

Central Valley Regional Water Quality Control Board  
2/3 August 2012 Board Meeting

**Prosecution Team's  
Response to Comments**

Administrative Civil Liability Complaint R5-2012-0543  
and  
Tentative Cease and Desist Order  
for  
Richard Sykora  
Red Ink Maid Big Seam Mine  
Placer County

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The following are the Central Valley Regional Water Quality Control Board (Central Valley Water Board) Prosecution Team response to comments submitted by the Designated Party and Interested Persons regarding the tentative Cease and Desist Order (CDO) issued to Richard Sykora (Discharger) for the Red Ink Maid Big Seam Mine.

COMMENT 1; 13 June 2012 Comment From Discharger Regarding Transfer of Ownership

One comment letter dated 13 June 2012 was received pertaining to an ancillary issue regarding a transfer request for Waste Discharge Requirements (WDRs) Order No. R5-2007-0181. The letter, sent by Mr. Sykora, did not specifically address or contest the issuance of the tentative CDO itself but was submitted "in response to [the] Cease & Desist Order." (Attachment 1.)

Specifically, the letter states, "[p]lease refer to Item #6 [of the CDO] which states, in part, 'a letter dated April 6, 2012 requesting submission of the required information to transfer the order to the subsequent operator...'. Please note that the completed Form 200 was received by your office on May 14, 2012 and to this date no response to it has been received."

**Background:**

Prior to the issuance of the tentative CDO, Central Valley Water Board staff discovered that the Discharger may have transferred ownership and operating responsibilities of the mining claims to Red Ink Maid, LLC and/or Wildcat Mining Enterprises, LLC. Both of these entities are Nevada limited liability companies of which the Discharger is a named officer. A search of the California Secretary of State's business database yielded no results for either of these limited liability companies, indicating that they may not be registered to conduct business in California. Item #6 of the tentative CDO briefly discusses this issue. On 6 April 2012, staff sent the Discharger a letter, including a

Response to Comments  
Richard Sykora  
Red Ink Maid Big Seam Mine  
Tentative CDO

Form 200, requesting the submission of the required information to transfer the WDRs to the new owner and operator of the mining claims if such a change in control or ownership occurred. (Exhibit R.)

On 12 May 2012, the Central Valley Water Board received a letter from Wildcat Mining Enterprises, LLC (“the LLC”) dated 10 May 2012 requesting a transfer of the WDRs. The letter also included a completed Form 200 signed by Mr. Sykora as manager of Wildcat Mine Enterprises, LLC. (Attachment 2.)

Mr. Sykora, on behalf of the LLC, sent a follow-up letter dated 28 May 2012 advising the Executive Officer that information pertaining to the date of the transfer from himself to the LLC was unintentionally omitted from the Form 200. Mr. Sykora stated “[p]lease refer to the letter I sent you dated February 29, 2008, stating the transfer of liability and ownership of the operation to Wildcat Mining Enterprises, LLC.” (Attachment 3.)

On 15 June 2012, the Central Valley Water Board received the comment letter dated 13 June 2012 which is described above.

#### **Prosecution Team’s Response to Comment 1**

On 22 June 2012, Central Valley Water Board staff sent the LLC a letter addressed to the attention of Mr. Sykora to follow-up on the request to transfer WDRs. (Attachment 4.) After reviewing the Form 200, staff noted that the LLC is a foreign business entity registered in Nevada and reconfirmed that the LLC is not registered with the California Secretary of State to conduct business in this state. In addition, staff pointed out similar concerns raised by the United States Forest Service (USFS) in its 23 March 2012 response to a Proposed Plan of Operation (Group Exhibit P). Finally, staff noted that it had no record of a letter dated 29 February 2008 regarding a transfer in liability and ownership of the mining claims and requested that this letter be submitted along with copies of the documents evidencing the date of transfer of ownership and operation from Mr. Sykora to the LLC.

Central Valley Water Board staff also requested that the LLC submit additional information regarding the LLC including Articles of Organization, by-laws, any agreement(s) between the members of the LLC identifying who has the authority to manage the company, a copy of the document indicating the LLC is registered to conduct business in California, or a copy of the submitted application for registration if it has not been finally approved by the Secretary of State. Submission of these documents was requested by 3 August 2012.

The Central Valley Water Board may issue a CDO pursuant to Water Code section 13301 where it finds that a discharge of waste is taking place, or threatening to take place, in violation of requirements or discharge prohibitions prescribed by the Central Valley Water Board. The purpose of a CDO is to direct those persons not complying with the requirements or discharge prohibitions to comply according to a time schedule established by the board. Therefore, issuance of a CDO presupposes that the Central

Response to Comments  
Richard Sykora  
Red Ink Maid Big Seam Mine  
Tentative CDO

Valley Water Board issued waste discharge requirements to those persons who are discharging waste or threatening to discharge waste in violation of requirements.

The Central Valley Water Board issued WDRs to Mr. Sykora on 6 December 2007. As noted in Item #6 of the tentative CDO, Mr. Sykora, continues to be the named mine claimant and operator on the WDRs. Until the LLC submits the requested information and until the WDRs are transferred to the LLC, Mr. Sykora continues to be the properly named party in the tentative CDO and remains responsible for complying with the terms of the WDRs and the CDO, should the Central Valley Water Board adopt it as proposed.

COMMENT 2; 26 June 2012 Comment From Mr. Ross Branch, Field Representative For Congressman Tom McClintock

Congressperson McClintock's Field Representative Ross Branch submitted a comment letter concerning the Administrative Civil Liability Complaint ("ACLC"). The 26 June 2012 letter from Mr. Branch is the last in a series of letters between the Congressman's aids and Mr. Cris Carrigan, Director of the State Water Resources Control Board's Office of Enforcement. (Attachment 5.) The letters were designated in the Prosecution Team's 9 July 2012 Rebuttal Evidence package, and are attached to this Response to Comments. (Attachment 6.)

The 26 June letter does not dispute the ACLC. Rather, Mr. Branch expresses that the Congressman's "interest in this case pertains solely from a policy concern, the involvement of a federal agency (United States Forest Service, USFS) and federal land, and the implementation of federal law." (Attachment 5, p. 1) Mr. Branch unequivocally states that the Congressman does not and will not represent the Discharger in the ACLC proceeding. (*Id.*)

Because the letter contains several misleading and factually erroneous statements, the Prosecution Team has elected to respond to it so that the Central Valley Water Board will have the benefit of a clear record. The letter concludes by recommending that: "If the Water Board is truly concerned about protecting water quality, it would behoove the agency to focus on significant threats to water quality, not a small operation which is already monitored and regulated by the federal land management agency, the United States Forest Service." (*Id.*, at p. 3.)

**Background**

The Industrial Storm Water General Order 97-03-DWQ ("ISW Permit") regulates discharges associated with ten broad categories of industrial activities. Mining facilities with Standard Industrial Classification ("SIC") Codes 10 through 14 are one of the ten facility categories covered by the ISW Permit. Red Ink Maid and Big Seam mine specifically fall within category 148, SIC Code 1481, for "Nonmetallic Minerals Service, Except Fuels," which provides coverage for establishments that primarily engage in the removal of overburden, strip mining, and other services for nonmetallic minerals. The Discharger listed this SIC Code on his 2006 Notice of Intent seeking to establish

Response to Comments  
Richard Sykora  
Red Ink Maid Big Seam Mine  
Tentative CDO

coverage under the ISW Permit. (Attachment 7.) The most common type of contaminants generated by this type of industrial activity are total suspended solids, total dissolved solids and turbidity.

The mining facility is located on a very steep slope (up to 60%) directly adjacent to Mad Canyon, a seasonal tributary to the American River. Surface water drains from the mining facility directly to Mad Canyon. The ISW Permit is intended to cover this type of mining facility and to regulate industrial stormwater discharges to Mad Canyon resulting from precipitation and stormwater runoff coming into contact with waste products, by-products and overburden at the mine site, as the Discharger himself apparently understood when he submitted the 2006 Notice of Intent.

**Prosecution Team's Response To Comment 2:**

The commenter asserts that in the 2006-2007 annual report, Water Board staff Loral Wardit stated there is "[n]o discharge from the facility site. All water percolates into the ground and does not runoff the site. Since no discharge event occurred, sampling was not possible." (Attachment 5, p. 1.) To clarify, the 2006-2007 annual report was filled out by the Discharger on 12 September, 2007 at the Central Valley Water Board office in Rancho Cordova with the assistance of Laurel Warddrip, Student Assistant. The annual report was due by 1 July 2007, and the Discharger apparently came to the Regional Board office to fill out the report form after having received a notice of non-compliance, which was mailed to him on 22 August 2007. Ms. Warddrip's hand written notes indicate that she typed the answers/explanations given to her by the Discharger into the application. (See Attachment 8, p. 4.) Accordingly, the statements quoted by the commenter are not properly attributed to Water Board staff.

With respect to the 2008-2009 annual report, the commenter cites to data from that annual report. However, as noted in the Storm Water Multiple Application & Report Tracking System 2 (SMARTS), the Central Valley Water Board staff has only received the 2006-2007 and 2007-2008 annual reports from the Discharger. (Attachment 9.) There is no record that the Discharger ever submitted the 2008-2009 annual report.

The commenter further contends that the Water Board has never proven that there is a discharge of stormwater from the mine site. (Attachment 5, p. 2.) However, the ISW Permit establishes that mining operations of this type, with this SIC Code, require coverage, generally. This facility is located on a very steep (up to 60%) slope directly above and adjacent to the Mad Canyon tributary to the American River. (Attachment 10.) Operations involve removing mining wastes, by-products and overburden from an underground mine, after which the wastes are placed in a series of waste dumps – exposed to the elements – on the steep slopes. These activities appear, on their face, to be the type the ISW Permit was intended to regulate under SIC Code 1481. Indeed, the Discharger recognized this when he filed his Notice of Intent for coverage under the ISW Permit in 2006. Perhaps most importantly, the Discharger has never filed a Notice of Termination of Coverage Under the General Industrial Storm Water Permit. Under

Response to Comments  
Richard Sykora  
Red Ink Maid Big Seam Mine  
Tentative CDO

section IV-3 of the Notice of Termination, a discharger may describe why storm water associated with the industrial activity does not discharge to waters of the United States, and provide the information required in section V through VIII if he wants to terminate coverage. (Attachment 11.) The Discharger has never submitted a Notice of Termination, nor has he provided the information required to affect a termination.

The commenter further asserts that the discharge of mining waste due to toe-slope failure is a legacy issue. (Attachment 5, p. 2.) Based on several inspections of waste dumps 1 through 4 at the site by Central Valley Water Board staff, discharges of mining waste, including mining by-product and overburden, are occurring continuously due to the unstable nature of the waste piles. Staff observed failures at the toes of the waste dumps where they abut Mad Canyon, and observed debris chutes created by slide material to Mad Canyon. These conditions currently violate, at a minimum, Waste Discharge Requirement Prohibition A.6 and Discharge Specification B.5.

Finally, the commenter asserts that the Central Valley Water Board should cede its authority to regulate and protect water quality at this facility to the United States Forest Service ("USFS"). (Attachment 5, p. 3.) Setting aside the questionable legality and wisdom of such an approach, the record for this matter clearly establishes that the USFS expressly conditioned its approval of the Discharger's Plan of Operations in its 8 September 2004 Decision Notice and Finding of No Significant Impact for the Big Seam and Red Ink Maid Mining Claim ("Decision Notice") on the Discharger obtaining a Waste Discharge Permit from the Regional Board. (Attachment 12, p. 5, para. 10; "This project requires a Waste Discharge Permit, and may require a Storm Water Pollution Prevention Plan, etc.")

In fact, the USFS' finding of no significant impact is dependent on compliance with the terms and conditions of Waste Discharge Requirements and of any Storm Water Pollution Prevention Plan ("SWPPP"). (See Attachment 12, *Conditions of Approval For Plan of Operations*, p. 3, paras. 9(a) through 9(d).) As a condition of the USFS approval to operate this mine taking effect, the Discharger was required to "[p]rovide this office with a copy of your Storm Water Pollution Prevention Plan as soon as it is approved by the Regional Water Quality Control Board." (*Id.*, para. 9(a).) The conditions of approval also prohibit soil loss from the site. In short, USFS recognizes and relies upon the Central Valley Water Board for its expertise and authority to protect water quality when regulating this site.