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment B. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.

29. As described above, the maximum penalty for the violations is \$1,320,000 and the minimum penalty is \$13,600. The Enforcement Policy requires that the minimum liability imposed be at least 10% higher than the economic benefit so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations. In this case, the economic benefit amount, plus 10%, is \$14,960. Based on consideration of the above facts and after applying the penalty methodology and allowing for staff costs pursuant to the Enforcement Policy, the Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **\$168,000**. The specific factors considered in this penalty are detailed in Attachment B.

### **Regulatory Considerations**

30. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the General Permit for which penalties have not yet been assessed or for violations that may subsequently occur.
31. An administrative civil liability may be imposed pursuant to the procedures described in CWC section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
32. 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 § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

### **THE CALIFORNIA DEPARTMENT OF GENERAL SERVICES IS HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Central Valley Water Board charges the Discharger with an administrative civil liability in the amount of **one hundred sixty eight thousand dollars (\$168,000)**. The amount of the proposed liability is based upon a review of the factors cited in CWC section 13385, as well as the State Water Resources Control Board's 2010 Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **29/30 March 2012**, unless one of the following options occurs by **2 February 2012**:
  - a) The Discharger 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, along with payment for the proposed civil liability of one hundred sixty eight thousand dollars (\$168,000); or

- b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
  - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
3. If a hearing 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.

*Original Signed by Frederick S. Moss*

---

PAMELA C. CREEDON, Executive Officer

3 January 2012

---

Date

Attachment A: 25 October 2011 Notice of Violation with 11 October 2011 Inspection Report  
Attachment B: Specific Factors Considered for Civil Liability

WMH/SER/WSW: 3-Jan-12

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the California Department of General Services (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2012-0500 (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 **one hundred sixty eight thousand dollars (\$168,000)** by check that references "ACL Complaint R5-2012-0500" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **2 February 2012**.
- 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 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.

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)



**California Regional Water Quality Control Board  
Central Valley Region  
Katherine Hart, Chair**



**Matthew Rodriguez**  
Secretary for  
Environmental Protection

11020 Sun Center Drive, #200, Rancho Cordova, California 95670-6114  
(916) 464-3291 • FAX (916) 464-4645  
<http://www.waterboards.ca.gov/centralvalley>

**Edmund G. Brown Jr.**  
Governor

25 October 2011

Leia Riley  
California Department of General Services  
707 3<sup>rd</sup> Street, 3<sup>rd</sup> Floor  
West Sacramento, CA 95605

**CERTIFIED MAIL**  
**7009 1410 0000 7143 1338**

**NOTICE OF VIOLATION, CALIFORNIA DEPARTMENT OF GENERAL SERVICES,  
NEVADA CITY FOREST FIRE STATION, NEVADA COUNTY, WDID # 5S29C360298**

On 5 October and again on 11 October 2011, Central Valley Water Board staff inspected the Nevada City Forest Fire Station construction site located at 10242 Ridge Road in Nevada City to evaluate compliance with the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ (General Permit). As the owner/operator of the Nevada City Forest Fire Station construction site and the legally responsible person enrolled in the General Permit for this project, the California Department of General Services (DGS) is responsible for complying with all elements the General Permit for this project. This construction project is a Risk Level 2 site under the terms of the General Permit.

Water Board staff inspected the construction site on 5 October during the first rain event of the season. Staff observed excessive tracking of soil from the construction site onto the roadway, and a lack of erosion controls to stabilize disturbed soils.

Water Board staff inspected the site again on 11 October following the next rain event. Board staff walked the job site with the contractor and again observed a number of significant storm water management issues at the site. Staff observed that good site management measures such as covering soil stockpiles, controlling tracking, covering waste disposal containers, and containing concrete wastes, were deficient or absent. Staff also observed that effective erosion and sediment control best management practices (BMPs) were not in place. Based on conditions observed at the site and review of the self-inspection checklists, Board staff concluded there was not an effective inspection and maintenance program at the site. See enclosed inspection report and site photographs for more information.

**Violations**

DGS has failed to implement good site management measures, failed to provide effective erosion and sediment controls, failed to implement an effective inspection and maintenance program, and failed in its duty to comply with the General Permit. Therefore, DGS is in violation of the following General Permit sections:

**California Environmental Protection Agency**



- Attachment D, Part B, Good Site Management "Housekeeping", which states in part:

*B. 1. b. Cover and berm loose stockpiled construction materials that are not actively being used (i.e. soil, spoils, aggregate, fly-ash, stucco, hydrated lime, etc.).*

*B. 1. e. Implement BMPs to prevent the off-site tracking of loose construction and landscape materials.*

*B. 2. d. Cover waste disposal containers at the end of every business day and during a rain event.*

*B. 2. i. Ensure the containment of concrete washout areas and other washout areas that may contain additional pollutants so there is no discharge into the underlying soil and onto the surrounding areas.*

- Attachment D, Part D, Erosion Control, which states in part:

*D. 2. Risk Level 2 dischargers shall provide effective soil cover for inactive areas and all finished slopes, open space, utility backfill, and completed lots. [Inactive areas of construction are defined as areas of construction activity that have been disturbed and are not scheduled to be re-disturbed for at least 14 days.]*

- Attachment D, Part E, Sediment Controls, which states in part:

*E. 1. Risk Level 2 dischargers shall establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.*

*E. 3. Additional Risk Level 2 Requirement: Risk Level 2 dischargers shall implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction. [Active areas of construction are areas undergoing land surface disturbance. This includes construction activity during the preliminary stage, mass grading stage, streets and utilities stage, and the vertical construction stage.]*

*E. 4. Additional Risk Level 2 Requirement: Risk Level 2 dischargers shall apply linear sediment controls along the toe of the slope, face of the slope, and at the grade breaks of exposed slopes to comply with sheet flow lengths in accordance with Table 1.*

*E. 5. Additional Risk Level 2 Requirement: Risk Level 2 dischargers shall ensure that construction activity traffic to and from the project is limited to entrances and exits that employ effective controls to prevent offsite tracking of sediment.*

*E. 7. Additional Risk Level 2 Requirement: Risk Level 2 dischargers shall inspect on a daily basis all immediate access roads daily. At a minimum daily (when necessary) and prior to any rain event, the discharger shall remove any sediment or other construction activity-related materials that are deposited on the roads (by vacuuming or sweeping).*

- Attachment D, Part G, Inspection, Maintenance and Repair, which states in part:

*G.1. Risk Level 2 dischargers shall ensure that all inspection, maintenance repair and sampling activities at the project location shall be performed or supervised by a Qualified SWPPP Practitioner (QSP) representing the discharger. The QSP may delegate any or all of these activities to an employee appropriately trained to do the task(s).*

*G.2. Risk Level 2 dischargers shall perform weekly inspections and observations, and at least once each 24-hour period during extended storm events, to identify and record BMPs that need maintenance to operate effectively, that have failed, or that could fail to operate as intended. Inspectors shall be the QSP or be trained by the QSP.*

*G.3. Upon identifying failures or other shortcomings, as directed by the QSP, Risk Level 2 dischargers shall begin implementing repairs or design changes to BMPs within 72 hours of identification and complete the changes as soon as possible.*

*G.4. For each inspection required, Risk Level 2 dischargers shall complete an inspection checklist, using a form provided by the State Water Board or Regional Water Board or in an alternative format.*

- Attachment D, Part I.3. Risk Level 2 – Visual Monitoring (Inspection) Requirements for Qualifying Rain Events, which states in part:

*I.3.e. Within 2 business days (48 hours) prior to each qualifying rain event, Risk Level 2 dischargers shall visually observe (inspect):*

*ii. All BMPs to identify whether they have been properly implemented in accordance with the SWPPP/REAP. If needed, the discharger shall implement appropriate corrective actions.*

*I.3.g. Within two business days (48 hours) after each qualifying rain event, Risk Level 2 dischargers shall conduct post rain event visual observations (inspections) to (1) identify whether BMPs were adequately designed, implemented, and effective, and (2) identify additional BMPs and revise the SWPPP accordingly.*

*I.3.h. Risk Level 2 dischargers shall maintain on-site records of all visual observation (inspections), personnel performing the observations, observation dates, weather conditions, locations observed, and corrective actions taken in response to the observations.*

- Section IV. Special Provisions, Part A, Duty to Comply, which states:

*The discharger shall comply with all of the conditions of this General Permit. Any permit noncompliance constitutes a violation of the Clean Water Act (CWA) and the Porter-Cologne Water Quality control Act as is grounds for enforcement action and/or removal from General Permit coverage.*

**Response**

In response to this Notice of Violation, DGS must immediately complete the following:

- Install appropriate erosion and sediment control BMPs throughout the site in conjunction with your SWPPP and amendments. This includes effectively stabilizing disturbed soil areas and maintaining erosion and sediment control BMPs across the site.
- Ensure that site BMPs are effective and result in the reduction or elimination of pollutants in storm water discharges and authorized non-storm water discharges from construction activity to the Best Available Technology Economically Achievable/Best Conventional Pollutant Control Technology BAT/BCT standard.

In order to demonstrate compliance with the General Permit, we request that you submit the following to the Regional Board by **10 November 2011**:

- A narrative explanation of how the BMPs will be installed and maintained throughout the construction site.
- An updated SWPPP map showing all BMPs installed across the construction site.
- Copies of all weekly, pre-storm, and post-storm inspection reports and REAPs completed from 1 October 2011 to 4 November 2011.
- Representative photographs to show how site management measures have been implemented and the how the site has been effectively stabilized with both erosion and sediment control BMPs.

Violations of the General Permit have exposed DGS to possible further enforcement action. Under Section 13385 of the California Water Code, the Central Valley Water Board can impose administrative civil liabilities (monetary fines) for violations of the General Permit. The maximum administrative civil liability for each day of violation is ten thousand dollars (\$10,000) and ten dollars per gallon of polluted storm water discharged in excess of 1,000 gallons.

Please contact Marty Hartzell at (916) 464-4630 with questions regarding this violation letter or the inspection report.



STEVE E. ROSENBAUM  
Chief, Storm Water Compliance and Enforcement Unit

Enclosure: Inspection report with site photographs

cc: Eugene Bromley, U.S. Environmental Protection Agency, Region IX, San Francisco  
Jay Boatwright, VP Operations, Sequoia Pacific builders, Roseville

## Storm Water Construction General Permit Inspection Report Central Valley Regional Water Quality Control Board

Insp. Date & Time:	5 October 2011 1500 hours 11 October 2011 0930 hours	Inspected By:	M. Hartzell
WDID #	5S29C360298	Site County:	Nevada
Owner Name:	State of California Department of General Services (DGS) c/o Leia Riley, (916-376-1785)		
Contractor Name:	Sequoia Pacific Builders, 1358 Blue Oaks Blvd Suite 100 Roseville c/o Jay Boatwright, VP Operations (916-784-8400) and Jeff Huelsman, Field Superintendent (916-870-6771)		
Site Name:	Nevada City Forest Fire Station		
Site Address:	10242 Ridge Road, Nevada City, 95959		

Inspection Type: <input checked="" type="checkbox"/> Compliance <input type="checkbox"/> Follow-up <input type="checkbox"/> Termination <input type="checkbox"/> Other (describe)	
SWPPP on site? Yes	Evidence of Non-SW Discharge? No
Photos Taken? Yes –Photos 1 and 2 were taken on 10/5/11, and Photos 3 through 24 were taken on 10/11/11.	Evidence of Erosion? Yes –minor rills on slopes and a small discharge of sediment onto a neighboring property.
Weather: 10/5: Partly cloudy and cool, rain overnight and intermittent in the afternoon; 10/11: Cool and overcast, rain from 10AM on 10/10/11 to 8AM on 10/11/11	Evidence of Tracking? Yes –Tracking onto Ridge Road was observed during the 10/5 and the 10/11 visits.

### Inspection Summary / Comments:

On 5 October 2011, following the first rain event of the season, I stopped by the site at 3PM. No one was at the site. I observed tire tracks through saturated soils leading across the construction entrance and onto Ridge Road (see Photos 1 and 2).

On 11 October 2011, I revisited the site following an approximate 22 hour rain event. I met with Sequoia Pacific Builders Field Superintendent Jeff Huelsman. I reviewed the SWPPP and inspection reports and evaluated the site for compliance with the Construction General Permit. I also met with Joe Balk, Inspector of Record with DGS.

Jeff stated that TSD Engineering is the QSD/P for the project and TSD is completing REAP documents and any revisions or amendments to the SWPPP. The SWPPP map shows sediment controls around the perimeter, a construction entrance and identified in the Erosion and Sediment Control General Note #11 that "Effective erosion control BMPs shall be in place prior to any storm events." The last inspection checklist was completed on 8/30, and a REAP was prepared on 9/30 for the 10/5 event. No inspections or checklists were prepared prior to the 10/10-10/11 event. The on-site rain gauge shows 3 ¾ inches, which Jeff qualifies as rainfall from 10/4 to present.

A construction entrance has been installed; however, it is not adequate to remove saturated soils from vehicle tires driving through the construction site. Tracking was observed from the site onto Ridge Road on 10/5/11 and again on 10/11/11. Jeff stated that Cal Fire staff needs to access the

Maintenance Garage and barracks, and Cal Fire vehicles as well as personal vehicles are being driven through the site. The access road through the construction site where construction vehicles and Cal Fire staff are driving is a native soil surface road (see attached Photographs 3 through 6).

The project area is active with grading, underground utility installation, concrete footings and slabs, and building construction work. Slopes, soil piles, and disturbed soil areas have not been stabilized prior to the rain event and effective erosion controls have not been installed throughout the site (Photos 9 through 18). Jeff explained that drain inlets were not connected yet and all storm water impacting the site percolated into the ground and did not run off the site. I observed saturated soil conditions from the rain event along with storm water accumulating in utility trenches and puddles on the construction site.

I observed concrete washed out onto the ground at the north end of the lower section (Photo 14). A concrete washout was not observed during the inspection. Garbage was observed in small piles throughout the construction site. Jeff stated the crews were in the process of cleaning up the site. A roll off dumpster near the front of the site was not covered and I did not observe a cover near the dumpster. Jeff stated the dumpster was emptied before the weekend.

A silt fence has been installed along the perimeter of the site. This sediment control BMP needed repair in a few locations and one location east of the future dozer shed showed where runoff from the site eroded fill material, flowed over the silt fence and discharged a small amount of sediment onto the neighboring property (Photos 21 and 22).

I observed multiple utility trenches filled with accumulated storm water. At one location near the future dozer shed, the contractor was pumping turbid storm water from the utility trench and into an on-site depression where the water percolated into the ground (Photos 23 and 24). As I was leaving the construction site, I observed workers pumping turbid storm water out of another utility trench and onto a neighboring property. I notified Jeff of the activity and workers turned off the pump. Jeff stated that dewatering is not addressed in their SWPPP.

Signature: Marty Hartzell

Date: 24 October 2011

Date Entered: \_\_\_\_\_  
Entered By: \_\_\_\_\_  
Senior Review: \_\_\_\_\_



Photo 1. View of the construction entrance off Ridge Road on 5 October 2011. Saturated soils observed on site.



Photo 2. View of the construction entrance on 5 October 2011 with tracking onto Ridge Road.



Photo 3. View of the constr. entrance at Ridge Road. The rock is not adequate to remove saturated soils from vehicle tires.



Photo 4. View of a vehicle leaving the construction area with muddy tires.



Photo 5. View of tracking off the construction site.



Photo 6. View of tracking from the construction site onto Ridge Road.



Photo 7. View of the unsurfaced access road adjacent to the construction entrance.



Photo 8. View of the access road looking towards the construction entrance. Unstabilized slope in foreground.



Photo 9. View of the Cal Fire Maintenance Garage that is active during construction. No erosion controls installed.



Photo 10. View of the active Maintenance Garage on the left and the construction trailer on the right.



Photo 11. View of the construction area downhill from the Maintenance Garage. No erosion controls installed.



Photo 12. Another view of the construction site with an unstabilized slope in the foreground.



Photo 13. View of slope shown in Photo 12 with minor rills following the rain event.



Photo 14. Concrete washout onto the ground. A concrete washout was not identified on site.



Photo 15. View of the construction area without erosion controls.



Photo 16. View of the construction area without erosion controls.



Photo 17. Soil piles uncovered.



Photo 18. Saturated soils on the access road.



Photo 19. Unmaintained silt fence along the perimeter of the site.



Photo 20. Silt fence along the downhill perimeter of the site.



Photo 21. Runoff from the site eroded fill material and discharged onto the neighboring property.



Photo 22. Failed silt fence below rill shown in Photo 21.



Photo 23. A trash pump was being used to pump accumulated storm water out of a utility trench.



Photo 24. The turbid storm water was pumped to a depression on the property and allowed to percolate into the ground.

## **Attachment B – ACL Complaint No. R5-2012-0500**

### **Specific Factors Considered for Civil Liability Department of General Services, Nevada City Forest Fire Station**

The State Water Board's *Water Quality Enforcement Policy* establishes a methodology for assessing administrative civil liability, addressing the factors that are required to be considered when imposing a civil liability as outlined in CWC section 13385(e). Each factor of the nine-step approach is discussed below, as is the corresponding score.

#### **Step 1 – Potential for Harm for Discharge Violations**

The “potential harm to beneficial uses” factor considers the harm that may result from exposure to the pollutants in the illegal discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) whether the discharge is susceptible to cleanup or abatement.

In this case, this factor does not apply because all of the violations are related to non-discharge events and the liability is determined in Step 3 below.

#### **Step 2 – Assessment for Discharge Violations**

This step addresses penalties for the spills based on both a per-gallon and a per-day basis. In this case, this factor does not apply because all of the violations are related to non-discharge events and the liability is determined in Step 3 below.

#### **Step 3 – Per Day Assessment for Non-Discharge Violation**

The Board shall calculate an initial liability for each non-discharge violation, considering Potential for Harm and the extent of deviation from applicable requirements. In this case, there are eight non-discharge violations to be considered. These violations are similar in that they reflect the Discharger's failure to properly implement the requirements of the General Permit. The violations also represent similar threats to water quality. Therefore, Board staff has grouped these violations together for the purpose of calculating the initial liability factor for each violation.

The Potential for Harm factor is considered “minor” because turbid storm water did not discharge off the construction site or enter storm drain systems to where it could be carried to surface waters. The Deviation from Requirement factor is considered “major” because the Discharger failed to implement its own SWPPP document requirements and rendered the General Permit requirements ineffective. Based on these two factors, a Per Day Factor of 0.3 was determined using Table 3 of the Enforcement Policy. This value is multiplied by the maximum per day amount allowed under the CWC to determine the initial liability factor for the grouped violation.

As described in detail in the Findings of the ACLC, two separate violations were identified from 5 October to 10 October (6 days) for a total of \$120,000 [2 violations X 6 days X \$10,000/day = \$120,000]. Five separate violations were identified from 11 October to 2 November (23 days) for a total \$1,150,000. Additionally, three days were identified where BMPs were not implemented for areas under active construction for a total of \$30,000, one day was identified

where BMPs were not repaired as required for a total of \$10,000, and one day was identified when a post-storm inspection was not completed as required for a total of \$10,000. The maximum liability is one million three hundred and twenty thousand dollars (\$1,320,000).

The Per Day Assessment for Non-Discharge violations is calculated as (0.3 per day factor) X (\$1,320,000) = \$396,000.

#### **Step 4 – Adjustment Factors**

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to cleanup or cooperate with regulatory authority, and the violator's compliance history.

##### Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental or intentional violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The Discharger was given a multiplier of 1.0, due to failure to follow the site specific SWPPP and implement appropriate erosion and sediment control BMPs on the construction site.

##### Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The Discharger was cooperative in meeting the requirements of the General Permit following staff inspections and issuance of the NOV. Therefore, the Discharger was given a multiplier of 0.75 for cleanup and cooperation.

##### History of Violation

This factor is to be used when there is a history of repeat violations. A minimum multiplier of 1.1 is to be used, and is to be increased as necessary. The DGS Nevada City Forest Fire Station is a short term construction site and there have not been any previous General Permit violations at this site. However, violations observed at the subject site are similar to other DGS construction sites inspected by Water Board staff over the last eight years including:

In October 2010, the contractor for the DGS Colfax Fire Station started grading work and did not stabilize the construction site prior to a storm event on October 23-24. Storm water runoff washed disturbed soils off the construction site and into roadside ditches. Water Board staff completed multiple inspections at this site to bring the contractor into compliance with the General Permit requirements.

In 2008, staff observed significant storm water management issues on the DGS 12-inch Transmission Pipeline Effluent Disposal System in Tuolumne County. This pipeline went from the Sierra Conservation Center to the future Gardella Reservoir. Staff conducted inspections in November and December and issued a verbal warning to the contractor for deficient BMPs. Staff worked extensively with the project manager and the contractor to protect water quality on this linear project.

In January to November 2009, staff also identified deficient BMP implementation at the DGS Gardella Reservoir Effluent Disposal System construction site in Tuolumne County. Staff issued two verbal warnings and worked with the contractor and DGS project manager to protect water quality at this large reservoir project.

In January 2004, Board staff also issued a Notice of Violation to DGS on the Butterfield Way State Office Buildings construction project in Sacramento County. The NOV identified a failure to implement an effective combination of erosion and sediment controls and discharge to the American River. At the request of the project manager, Water Board staff provided BMP implementation training for DGS and onsite personnel.

The concern of Board staff is that DGS's contractors are not implementing storm water BMPs as required by their SWPPPs and the General Permit, and DGS is not ensuring that their contractors comply with the General Permit.

Based on the history of violations at the subject construction site, the minimum multiplier of 1.1 is used.

#### **Step 5 - Determination of Total Base Liability Amount**

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

**Total Base Liability Amount:** This value is calculated as the Initial Liability Amount (\$396,000) X Adjustment Factors (1.0), (0.75), and (1.1) and is equal to \$326,700.

#### **Step 6 - Ability to Pay and Ability to Continue in Business**

Board staff is not aware of any reason why the California Department of General Services is unable to pay the liability.

#### **Step 7 – Other Factors as Justice May Require**

If the Central Valley Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this.

#### **Costs of Investigation and Enforcement Adjustment**

The costs of investigation and enforcement are "other factors as justice may require", and should be added to the liability amount. Since early October, staff of the Central Valley Water Board has spent approximately 75 hours associated with site inspection, preparing inspection reports and the Notice of Violation, and preparation of the enforcement action. The State Water Board Office of Enforcement has directed that all regional boards are to use a value of \$150 per hour for staff costs. For this case, staff time through preparation of the Complaint is \$11,250.

The Enforcement Policy states that staff costs are to be added to the liability amount. The adjusted liability is (\$326,700+ \$11,250), or \$337,950. However, for ease of use, this value has been rounded to **\$338,000**.

### Other Factors

The Enforcement Policy allows a Regional Board to adjust the penalty amount calculated in Steps 1 through 6 upward or downward if it believes the amount is inappropriate. The penalty may only be adjusted if the Regional Board makes express findings to justify the adjustment.

The Regional Board is bringing this Administrative Civil Liability Complaint because the Department of General Services has a poor record of implementing the Construction General Permit at this facility as well as at other facilities. However, the calculated penalty of \$338,000 is inappropriate given the nature of the violations and overall circumstances surrounding this individual case. There is pertinent information not previously considered that indicates a lower penalty amount is justified. The violations that are the subject of this Complaint occurred early in the wet season and the Discharger made corrections after it received a Notice of Violation. Some sediment was tracked off-site onto the roadway, but it does not appear that the violations resulted in a direct discharge of sediment to surface waters. Furthermore, the facility has made the proper adjustments to its BMPs and is currently in compliance,

In consideration of these other factors, the Regional Board believes it is appropriate to reduce the penalty by 50%, to \$168,000.

### Step 8 – Economic Benefit

Pursuant to CWC section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The violations of the General Permit were due to failure to implement appropriate erosion and sediment control BMPs as listed in the site specific SWPPP. Based on a survey of consultants in the greater Sacramento area, approximately \$2,000 to \$6,000 per acre is needed to provide the necessary erosion and sediment control measures for construction sites depending on the slope and soil type. The subject construction site has erodible soils and a few steep slopes; therefore, an effective combination of both erosion and sediment control BMPs is critical to protect the site. Since only perimeter BMPs were installed at the active construction site, the economic benefit received by the Discharger by not installing and maintaining an effective combination of erosion and sediment control BMPs at this site was estimated to be \$4,000 per acre. This is the midpoint of the estimated cost per acre to provide the necessary erosion and sediment control measures for construction sites in the greater Sacramento area. At 3.4 acres of disturbed area, the minimum liability is \$13,600. The Enforcement Policy requires that the minimum liability imposed be at least 10% higher than the economic benefit so that liabilities are not construed as the cost of doing business and that the assessed liability provides a

meaningful deterrent to future violations. In this case, the economic benefit amount, plus 10%, is \$14,960.

**Step 9 – Maximum and Minimum Liability Amounts**

The maximum and minimum amounts for the violations are shown below. The proposed liability falls within the maximum and minimum amounts and therefore, no adjustment is necessary.

Maximum Liability Amount: \$1,320,000

Minimum Liability Amount: \$14,960

**Step 10 – Final liability Amount**

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided amounts are within the statutory minimum and maximum amounts. Without further investigation of the discharge, calculation of economic benefits, and additional staff time, the proposed Administrative Civil Liability is **\$168,000**.

For ease of reference, the Enforcement Policy adjustment factors used in this penalty calculation are tabulated below:

**Adjustment Factors**

<b>Adjustment Factors</b>	<b>Range</b>	<b>Factors Used</b>
Harm or Potential Harm to Beneficial Uses	0 to 5	n/a
Physical, Chemical, Biological or Thermal Characteristics of the Discharge	0 to 4	n/a
Susceptibility to Cleanup or Abatement	0 or 1	n/a
Final Score	0 to 10	n/a
Per Gallon Assessment	Minor, Moderate, Major	n/a
Per Day Assessment	Minor, Moderate, Major (0.1 to 1)	0.3
Culpability	0.5 to 1.5	1.0
Cleanup and Cooperation	0.75 to 1.5	0.75
History of Violations	Minimum is 1.1	1.1
Ability to Pay		1
Other Factors as Justice May Require: Staff Costs	\$11,250	
Other Factors as Justice May Require: Adjustment	50% reduction	
Economic Benefit	\$14,960	



**California Regional Water Quality Control Board**  
**Central Valley Region**  
**Katherine Hart, Chair**



**Matthew Rodriguez**  
Secretary for  
Environmental Protection

11020 Sun Center Drive, #200, Rancho Cordova, California 95670-6114  
(916) 464-3291 • FAX (916) 464-4645  
<http://www.waterboards.ca.gov/centralvalley>

**Edmund G. Brown Jr.**  
Governor

3 January 2012

Leia Riley, Project Director II  
California Department of General Services  
Real Estate Services Division –Project Management Branch  
707 3rd Street, 3rd Floor  
West Sacramento, CA 95605

**CERTIFIED MAIL**  
**7009 1410 0000 7143 1352**

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2012-0500, CALIFORNIA  
DEPARTMENT OF GENERAL SERVICES, NEVADA CITY FOREST FIRE STATION,  
NEVADA COUNTY**

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code (CWC) sections 13385 and 13323. The Complaint charges the California Department of General Services (Discharger) with civil liability in the amount of **one hundred and sixty eight thousand dollars (\$168,000)** for violations of the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ (NPDES No. CAS000002). The violations are associated with failure to implement storm water best management practices at the Nevada City Forest Fire Station construction site.

The Discharger may:

- Pay the proposed administrative civil liability and waive its right to a hearing (Option #1 on the attached waiver form);
- Ask that the hearing be postponed to facilitate settlement discussions or for other reasons (Options #2 or #3 on the attached waiver form); or
- Contest the Complaint and/or enter into settlement discussions without signing the enclosed waiver.

If the Central Valley Water Board does not receive a signed waiver by **2 February 2012**, a hearing will be scheduled for the **29/30 March 2012** Board meeting in Rancho Cordova. This hearing will be governed by the attached Hearing Procedures, which have been approved by the Board Chair for use in adjudicating matters such as this one. Any objections to the Hearing Procedures must be received by Alex Mayer, whose contact information is listed in the Hearing Procedures, by **5 p.m. on 17 January 2012**.

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations. The settlement will be considered final

**California Environmental Protection Agency**

pending a 30-day comment period, starting from the date this Complaint is issued. Interested parties may comment on the proposed action during this period by submitting written comments to the Central Valley Water Board staff person listed below. Should the Central Valley Water Board receive new information or comments during this comment period, the Executive Officer may withdraw the complaint, return payment, and issue a new complaint. If the Central Valley Water Board does not hold a hearing on the matter, and if the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement.

In order to conserve resources, this letter transmits paper copies of the documents to the Discharger only. Interested persons may download the documents from the Central Valley Water Board's Internet website at:

[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/tentative\\_orders/](http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/).

Copies of these documents can also be obtained by contacting or visiting the Central Valley Water Board's office weekdays between 8:00 AM and 5:00 PM.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Marty Hartzell at (916) 464-4630 or Steve Rosenbaum at (916) 464-4631.

*Original Signed by*

WENDY S. WYELS, Supervisor  
Compliance and Enforcement Section

Enclosure: ACL Complaint R5-2012-0500  
Hearing Procedures  
Waiver Form

cc w/o encl: Niklas Karlsson, Acting Branch Chief, Dept. of General Services, West Sacramento  
Henry Nanjo, Assistant Chief Counsel, Dept. of General Services, West Sacramento  
Kenneth Landau, Central Valley Water Board, Rancho Cordova  
Ellen Howard, Office of Enforcement, SWRCB, Sacramento  
Alex Mayer, Office of Chief Counsel, SWRCB, Sacramento  
Jay Boatwright, Sequoia Pacific Builders, Roseville

Central Valley Regional Water Quality Control Board

HEARING PROCEDURE  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
R5-2012-0500

ISSUED TO  
CALIFORNIA DEPARTMENT OF GENERAL SERVICES  
NEVADA CITY FOREST FIRE STATION  
NEVADA COUNTY

SCHEDULED FOR 29/30 MARCH 2012

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

**Background**

The Executive Officer has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (CWC) section 13323 to California Department of General Services, alleging violations of CWC section 13385 by failing to comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ (NPDES No. CAS000002). The violations are associated with failure to implement storm water best management practices at the Nevada City Forest Fire Station construction site.

The Complaint proposes that an administrative civil liability in the amount of \$168,000 be imposed. A hearing is currently scheduled to be conducted before the Central Valley Water Board during its 29/30 March 2012 meeting.

**Purpose of Hearing**

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Central Valley Water Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on 29/30 March 2012 will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Central Valley Water Board meeting agenda. The meeting will be held at

11020 Sun Center Drive, Suite 200, Rancho Cordova, California.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Central Valley Water Board's web page at:

[http://www.waterboards.ca.gov/centralvalley/board\\_info/meetings](http://www.waterboards.ca.gov/centralvalley/board_info/meetings).

## **Hearing Procedures**

The hearing will be conducted in accordance with this Hearing Procedure. This Hearing Procedure has been approved by the Central Valley Water Board Chair in model format, and is subject to further revision by the Central Valley Water Board's Advisory Team or the Chair. A copy of the general procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648, subdivision (b) and herein, Chapter 5 of the Administrative Procedures Act (commencing with Gov't Code § 11500) does not apply to this hearing.

**ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE CENTRAL VALLEY WATER BOARD'S ADVISORY TEAM NO LATER THAN 17 JANUARY 2012, OR THEY WILL BE WAIVED. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.**

The Discharger shall contact the Prosecution Team to try to resolve objections regarding due dates, the hearing date and hearing time limits BEFORE submitting objections to the Advisory Team.

## **Hearing Participants**

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the Central Valley Water Board, staff or others, at the discretion of the Central Valley Water Board.

The following participants are hereby designated as parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. California Department of General Services

## **Requesting Designated Party Status**

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received no later than **5 p.m. on 23 January 2012**, by the Advisory Team attorney (contact information listed below). The request shall include an explanation of the basis for status as a designated party (i.e., how the issues to be addressed in the hearing and the potential actions by the Central Valley Water Board affect the person, and the need to

present evidence or cross-examine witnesses), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be received by the Advisory Team, the person requesting party status, and all other parties by **5 p.m. on 2 February 2012**. The parties will be notified by **5 p.m. on 13 February 2012** whether the request has been granted or denied.

### **Primary Contacts**

#### **Advisory Team:**

Kenneth Landau, Assistant Executive Officer  
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670  
Phone: (916) 464-4726  
klandau@waterboards.ca.gov

Alex Mayer, Staff Counsel  
State Water Resources Control Board, Office of Chief Counsel  
Physical Address: 1001 I Street, Sacramento, CA 95814  
Mailing Address: P.O. Box 100, Sacramento, CA 95812  
Phone: (916) 341-5051; fax: (916) 341-5199  
AMayer@waterboards.ca.gov

#### **Prosecution Team:**

Pamela Creedon, Executive Officer  
Frederick Moss, Assistant Executive Officer  
Wendy Wyels, Environmental Program Manager  
Steve Rosenbaum, Senior Engineering Geologist  
Marty Hartzell, Engineering Geologist  
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670  
Phone: (916) 464-4835; fax: (916) 464-4645  
wwyels@waterboards.ca.gov

Ellen Howard, Staff Counsel  
State Water Resources Control Board, Office of Chief Counsel  
Physical Address: 1001 I Street, Sacramento, CA 95814  
Mailing Address: P.O. Box 100, Sacramento, CA 95812  
Phone: (916) 341-5677; fax: (916) 341-5199  
EHoward@waterboards.ca.gov

#### **Discharger**

Leia Riley, Project Director II  
California Department of General Services -Real Estate Services Division,  
Project Management Branch  
Address: 707 Third Street, Suite 3-305, West Sacramento, CA 95605  
Phone: (916) 376-1785  
Leia.Riley@dgs.ca.gov

### **Separation of Functions**

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Central Valley Water Board (Prosecution Team) have been separated from those who will provide advice to the Central Valley Water Board (Advisory Team). Members of the Advisory Team are: Kenneth Landau, Assistant Executive Officer and Alex Mayer, Staff Counsel. Members of the Prosecution Team are: Pamela Creedon, Executive Officer; Frederick Moss, Assistant Executive Officer; Ellen Howard, Staff Counsel, Wendy Wyels, Environmental Program Manager; Steve Rosenbaum, Senior Engineering Geologist; and Marty Hartzell, Engineering Geologist.

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Pamela Creedon regularly advises the Central Valley Water Board in other, unrelated matters, but is not advising the Central Valley Water Board in this proceeding. Other members of the Prosecution Team act or have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

### **Ex Parte Communications**

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Central Valley Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested person on the one hand, and a Central Valley Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

The following communications to the Advisory Board must be copied to all designated parties: Objections to these Hearing Procedures; requests for modifications to these Hearing Procedures; requests for designated party status, or objections thereto; and all written evidence, legal argument or policy statements from designated parties. This is not an all-inclusive list of ex parte communications.

### **Hearing Time Limits**

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined **30** minutes to present evidence (including evidence presented by witnesses called by the designated party), cross-examine witnesses (if warranted), and provide a closing statement; and each

interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received by **5:00 p.m. on 9 March 2012**. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Central Valley Water Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments or legal argument require extra time, and why the Discharger could not adequately provide the testimony, comments or legal argument in writing before the hearing.

If *new* rebuttal evidence or argument is accepted after the above date, designated parties shall submit any requests for additional time to respond to the rebuttal by **23 March 2012**. In most cases, additional time will not be necessary to respond to rebuttal.

A timer will be used, but will not run during Board questions or the responses to such questions, or during discussions of procedural issues.

### **Submission of Evidence and Policy Statements**

**Case in Chief:** The Prosecution Team, the Discharger and each other designated party must submit the following information in writing in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Central Valley Water Board to consider. Evidence and exhibits already in the public files of the Central Valley Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3. Board members will generally not receive copies of materials incorporated by reference, and the referenced materials are generally not posted on the Board's website.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony. (This information is not required for rebuttal witnesses or rebuttal testimony.)
4. The qualifications of each expert witness, if any. (This information is not required for rebuttal witnesses.)

The Prosecution Team's information must include the legal and factual basis for its claims against each Discharger; a list or attached copy of all evidence on which the Prosecution Team relies, which must include, at a minimum, all documents cited in the complaint or Staff Report; and the witness information required under items 3-4 for all witnesses, including staff. The Prosecution Team shall provide an electronic copy to Kenneth Landau and Alex Mayer of all documents cited in the complaint or Staff Report no later than the due date under Important Deadlines, below.

The Prosecution Team shall submit one hard copy and one electronic copy to Kenneth Landau and one electronic copy to Alex Mayer. Each other designated party shall submit 3 hard copies and one electronic copy to Kenneth Landau; one electronic copy to Alex Mayer; and one electronic copy and one hard copy to Wendy Wyels. All submissions must be received no later than 5:00 p.m. on the applicable due date under Important Deadlines, below.

Rebuttal: Any designated party that would like to submit evidence, legal analysis or policy statements to rebut the information previously submitted by other designated parties shall submit 3 hard copies and one electronic copy of their rebuttal information to Kenneth Landau; one electronic copy of the information to Alex Mayer; and one electronic copy and one hard copy to Wendy Wyels so that they are received by 5 p.m. on the due date under Important Deadlines, below. "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other designated parties' submissions. Rebuttal shall be limited to the scope of the materials previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

Copies: Board members will receive copies of all materials submitted in hard copy or electronic format. The Board's copies will be printed in black and white from the designated parties' electronic copies. Designated parties who are concerned about print quality of all or any part of their written materials should submit a high-resolution pdf or provide an extra nine paper copies for the Board members. For items with voluminous submissions, Board members may receive copies electronically only. Electronic copies are also posted on the Board's website.

Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy and mailing center. However, the Board will not reject materials solely for failure to provide electronic copies.

By **15 March 2012**, the Prosecution Team shall prepare a summary agenda sheet ("buff sheet") for this item to be included in the Board members' agenda package and posted on the internet. The buff sheet shall clearly state that it was prepared by the Prosecution Team. The Prosecution Team shall provide a copy of the buff sheet to all parties by mail or email.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by **15 March 2012**. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Central Valley Water Board may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the Central Valley Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content

may not exceed the scope of other submitted written material. Designated parties must provide the Advisory Team with a printed copy of such materials at or before the hearing, for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

### **Evidentiary Documents and File**

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 11020 Sun Center Drive, Rancho Cordova, CA 95670. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Central Valley Water Board's Chair. Many of these documents are also posted on-line at [http://www.waterboards.ca.gov/centralvalley/board\\_decisions/tentative\\_orders/index.shtml](http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml) Although the web page is updated regularly, to assure access to the latest information, you may contact Wendy Wyels (contact information above) for assistance with obtaining copies of administrative record.

### **Questions**

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information above).

**IMPORTANT DEADLINES**

All required submissions must be received by 5:00 p.m. on the due date.

- |                  |   |
|------------------|---|
| 3 January 2012   | Prosecution Team issues ACL Complaint and proposed Hearing Procedures to Discharger and Advisory Team.  |
| 17 January 2012  | Objections due on proposed Hearing Procedure  |
| 23 January 2012  | Deadline for submission of request for designated party status.   |
| 2 February 2012  | Deadline for opposition to request for designated party status.   |
| 2 February 2012  | Discharger's deadline for submitting signed form to waive right to hearing within 90 days.  |
| 10 February 2012 | Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.   |
| 13 February 2012 | Advisory Team issues decision on requests for designated party status, if any.  |
| 1 March 2012     | Remaining Designated Parties' (including the Discharger's) deadline for submission of all information required under "Evidence and Policy Statements," above.   |
| 1 March 2012     | Prosecution Team submits an electronic copy to Kenneth Landau and Alex Mayer of all documents cited in the complaint or Staff Report, unless previously submitted.  |
| 9 March 2012     | Requests for additional hearing time (see Hearing Time Limits, above).  |
| 12 March 2012    | All Designated Parties shall submit any rebuttal evidence, written rebuttal to legal argument and/or written rebuttal to policy statements; and all evidentiary objections to other Designated Parties' submittals. |
| 15 March 2012    | Interested persons' comments are due.   |
| 15 March 2012    | Prosecution Team's deadline to submit Buff Sheet.   |
| 23 March 2012    | If <i>new</i> rebuttal evidence or argument is submitted, deadline for designated parties to submit any requests for additional time at the hearing to respond to the rebuttal.                                     |
| 29/30 March 2012 | Hearing   |