

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2020-0504

IN THE MATTER OF

25 HILL PROPERTIES, INC.
JAMESON TRUST, VIRGINIA LANDS, AND B-ZONE (SHELL) LEASES,
MIDWAY SUNSET OIL FIELD
KERN COUNTY

This Complaint is issued to 25 Hill Properties, Inc. (Discharger) under the authority of California Water Code (Water Code) section 13323 to assess administrative civil liability pursuant to Water Code section 13350 for failure to comply with cleanup and abatement order No. R5-2015-0745 and cease discharge of oil field produced wastewater to disposal surface impoundments on the Jameson Trust, Virginia Lands, and B-Zone (Shell) Leases by the prescribed deadline.

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

1. The Discharger owns and operates the Jameson Trust, Virginia Lands, and B-Zone (Shell) Leases (Facilities), located at the southern and southwestern outskirts of Taft, California, County of Kern.
2. The Facilities are regulated by Cleanup and Abatement Order No. R5-2015-0745 (CAO) and monitoring and Reporting Program No. R5-2015-0745 (MRP), issued by the Central Valley Water Board on 1 December 2015 (Exhibit A). The CAO and accompanying MRP contain reporting requirements for surface impoundments (ponds) used for disposal of oil field produced wastewater (discharges). The Discharger operates three such ponds, one at each of the Facilities. The discharges are not regulated by waste discharge requirements.
3. The CAO requires the submission of a work plan (Work Plan) by 1 February 2016, to assess whether the discharges can comply with applicable laws, policies, and regulations that would allow the issuance of waste discharge requirements. The CAO also requires the submission of quarterly technical reports starting 29 February 2016, and the Discharger to comply with the accompanying MRP. If it is determined that the discharges cannot comply with applicable laws, policies, and regulations, the CAO requires the Discharger to cease discharge by 31 December 2016, a deadline later extended by the Central Valley Water Board Executive Officer to 7 August 2017.
4. The Discharger has failed to submit the Work Plan, furnish quarterly technical reports, and comply with the MRP. The Discharger continued to use the ponds and failed to cease discharge by the prescribed deadline.

STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED

5. An administrative civil liability may be imposed pursuant to the procedures described in Water Code 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.
6. Pursuant to Water Code section 13350, subdivision (a), a person who violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board, or causes or permits any oil or any residuary product of petroleum to be deposited in or on any or the waters of the state, except in accordance with waste discharge requirements, shall be liable civilly and remedies may be proposed, in accordance with subdivision (d) or (e).
7. Pursuant to Water Code section 13350, subdivision (e), civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.
8. Pursuant to Water Code section 13267, subdivision (b)(1), a regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports and shall identify the evidence that supports requiring that person to provide the reports.
9. Pursuant to Water Code section 13268, subdivision (a), any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).
10. Pursuant to Water Code section 13268, subdivision (b)(1), civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

ALLEGED VIOLATIONS

11. On 19 September 2017, the Central Valley Water Board staff issued Notices of Violation (NOVs), one for each of the Facilities, notifying the Discharger that the Work Plan and technical reports with appurtenant components had not been received. (Exhibit B.) The NOVs were issued following inspections of the Facilities on 23 August 2017 where Board

Staff confirmed that the ponds were still being used for discharge. The NOV's requested that the delinquent reports be submitted, and other violations corrected as soon as possible, but prior to 30 November 2017. The NOV's advised the Discharger that the discharge of crude oil and wastewater to land without obtaining waste discharge requirements is a violation of the CAO, and such violations subject the Discharger to formal enforcement actions including the assessment of administrative civil liability. The NOV's also stated that if the Discharger intends to retain the ponds for discharge, a notice of Intent (NOI) must be submitted to apply for a Notice of Applicability for enrollment under one of the Central Valley Water Board's General Orders for Oil Field Discharges to Land (General Orders).

12. On 22 November 2019, the Central Valley Water Board staff issued Notices of Violation (NOV's), one for each of the Facilities, notifying the Discharger that the Work Plan and technical reports with appurtenant components had not been received. (Exhibit C.) The NOV's were issued following inspections of the Facilities on 30 October 2018 where Board Staff observed dark black fluids in the ponds that appeared to consist of oil and oil field produced wastewater. The NOV's requested that the delinquent reports be submitted, and other violations corrected as soon as possible, but prior to 23 December 2019. The NOV's advised the Discharger that the discharge of crude oil and wastewater to land without obtaining waste discharge requirements is a violation of the CAO, and such violations subject the Discharger to formal enforcement actions including the assessment of administrative civil liability. The NOV's also stated that if the Discharger intends to retain the ponds for discharge, a NOI must be submitted to apply for a Notice of Applicability for enrollment under one of the Central Valley Water Board's General Orders.
13. On 22 November 2019, the Central Valley Water Board staff issued a Notice of Violation (NOV), for failure to submit the Work Plan and Comply with the CAO. (Exhibit D.) The NOV explained the Discharger's situation regarding the violations associated with non-compliance with the CAO and the accompanying MRP. The NOV advised that the Discharger is in violation of California Water Code and liable under section 13260 for failure to submit a report of waste discharge, and section 13350 for improper discharges to land, for continued unregulated usage of the ponds for the wastewater disposal, and for failing to comply with the CAO requirements. The NOV also stated the deliverables prescribed in the CAO were past due, therefore, the Discharger is accruing penalties based on the Discharger's failure to accurately and timely respond to the CAO. The NOV directed the Discharger to contact Central Valley Water Board staff by 10 December 2019, to set up a meeting to discuss the Discharger's situation. Therefore, the Discharger was provided an opportunity to meet with the Central Valley Water Board staff to discuss the alleged violation and compliance alternatives. The Discharger was not responsive to the to the 22 November 2020 NOV.
14. On 6 January 2020, the Central Valley Water Board staff issued a courtesy letter notifying the Discharger that staff was in the process of assessing civil liability for failure to comply with the CAO. (Exhibit E.) The letter included a calculation of the maximum penalty (\$7,000,000) as of 6 January 2020 for the failure to submit the missing Work Plan, submit technical reports, comply with the MRP, and cease discharge by the prescribed deadline.

The methodology used to calculate the maximum penalty in the 6 January 2020 letter consolidated the violation types. As of the date of this Complaint, the Discharger did not respond to the 6 January 2020 letter.

15. Central Valley Water Board's compliance tracking system and case files indicate that, to date, the Board has not received the Work Plan, technical reports or any of the appurtenant components thereof. The Discharger has not complied with the MRP, and according to Board staff observations and aerial images, the ponds are still in use.
16. On 3 February 2020, Central Valley Water Board staff successfully contacted the Discharger by telephone. The Discharger indicated that he had received the 22 November 2019 NOV, and the 6 January 2020 courtesy notice. The Discharger did not indicate why he had not contacted Central Valley Water Board staff to discuss his situation. He did indicate that he hired a professional geologist to help get him into compliance and that the professional geologist would contact Central Valley Water Board staff. As of the date of this complaint, the professional geologist has not contacted Central Valley Water Board staff regarding the Discharger's site.
17. The Discharger is alleged to have violated the following sections of the CAO and the MRP:
 - A) Order 1 of the CAO, which states:

“By 1 February 2016, the Discharger shall prepare and submit to the Central Valley Water Board a Work Plan with a time schedule proposed by the Discharger and approved by the Assistant Executive Officer. The schedule shall provide the ability to determine whether the discharge can comply with applicable laws, policies, and regulations that would allow the issuance of waste discharge requirements by 31 October 2016. If issuance of waste discharge requirements is not obtained by 31 December 2016, the discharge shall cease.”
 - B) Order 2 of the CAO, which states in part:

“Beginning 29 February 2016, or a date approved by the Assistant Executive Officer, and quarterly thereafter until all Work Plan activities are complete, the Discharger shall submit technical reports that provide information to document the Work Plan activities completed to date and to ultimately document that all elements of the Work Plan have been completed.”
 - C) Order 3 of the CAO, which states in part:

“The Discharger shall comply with the MRP, which is part of this Order, and any revisions thereto as ordered by the Assistant Executive Officer. The submission dates of self monitoring reports shall be no later than the submission date specified in the MRP.”
 - D) The MRP, which states in part:

“Compliance with this Monitoring and Reporting Program (MRP) is required pursuant to Water Code section 13267 as ordered by Cleanup and Abatement Order

R5-2015 0745 (the “CAO”). Failure to comply with this program constitutes noncompliance with the CAO and the Water Code, which can result in the imposition of civil liability.”

SUMMARY OF ALLEGED VIOLATIONS

18. The Discharger violated both the CAO and the MRP by failing to submit the Work Plan with appurtenant components as directed by the MRP that accompanies the CAO, which contain reporting requirements for ponds used for disposal of oil field produced wastewater and for failing to cease the discharges. The following summarizes the violations in more detail:

Violation 1: The Discharger failed to submit the Work Plan with appurtenant components by 1 February 2016 as required by the CAO. As of the date of this Complaint this Work Plan is now 553 days late. The total number of days the Discharger has been out of compliance is the basis for determining the recommended civil liability amount. The Discharger has been out of compliance for a total of 553 days.

Violation 2: The Discharger failed to comply with the MRP, as required by the CAO. As of the date of this Complaint the Discharger is out of compliance with the MRP for 553 days. The Discharger has been out of compliance for a total of 553 days.

Violation 3: The Discharger failed to submit quarterly technical reports with appurtenant components starting 29 February 2016 as required by the CAO. As of the date of this Complaint these technical reports are now 525 days late. The Discharger has been out of compliance for a total of 525 days.

Violation 4: The Discharger failed to cease discharge by 7 August 2017, an extension to the original deadline prescribed in the CAO. As of the date of this Complaint, ceasing discharge is 917 days late. The Discharger has been out of compliance for a total of 917 days.

The total numbers of days the Discharger has been out of compliance for each violation is the basis for determining the recommended civil liability amount.

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

19. On 4 April 2017, the State Water Resources Control Board adopted Resolution No. 2017-0020 amending the [Water Quality Enforcement Policy \(Enforcement Policy\)](#). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 5 October 2017. 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.

(https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

20. The administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy. In summary, this penalty assessment is based on the failure to comply with the CAO and the accompanying MRP. 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.

The required factors have been considered using the methodology in the Enforcement Policy, as explained in detail in Attachment A. Attachment B shows the Economic Benefit Analysis.

21. The maximum penalty for the violations described above is \$12,740,000 based on a calculation of the total number of per-day violations for each violation times the statutory maximum penalty (553 total days of violation 1 X \$ 5,000) + (553 total days of violation 2 X \$5,000) + (525 total days of violation 3 X \$5,000) + (917 total days of violation 4 X \$5,000). However, based on consideration of the above facts and after applying the penalty methodology, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **three hundred twenty-five thousand three hundred thirty-nine dollars (\$325,339)** for the violation cited above. The specific factors considered in this penalty are detailed in Attachment A. The Discharger's culpability, history of violations, and ability to pay and continue in business were considered. Other factors as justice may require were considered, but circumstances warranting an adjustment under this step were not identified by Central Valley Water Board staff or provided by the Discharger.

**PROPOSED ADMINISTRATIVE CIVIL LIABILITY - 25 HILL PROPERTIES, INC., IS
HEREBY GIVEN NOTICE THAT:**

The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an administrative civil liability pursuant to Water Code sections 13323 and 13350 in the amount of **three hundred twenty-five thousand three hundred thirty-nine dollars (\$325,339)** for failure to submit the Work Plan with appurtenant components by the 1 February 2016, submit quarterly technical reports starting 29 February 2016, failing to comply with the MRP, and failing cease discharge by the prescribed deadline, as required by the CAO and the accompanying MRP.

If the Central Valley Water Board holds a hearing, it may choose to impose an administrative civil liability in the amount proposed or for a different amount, decline to seek civil liability, or refer the matter to the Attorney General to have a Superior Court consider enforcement. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this administrative civil liability complaint through hearing.

There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.

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 CAO and the accompanying MRP for which penalties have not yet been assessed or for violations that may subsequently occur.

Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

Payment of the assessed liability amount does not absolve the Discharger from complying with the CAO or the MRP, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Discharger fails to comply with the CAO, the MRP, and/or future orders issued by the Central Valley Water Board.

Original Signed by W. Dale Harvey for:
CLAY L. RODGERS
Assistant Executive Officer
Central Valley Water Board Prosecution Team

11 February 2020
DATE

Attachments: Attachment A - ACL Complaint No. R5-2020-0504, Specific Factors Considered
Attachment B - ACL Complaint No. R5-2020-0504, Economic Benefit Analysis

Exhibits: Exhibit A
Exhibit B
Exhibit C
Exhibit D
Exhibit E